BACKGROUND OF ACTION TAKEN LEADING UP TO APPROVAL OF THE PROPOSAL TO INCLUDE GENDER IDENTITY (GI) IN THE MSU ANTI-DISCRIMINATION POLICY (ADP)

- 11-8-02 Final Report out of GI Ad Hoc Committee to ECAC
- 11-12-02 Standing Committees reviewed - Committee findings forwarded to GI Ad Hoc Committee
- 2-18-03 GI Ad Hoc Committee presented Proposed Amendment to ECAC addressing the University Committee on Faculty Affairs Concerns - ECAC approved. (See attachment #1)
- 2-25-03 GI Ad Hoc Committee presented report to Academic Council with proposed amendment (Action Item - Advisory Mode) - Academic Council approved.
- 2-25-03 The amended GI Ad Hoc Committee Report went to President McPherson for consideration.
- 4-8-03 Executive Committee of Academic Council received response from President McPherson which was referred back to the GI Ad Hoc Committee for further review. (See attachment #2)
- 9-9-03 ECAC received and approved another proposed substitute amendment from the GI Ad Hoc Committee to the MSU ADP.
- 9-23-03 Academic Council approved the proposed substitute amendment to the ADP regarding gender identity and harassment. (See attachment #3)
- 12-5-03 Board of Trustees approved the amendment to the ADP. (See attachment #4)
February 14, 2003

TO: Executive Committee of Academic Council

From: Ad Hoc Committee on Gender Identity

Re: Response to UCFA concerns regarding proposed amendment to the Anti-Discrimination Policy

During the fall semester of 2002, The Executive Committee of Academic Council (ECAC) received the report of the Ad Hoc Committee on Gender Identity (hereafter referred to as the Committee) and forwarded it to four relevant standing committees and the Council of Graduate Students for review and response. All endorsed the Committee’s recommendations; however, the University Committee on Faculty Affairs (UCFA) had concerns. On January 14, 2003, ECAC referred these concerns back to the Committee for consideration. This memorandum is offered to provide a revised footnote and committee’s commentaries during the deliberation.

UCFA drafted an addition to the proposed footnote that specified example situations in which reasonable limitations may exist on the ability to accommodate complaints based on gender identity. In its research, the Committee took into consideration the many potential consequences of its proposed amendment, including those areas stated in UCFA’s response. However, the Committee fears that a list of these example situations may instead be used as a list of absolute exemptions for which the University will not consider complaints. With changing societal expectations and “norms”, these concerns will undoubtedly change over time. In addition, a list of potential areas in which “inappropriate limitations” may apply is inconsistent with the format of the Anti-Discrimination Policy. No other protected group has such a list, even though the clause has very real application to several of them.

In response to UCFA’s concerns, the Committee endorses the following substitute revision as the recommended footnote to be added to “gender” in the ADP:

Gender includes sex as that term is used in Michigan and federal anti-discrimination laws, but shall also be broadly interpreted to provide protection against gender stereotyping and for persons who are, or are assumed to be, transgender. For these purposes, a transgender person includes (a) an individual whose gender self-image may be different from his/her biological or assigned sex at birth, whether or not that individual has taken any action to change his/her behavior and/or appearance (face, body, dress) to conform to the gender with which he/she identifies; and (b) an individual whose gender is, or is perceived to be, ambiguous or fluid. (Adjudication of discrimination complaints filed with the Anti-Discrimination Judicial Board pursuant to this footnote may involve interpretation of the concept of “inappropriate limitations”. The meaning of this phrase in this context is subject to evolution as cultural norms, societal expectations and legal standards change. If deemed necessary, its interpretation may also involve a judicious balancing of interests (for example, in weighing how reasonable expectations of personal privacy affect the redress sought by the complainant) and an incremental approach to implementation (for example, with regard to off-campus programs or modification of facilities).

The Committee feels that this wording sufficiently addresses the role of “inappropriate limitations” while providing flexibility to tailor resolutions to the circumstances of individual cases. The examples provide illustration of when this clause might be useful, without stating specific situations that are likely to change (and therefore require periodic reevaluation and rewriting).
In response to other concerns brought up during review, the Committee would also like to clarify the intended scope of protection. In effect, every person is protected, given that his/her complaint of discrimination applies to gender stereotyping or the definitions of transgender provided. Analogous to age discrimination, which can happen to a person of any age, the protected population is inclusive, but the guidelines for protection are well defined.

Lastly, the Committee would like to reemphasize the importance of education. As the scientific and university communities are just beginning to grasp gender identity issues, the general public has yet to be well informed. Fair and sensible implementation of the policy, with the interest of both complainants and other students/staff/faculty in mind, requires an in depth understanding of the scope and need for gender identity protection.
MICHIGAN STATE
UNIVERSITY

April 8, 2003

MEMORANDUM

TO: Steven Spees, Chairperson, Executive Committee of
    Academic Council

FROM: President Peter McPherson

SUBJECT: Implementation Questions Related to the Proposed Change in the Anti-
Discrimination Policy and Gender Identity

As you know, the ECAC Ad Hoc Committee on Gender Identity submitted its report
to the Academic Council for review and action. The Academic Council approved the
report and the changes proposed by the Ad Hoc Committee in the Anti-Discrimination
Policy ("ADP") on February 25, 2003. After reviewing the report of the Committee
and the action of the Academic Council, I requested a meeting with the Ad Hoc
Committee. While it is clear that the Ad Hoc Committee was very thorough and
thoughtful in its deliberations, I was concerned that a number of questions were left
unresolved by the proposed ADP amendments. In my view, not only must the
proposed change be clear in terms of its protections, we also have an obligation to
assure that if a person is going to be charged with discrimination, the rule must have
enough clarity for common understanding, or it is not fair to those being charged.

On March 14, most of the Ad Hoc Committee members met with me; Provost Lou
Anna K. Simon; Paulette Granberry Russell, Senior Advisor to the President for
Diversity and Director, Office for Affirmative Action; Angela Brown, Director,
University Housing; and Denise Anderton, Acting Assistant Vice President, Office of
Human Resources. General Counsel Noto and Assistant Provost Banks, who acted as
advisors to the Ad Hoc Committee, were also in attendance. The Ad Hoc Committee
members and others in attendance at the meeting provided commentary in response to
various questions related to the implementation of the proposed changes.

While the meeting was very helpful, I continue to have concerns regarding the
practicability of the proposed changes, particularly with respect to our ability to
reasonably implement an enhanced definition of gender that is perceived by some as
vague and ambiguous. After listening to the Committee members and considering
their responses, I believe the answers still leave room for the exercise of judgment that
may unreasonably expose members of the community to charges of violating the ADP.
The proposed changes seem to lead us in the direction of an evolving "common law"
of gender identity discrimination. Most regulatory schemes for discrimination are
more prescriptive than what is envisioned here. It is hard to ask staff and
administrators to make tough decisions on issues like access to facilities in the gender
identity context when those making the decision have little ability to foresee whether
they can be charged with violating the ADP, and found to have violated the ADP, because of their decisions. This is equally true for faculty, staff, students, and others who are expected to abide by standards of behavior that are nondiscriminatory, and in order to do so need a clear and unambiguous Anti-Discrimination Policy.

However, my concerns regarding the practicality of the proposed changes do not affect my support for the need for further dialogue and educational programming on gender identity and gender stereotyping.

It should be noted that the ambiguities present fewer difficulties, in my judgment, in the harassment area than in deciding discrimination claims. For example, under the current ADP, prohibited racial, religious, or sexual orientation harassment, is handled similarly to sexual harassment and prohibiting harassment based on gender identity or gender stereotyping could therefore also be implemented and administered in a similar fashion.

As you will note, the Ad Hoc Committee members provided commentary to a representative sampling of the questions raised during our meeting. As I consider the Academic Council's recommendations, more definitive responses to these questions would help guide me as I deliberate about my position regarding the proposed change to the ADP. I would expect that the Board of Trustees might also raise these questions as well. While the questions are posed to you (ECAC), the process you use for responding to these questions is a matter for your decision.

Questions for Consideration

1. In the definition, what is the meaning of “ambiguous or fluid” found in subsection (b)?

   Members of the Ad Hoc Committee indicated that “ambiguous and fluid” reflects that gender is on a continuum and that a person’s gender identity and expression may be fluid (i.e., variable and changeable). Further, the Committee also meant that it refers to “intersex” individuals, whose sex (male or female) cannot readily be determined medically or biologically.

   In reviewing the Ad Hoc Committee report, it is apparent that the members spent a significant amount of time considering the definitions for the class of people to be protected from discrimination and harassment. These are not concepts that are or will be easily understood within the community. In my view, however, without further clarification, the ambiguities and vagueness in the proposed ADP change will adversely impact our ability to protect the various interests that the Ad Hoc Committee sought to guard.

   One of the significant problems with subsection (b) is that it does not clearly inform people of what is protected or prohibited. (But, this is true for subsection (a) as well.) For example, if a supervisor reasonably perceives someone’s gender in one way and acts on that and denies the individual access to a facility or opportunity, could the supervisor be found in violation of the
ADP regardless of his or her intent not to discriminate and acting in good faith, if that reasonable perception is later determined to be wrong? The commentary during the meeting suggests that there is no need to provide additional guidance and that we deal with situations, like that described above, on a case-by-case basis. However, in my judgment, to do so presents greater opportunity for inconsistent treatment and error. The terms "ambiguous or fluid," for example, are subjective in nature and not susceptible of being understood, i.e., vague. The ADP must give notice to people of what is protected, as well as conduct that is prohibited and provide definite standards to guide discretionary actions of administrators and others.

2. Relative to the language "incremental approach to implementation," what facility modifications would be required by this amendment to the ADP?

The Ad Hoc Committee members indicated that they intended the same approach to facility modifications as that which occurs for persons with disabilities. In fact, it was suggested by the Ad Hoc Committee that many of the changes being made for disability accessibility would also address gender identity needs, e.g., a bathroom is renovated to accommodate disabilities, but it can also be designated unisex – hence their expectation that the proposed amendments would result in little additional cost on the facilities front. I interpreted this to mean that any requirement to make facility changes would be met if we comply with the ADA requirements, but others seemed less sure of this and your clarification on this interpretation is sought. In the disability area, case law, technical manuals, and other guidance give parameters for making decisions about reasonable accommodations. There are no such materials on gender identity.

3. How is the assignment of students in the residence halls to be handled and is there an expectation that accommodations would have to be made in every residence hall when requested?

While the Ad Hoc Committee report, page 11 provides some clarification of the Committee's intentions, the Ad Hoc Committee members also indicated that assignment questions should be handled on a case-by-case basis. However, as noted in the commentary under question (2) above, if such matters are to be treated like reasonable accommodations in the disability area, more detailed guidance (like that which exists for the ADA) would be useful in implementing such accommodations.

4. If a student's gender is in question for housing assignment, or after housing has been assigned, will University Housing have the ability to gain information from the student to make the best assignment or a change in assignment without being subject to a charge of discrimination?

The position taken by the Ad Hoc Committee members continued to be that we work these assignments out on a case-by-case basis. That has the same problems as (2) and (3) above. The absence of standards up front will expose
the individuals who handle these issues to second-guessing later.

5. What is the definition of gender stereotyping, and are there situations where there are “appropriate limitations” on employment opportunity, access to University residential facilities, or participation in other ADP enumerated University activities based on gender stereotyping?

Toward the end of the meeting with the Ad Hoc Committee members, I raised the question regarding the definition of gender stereotyping. While we did not have extensive discussions on the question, it was my impression that this is an area where we can reasonably expect implementation concerns. Based on a review of the Ad Hoc Committee report and action of the Academic Council it seems no attempt has been made to 1) ascertain the number and type of discrimination complaints that could be made as a result of adding gender stereotyping to the proposed ADP change; and 2) define the standards that would be applied to these complaints.

The Ad Hoc Committee is to be commended for its report. Yet, the remaining questions and their answers are essential to protecting the rights of the campus community. The administrators and other members of our community who make judgments here deserve more specific guidance from those who wish to change the ADP. I ask for assistance in clarifying these important matters.

Cc: Provost Lou Anna K. Simon
    Dr. Lee June
    Dr. Robert Banks
    Robert Noto
    Paulette Granberry Russell
    Denise Anderton
    Angela Brown
Would any monies be saved if MSU had fewer non-revenue raising sports? Some faculty have raised some question about the “free” tickets for football, basketball and hockey. Professor Abeles voiced the need for a forum or open discussion about such issues identified. Professor Kasavana indicated that a faculty member from UCAP, would be identified to sit on the Athletic Council this year to increase the communication. Professor Dilley identified himself as the UCAP Representative. The Provost noted that having the Chairperson of the Athletic Council sit on Academic Council could be discussed.

University Committee on Curriculum Report:
Professor Beckwith, Chairperson of UCC, presented the Curriculum Report as an action item. Professor Beckwith noted the website on the short version of the UCC Report for detailed information on the committee’s actions. Several new programs were highlighted:

- A new Specialization in Aquaculture has been established to serve undergraduates by providing an introduction to the husbandry of aquatic organisms to complement skills in other majors. It was developed to serve students interested in careers in aquaculture, whose primary interest is outside the realm of fisheries and wildlife.
- A new option in Language and Literacy has been established for doctoral students in Learning, Technology and Culture and Curriculum, Teaching and Educational Policy.
- A new Graduate Specialization in Environmental Science and Policy has been established for this academic year. It is available as an elective to doctoral students in departments and programs emphasizing environmental science or policy.

A motion to accept the Report was passed.

Gender Identity:
Provost Simon asked for permission from members for Professor Chou to address the Council. Permission granted. Professor Chou, Chairperson of the Ad Hoc Committee on Gender Identity, presented a revised proposal for an amendment to the ADP. This revised proposal would supersede the gender identity amendment previously approved by the Council Spring Semester 2003 and should be considered a proposed substitute amendment. This substitute amendment addresses only the anti-harassment clause of the current ADP.

Professor Chou reviewed the concerns raised by President McPherson relating to the implementation of the antidiscrimination portion of the original proposed amendment. The Ad Hoc Committee and ECAC agreed the issues identified need to be studied and discussed further, before a more satisfactory amendment regarding the anti-discrimination clause and gender identity can be proposed to the ADP. The ECAC believed it was important to go forward with a clear statement that harassment of
individuals with gender identity concerns will not be tolerated within the MSU community. (See attached Proposed Substitute Amendment).

A motion to accept the proposed substitute amendment to the ADP was passed.

Ratification of Action by ECAC on March 18, 2003 re: UCC Report:
Professor Sticklen reported that ECAC approved the UCC Report on March 18, 2003 due to the lack of a quorum at Academic Council.

Ratification of Action by ECAC on April 22, 2003 re: UCC Report:
Professor Sticklen reported that ECAC approved the UCC Report on April 22, 2003 due to the lack of a quorum at Academic Council.

The Provost announced that President McPherson was due back to the University to assume his duties on October 1, 2003. The State of the University address will be on October 28, 2003, prior to Academic Council. Provost Simon stated it had been a privilege to serve MSU in her role during the absence of the President and appreciated the confidence of the Board of Trustees and the help of the entire community during these last months.

There being no further business, the meeting was adjourned at 4:35 p.m.

Respectfully submitted,

Jacqueline Wright
Secretary for Academic Governance

Attachments:

1. Revised Proposal for an Amendment to the ADP
2. Standing Committee Annual Reports for 2002-03

Tapes of complete meetings of the Academic Council are available for review in the office of the Secretary for Academic Governance, 308 Olds Hall, 355-2337.
MSU Trustees Approve Amendment To Anti-Discrimination Policy

12/05/2003

EAST LANSING, Mich. – The Michigan State University Board of Trustees voted today to add “gender identity” to the list of protected categories in the university’s anti-discrimination policy.

The policy also prohibits acts which harass any university community member on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status or weight.

“We hope that this amendment sends a clear message that harassment of individuals on the basis of gender identity will not be tolerated within the MSU community,” Trustee Colleen McNamara said.

The amendment to the policy also states that “the reference to ‘gender identity’ prohibits harassment based on (a) any gender-specific behavior, appearance or expression of an individual that departs from the harasser’s expectations for gender-specific behavior, appearance or expression or (b) any change of gender, completed or in process.”
Ad Hoc Committee on Gender Identity

Report to ECAC on the ASMSU Proposal to Include Gender Identity in the MSU Anti-Discrimination Policy

Friday, November 8, 2002
Report to ECAC
Ad Hoc Gender Identity Committee

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AD HOC GENDER IDENTITY COMMITTEE
Report to ECAC: Executive Summary

Last February, the ASMSU proposed that “gender identity” be added to the list of categories which provide the basis for protection against discrimination and harassment under the University’s Anti-Discrimination Policy. The standing committees of the Academic Governance system to which ECAC submitted the proposal for comment raised a number of questions about it. As a result, ECAC referred the proposal to an ad hoc committee composed of three faculty and three students for further study.

The Ad Hoc Committee on Gender Identity has studied the ASMSU proposal and related issues for the last five months. Its Report and recommendations are attached. The Committee’s recommendations were unanimous.

In sum:

1. Although the Committee was sympathetic to the ASMSU proposal, it concluded that the phrase “gender identity” lacks a standard and accessible definition and is poorly understood in the University community. Therefore, the Committee did not recommend that the ASMSU proposal be adopted.

2. (i) After careful study, the Committee determined that gender variant individuals should receive protection against discrimination and harassment under the Anti-Discrimination Policy. The Committee recommends that a footnote be added to the Anti-Discrimination Policy that would provide protection against gender stereotyping and for persons who are, or are assumed to be, transgender. For purposes of the Anti-Discrimination Policy, the Committee suggests that “transgender” persons include “(a) an individual whose gender self-image may be different from his/her biological sex or assigned sex at birth, whether or not that individual has taken any action to change his/her behavior or appearance (face, body, dress) to conform to the gender with which he/she identifies; and (b) an individual whose gender is, or is perceived to be, ambiguous or fluid.” The footnote would be attached to the word “gender” in the present text of the Anti-Discrimination Policy, and would have the effect of extending “gender” to encompass the set of issues faced by individuals who identify as desiring protection based on gender identity.

(ii) The Committee feels that the practical implications of making the amendments that it proposes to the Anti-Discrimination Policy warrant educational efforts at MSU about gender identity issues and, in most cases, a measured approach to resolving complaints alleging violations of the Anti-Discrimination Policy on gender identity grounds.
AD HOC GENDER IDENTITY COMMITTEE
Report to ECAC

1. Charge to the Committee

The Ad Hoc Committee on Gender Identity (to be called the Committee throughout this Report) acted under a charge from the Executive Committee of Academic Council (ECAC) of MSU. At its meeting of February 5, 2002, ECAC received a formal proposal from the Associated Students of Michigan State University (ASMSU) to include the phrase “gender identity” in the list of categories which provide the basis for protection against discrimination and harassment under the Michigan State University Anti-Discrimination Policy (ADP). (See Appendix I: ASMSU Proposal.)

ECAC referred the matter for comment to a number of standing committees in the MSU Academic Governance system. At the ECAC meeting of April 9, 2002, following receipt of reactions from these standing committees, the Committee was constituted by ECAC, with specific membership to be selected by Prof. Norm Abeles, then-Chairperson of ECAC. In consultation with student groups and others, Prof. Abeles selected a group of three MSU faculty members and three MSU students to serve on the Committee. (See Appendix II: Committee Members and Advisors.)

Prof. Abeles issued the following charge to the members of the Committee. (See Appendix III: Charge to the Committee.)

Charge 1. Consider the ASMSU proposal to amend the ADP to include a reference to “gender identity”.

Charge 2. Advise whether it is appropriate to provide protection against discrimination and harassment on gender identity grounds under the ADP and, if so, how best to do so.

Charge 3. Select a chairperson for the Committee.

At the first meeting of the Committee, held on May 31, 2002, the Committee’s members selected Prof. Karen Chou as its Chairperson.

2. Goals and Activities of the Committee, May 31, 2002 to Present

Since its organizational meeting on May 31, 2002, the Committee has undertaken a thorough examination of the issues under its charge. In doing so, the Committee sought:

- to develop an understanding of the complex issues of gender identity;
- to learn the scope and nature of problems at MSU against which the inclusion of “gender identity” in the ADP would provide protection;
- to determine whether it is appropriate to provide protection against discrimination and harassment on gender identity grounds under the ADP;
to determine how best to change the ADP to provide such protection, should such protection be, in concept, recommended;
• to ascertain the practical implications of providing such protection, should such protection be, in concept, recommended; and
• to provide commentary and suggestions to ECAC on related issues that might merit its future attention.

The Committee convened in a total of 31 meetings to consider issues under its charge. (See Appendix IV: Record of Committee Meetings.) From May through late August, these meetings generally occurred once a week. From August 23, 2002 until mid-October, the Committee typically met twice weekly. Thereafter, it met intermittently to review drafts of this Report.

In its meetings, the Committee consulted many individuals, most from the University community, who offered a broad range of perspectives on the issues before the Committee. (See Appendix V: Faculty, Administrator, Community Resources.) In all, 28 individuals were contacted. They either met with the Committee, for an average time of one hour, or spoke with a member of the Committee or one of the Committee’s advisors.

Written materials examined by the Committee included the following. (See Appendix VI: Written Materials Examined by the Committee.)

• UCFA commentary on the ASMSU proposal,
• UCSA commentary on the ASMSU proposal,
• UGC commentary on the ASMSU proposal,
• COGS commentary on the ASMSU proposal,
• CIC nondiscrimination policies and a survey of CIC institutions on gender identity/transgender issues prepared by the Office of Affirmative Action Compliance and Monitoring,
• ordinances and policies from a number of communities and universities that have chosen to provide protection against discrimination on gender identity grounds,
• a variety of magazine and newspaper articles,
• an educational packet of materials assembled by ASMSU, and
• several legal cases involving gender identity issues.

3. The Committee’s Understanding of “Gender Identity” and Related Terminology

In order to discuss the proposal by ASMSU, the Committee examined various definitions of gender identity. Gender identity has been defined broadly in some cases and very specifically in others; each definition appears to be crafted to meet the intentions of the governing body creating the policy. Examples of some of these definitions include:
“GENDER IDENTITY. Manifesting an identity not traditionally associated with one's biological maleness or femaleness.” - Jefferson County, KY, 1999

“Gender Identity’ includes the status of being transsexual, transvestite, or transgender.” - Olympia, WA, 1997

“Gender Identity means an individual's various attributes as they are understood to be masculine and/or feminine and shall be broadly interpreted to include pre- and post-operative transsexuals, as well as other persons who are, or are perceived to be, transgendered” - Tucson, AZ, 1999

After its review, the Committee concluded that there is no standard definition of “gender identity”, at least not one that encompasses all the meanings and connotations associated with that term. “Gender identity” has different meanings to different people and in different contexts. In many ways, it is an umbrella term that is used as a point of reference for a number of issues associated with how an individual’s gender is perceived or manifested, by the individual himself/herself and by others. The terms “gender expression” and “gender characteristics” are used in the literature, at times interchangeably with “gender identity,” but often with distinct differences in meaning. In most cases, “gender identity” is used to refer to an individual’s own self-image regarding his/her gender status. This self-identity as male, female, or an intermediate state along a gender continuum may be strongly felt and relatively unchanging, or it may be more fluid or ambiguous. “Gender expression” and “gender characteristics” are terms used to refer to outward signs of appearance or behavior that are perceived by others and judged by cultural “norms”. (“Gender characteristics” may also be used to refer to biological manifestations of gender, from chromosomes to reproductive organs and secondary sexual characteristics.) The perception that others have of a person’s gender may or may not coincide with that person’s self-identity, in part because an individual’s gender identity may not be consistent with his/her outward appearance or behavior, in part because one individual’s perception of another’s gender may be a function of a set of expectations that causes this individual to misread the other’s gender “signals” and, hence, his/her true gender identity. Perception of an individual’s gender identity is often a greater factor in discrimination than his/her actual gender identity.

The Committee also concluded as a result of its review that “gender identity” is not a well-understood term in our University community, and that the general University community is not familiar with the range of complex gender issues encompassed by the set of terms briefly described in the last paragraph. The novelty and difficulty of these concepts for many here at MSU, the absence of a standard definition of “gender identity”, the fact that even experts use the different terms noted above in varying ways to convey different ideas and nuances, and the continuing evolution of meaning which these terms are undergoing – these problems prompted the Committee to explore how “gender identity” relates conceptually to other protected categories currently included in the ADP. As a term, “gender identity” is used in connection with issues faced by individuals who identify as transsexual, transgender, transvestite, and intersex, among others. The two ADP categories most clearly related were “sexual orientation” and “gender”.

There are similarities and practical connections between discrimination based on sexual orientation and discrimination against those who identify as desiring protection based on “gender identity”. But, “gender identity” and “sexual orientation” are quite different conceptually.
Whereas “sexual orientation” is a term used to describe an individual’s sexual partnering or affectional preferences, “gender identity” involves an individual’s gender self-image. A correlation cannot reliably be made between sexual orientation and gender identity for any individual. Although sexual orientation has been defined or redefined in a state law and in some communities’ ordinances to give protection against discrimination on gender identity grounds, it was clear to the Committee that “sexual orientation” is not conceptually inclusive of all gender identity issues.

The Committee also examined the issues of “gender identity” in relation to “gender”. The prohibition against gender discrimination protects against discrimination based on an individual’s sex (male or female). Increasingly, laws prohibiting sex discrimination are also being interpreted to ban discrimination or harassment based on rigid stereotypes of gender roles. The Committee discussed the issue of gender-based stereotyping and its relevance to gender identity issues at length. Social norms change dramatically over time. For example, not more than 50 years ago, business-appropriate slacks were not widely accepted as proper dress for women in the workplace. Today, this attire is common and accepted. On the other hand, an increasing number of men are opting to be the full-time childcare provider in the home. Gender appropriateness is a socially defined concept, and subject to evolution. Protection against this type of stereotyping is a recognition that gender expression is not categorical, but rather exists on a continuum or plane of characteristics. Such issues are similar to those often faced by individuals who identify as desiring protection based on gender identity. Transgender, transsexual, transvestite, and intersex individuals face discrimination based on their nonconformance to gender role stereotypes.

The Committee found through discussion that the most satisfactory method of understanding and approaching gender identity issues is to consider them as an extension of gender stereotyping issues.

4. The Committee’s Review of Gender Identity Issues at MSU

During its meetings with a variety of individuals from the MSU community, the Committee sought to learn the scope and nature of problems suffered by members of the MSU community who would obtain protection under the ADP against discrimination and harassment if “gender identity” were to be added to its list of protected categories.

The Committee found that there is little hard data on such problems. Several years ago, a former student tried to bring an ADJB complaint which involved a gender transition, but the student had already left the University when the complaint was filed and it could not be processed. Also several years ago, an employee sought to learn if an ADJB complaint based on a gender transition or gender identity would be processed under the present ADP. But, the employee did not file an ADJB complaint alleging any past or continuing discrimination or harassment; the ADP and the Procedures for the Anti-Discrimination Judicial Board provide for adjudication of actual complaints, not for the issuance of advisory opinions on the scope or application of the ADP.
There have been occasional incidents of verbal harassment and derogatory graffiti at MSU which can be linked to gender identity issues, though some may also involve perceptions of or assumptions about an individual’s sexual orientation. There has been at least one physical assault, some years ago, which was based on the victim’s gender identity/perceived sexual orientation. Individuals have transitioned from one gender to another while employed at the University; it seems these situations have been handled successfully and with sensitivity on a case-by-case basis. Apart from derogatory graffiti, there is little or no track record involving student gender transitions or other gender identity issues in the residence hall system. Students seek and obtain counseling related to gender identity from various individuals at the University.

It is plain, however, that some individuals are reluctant to seek action on, or assistance with, gender identity problems in the University community because they are unsure of the reception they will receive from those they would have to approach about these issues. At least some individuals who have kept their real gender identities to themselves would be more inclined to disclose them, to seek transfers or promotions to other units, and to ask for accommodations involving, for example, restrooms, if the ADP provided specific protection against discrimination and harassment under the “gender identity” rubric. How many individuals would come forward in these and other ways the Committee cannot predict.

5. Providing Protection on Gender Identity Grounds in the ADP

The Committee evaluated the information it received from the individuals it interviewed and from the materials it reviewed to determine whether it is appropriate to provide protection against discrimination and harassment on gender identity grounds in the ADP. The Committee concluded that it is.

Normally, such a recommendation would rest on evidence of discrimination against a substantial number of individuals, or of discrimination or harassment of considerable severity. The Committee did not find such evidence. Instead, the Committee bases its recommendation on other grounds.

- Michigan State University has been a leader among major public universities in promoting an inclusive environment in which all members of the MSU family can achieve their full potential and in which acts of discrimination based on attributes other than individual merit are not tolerated. Extension of the MSU ADP to provide protection under the gender identity rubric is a natural extension of anti-discrimination attitudes at MSU, reasonable in light of the history and purposes of the ADP, and consistent with the commitment to diversity and inclusiveness that has characterized our campus for decades.

- Several communities in Michigan, and many others nation-wide, have adopted policies intended to provide protection against discrimination on gender identity grounds. So have a few institutions of higher education. The Committee believes this shows a shift in society’s general acceptance of people who are transgender or who do not fit a standard definition of masculinity or femininity. The Committee believes that, with increasing acceptance of gender variant individuals, there will be more such individuals joining the MSU community. With proactive problem solving like an ADP amendment, MSU can be prepared to welcome new students, faculty, and staff with tolerance.
• The Committee feels that the low incidence of problems involving gender identity in the MSU community may be due in part to the hesitation of affected individuals to report their problems in the absence of protection under the ADP. Several of the experts whom the Committee interviewed characterized such individuals as extremely cautious, even secretive, about their status. When individuals acknowledge and act on their membership in an identified group, the visibility of that group increases, and their willingness to report and seek redress for discrimination or harassment may well grow, too. The Committee believes this will occur if gender variant individuals are protected against discrimination and harassment through the ADP.

• Although the Committee found little evidence of systematic harassment or discrimination at MSU against individuals whose gender identity, expression, or characteristics are atypical or nonconformist, the Committee believes that such individuals regularly suffer discrimination and harassment in society at large. The Committee believes this is wrong and that MSU should visibly join those who seek to end such discrimination and harassment.

• It is not right for individuals to deny or hide who they are based on their sense that, if they were open about their status, they would be the objects of discrimination or harassment. An appropriate change to the ADP (see Section 7 below) should provide reassurance to some members of our community and an opportunity to educate the community generally about gender identity issues with little cost or disruption to the University (see Sections 8 and 9(a) below).

6. Consideration of How to Amend the ADP to Provide Protection on Gender Identity Grounds

Having completed discussion and unanimously reached the conclusion that protection should be afforded to individuals facing discrimination or harassment based on gender identity, the Committee sought to develop a recommendation for how best to implement that decision.

While developing a working understanding of issues of gender identity (see Section 3 above), the Committee considered four possible options, of which explanations follow:

1. Accepting the ASMSU proposal to add “gender identity” to the ADP. The Committee rejected this option because “gender identity” does not have a simple, common meaning, and because the term “gender identity” and the issues associated with it are not well understood in the University community. (See Section 3 above.)

2. Accepting the ASMSU proposal to add “gender identity” to the ADP, but with a footnote defining “gender identity”. The complications involved in concretely defining “gender identity”, and in defining it in an accessible way, led the Committee to reject this option. (Again, see Section 3 above.)

3. Including gender identity protection in the current ADP category of “sexual orientation”, by adding a footnote to extend the meaning of “sexual orientation” to cover gender identity issues. However, as discussed in Section 3 above, though discrimination and harassment on gender identity grounds often involve
assumptions about the victim’s sexual orientation, sexual orientation and gender identity are conceptually different. The Committee, therefore, rejected this option.

4. Including gender identity protection in the current ADP category of “gender”, by adding a footnote to extend the meaning of “gender” to cover gender identity issues. As discussed in Section 3, the Committee felt the best way to afford protection against discrimination and harassment on gender identity grounds was through and in connection with a general prohibition on gender stereotyping, as these sets of issues are closely and logically connected. (Again, see Section 3 above.)

Adding the following footnote after the reference to “gender” in the ADP is the way the Committee chose to implement the option it selected.

Gender includes sex as that term is used in Michigan and federal anti-discrimination laws, but shall also be broadly interpreted to provide protection against gender stereotyping and for persons who are, or are assumed to be, transgender. For these purposes, a transgender person includes (a) an individual whose gender self-image may be different from his/her biological sex or assigned sex at birth, whether or not that individual has taken any action to change his/her behavior and/or appearance (face, body, dress) to conform to the gender with which he/she identifies; and (b) an individual whose gender is, or is perceived to be, ambiguous or fluid.

The footnote embodies a broader, functional view of gender. It is intended to protect against gender stereotyping of any kind, for those who consider themselves transgender and those who do not, as well as to provide protection against discrimination and harassment based on transgender status, or the perception thereof.

7. Recommendations of the Committee

After due deliberation, the Committee unanimously makes the following recommendations.

   Recommendation 1. The Committee recommends that the ADP provide protection against discrimination and harassment on gender identity grounds.

   Recommendation 2. To do so, the Committee recommends that Article 2 of the ADP be amended as shown in (c) below. For clarity, three versions of Article II of the ADP follow: (a) the current version of the MSU ADP, (b) the version recommended by ASMSU, and (c) the amended version recommended by the Committee.

   a) Current Version of ADP Article II

   Unlawful acts of discrimination or harassment are prohibited.
In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation\(^2\) of employment opportunity\(^3\), access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight\(^4\); or

2. Harass any University community member(s) on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.

\(^2\)Limitations are inappropriate if they are not directly related to a legitimate University purpose.

\(^3\)For purposes of this policy, "employment opportunity" is defined as job access and placement, retention, promotion, professional development, and salary.

\(^4\)University ordinances, written regulations and policies, and published ADJP decisions approved by the President, provide guidance on the discriminatory acts prohibited by Section 1 and the harassing acts prohibited in Section 2.

b) ASMSU Proposed ADP Article II

[Proposed ASMSU changes are shown in boldface italics]

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation\(^2\) of employment opportunity\(^3\), access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, \textit{gender identity}, veteran status, or weight\(^4\); or
2. Harass any University community member(s) on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, gender identity, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.

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2 Limitations are inappropriate if they are not directly related to a legitimate University purpose.

3 For purposes of this policy, "employment opportunity" is defined as job access and placement, retention, promotion, professional development, and salary.

4 University ordinances, written regulations and policies, and published ADJB decisions approved by the President, provide guidance on the discriminatory acts prohibited by Section 1 and the harassing acts prohibited in Section 2.

c) Committee's Proposed ADP Article II

[Proposed Committee changes are shown in boldface italics]

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight; or

2. Harass any University community member(s) on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.

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2 Limitations are inappropriate if they are not directly related to a legitimate University purpose.
For purposes of this policy, "employment opportunity" is defined as job access and placement, retention, promotion, professional development, and salary.

Gender includes "sex" as that term is used in Michigan and federal anti-discrimination laws, but shall also be broadly interpreted to provide protection against gender stereotyping and for persons who are, or are assumed to be, transgender. For these purposes, a transgender person includes (a) an individual whose gender self-image may be different from his/her biological sex or assigned sex at birth, whether or not that individual has taken any action to change his/her behavior and/or appearance (face, body, dress) to conform to the gender with which he/she identifies; and (b) an individual whose gender is, or is perceived to be, ambiguous or fluid.

University ordinances, written regulations and policies, and published ADJB decisions approved by the President, provide guidance on the discriminatory acts prohibited by Section 1 and the harassing acts prohibited in Section 2.

8. Practical Implications of the ADP Amendment Proposed by the Committee

The Committee devoted much of its attention to the practical implications for the University community of making a change to the ADP that would provide protection against discrimination and harassment to gender variant individuals. This was the focus of its conversations with the many administrators that it consulted; this wound up being the most time-consuming and difficult set of issues considered by the Committee.

Having carefully considered the practical implications of making the amendments to the ADP that it now recommends, the Committee has several observations. First, the administrators interviewed by the Committee uniformly assured the Committee that, if changes were made to the ADP to extend protection against discrimination and harassment to gender variant individuals, they would do what it takes in their units to respond to and implement the changes. But they also uniformly expressed the view that the University community will need education and training on gender identity issues in connection with the adoption of such changes to the ADP. For this reason, the Committee has suggested a set of educational and training efforts on these issues. See Section 9(a) below.

Second, the Committee has somewhat reluctantly concluded that it will often be necessary or appropriate for the University to have a measured approach to resolving (through mediation or adjudication) complaints alleging violations of the ADP on gender identity grounds. In this regard, the Committee notes that Article II of the ADP prohibits discrimination "through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities" (emphasis added). The ADP defines "inappropriate limitation" as follows: "Limitations are inappropriate if they are not directly related to a legitimate University purpose." The Committee believes the "inappropriate limitation" clause should be interpreted to provide administrators and, especially, the ADJB and the President with broad discretion to craft nuanced resolutions to complaints alleging violations of the ADP on gender identity grounds. In general, their goal should be to
respond to the needs of the complainant in ways that do not cause unnecessary disruption to other members of the University community or excessive expense to the University. In other words, the Committee believes that inverting the "inappropriate limitation" concept presently included in the ADP should yield a sense of what constitutes an "appropriate limitation" in resolving gender identity based complaints. Thus, those charged with interpreting the ADP in gender identity complaints should weigh carefully whether the particular remedy sought by the complainant would cause unnecessary disruption or excessive expense (avoiding such a disruption or expense is a "legitimate University purpose"); if it would, it may be possible for them to craft another remedy that would not.

Several examples may clarify the Committee's intentions here.

- The literature provided by ASMSU focuses on discrimination against gender variant individuals in the workplace. But the living arrangements for students in residence halls and the locker/shower facilities in intramural and other athletic facilities often result in a lack of privacy that does not exist in the workplace. A male-to-female transgender student who seeks placement in a residence hall as a female student with other female students may reasonably be accommodated in a room with a roommate who accepts the placement, or through placement in a single room, in a residence hall with private bathroom facilities or common bathroom facilities where doors can be closed and curtains drawn. The Committee strongly encourages the University to develop bath/shower facilities which permit individual privacy when renovating or constructing residence hall facilities. It does not believe the University should have to create such facilities in a particular residence hall where they do not presently exist solely to accommodate a request by a transgender student to live in that residence hall.

- In some units of the University, the educational experience involves field training. Student teaching in the College of Education, field work in the School of Social Work, and the clinical programs of the various medical colleges are concrete examples. Many more colleges offer voluntary externship programs to supplement the on-campus academic experience. It is the practice in such units to work with individual students to help them understand how placements in those programs are made and what is expected of them there. While anticipating the norm here to be one of successful negotiation of difficulties relating to placement of a gender variant student in such programs, the Committee recognizes the possibility that a few gender variant individuals may be difficult to place in the specific field work situations that they seek. If, after honest and diligent negotiation between the unit of the University and the external entity involved in such a case, the external entity declines to accept the student (or to enter into a contract which incorporates protection against discrimination or harassment on gender identity grounds), the student should not be able to assert that the ADP was violated by that unit of the University. It is critical for the University to maintain relationships with external entities that provide field experiences for students, and since there is no legal protection for transgender individuals in Michigan outside a few communities that provide such protection by ordinance (e.g., Ann Arbor and Ypsilanti), the University may not be able to persuade all institutions that provide field experiences to accept transgender students into their programs. Nonetheless, the University should find a way to make sure that every gender variant student who needs off-campus experience to complete degree
requirements has the opportunity to have that experience. It may be that the experience is at a site or in a program selected by the relevant unit rather than one preferred by the student, but units presently exercise that authority in arranging off-campus clinical/work experiences.

- The bathroom at work is the most commonly cited example of a “problem” situation involving transgender individuals. Based on past experience at the University, the Committee is confident that these situations can be resolved on a case-by-case basis. In the rare situation where no mutually agreeable solution can be negotiated, the Committee believes that providing the transgender individual access to private, unisex restroom facilities would be a reasonable outcome. This does not mean the ADP should be construed to require the University to construct such facilities where they are not available. The Committee would hope that new construction and renovations will be designed to include such facilities in work spaces in the future. The Committee urges the University to plan to install such facilities in existing buildings over a reasonable time, insofar as that is possible given available resources.

That the Committee reluctantly accepts the need for a measured approach to resolving some complaints alleging ADP violations on gender identity grounds does not mean that such an approach would be appropriate or reasonable in responding to all such complaints. For example, the Committee cannot think of a reason that harassment based on transgender status should ever be tolerated or excused. Similarly, the Committee does not believe that a limitation on employment opportunity based on gender identity would be appropriate unless the limitation relates to a bona fide occupational qualification.

The Committee hopes that its expression of its views on these situations will provide help and guidance to those who construe the ADP and “inappropriate limitation” concept in the future, if the ADP is amended as the Committee has recommended.

9. Committee Suggestions

Through the course of the Committee’s deliberations and interactions between the Committee and the varied and diverse set of individuals whom it consulted, members of the Committee concentrated on the issues raised by the ASMSU proposal, per the charge to the Committee from ECAC. The Committee’s specific recommendations pursuant to that charge are set forth above in Section 7 above.

In addition, a number of other issues arose in the course of the Committee’s discussions and deliberations that, though outside the scope of the ECAC charge, merit separate comment and form the basis for suggestions to ECAC by the Committee.

a. Importance of Education on Gender Identity Issues

Gender identity issues are generally ill understood and ill appreciated in the MSU family. As a great university, the most appropriate, and indeed the best, remedy for this situation is education aimed at increasing knowledge about these issues and individual sensitivity to these issues.
Suggestion 1: The Committee suggests three specific educational efforts, as follows.

- First, for students, an educational program on gender identity issues that is developed and administered through the residence life offices.
- Second, for faculty and staff, educational programs and training on gender identity issues that would bring appropriate speakers to scheduled unit level events at which all those who work in the unit are present (e.g., regular department meeting, retreat).
- Third, for faculty, staff, and students, a series of dialogues on issues of gender identity.

b. COGS Concern: Unchecked Addition of Protected Groups

In response to Prof. Abeles’s inquiry regarding the possible addition of “gender identity” to the list of protected groups in the ADP, as proposed by ASMSU, Samuel Howerton, then-President of COGS, wrote on March 12, 2002:

_There were also concerns that the repeated addition of protected groups could grow unchecked. As a result, COGS seeks information regarding any current or proposed mechanisms that would insure that future additions are necessary and distinguishable from current language._

Although not explicitly charged to address the issues thus raised by COGS, the Committee repeatedly discussed them and suggests that they receive further review.

In effect, COGS has two questions. The first is whether the number of protected groups the ADP may contain has some practical limit beyond which the effectiveness of the ADP may begin to decline. If more and more protected groups were to be added to the ADP, then the possibility would exist that — no matter how great the need of each individual group for protection against discrimination and harassment under the ADP — the impact of the ADP and the ADJB would be diminished.

Second, COGS asks whether there should be a screening process by which the addition of a new protected group would be evaluated to assure that it is “necessary and distinguishable from current language.” The Committee believes such a screening process is appropriate, as it would seem prudent to keep the number of protected groups as small as possible while including under the ADP those groups that need afforded protections. However, in practice, the “necessity” of adding a proposed protected group is not easily determined. The Committee understands the COGS phrase “distinguishable from current language” to mean that proposed additions to the list of protected groups under the ADP should not overlap or be subsumed by currently protected groups. Making such determinations would also, in practice, be difficult. The experience of the Committee in considering issues of gender identity underscores this point.

Suggestion 2: The Committee suggests that the COGS comments on the possible future addition of new protected groups to the ADP be referred to an appropriate group or body in (or convened by) the Academic Governance system which reflects the diversity of the community at large. This body should consider whether it would be possible to propose guidelines for the
inclusion of new protected groups in the ADP and, if so, should propose such guidelines.

10. Conclusion

The Committee expresses its thanks to the many members of the University community who were generous with their time and expertise in assisting the Committee to learn about the complex issues before it. The Committee also expresses its gratitude and appreciation for the many hours of assistance offered by its advisors, Dr. Banks and Mr. Noto. The Chairperson and members of the Committee will be available to respond to questions about this Report.
ASMSU Proposal

WHEREAS, article II of the All-University Anti-Discrimination Policy currently reads:

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, handicapper status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight or

2. Harass any University community member(s) on the basis of age, color, gender, handicapper status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights; and

WHEREAS, the All-University Anti-Discrimination Policy is currently not inclusive of gender identity; and

WHEREAS, Michigan State University, as a land-grant institution, should reflect the diversity of the community as a whole; and

WHEREAS, this body has the authority to advise and make recommendations to the Board of Trustees; therefore be it

RESOLVED, that this body recommends that article II of the All-University Anti-Discrimination Policy be amended to read:

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on
APPENDIX I

the basis of age, color, gender, handicapper status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, gender identity, veteran status, or weight or

2. Harass any University community member(s) on the basis of age, color, gender, handicapper status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, gender identity, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.
APPENDIX II
Committee Members and Advisors

As selected by Prof. Norm Abeles, then-Chairperson of ECAC, the membership of the Committee is as follows.

Members

Josh Boehme
Undergraduate Student
College of Engineering
Alliance of Lesbian, Bisexual, Gay, and Transgender Students

Karen Chou, Chairperson
Associate Professor
College of Agriculture and Natural Resources
Executive Committee of Academic Council

Hillary Noyes
Undergraduate Student
College of Natural Sciences
Women's Council

Jon Sticklen
Associate Professor
College of Engineering
Executive Committee of Academic Council

Matt Weingarden
Undergraduate Student
College of Social Sciences
Associated Students of Michigan State University

Jacqueline Wright
Associate Professor
College of Nursing
Secretary for Academic Governance
APPENDIX II

Advisors to the Committee

Robert Banks
Assistant Provost and Assistant Vice President for Academic Human Resources

Robert A. Noto
Vice President for Legal Affairs and General Counsel
Attached is the memo from Dr. Norman Abeles, then-Chair of the Executive Committee of Academic Council, which functioned as the Committee’s charge.
May 29, 2002

MEMORANDUM

TO: Ad Hoc Committee on the Proposed Inclusion of “Gender Identity” In the University’s Anti-Discrimination Policy

FROM: Norman Abeles, Chair Executive Committee of Academic Council

SUBJECT: Gender Identity Review

Thank you for convening to discuss this matter. Attached are some questions and issues to assist in your discussion together with identified background materials.

The list of questions and issues is not intended to restrain your review, which is to focus on consideration of the ASMSU proposal to amend the University’s Anti-Discrimination Policy. Specifically, the focus is whether such a change is warranted and if so, how it can be addressed in policy terms.

Also, please be advised that the committee should select a chair from among its membership to aid in the completion of this task.

attachment

c: Robert F. Banks Robert Noto
ECAC Ad Hoc Committee on the Proposed Inclusion of “Gender Identity” in the University’s Anti-Discrimination Policy

Issues for Consideration

A. Evaluating the ASMSU Proposal

1. What does the ASMSU proposal for the amendment of the Anti-Discrimination Policy (ADP) seek to accomplish?

2. How are these objectives addressed by the current text of the ADP?

3. Does the Ad Hoc Committee endorse these objectives?

4. How did the academic governance committees that reviewed the ASMSU proposal during the last academic year react to it?

5. What does “gender identity” mean? Should it be defined if it is added to the ADP? Where? How?

6. Does the insertion of “gender identity” in the ADP accomplish the ASMSU’s goals? How? Is that the best word, phrase, definition, or description to add to the ADP to accomplish those goals, or would another be better? Why?

7. If “gender identity” is added to the ADP, who will be protected by the ADP that is not protected by it now?

8. Will members of the University community know what “gender identity” means or who is protected by inserting that phrase in the ADP? How? When?

9. What are the consequences of inserting “gender identity” in the ADP? In particular, what would the impact be in each of the following contexts (which are the present categories for protection against discrimination under the ADP) and would the impact be desirable or not?

- Employment opportunity, as defined in the ADP (“job access and placement, retention, promotion, professional development, and salary”).
- Access to University residential facilities.
- Participation in educational activities.
- Participation in athletic activities.
- Participation in cultural activities.
- Participation in other University activities.
9. If some of the consequences of adding "gender identity" to the ADP are not desirable, how can those consequences be avoided? Should other changes be made to the ADP to avoid them?

10. Is amending the ADP to add "gender identity" the best way to accomplish the objectives of the proposed change? Is there some other, better way to do so?

B. Gender Identity Issues Generally

1. Are the following groups of individuals unprotected or imperfectly protected against discrimination or harassment at MSU by the ADP in its present form?
   - Transgendered individuals
   - Intersexed individuals
   - Individuals whose gender identity is at variance with their biological sex
   - Individuals whose gender expression is at variance with their biological sex
   - Individuals whose gender expression, gender identity, or gender characteristics is/are perceived to be at variance with their biological sex

2. Are such individuals presently suffering discrimination or harassment at MSU? What is the incidence of such discrimination or harassment? In what areas/contexts has it occurred?

3. Should further protection against discrimination and harassment be provided to these individuals? To some or all? If some, which? How should those to be protected be described?

4. Will members of the University community be able to identify those to be protected and change their behavior toward such individuals to meet the ADP's requirements?

5. Against what should such individuals be protected? Should they be protected against harassment? Against other forms of discrimination besides harassment? Against all forms of discrimination for which the ADP presently offers protection?

6. What would be the consequences of extending this protection to these individuals? How will other members of the University community be affected by affording these protections to these individuals? Will there be costs to providing these additional protections? What kind? Are they justified by what is achieved?

7. Is the best way to offer these protections to these individuals an amendment of the ADP? How comprehensive would the amendment be? Are other means of offering these protections to these individuals available? What are they? What are the pro's and con's of these different approaches?
Consultants to Ad Hoc Committee

In addition to the consultants identified in the April 18 and 22, 2002 emails to Provost Simon from Julie Harris (Alice Dreger, Gershen Kaufman, Brent Bilodeau, Jayne Schuiteman, and Julia Grant), the Ad Hoc Committee may want to invite comments and perspectives from the Vice President for Student Affairs and Services, Lee June; Acting Assistant Vice President for Human Resources Denise Anderton; and Director of the Office for Affirmative Action/Senior Advisor to the President for Diversity Paulette Granberry Russell.

Bob Noto will provide legal advice.

Bob Banks will act as staff to the Committee.

Materials for Committee Consideration

- MSU Antidiscrimination Policy and ADJB Procedures (Attachment 1)
- Packet of Materials from ASMSU to Dr. Norman Abeles (Attachment 2)
- April 2, 2002 letter to Dr. Norman Abeles re: UCFA Recommendations (Attachment 3)
- Comments from other Grievance Committees (UCSA-Attachment 4a, UGC-4b, COGS-4c)
- Results from survey of CIC Affirmative Action Panel and CIC Institutions’ nondiscrimination policies (Attachment 5)

Reporting Requirements

The expectation is that a report summarizing the results of the Ad Hoc Committee’s work will be presented to the ECAC at its first meeting during the 2002-2003 academic year (September 10, 2002).
Michigan State University
Anti-Discrimination Policy
(All-University Policy)

ARTICLE I Purpose

Michigan State University's scholarly community-building efforts occur within the context of general societal expectations, as embodied in the law. The University, consistent with its policies and governing law, promotes institutional diversity and pluralism through mechanisms such as affirmative action, within an overarching strategy promoting equitable access to opportunity. The University's commitment to non-discrimination is the foundation for such efforts.

This policy states expectations for institutional and individual conduct. It applies to all university community members, including faculty, staff, students, registered student organizations, student governing bodies, and the University's administrative units, and the University's contractors in the execution of their University contracts or engagements, with respect to the following:

1) All educational, employment, cultural, and social activities occurring on the University campus;
2) University-sponsored programs occurring off-campus, including but not limited to cooperative extension, intercollegiate athletics, lifelong education, and any regularly scheduled classes;
3) University housing; and
4) Programs and activities sponsored by student governing bodies, including their constituent groups, and by registered student organizations.

ARTICLE II Prohibited Discrimination

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1) Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight;

2) Harass any University community member(s) on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.

ARTICLE III Mediation and Adjudication

Mediation of claims and disputes, through consultation provided by offices serving the University, is encouraged. Complaints under this policy may be submitted for non-disciplinary adjudication according to the provisions of the "Procedures of the Anti-Discrimination Judicial Board." Upon its review, the ADJB may recommend that appropriate disciplinary proceedings be initiated, if such has not already occurred. Disciplinary proceedings are governed by the documents listed in Appendix A.

Excepting the President and the General Counsel, any University community member may be named in a complaint.

APPENDIX A
The contracts, policy documents, and procedures listed below provide avenues for the consideration of disciplinary complaints or actions against the various members of the Michigan State University community.
- "Academic Freedom for Students at Michigan State University"
- "Cooperative Extension Service Continuing Employment Policy and Dismissal Hearing Procedure"
- "Dismissal of Tenured Faculty for Cause"
- "Faculty Grievance Procedure"
- "General Grievance Procedure for Non-Unionized Employees"
- "Graduate Student Rights and Responsibilities"
- "Librarian Personnel Handbook of Policies, Procedures, and Practices: Michigan State University"
- "Medical Students Rights and Responsibilities"
- Michigan State University Collective Bargaining Agreements
- "Michigan State University Faculty Group Practice Rules and Regulations"
- "Personnel Policies and Procedures Manual"

1 This policy does not apply to the conduct of a contractor's internal affairs, nor does it apply to the conduct of contractual engagements to which the University is not a party.
2 Limitations are inappropriate if they are not directly related to a legitimate University purpose.
3 For purposes of this policy, "employment opportunity" is defined as job access and placement, retention, promotion, professional development, and salary.
4 University ordinances, written regulations and policies, and published ADJB decisions approved by the President, provide guidance on the discriminatory acts prohibited by Section 1 and the harassing acts prohibited in Section 2.
5 Consultation with one or more of the following may be useful:
- the chairperson, dean, or director of the relevant unit,
- the office of Support Services,
- the Women's Resource Center,
- the Ombudsman,
- the Office of Minority Student Affairs,
- the Office of Student Affairs;
- Sexual Assault, Crisis & Safety Education,
- the faculty or staff academic advisors;
- the MSU Counseling Center,
- the Office of Human Resources.

Attachment 1
MSU Antidiscrimination Policy and ADJB Procedures
Anti-Discrimination Judicial Board

(The following is excerpted from the Anti-Discrimination Judicial Board Procedures.)

The ADJB consists of at least fourteen individuals, including at least two minority persons, five women, five men, and one person with a disability. Membership is comprised of:

- Three undergraduates appointed by ASMSU, serving for two years;
- One graduate student selected by COGS, serving for two years;
- Four faculty or specialists selected by the University Committee on Academic Governance, serving for three years;
- Four employees selected by the Vice President for Finance and Operations, serving for three years; and
- Two individuals appointed by the President, serving for two years.

The ADJB Chairperson is selected by the ADJB members and serves for one year.

The ADJB Coordinator, a staff member reporting to the Office of the President, ensures appropriate staff support for the ADJB, facilitates the operation of the ADJB, and presides without vote at all hearings and appeals.

Decisions by the ADJB are forwarded to the President in the form of a recommendation. The President may concur, overrule, or modify the decision.

Procedural rulings made by the ADJB Coordinator may also be appealed to the President.

For a copy of both the Anti-Discrimination Policy and ADJB procedures see:

- MSU Faculty Handbook
  www.msu.edu/unit/facrecods/FacHand/antidiscrim.html
- Spartan Life, Student Handbook and Resource Guide
  www.vps.msu.edu/splife/rule8.htm

To discuss matters relating to discrimination, contact:

- Any of the individuals listed in Appendix A of the Policy (see inside)
- Director of Affirmative Action Compliance and Monitoring and Advisor to the President on Diversity Issues
  303 Administration
  353-3922

To file a complaint, contact:

The ADJB Office
102 Olds Hall
353-3929, TTY: 432-3898
FAX: 353-1794

Michigan State University is an affirmative action, equal opportunity institution.

Prepared by the ADJB Office, 899
Anti-Discrimination Judicial Board
Michigan State University

- Anti-Discrimination Policy -
- Procedures for the ADJB -

and

- ADJB User's Manual -

MSU is an affirmative-action/equal-opportunity institution.
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MSU Anti-Discrimination Policy
(All-University Policy)
Approved by the Board of Trustees April 9, 1993

ARTICLE I – Purpose
Michigan State University's scholarly community-building efforts occur within the context of general societal expectations, as embodied in the law. The University, consistent with its policies and governing law, promotes institutional diversity and pluralism through mechanisms such as affirmative action, within an over-arching strategy promoting equitable access to opportunity. The University's commitment to non-discrimination is the foundation for such efforts.

This policy states expectations for institutional and individual conduct. It applies to all university community members, including faculty, staff, students, registered student organizations, student governing bodies, and the University's administrative units, and the University's contractors in the execution of their University contracts or engagements, with respect to the following:
1) All educational, employment, cultural, and social activities occurring on the University campus;
2) University-sponsored programs occurring off-campus, including but not limited to cooperative extension, intercollegiate athletics, lifelong education, and any regularly scheduled classes;
3) University housing; and
4) Programs and activities sponsored by student governing bodies, including their constituent groups, and by registered student organizations.

ARTICLE II – Prohibited Discrimination
Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:
1) Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight; or
2) Harass any University community member(s) on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.

ARTICLE III – Mediation and Adjudication
Mediation of claims and disputes, through consultation provided by offices serving the University, is encouraged.

Complaints under this policy may be submitted for non-disciplinary adjudication according to the procedures of the "Procedures of the Anti-Discrimination Judicial Board." Upon its review, the ADJB may recommend that appropriate disciplinary proceedings be initiated, if such has not already occurred. Disciplinary proceedings are governed by the documents listed in Appendix A.

Excepting the President and the General Counsel, any University community member may be named in a complaint.

1This policy does not apply to the conduct of a contractor's internal affairs, nor does it apply to the conduct of contractual engagements to which the University is not a party.
2Limitations are inappropriate if they are not directly related to a legitimate University purpose.
3For purposes of this policy, "employment opportunity" is defined as job access and placement, retention, promotion, professional development, and salary.
4University ordinances, written regulations and policies, and published ADJB decisions approved by the President, provide guidance on the discriminatory acts prohibited by Section 1 and the harassing acts prohibited in Section 2.
5Consultation with one or more of the following may be useful:
   + the chairperson, director, or dean of the relevant unit,
   + supervisory support personnel,
   + the Women's Resource Center
   + the Ombudsman,
   + the Office of Minority Student Affairs,
   + Student Life or Residence Halls staff,
   + Sexual Assault Crisis & Safety Education,
   + faculty or staff academic advisors,
   + the MSU Counseling Center, and
   + the Faculty Grievance Official.
APPENDIX A

The contracts, policy documents, and procedures listed below provide avenues for the consideration of disciplinary complaints or actions against the various members of the Michigan State University Community.

"Academic Freedom for Students at Michigan State University"

"Cooperative Extension Service Continuing Employment Policy and Dismissal Hearing Procedure"

"Dismissal of Tenured Faculty for Cause"

"Faculty Grievance Procedure"

"General Grievance Procedure for Non-Unionized Employees"

"Graduate Student Rights and Responsibilities"

"Librarian Personnel Handbook of Policies, Procedures, and Practices: Michigan State University"

"Medical Student Rights and Responsibilities"

"Michigan State University Collective Bargaining Agreements"

"Michigan State University Faculty Group Practice Rules and Regulations"

"Personnel Policies and Procedures Manual"
ARTICLE I – Composition and Selection of the Anti-Discrimination Judicial Board

1) The Anti-Discrimination Judicial Board (ADJB) shall consist of at least fourteen individuals serving staggered terms, and shall include at least each of the following: two minority persons, five women, five men, and one person with a disability. Membership shall comprise:

a) Three junior-status, undergraduate students selected by ASMSU. Each student shall serve for a term of two years.

b) One graduate student, to serve for a term of two years, selected by the Council of Graduate Students.

c) Four members selected by the University Committee on Academic Governance from the tenure system faculty and job security system specialists. Each such member shall serve for a term of three years.

d) Four individuals, to serve for terms of three years, selected by the Vice President for Finance and Operations from a slate comprised of two nominees from each recognized bargaining unit and two nominees from the non-union support employees.

e) Two individuals, to serve for terms of two years, appointed by the President. All selectors shall strive to ensure membership diversity, being cognizant of the factors listed in Article II of the MSU Anti-Discrimination Policy. Additional Presidential appointments shall be made if necessary in any given year to ensure the minimum diversity of membership mandated above. When and if necessary, such appointees shall serve for two years.

No member of the ADJB shall serve more than two consecutive terms. All selecting groups and University officers are expected to give due consideration to the necessity for a diverse total membership.

2) Terms on the ADJB shall begin on August 15th. Thereafter, the ADJB shall select one of its members to serve as chairperson for the entire year. Vacancies during terms shall be filled in accord with these procedures. The chairperson shall appoint members of hearing panels, as provided herein.

3) The position of "ADJB Coordinator" shall be established, reporting to the President of Michigan State University. The ADJB Coordinator shall ensure the provision of appropriate staff support services for the ADJB and generally facilitate the efficient operation of the group. In addition, at all hearings and appeals, the ADJB Coordinator shall:
+ preside without a vote to ensure consistency and equity in procedure;
+ provide the legal advice needed by the ADJB; and
+ draft majority and minority opinions for finalization and approval by the ADJB, at the request of the group’s members.

Procedural rulings made by the ADJB Coordinator while presiding over hearings and appeals may be appealed in writing to the President, upon completion of the ADJB proceedings.

11"Minority" is defined by the Federal Inter-agency Committee on Education as one who is a member of one of the following groups: a. American Indian or Alaskan Native; b. Asian or Pacific Islander; c. Black (African American); and d. Hispanic.
ARTICLE II – Jurisdiction

1) The ADJB shall have jurisdiction only over those complaints filed by and pertaining to members of the University community which allege discrimination as defined in the All-University Policy entitled "MSU Anti-Discrimination Policy."

2) A complaint filed with the ADJB must be filed within thirty (30) calendar days of the alleged discrimination. Either the ADJB Coordinator or the full ADJB by majority vote may waive the 30-day time limit for good cause shown. A complaint must simply, concisely and directly specify the time, place, and nature of the alleged discrimination, as well as the individual(s), group, or entity alleged to be responsible for the discrimination. The complaint must also contain a short and plain statement of the remedy sought.

3) The ADJB shall not proceed to consider any claim: (a) for which another procedure for final and binding adjudication is provided within the University by contract, unless both contracting parties agree to submit the matter to this ADJB or (b) which, based on the same set of facts, has been submitted for adjudication under the rules of another University procedure. However, when a complaint has been adjudicated under another University procedure, the ADJB may review such findings upon the written request of the complainant to assure itself that any non-disciplinary matters relating to prohibited discrimination were satisfactorily addressed. If, in its judgment, such non-disciplinary matters were not adequately addressed, it may accept the complaint for further consideration on the basis of the non-disciplinary charges of discrimination only.

4) The ADJB shall have no jurisdiction respecting disciplinary charges against individuals, and no disciplinary sanctions shall be imposed through the procedures set forth herein. Alternative disciplinary channels exist for the consideration of such charges against any member of the University community (See Appendix A [Anti-Discrimination Judicial Board Policy]). On the basis of its non-disciplinary proceedings, the ADJB may recommend that separate, de novo disciplinary proceedings be initiated by relevant administrators for alleged violations of the "MSU Anti-Discrimination Policy" when such actions were known, or reasonably should have been known, to be prohibited by that policy.

5) The ADJB shall address all jurisdictional questions by a majority vote of the full Board. Immediate presidential review of jurisdiction decision may be requested under Article IV by either party to a dispute.

ARTICLE III – Procedures

1) Initial Filing of a Complaint
   a) When an individual files a complaint with the ADJB, the ADJB Coordinator shall refer the matter in writing to the chairperson of the ADJB, who shall appoint five voting members of a Hearing Panel to be convened and presided over by the ADJB Coordinator. The ADJB Coordinator shall provide a copy of the complaint to the party or parties against whom it is made.
   b) A contested matter shall be heard without undue delay. The hearing and its record shall be closed unless both parties consent to an open hearing. The ADJB Coordinator shall give the parties reasonable notice of the hearing, which notice shall include:
      i) A statement of the date, hour, place and nature of the hearing; (a hearing shall not be continued or adjourned except for good cause and in the discretion of the ADJB Coordinator);
      ii) A copy of this policy and the general rules of conduct for hearings.
c) The complainant is required to establish the basis for and produce evidence in support of the complaint. Complainants assume the burden of proof, which must be met by a preponderance of the evidence.

d) After the complainant presents his/her case, the respondent shall present his/her case. Respondent may forego answering a complaint.

e) Parties may be accompanied by an advisor of their choice, who may provide private counsel to the party during a hearing but shall have no official voice in the proceeding. Advisors must be members of the faculty, staff, or student body of the University. Each party shall be responsible for the presentation of his/her own case. Each party shall have the opportunity to present witnesses, and to question witnesses presented by the other.

f) The Hearing Panel shall render a decision in writing, without undue delay, and the ADJB Coordinator shall transmit copies of it promptly to the ADJB chairperson and the parties. The Panel's decision shall address all major questions raised. The recommended relief, if any, shall be tailored to remedy charges which have been substantiated. The decision shall state the name(s) of the prevailing party/ies and the party/ies against whom any complaints have been substantiated. The Panel shall carefully and clearly state its factual findings and the reasoning supporting its decision.

2) Appellate Procedures

a) A party may appeal the decision of the Hearing Panel to the full ADJB by filing a written request with a short, written statement in support of the party's position on appeal with the ADJB Coordinator. The appeal shall be filed within 14 calendar days of receipt of the Panel's decision, and a copy shall be provided to the opposing party. The opposing party shall have 14 calendar days from receipt of the request in which to submit a written statement in support of its position on the appeal.

b) Appeals shall be based on the record established at the initial hearing and shall be limited to the following two issues:
   i) Whether the evidence previously presented provides a reasonable basis for the resulting findings and recommended remedies (if any), and
   ii) Whether specified procedural errors were so substantial as to effectively deny the appealing party fundamental fairness.

c) The ADJB chairperson shall provide written notice to both parties of the scheduled hearing date.

d) With the exception of the ADJB Coordinator, members of the initial Hearing Panel shall not participate in the appellate hearing or deliberations. An appellate quorum shall be necessary to hear any appeal and shall consist of a majority of those ADJB members who did not serve on the original Hearing Panel.

e) Parties may be accompanied by an advisor of their choice, who may provide private counsel to the party during an appeal but shall have no voice in the proceeding. Advisors must be members of the faculty, staff, or student body of the University. Each party shall be responsible for the presentation of his/her own appeal.

f) The ADJB shall give each party the opportunity to present an oral argument, based on the record established at the initial hearing, in support of his/her position on appeal.

g) The hearing shall be closed unless both parties consent to an open hearing.

\[i.e.,\ \text{that which is more convincing, more credible, and of greater weight than contrary evidence.}\]
h) The ADJB's review on appeal shall be limited to the record established at the initial hearing, the Hearing Panel's decision, the written statements submitted by the parties, and the parties' oral arguments. Findings of fact by the Hearing Panel may not be overturned unless clearly erroneous.

i) The ADJB shall render a decision without delay. The ADJB may affirm or reverse the Hearing Panel's decision in whole or in part and/or remand it to the original Hearing Panel for reconsideration. Recommended relief, if any, shall be tailored to remedy those charges which have been substantiated.

ARTICLE IV – Final Resolution

1) Decisions issued by the ADJB (including those of jurisdiction) and unappealed decisions of its Hearing Panels shall be forwarded to the President by the ADJB Coordinator in the form of a recommendation, without undue delay.

2) Within 30 calendar days, the President shall either concur with the decision and direct appropriate action to implement it, or for stated cause, shall overrule or modify the decision. When the President overrules or modifies a decision, he/she shall provide written reasons to the ADJB and to the parties.

ARTICLE V – The ADJB's Advisory Function

The ADJB shall meet with the ADJB Coordinator regularly (at least once annually and no more than monthly at the discretion of the Board) to review and consider any policies or practices brought to its attention, which may have contributed to allegations of unlawful discrimination or harassment. The ADJB may meet with University administrators to obtain information regarding relevant policies and practices. Upon discussion and review, the ADJB may make such advisory operational recommendations to the President as it deems appropriate.

ARTICLE VI – Other Provisions

1) Time limits With the exception of the thirty-day filing deadline in Section II of Article II, all time limits set forth above shall be suspended during regularly scheduled vacations or semester breaks in the University's academic year. Summer semesters shall similarly be excluded from consideration when calculating time limits applicable to complaints brought by students not then enrolled.

2) Regular Reports The ADJB Coordinator shall make annual reports to the President, who shall share them with the Board of Trustees and University community.

3) Assistance with Complaints Individuals considering filing complaints with the ADJB may obtain advice and procedural assistance through the ADJB Coordinator and, as appropriate, the bodies listed in footnote #5 of Article III of the MSU Anti-Discrimination Policy.
I. Introduction  The MSU Anti-Discrimination Policy (All-University Policy) approved by the MSU Board of Trustees on April 9, 1993 defines expectations for institutional and individual conduct of Michigan State University community members. The User's Manual should be used only as a supplement to the MSU Anti-Discrimination Policy. It addresses various procedural issues which are not explicitly covered by the Policy and sets forth practices to be followed by the Anti-Discrimination Judicial Board (ADJB) in carrying out the functions of that Board. The contents of this manual have been reviewed and approved by the President's Office.

Adjudication by the ADJB is non-disciplinary. Avenues for consideration of disciplinary complaints or actions are listed in Appendix A of the MSU Anti-Discrimination Policy.

This manual will be distributed to all ADJB members, all parties to a formal complaint and, upon request, to any member of the MSU faculty, staff or student body.

What constitutes discrimination or harassment under the MSU Anti-Discrimination Policy? Article II of the Policy prohibits unlawful discrimination and harassment against any University community member on the basis of age, color, gender, disability status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight. In addition, University community members may not otherwise discriminate through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities. As an example, it is unlawful to fail to hire a qualified individual merely because he/she is a member of a particular race.

Following is a brief summary of the major federal and state laws covering discrimination and harassment. This is an overview and does not include all of the provisions and exemptions of the laws. The complete text of the laws are available in the library or a copy may be obtained from the Coordinator.

FEDERAL LAWS
Americans With Disabilities Act (ADA)  The ADA requires that individuals with disabilities be given the same opportunities and access as individuals without disabilities in the areas of employment services, activities and programs. Reasonable accommodation must be made.

Rehabilitation Act of 1973  Requires affirmative action by federal (sub)contractors in the employment and advancement of qualified individuals with disabilities (section 503) and prohibits discrimination in any program receiving federal financial assistance (section 504).

Equal Pay Act of 1963 (Fair Labor Standards Act)  Requires the same pay for men and women doing substantially equal work requiring substantially equal skill, effort, responsibility, and performed under similar working conditions in the same establishment.

Age Discrimination in Employment Act of 1967 (ADEA) as amended  Makes it unlawful to discriminate in hiring or the terms and conditions of employment on the basis of age. The Act applies to persons over forty years of age.

Civil Rights Act of 1964—Title VI: "No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, or denied the benefits
of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Title VII: makes it an unlawful employment practice for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

Civil Rights Act of 1991 Provides additional protections against unlawful discrimination in employment, including compensatory and punitive damages (subject to caps) for victims of intentional discrimination under Title VII for sex, race, color, national origin, and religion as well as disability.

Education Amendments of 1972—Title IX Provides that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Vietnam Era Veterans Readjustment Act of 1974 Requires contractors to take affirmative action in employment and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

STATE OF MICHIGAN LAWS
Elliott-Larsen Civil Rights Act "The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, sex, height, weight, or marital status as prohibited by this act, is recognized and declared to be a civil right.

Michigan Persons with Disabilities Civil Rights Act Defines the civil rights of individuals with disabilities, and prohibits discrimination in the exercise of such rights.

RETRIALATION Any attempt to retaliate against an individual who files a complaint is prohibited by law.

II. COMPLAINT—Who may file a complaint?
Any faculty member, staff member, student, registered student organization or student governing body at MSU may file a complaint under this policy. Complaints must be filed by the aggrieved individual or by a group of individuals who are similarly situated. Complaints cannot be filed on behalf of another party.
All complaints submitted for a formal hearing under the ADJB procedures must be signed and notarized. A Notary is available in the ADJB office at no charge.

Information received from anonymous sources will be passed back to the relevant line administrator(s) within the department, administrative unit, or college, for investigation.

The ADJB may choose to join two or more complaints which are similar in nature and which have been filed against the same respondent. This is done by a majority vote of the full Board.

A Complainant must be an employee, student, or member of a registered student organization or student governing body of MSU at the time a grievance is filed; however, a grievance may go forth even if such status is not maintained.
Initiation of Complaints  All complaints must be initiated within 30 calendar days of the alleged discrimination. Filing a complaint under another procedure does not meet the filing requirement for the ADJB. Complaints may be mediated through consultation provided by Offices serving the University as encouraged by the ADJB Policy, or a Complaint may be accepted for formal proceedings.

An individual who feels aggrieved may without delay discuss the matter in a personal conference with the ADJB Coordinator. If the Coordinator determines the complaint does not fall within the jurisdiction of the ADJB, the Complainant may ask for a determination of jurisdiction by a vote of the full ADJB.

The Coordinator will encourage complainants to seek mediation, and will make referrals upon request. In addition, the Coordinator will advise individuals concerning other University policies and procedures.

In determining jurisdiction, the Coordinator will use the following guidelines:

1. The discrimination or harassment complaint, if proven, must be a violation of law or University policy.
2. The complainant must be a member of the faculty, staff or student body of MSU.
3. The complaint must be filed within 30 calendar days of knowledge of the last act of alleged discrimination, unless good cause is shown.
4. If the grievance or one based on the same or similar facts has been submitted to any other grievance procedure within the University, that grievance procedure must be complete. If the grievance has been filed and not completed, the ADJB complaint will be held in abeyance. The only exception to this is the Faculty Grievance Procedure which specifies that the ADJB proceed first.
5. If the grievant is an employee covered by a collective bargaining agreement which has a procedure for final and binding arbitration for the alleged discrimination, both the Complainant and Respondent must agree to accept ADJB jurisdiction. The Coordinator will notify the Office of Employee Relations of any complaints involving a member of a collective bargaining unit.

If the individual feels the Coordinator’s determination of lack of ADJB jurisdiction is incorrect, the issue will be presented for a decision by a majority vote of the full Board.

The Coordinator will notify the President’s Office if immediate administrative action is necessary. Confidence will be respected to the fullest extent possible.

If another University grievance procedure applies and the individual chooses to use the alternative procedure, the ADJB will not proceed concurrently. Upon final resolution of an alternative internal grievance procedure, the individual may seek ADJB review of any issues of discrimination or harassment which have not been adequately addressed. The complaint may be accepted under the Anti-Discrimination Policy only if the initial contact with the ADJB was made within 30 calendar days of the individual’s knowledge of the discrimination or harassment, and a written request for ADJB review is received within 14 calendar days of notification of resolution of the case under the alternative grievance procedure. If these requirements are met, the Chairperson and the Coordinator will determine whether issues of discrimination or harassment were adequately addressed. If the issue cannot be resolved by the Chairperson and Coordinator, it will be subject to a vote of the full ADJB.
On the basis of his/her conference with the Coordinator, an individual may choose to attempt to mediate the complaint under Article III. of the Policy or to file a formal complaint under Article III. of the Procedures.

**Mediation** Article III of the Policy encourages mediation of claims and disputes. If, upon consultation with the ADJB Coordinator, the individual determines that mediation is appropriate, the following procedures will be followed:

1. A "Mediation Request Form" will be completed, signed and dated by the individual filing the complaint. The date this form is signed will be used to determine whether the complaint was filed on a timely basis.
2. The Coordinator will assist the Complainant in determining which MSU individual or organization should undertake mediation. These may include but are not limited to those individuals and organizations listed in the Anti-Discrimination Policy.
3. The Coordinator will contact the appropriate individual or organization to initiate mediation. The contact will be followed by a "Referral For Mediation Services" form and "Mediation Status Report" form to monitor progress of mediation efforts. The Coordinator will be responsible for monitoring the progress of all complaints referred for mediation.
4. Mediation should be carried out as expeditiously as possible. Mediation efforts usually include meeting(s) between the mediator and the parties separately and, if necessary, jointly. The purpose of these discussions is to determine whether the dispute can be resolved to the mutual satisfaction of the parties without resort to formal hearing procedures.
5. During the mediation stage, the mediator may make suggestions to the parties for bridging the gap between the parties. The mediator may also recommend that the complaint be dropped for lack of merit or another just cause. Such recommendation is not binding on the complainant.
6. The mediator will notify the Coordinator and the parties of the outcome of the mediation. A written report of the resolution of mediation will be maintained in the file. If mediation is successful, the Agreement will be signed by both parties.
7. If mediation is successful, the case will be formally closed. If mediation is unsuccessful, the individual filing the complaint will decide whether to proceed to a formal hearing. If a formal hearing is requested, the individual must file a formal complaint (described below) within 14 calendar days of receipt of notice that mediation has not been successful. Failure to submit a formal complaint will constitute a waiver of the individual's right to pursue a formal complaint.

**Procedures for Filing a Formal Complaint** All formal complaints are filed using the "Complaint Form" obtained from the ADJB Coordinator's Office. The form must be signed and dated by the complainant and notarized.

In filing a formal complaint, the following should be addressed:

1. The complainant's position in the University community should be fully described, i.e., faculty, student, staff, and the position held.
2. The respondent(s) should be identified, and the respondent's relation to the complainant should be stated. General terms such as supervisor or coworker should be used in addition to titles to more accurately describe the nature of the complainant's contact with the respondent.
3. A full description of the complainant and the respondent in relation to the "basis" section of the form should be included. For example, if the alleged discrimination is based on race, state the complainant's race and the race of the respondent(s) in describing the incident(s).

4. A concise summary of the alleged discrimination or harassment should be provided. State the obvious. Descriptions should be clear enough to be understood by someone unfamiliar with the location, operating procedures and circumstances of the incident(s). Describe behaviors, statements, and actions taken in specific terms. Report times, places, and the sequence of events.

5. Any action taken in an attempt to resolve the complaint prior to contact with the ADJB Coordinator should be detailed. The summary should contain the names, titles, and unit affiliation of individuals involved, as well as the date(s) and outcome of the activity.

6. The redress being sought should be identified. Such redress must be in accord with University policy consistent with existing policy, procedures or practices in the appropriate unit of the University.

When the complaint form has been filed, a copy will be provided to the respondent(s) by certified mail or hand delivery. The respondent will be given the opportunity to respond in writing to the complaint. A copy of the response will be provided to the Complainant.

The matter will be promptly referred to the chairperson of the ADJB pursuant to Article III of the Procedures.

A complainant may amend an original grievance at any time. However, in order for the respondent to adequately prepare there must be at least three days notice of an amendment prior to a scheduled hearing. This may require the postponement of a scheduled hearing. Any amendment must concern the same matters addressed in the initial statement of the complaint. All amendments must be submitted to the Coordinator in writing.

III. HEARING – Scheduling the Hearing

Hearings will be held at a time convenient to both parties. A group, organization or unit must choose an individual as a representative.

The respondent may elect to forego answering a complaint.

Complainants and respondents will receive notification of the hearing at least ten working days prior to the hearing.

This notice will include the time and place of the hearing, MSU Anti-Discrimination Judicial Board Policy and User's Manual, a list of Hearing Panel members, and a copy of all factual material which has been presented to the ADJB.

Conduct of Hearings

1. Each party shall be informed in writing of the date, time, place and nature of the hearing. Each party shall receive a list of Hearing Panel members, a copy of the complaint and the response.

2. A list of all witnesses the complainant intends to call must be provided to the ADJB Coordinator at least seven working days prior to the hearing. The list will be provided to the respondent, who will then provide a list of all witnesses he/she intends to call at least four working days prior to the scheduled hearing date.
list of respondent's witnesses will be provided to the complainant. Either party may amend the list of witnesses provided that at least 24 hour notice is provided to the other party prior to the hearing. No individual may testify unless his/her name appears on the list unless the testimony is such that it is of importance to the case to present a rebuttal witness who can provide testimony that cannot be provided by any of the planned witnesses. The determination as to whether an unscheduled rebuttal witness will be allowed to testify will be made by the Coordinator.

3. The hearing shall be conducted in an informal manner to the greatest extent possible.

4. The hearing is closed to the public unless both parties consent in writing to an open hearing.

5. The privacy of confidential records used in the hearing shall be respected. The hearing will be recorded on audio tape. The tape will be used solely to aid the Hearing Panel in their deliberations and the subsequent formulation of a formal decision. The tape will not be considered an official transcript of the hearing and therefore will be available only to the Hearing Panel and the ADJB Coordinator.

6. The ADJB Coordinator shall preside over the hearing without vote and shall resolve any procedural issues raised during the hearing including the admission of evidence.

7. Each individual who is a party shall attend the hearing in person and present his/her own case. Each group, organization, or unit who is a party shall be represented by an individual.

8. Each party may be accompanied by a member of the faculty, staff, or student body of the University who may serve as an advisor. The advisor may be present throughout the hearing but has no voice in the hearing.

9. Each party shall be given the opportunity to present evidence. Formal rules of evidence shall not apply.

10. Witnesses other than parties shall be present in the hearing room only while testifying. Witnesses shall not be sworn.

11. Each party may ask questions of the opposing witnesses and may submit evidence in rebuttal. Members of the Hearing Panel may ask questions at any stage of the hearing.

12. Each party shall be allowed a maximum of 90 minutes to present its case. Ten minutes shall be permitted for an opening statement and ten minutes for a summary statement.

13. The complainant must prove his/her case by a preponderance of the evidence. This standard of proof means evidence "which is more convincing, more credible, and of greater weight than contrary evidence."

14. There shall be no communication between a Hearing Panel member and any party, advisor, or witness for a party on any matter relating to the case.

**Preparing the Presentation** Parties are encouraged to make presentations in an organized, logical, and concise manner. Emphasis should be placed on the sequence of events surrounding the alleged incident(s) and the details regarding time, place, and individuals involved.

Parties may wish to make notes prior to the hearing covering all pertinent information. Notes should be organized for use as a presentation outline.

Parties should stick to the incident at hand—don't bring up unrelated grievances.
A party planning to use audio-visual materials in making the presentation should notify the ADJB Coordinator at least two working days prior to the hearing. Otherwise, the audio-visual equipment needed for the presentation may not be available.

A party is required to provide only one copy of any document(s) submitted as evidence at the hearing. However, a party planning to refer to text within the document(s) during the presentation will find it helpful to provide additional (7) copies for each member of the Hearing Panel and the opposing party.

The Complainant has the burden of proof, and must prove his/her case by a preponderance of the evidence. This standard of proof means evidence "which is more convincing, more credible, and of greater weight than contrary evidence".

The ADJB Coordinator will provide office personnel to take notes at the Hearing. The notes are provided to the Hearing Panel members for use in drafting their decision. The notes are not the official record of the Hearing. The decision of the Hearing Panel is the official record of the Hearing, and will be used as the record on Appeal.

**Witnesses**: Each party may call witnesses to provide supporting evidence at the hearing.

A list of all witnesses the complainant intends to call must be provided to the ADJB Coordinator at least seven working days prior to the hearing. The list will be provided to the respondent, who will then provide a list of all witnesses he/she intends to call at least four working days prior to the scheduled hearing date. The list of respondent's witnesses will be provided to the complainant. Either party may amend the list of witnesses provided that at least twenty-four hours notice is provided to the other party prior to the hearing. No individual may appear at the hearing unless his/her name appears on the list unless the testimony is such that it is of importance to the case to present a rebuttal witness who can provide testimony that cannot be provided by any of the planned witnesses. The determination as to whether an unscheduled rebuttal witness will be allowed to testify will be made by the Coordinator.

It is each party's responsibility to make certain their witnesses are present at the hearing.

Witnesses should be prepared ahead of time. Let them know what questions they will be asked. Witnesses may be questioned at any time by the Hearing Panel and by the opposing party at the conclusion of the presenting party's questioning.

Witnesses will be called into the hearing room one at a time and may remain in the room only while providing information. Witnesses may wish to bring reading materials, since they must wait outside the hearing room until called to testify.

**Advisors**: Parties may be accompanied by an advisor. The advisor will not have a voice in the proceedings; each party must present his/her own case. An advisor must be a member of the MSU faculty, staff, or student body.

The Coordinator should be notified in advance of the name of the advisor.

**Hearing Procedures**: The ADJB Coordinator is the presiding officer for the hearing. The Coordinator is not a voting member of the Hearing Panel, but is responsible for ensuring that procedural rules are applied consistent with the Anti-Discrimination Policy.
The Coordinator may ask questions of parties and witnesses during the hearing, and has the authority to make rulings on procedural issues.

**FORMAT**

1. **Introductory Remarks** The Coordinator will ask all participants to introduce themselves: complainant(s), respondent(s), advisor(s), ADJB staff, and Hearing Panel members. Witnesses will be introduced as they are called into the hearing room.

   The Coordinator will make a brief statement summarizing the allegations. The procedures to be followed for the hearing will be reviewed, and parties will be provided an opportunity to ask any questions they have regarding the procedures.

2. **Opening Statements** Ten minutes is allowed for each party to present an oral or written opening statement. The complainant will make his/her presentation first, to be followed by the respondent.

   Written opening statements will be accepted, but parties providing written statements are encouraged to read their statement into the record.

3. **Presentations** A maximum of ninety minutes is allowed for each party to present his/her case including opening and closing remarks. The Coordinator may grant additional time for good cause shown.

   Witnesses will not be sworn.

   a. Presentation of Complainant’s case, including questioning witnesses by Complainant, Respondent, and Hearing Panel.

   b. Presentation of Respondent’s case, including questioning witnesses by Respondent, Complainant, and Hearing Panel.

   Parties should show evidence for what occurred and call witnesses at appropriate times to support or add to what is being said.

   Parties should state the obvious. Descriptions should be clear enough to be understood by someone unfamiliar with the location, operating procedures and circumstances of the incident(s). Behaviors, statements, and actions taken should be described in specific terms. Times, places, and the sequence of events should be reported.

   Parties are encouraged to keep an eye on the time. Presenters should allow time for questions from Hearing Panel members and the opposing party. Parties should reserve time to summarize the presentation.

4. **Closing Statements** Ten minutes is allowed for each party to make a closing statement. The Complainant will make his/her statement first, to be followed by the Respondent.

   Parties may wish to take notes during the opposing party’s presentation. Any discrepancies in the opposing party’s presentation should be noted for use in the closing statement.
5. **Deliberations** Parties and advisors will be excused, and the Hearing Panel will deliberate and reach its finding either in a session immediately following or at a later meeting at a time agreeable to Hearing Panel members.

**HEARING PANELS**

**Composition** Members of the Hearing Panel will be selected by the chairperson of the ADJB from among the ADJB members. Five members are selected for each Hearing Panel, and are expected to serve for the duration of the hearing. A hearing will not be convened without a full five member Hearing Panel.

An ADJB member's assignment to the Hearing Panel may be challenged for cause by either party. The challenge must be submitted in writing to the Coordinator at least 48 hours prior to the scheduled hearing. Final determination of Hearing Panel composition will be made by the Coordinator.

The Coordinator will provide notice of the hearing to the members of the Hearing Panel. Notice will include the time and place of the hearing and any documents deemed relevant by the Coordinator. These will include:

- The Complaint
- The Statement of Response
- Documents submitted as evidence by the parties
- A copy of any relevant laws or University procedures
- The MSU ADJB Policy and User's Manual

**Duties** Hearing Panel members are expected to review the case and related policies in preparation for the hearing, to bring such materials to the hearing, and to treat them with utmost respect for confidentiality. All materials should be returned to the ADJB Coordinator's Office upon completion of the Hearing Panel's report.

Hearing Panel members should not communicate directly with nor receive direct communication from either party or their witnesses concerning the complaint at any time other than during the course of the formal hearing. Hearing Panel members shall not seek information beyond that given in the hearing.

Hearing Panel members may ask questions of either party. Questions should be relevant to the issues in the case in order to assist in the decision making process.

Any Hearing Panel member who is unable to attend a scheduled hearing due to an emergency, or who may feel that his/her participation in the hearing raises issues of conflict of interest, should inform the Coordinator as soon as possible. If a Hearing Panel member believes that a conflict of interest exists, the matter should be discussed with the Chairperson and the Coordinator to determine whether a replacement should be appointed.

**Hearing Panel Decisions** The Coordinator will convene and chair the deliberative sessions of the Hearing Panel subsequent to the formal hearing. Based on the deliberations, the Coordinator will draft the Hearing Panel's report for review and approval by members of the Panel.

The Hearing Panel should make a finding on each of the allegations contained in the complaint as to whether it is or is not supported by a preponderance of the evidence as
defined in Article III.1)c) of the Procedures. If the Hearing Panel finds that there has been a violation of the MSU Anti-Discrimination Policy, it should recommend the appropriate redress, taking into account the redress sought by the complainant and that the ADJB has no disciplinary function. The Hearing Panel may choose to make a recommendation for discipline under the appropriate University procedures.

The written decision of the Hearing Panel should be a self-contained document that sets out the summary of the evidence presented, the findings of the Hearing Panel, and the recommended redress(es). The decision of the Hearing Panel should represent the majority opinion of the Panel, and need not be unanimous. The report should be signed by a majority of the Panel. The Hearing Panel may choose to have a minority opinion as well as the majority opinion.

The decision shall be forwarded promptly to the ADJB Chairperson and the parties by the Coordinator. If the decision is not appealed within the required time, the Coordinator shall forward the decision to the President.

IV. APPEALS

Appeal of Jurisdiction  Immediate Presidential review of jurisdiction questions may be requested under Article IV of the Procedures by either party to a dispute.

Parties must request a review of jurisdiction within 14 days of receipt of notice. The request must be in writing and give a brief statement of the reason for the request. Within 30 days of receipt of the request, the President will either concur with the decision of the ADJB or overrule the jurisdictional decision.

Appeal of Hearing Panel Decisions  Either Complainant or Respondent can appeal.

Grounds for Appeal  Appeals are based on the record established in the initial hearing, and are limited to the following two issues:
1. Whether the evidence previously presented provides a reasonable basis for the resulting findings and recommended remedies (if any), and
2. Whether specified procedural errors were so substantial as to effectively deny the appealing party fundamental fairness.

Appeals must be in writing and the grounds for appeal must be specifically stated. Appeals should be submitted to the ADJB Coordinator's office.

The Coordinator will forward a copy of the appeal to the opposing party and the chairperson of the ADJB.

The opposing party has 14 calendar days from receipt of notice to respond in writing to the appeal. A copy of the response will be forwarded to the party filing the appeal at least five days prior to an appeal hearing.

Time Limit for Filing an Appeal  An appeal must be received in the ADJB Coordinator's office within 14 calendar days of receipt of the Hearing Panel's decision. Decisions not appealed within 14 calendar days are deemed to be accepted by the parties.
Conduct of Appeals

1. Each party shall submit a short, written statement of their position on appeal in accordance with the requirements of Article III. 2. a. of the Procedures. The statement should be limited to the evidence and arguments presented at the initial hearing.
2. Each party shall be informed in writing of the date, time, place and nature of the hearing.
3. The hearing shall be conducted in an informal manner to the greatest extent possible, consistent with the protections of due process.
4. The hearing shall be closed unless both parties consent in writing to an open hearing.
5. The ADJB Coordinator shall preside over the hearing without vote and shall resolve any procedural issues raised during the hearing.
6. Each party is responsible for the presentation of his/her appeal and shall have thirty minutes in which to present an oral argument in support of his/her position. A member of the faculty, staff or student body of the University may accompany each party as an advisor, but shall have no voice in the proceedings.
7. Appeal Board members may ask questions of either party during the presentation of appeals.
8. The ADJB's review shall be limited to the record established at the initial hearing, the Hearing Panel's decision, the written statements submitted by the parties, and the parties' oral arguments.
9. There shall be no communication between an Appeal Board member and any party or advisor on any matter relating to the case.

Appeal Procedures  The ADJB Coordinator is the presiding officer for the appeal hearing. The Coordinator is not a voting member of the Appeal Board, but is responsible for ensuring that procedural rules are applied consistent with the Anti-Discrimination Policy. The Coordinator may ask questions of parties during the appeal hearing, and has the authority to make rulings on procedural issues.

Hearings will be held at a time convenient to both parties.

The Chairperson or Coordinator will provide written notice of the appeal to the parties. Such notice will include the time and place of the appeal hearing, a copy of the appeal and response, and a copy of "Conduct of Appeal Hearings".

Each party may be accompanied by an advisor, who must be a member of the MSU faculty, staff, or student body and will not have a voice in the proceedings.

FORMAT

1. **Introductory Remarks**  The Coordinator will ask all participants to introduce themselves: appellant (person bringing the appeal), appellee (person responding to the appeal), advisor(s), ADJB staff, and Appeal Board members.

   The Coordinator will make a brief statement summarizing the parties' positions on appeal. The procedures to be followed for the appeal hearing will be reviewed, and parties will be provided an opportunity to ask any questions they have regarding the procedures.

2. **Oral Arguments**  Each party will have 30 minutes to present an oral argument. a. Oral argument by appellant, followed by questions from the Board.
b. Oral argument by appellee, followed by questions from the Board.
c. If both parties appeal the decision, the Coordinator will determine the order of presentation prior to the hearing.

**Deliberation** Parties and advisors will be excused and the Board will deliberate either immediately following or at a time agreeable to Appeal Board members.

**Composition of Appeal Board** Appeals are heard by the full ADJB, except that members of the initial Hearing Panel are excluded from participation. A majority of members of the ADJB who did not serve on the Hearing Panel is required to hear an appeal. Any ADJB member appointed to the Hearing Panel and excused for cause will not be eligible to serve on the Appeal Board. A party may challenge the appointment to the Appeal Board of any member for cause. The challenge must be submitted in writing to the Coordinator at least 48 hours prior to the scheduled hearing date. The Coordinator will make the final determination of Appeal Board composition.

The Coordinator will provide notice of the appeal hearing to the members of the Appeal Board. Notice will include the time and place of the hearing. The following documents will be made available to Board members prior to the appeal hearing:

- The Hearing Panel decision
- The record established at the original hearing
- Written statements submitted by the parties

If a Board member believes that a conflict of interest exists, the matter should be discussed with the Chairperson and the Coordinator to determine whether the member should participate in the appeal hearing.

Board members are expected to review the above materials in preparation for the appeal hearing and to treat them with utmost respect for confidentiality.

Board members should not communicate directly with nor receive direct communication from either party concerning the complaint at any time other than during the course of the appeal hearing. Appeal Board members should not seek information beyond that given in the hearing.

**Appeal Decision** Generally, appeals are decided upon the record of the original hearing. New information or evidence may be submitted only if it is relevant to the appeal and previously unavailable to the party, although the party acted with due diligence to obtain such evidence. Decisions as to whether to accept new evidence rest with the Coordinator.

If newly discovered evidence is deemed such that its omission may have constituted prejudicial error if not considered at the initial hearing, the Appeal Board may, by majority vote, remand the case back to the original Hearing Panel for rehearing.

The Board should consider the record established at the initial hearing, the Hearing Panel's decision, the written statements submitted by the parties, and the parties' oral arguments in reaching a decision.

The Board may affirm or reverse the Hearing Panel's decision in whole or in part and/or remand it to the original Hearing Panel for reconsideration.
In preparing the decision, the Board is to follow the relevant guidelines for initial Hearing Panels in Section VIII of this manual.

The Board will issue a written decision without undue delay. The Board may choose to have a minority opinion as well as the majority opinion.

The Coordinator will forward the decision to the President and parties without undue delay.

The President will, within 30 calendar days, review the decision and render an opinion.

V. ADJB QUARTERLY REPORTS AND MEETINGS

Quarterly Reports The Coordinator will provide the President of the University with a quarterly report of all mediation and formal complaints. The report will include a list of complaints by number (no names), the basis of the complaint, and the progress of the complaint or mediation attempt. This information will also be shared with the ADJB Chairperson.

Meetings The ADJB will hold an orientation meeting at the beginning of each school year. The purpose of this meeting is to introduce new members, elect a chairperson, clarify the procedures for hearings and appeals, and provide members with any necessary information. There will also be a training session for new members.

The ADJB will meet quarterly. The final meeting of each year will be to review the year and make recommendations for the following year. At this meeting members will review cases to determine whether there are any patterns or practices which require further ADJB review or which should be brought to the attention of the President.

A majority of ADJB members must be in attendance at a meeting in order to conduct business. The only exception to this is the training session.

The Coordinator will attend all meetings and be responsible for note taking and drafting minutes. Minutes will be reviewed by the Chairperson and submitted to the ADJB at the following meeting for approval.

All information concerning any ADJB case is treated confidentially to the extent permitted by law.

Questions from the press concerning the ADJB will be cleared with the University Relations office prior to response.

*Deadlines appearing in this document are for administrative purposes to provide for an expeditious hearing. 8/11/93
Anti-Discrimination Judicial Board
Michigan State University

MEDIATION REQUEST FORM

Name __________________________
Address __________________________

Phone Number(s) __________________________ e-mail __________________________

Unlawful Act or Practice Believed to Have Occurred:

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<tr>
<th>ACT OR PRACTICE</th>
<th>BASED ON</th>
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<td>Discrimination</td>
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<td>Harassment</td>
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<td>Inappropriate Limitation</td>
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<td>Retaliation</td>
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Date(s) of Alleged Discrimination __________________________

Initial contact made and mediation request filed within thirty (30) calendar days of the alleged discrimination: _____Yes _____No

I wish to pursue mediation through consultation provided by offices serving the University as encouraged in the MSU Anti-Discrimination Policy. The ADJB Coordinator will follow the progress of mediation efforts if a referral is made. A formal filing of a complaint may be pursued if the mediation is unsuccessful.

Signature __________________________ Date __________________________

MSU is an affirmative-action/equal-opportunity institution.
Michigan State University
Anti-Discrimination Judicial Board
Complaint Form

A complaint filed with the ADJB must be filed within sixty (60) calendar days of the alleged discrimination. Either the ADJB Coordinator or the full ADJB by majority vote may waive the 30-day time limit for good cause shown.

A complaint must clearly, concisely and directly specify the time, place and nature of the alleged discrimination as well as the individual(s), group or entity alleged to be responsible for the discrimination. The complaint must also contain a short and plain statement of the remedy sought.

The ADJB shall not proceed to consider any claim: (a) for which another procedure for final and binding adjudication is provided within the University by contract, unless both contracting parties agree to submit the matter to the ADJB or (b) where, based on the same underlying facts, has been submitted for adjudication under the rules of another University procedure. However, when a complaint has been adjudicated under another University procedure, the ADJB may review such findings upon the written request of the complainant, to assure itself that any non-disciplinary remedies related to prohibited discrimination were satisfactorily addressed. If, in its judgment, such non-disciplinary remedies were not adequately addressed, it may accept the complaint for further consideration on the basis of the non-disciplinary charges of discrimination only.

The ADJB shall have no jurisdiction respecting disciplinary charges against individuals and no disciplinary sanction shall be imposed.

Excerpt from MSU Anti-Discrimination Policy and Procedures approved by the Board of Trustees April 2, 1993.

Please print or type:

COMPLAINANT (8)

Last First Middle

Address

Phone Number(s)

mail

RESPONDENT(s)

Address/Unit Affiliation

Phone Number(s)

mail

This complaint alleges that the respondent violated the Anti-Discrimination Policy as a result of:

ACT OR PRACTICE

BASED ON

__ Discrimination
__ Age
__ Marital Status
__ Religion

__ Harassment
__ Color
__ National Origin
__ Sexual Orientation

__ Inappropriate Intimacy
__ Disability Status
__ Political Persuasion
__ Veteran Status

__ Retaliation
__ Gender
__ Race
__ Weight

__ Height
__ Other

WITH REGARD TO

__ Educational, employment, cultural and social activities occurring on the University campus (circle one)
__ University sponsored programs occurring off campus
__ University housing

__ Programs and activities sponsored by student governing bodies, including their constituent groups, and by registered student organizations.

---

Page 2: Complaint filed by __________________________

Date(s) of alleged discrimination __________________________

If more than 30 days has passed, state why an extension should be granted.

Today's date __________________________

Please provide information on the following three areas using separate paper.

2. Steps already taken to resolve the complaint.
3. Specific remedy or relief sought.

To be completed with Coordinator

a. I decline mediation of my complaint.

b. I have received an official copy of the Anti-Discrimination Judicial Board Policies and Procedures.

c. I have been advised of my right to file (Civil Rights) complaints with external government agencies and that the usual time allowed for filing charges of discrimination is within 180 days from the date of the alleged discriminatory act(s).

Signature of Complainant

Subscribed and sworn to before me this ________ day of ________, 20____

Fax Public

Per office use only

Received by __________________________

Total # pages __________________________

Case # assigned __________________________

Mediation process initiated (date) __________________________

converted to Complaint Status (date) __________________________

MSU is an affirmative-action, equal-opportunity institution.
Dr. Abeles,

May we have this added to next Tuesday's ECAC agenda as an action item?

Thanks,

[Signature]

THE MSU IDEA IS INSTITUTIONAL DIVERSITY: EXCELLENCE IN ACTION
ASSOCIATED STUDENTS
MICHIGAN STATE UNIVERSITY
ACADEMIC ASSEMBLY

TENTH SESSION

BILL NO. 10-41

INTRODUCED BY Bochum SECONDED BY Lantry

A BILL TO: Express Academic Assembly's support for gender identity inclusion

THE ASSOCIATED STUDENTS OF MICHIGAN STATE UNIVERSITY ENACT;

WHEREAS, The All-University Anti-Discrimination Policy is currently not inclusive of gender identity; and

WHEREAS, Student Assembly and Academic Assembly recently voted to change the ASMSU Organizational Policy Code to be inclusive of gender identity and to hold a referendum to make the Preamble of the ASMSU Constitution similarly inclusive; and

WHEREAS, Academic Council has the authority to advise and make recommendations to the Board of Trustees; and

WHEREAS, Academic Assembly is the primary student voice in Academic Council; therefore be it

RESOLVED, That the body urge Academic Council to make a recommendation to the Board of Trustees that the All-University Anti-Discrimination Policy be amended to include gender identity as described in the following attachment.

INTRODUCED ON 1.21.02

REFERRED TO COMMITTEE ON

SPECIAL ACTION TAKEN DATE

FINAL ACTION TAKEN X Passed Failed Vote 1.22.02

CHAIRPERSON SIGNED

SECRETARY SIGNED
ASSOCIATED STUDENTS
MICHIGAN STATE UNIVERSITY
ACADEMIC ASSEMBLY

TENTH SESSION

Academic Council Proposal (12-4-01 Draft)

WHEREAS, article II of the All-University Anti-Discrimination Policy currently reads:

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, handicapper status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight or

2. Harass any University community member(s) on the basis of age, color, gender, handicapper status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights; and

WHEREAS, the All-University Anti-Discrimination Policy is currently not inclusive of gender identity; and
WHEREAS, Michigan State University, as a land-grant institution, should reflect the diversity of the community as a whole; and
WHEREAS, this body has the authority to advise and make recommendations to the Board of Trustees; therefore be it
RESOLVED, that this body recommends that article II of the All-University Anti-Discrimination Policy be amended to read:

Unlawful acts of discrimination or harassment are prohibited.

In addition, the University community holds itself to certain standards of conduct more stringent than those mandated by law. Thus, even if not illegal, acts are prohibited under this policy if they:

1. Discriminate against any University community member(s) through inappropriate limitation of employment opportunity, access to University residential facilities, or participation in educational, athletic, social, cultural, or other University activities on the basis of age, color, gender, handicapper status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, gender identity, veteran status, or weight or

2. Harass any University community member(s) on the basis of age, color, gender, handicapper status, height, marital status, national origin, political persuasion, race, religion, sexual orientation, gender identity, veteran status, or weight.

These prohibitions are not intended to abridge University community members' rights of free expression or other civil rights.
"At this land-grant university, we do have a special obligation to advance the causes of human rights. We have the obligation, in fact, to lead such causes."

Gender Identity:
Creating Change at Michigan State University
Spring Semester 2002
Gender Identity
Table of Contents

Cover Sheet
Included here are basic terms and concepts

Introduction to Transgender Issues
Taken from the NGLTF Transgender Equality Workbook

F M Chester
A brief personal letter from a Transgender person

Key Issues
Two issues broken down so as to assist in the creation of anti-discrimination policies.

Definitions
Specific definitions in non-discrimination laws from across the nation.

Common Myths and Talking Points
Information presented to address many misconceptions

Resources
References and other sources of pertinent information.

The quote presented on the cover of this packet is from a letter issued to the MSU community by MSU President John A. DiBiaggio in June of 1989. It is a message that is implicit within the core of MSU values and continues to resonate with members of the MSU Community.
GENDER IDENTITY

Objective:
Transgender people are individuals of any age or sex whose appearance, personal characteristics, or behaviors differ from stereotypes about how men and women are "supposed" to be. Transgender people have existed in every culture, race, and class since the emergence of recorded history. People who transgress gender are at greater risk of discrimination and thus it is prudent for Michigan State University and the units and organizations within its campus to include gender identity, the legally prescribed category for gender expression, into anti-discrimination policies.

Definitions:

Sex
A person's biological/anatomical identity. This is usually manifested as male or female, however other categories do exist.

Intersex
Though many people believe that all infants are born clearly male or female, in fact Mother Nature is not so binary-minded. At least one in every 2,000 children is born with a sexual anatomy that mixes male and female characteristics in ways that make it difficult, even for an expert, to label them male and female. Often doctors cosmetically alter the children's genitalia without parental knowledge or consent. More information is available on this through the Intersex Society of North America at http://www.isna.org.

Gender
A culturally defined characteristic, usually masculine or feminine, varying over time. Examples include: Scottish kilts are masculine only in certain places. Acceptable dress for women has changed over time moving from dresses to business suits and long hair to short hair. African American men are often seen as a threat because of their perceived "hypermasculinity."

Transgender
Transgender is not a medical or psychiatric diagnosis. Transgender people are generally people whose gender identity and/or gender expression does not match their socially prescribed gender.

Gender Identity
"Gender identity" refers to a person's internal, deeply felt sense of being male, female, or something other or in between. This is often exhibited through forms of gender expression or through identifying as transgender.

Gender Expression
A person's "gender expression" refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns, and social interactions.
Important Notes:

It must be recognized that "gender identity" is a legally established category often used in anti-discrimination policies as a means to protect individuals from discrimination. This most often protects individuals who identify as transgender and who exhibit non-traditional forms of gender expression. Thus it is a category inclusive many times of transgender people; heterosexual men and women; and lesbian, gay and bisexual men and women.

Precedents:

Within the academic sphere, a number of colleges and universities are becoming more inclusive of gender identity. Nationally this includes, Rutgers and University of Kansas and in the Big Ten, University of Minnesota and University of Illinois.

Outside of the academic sphere, cities and states are becoming more inclusive as well. In Michigan, for example, Ann Arbor, Ypsilanti, Grand Rapids, and Huntington Woods have inclusive ordinances, while East Lansing is considering amending its own ordinance.

Final Notes:

It is only natural for a progressive University such as Michigan State University to include gender identity, the legally established category for this type of discrimination, in its anti-discrimination policy because people whose gender expression differs from culturally defined characteristics have no current protection from discrimination. Already Michigan State University student organizations have taken a strong lead in creating a more inclusive environment. The Associated Students of Michigan State University and the MSU Residence Halls Association are the two largest organizations which have already taken this step.
Introduction

TO TRANSGENDER ISSUES

by Jamison Green

Transgendered people are individuals of any age or sex whose appearance, personal characteristics, or behaviors differ from stereotypes about how men and women are "supposed" to be. Transgendered people have existed in every culture, race, and class since the story of human life has been recorded. Only the term "transgender" and the medical technology available to transsexual people are new.

Over the past few years, many gay, lesbian and bisexual organizations have broadened the scope of their work to include the issues and concerns of transgendered people (hence the acronym GLBT for gay, lesbian, bisexual, and transgendered people). This change reflects an acknowledgment that sexism and gender stereotyping have a powerful effect on the social and legal treatment of gay as well as transgendered people. It also reflects the growing strength and maturity of the GLBT civil rights movement, which has expanded its self-understanding to include heterosexual family members and friends, allies who have endured similar oppressions, and others who share a broader vision of human rights and social justice than a narrowly defined "gay identity politics" could hope to achieve.

In addition to providing up-to-date information on the current status of efforts to achieve basic legislative protections for transgendered people, the purpose of this publication is to promote greater understanding of transgender issues. To build an effective political movement and to win civil rights legislation with the broadest possible effect, we must all learn to be advocates for our entire community, including educating ourselves and being prepared to talk about experiences and issues that are not always our own. With that goal in mind, the following discussion is designed to provide a basic overview of transgender issues and of how they are connected to those of gay, lesbian and bisexual people.
DEFINING SOME COMMON TERMS: "GENDER," "GENDER IDENTITY" AND "GENDER EXPRESSION"

Gender v. Sex

In everyday language as well as in the law, the terms "gender" and "sex" are used interchangeably. However, it is often important to distinguish the two terms. Social scientists, for example, use the term "sex" to refer to a person's biological or anatomical identity as male or female, while reserving the term "gender" for the collection of characteristics that are culturally associated with maleness or femaleness.

The specific characteristics that are socially defined as "masculine" or "feminine" vary across cultures and over time within any given culture. For example, for centuries, standard Greek military attire was a type of skirt. As another example, in many American cities, just a few decades ago, women were forbidden (often by statutory law) to wear trousers or pants. Often women who violated this gender norm were perceived as men, or were assumed to have a desire to be men, whereas those assumptions are seen as outdated now. Even today, social norms about gender vary significantly within different geographic regions, classes, and ethnic or racial groups. For example, social expectations concerning what counts as "appropriately" masculine or feminine attire in a small farming community in the Midwest may differ considerably from those in Los Angeles, New York City or other large cities.

While these differences may sometimes simply reflect different cultural norms, they are also frequently used to perpetuate invidious racist stereotypes and practices. For example, the racist stereotype that black men are "hypermasculine" and therefore supposedly prone to violent and criminal behavior has contributed to pervasive discrimination against black men in the criminal justice system, from the use of "racial profiling" by law enforcement personnel to the disproportionate targeting of black men in prosecution and sentencing. In practice, stereotypes about gender are rarely independent of stereotypical assumptions about race and class.

In addition, it is much more common than one might think for people to have gender characteristics that are stereotypically ascribed to the opposite sex. If one looks closely at a wide variety of people, it is easy to see varying degrees of "transgender" characteristics displayed by a large percentage of any given population. In fact, even if one looks closely at any given individual, it is always possible to find traits that might be characterized as "gender atypical." What singles out many transgendered people is simply a preponderance of these characteristics, causing observers to doubt their perception of an individual's gender or sex, which often leads them to question the person's sexual orientation as well.

In short, both the variable definitions of "masculinity" and "femininity" within different cultures and the fact that all people have a mix of gendered traits indicate that the qualities we define as "masculine" or "feminine" are ultimately simply human. From this perspective, naming "transgender" people as a discrete group may be arbitrary and even misleading, insofar as it reinforces the mistaken view that transgender individuals are somehow fundamentally different than other people. From a political perspective,
however, it has been necessary to embrace the label "transgender" to foster a sense of solidarity among those who bear the brunt of discrimination against gender atypical people. Only by naming that discrimination can we hope to end it, and only by building a movement for transgender civil rights can we create a world in which the label "transgender" will no longer be needed.

Gender Identity and Gender Expression

"Gender identity" refers to a person’s internal, deeply felt sense of being either male or female, or something other or in between. Because gender identity is internal and personally defined, it is not visible to others. In contrast, a person’s "gender expression" is external and socially perceived. Gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

Transsexual People

Most people experience their gender identity as correlating to, or in line with, their physical sex. That is, most people who are born with female bodies also have a female gender identity (i.e., an internal sense that "I am a woman"), and most people who are born with male bodies have a male gender identity (i.e., an internal sense that "I am a man"). For a transsexual person, however, there is a conflict between one’s physical sex and one’s gender identity as a man or a woman. Female-to-male transsexual (FTM) people are born with female bodies, but have a predominantly male gender identity. Male-to-female transsexual (MTF) people are born with male bodies, but have a female gender identity. Many, but not all, transsexual people undergo medical treatment to change their physical sex through hormone therapy and sex reassignment surgeries.

Female-to-male transsexual people are rarely mentioned in contemporary discussions of transgender lives, with the recent exception of Brandon Teena, whose brutal murder in Nebraska in 1993 garnered widespread attention and was depicted in the 1999 movie Boys Don't Cry. The contemporary culture is more familiar with male-to-female narratives like those of Jan Morris or Renee Richards, or with challenges to gender norms represented most publicly by author/performance artist Kate Bornstein. Despite the relative invisibility of FTMs, there are equal numbers of FTM and MTF transgender people throughout the world.3

WHAT DOES TRANSGENDER MEAN?

The contemporary term "transgender" arose in the mid-1990s from the grassroots community of gender-different people. Unlike the term "transsexual," it is not a medical or psychiatric diagnosis. In contemporary usage, transgender has become an "umbrella" term that is used to describe a wide range of identities and experiences, including but not limited to: pre-operative, post-operative, and non-operative transsexual people; male and female cross-dressers (sometimes referred to as "transvestites," "drag queens" or "drag kings"); intersexed individuals; and men and women, regardless of sexual orientation, whose appearance or characteristics are perceived to be gender atypical. In its broadest sense, transgender encompasses anyone whose identity or behavior falls
outside of stereotypical gender norms. That includes people who do not self-identify as transgender, but who are perceived as such by others and thus are subject to the same social oppressions and physical violence as those who actually identify with any of these categories. Other current synonyms for transgender include "gender variant," "gender different," and "gender non-conforming."4

Before the mid-1990s, the term "transgender" had a narrower and more specific meaning. As coined several decades ago by Dr. Virginia Prince, who has published numerous books and articles on the subject, the term originally referred to biological men who are satisfied with their male genitalia, but who wish to be seen and to live in the world as women. In contrast to transsexual people, "transgender" persons (in the older, more narrow sense of the term) have come to terms with the contradiction between their bodies and their gender identities and are not troubled by that contradiction, so they have not shown up in doctors' offices to be diagnosed and documented. Instead, they are more likely to show up in sociological or anthropological studies, or to be writing their own stories in the form of autobiographies, essays or books. As a group, their sexual orientation is predominantly heterosexual (based on genitalia), but there are also bisexual, asexual, and homosexual individuals. Sexual orientation or behavior is not the primary issue or primary motivation for transgendered people; rather, the issue is wishing to live and to be perceived as a gender that is different than one's biological sex. This is, of course, an oversimplification because the relationship between gender identity and sexual desire is highly complex and individual.

Historically, people who have female bodies but who live their lives as men have received less attention than their male-bodied counterparts. The world is much more familiar with stories of male-to-female gender crossing. Nonetheless, there are many women throughout history who have conformed to this definition of transgender, as well as many who do so today. These individuals are often referred to as "passing women," of whom there are numerous historical examples such as Catalina de Erauso, a soldier in the Spanish army stationed in Chile and Peru in the early 1600s, and Dr. James Barry, a surgeon in the British army in the early 1800s.6 In the US, the best-known contemporary example is Billy Tipton, the jazz musician who, to the surprise of his adopted children (then adults) and his ex-wife, was discovered on his death in 1989 to have a female body.7 As in the case of male-bodied transgender persons, female-bodied transgender persons may be heterosexual, homosexual, bisexual or asexual. Sometimes, as in Tipton's case, those who have female partners or wives consider themselves to be heterosexual, based on their gender identification rather than their female genitalia. In other cases, such as that of contemporary trans activist and author Leslie Feinberg, some who have female partners may identify as lesbian. And then there are those like Jack Bee Garland, who died in 1936, who preferred to live as a man in the company of men.8 His biographer theorized that Garland was a gay-identified FTM (female-to-male) transsexual who would have availed himself of medical treatment had it been available.

Today, as the 21st century begins to unfold, the term "transgender" encompasses a much broader spectrum of experience. Many transsexual people have been willing to take on the label of transgender because it describes their experience before their change of sex, or in some way helps to describe their ongoing consciousness once they
have changed their sex, implying the broader social awareness they may have as a result of experiencing life from within two kinds of (perceived) bodies, though their gender identity may always have remained the same. Many gay, lesbian, and bisexual (GLB) people are taking on the transgender label because their gender presentation crosses arbitrary boundaries that they want to render less constraining, or because they recognize that loving a person of the same sex is in itself a challenge to dominant gender norms.

The expansiveness of the contemporary transgender movement is evident in other ways as well. There is a growing awareness of the ubiquity and diversity of transgender identities across the globe and within different communities in the US. As a wealth of historical research has shown, transnamed people have long been a part of many nonwestern cultures, from the Hijra of India to the "two spirited" peoples who, to varying degrees, were accepted within many Native American cultures prior to their contact with European colonists.9 Within the US, GLBT scholars and activists have documented the experiences and contributions of transnamed people within African-American, Asian-American, Latino/a, Native American and other communities, both historically and in the present.10

Variety and diversity are the hallmarks of the contemporary transgender movement. There is no one way to be, and there is room for everyone to be who they are.

WHAT ABOUT INTERSEXED PEOPLE?11

Though many people believe that all infants are born clearly male or female, in fact Mother Nature is not so binary-minded. At least one in every 2,000 children is born with a sexual anatomy that mixes male and female characteristics in ways that make it difficult, even for an expert, to label them male or female. Although no one is ever born with two full sets of genitals, male and female, some intersexed infants may have ambiguous genitalia, such as a penis that is judged "too small" or a clitoris that is judged "too large."

Parents concerned about their infant's health and well-being are often frightened by this variation. Although genital ambiguity does not in itself represent a health problem, parents often fear that their children will be adversely affected by being different, or that somehow the child will grow up to be lesbian or gay.

Some intersexed people are born with genitals that look like most girls' or boys' genitals, but may have internal reproductive organs usually associated with the other sex. Others have bodies that do not spontaneously go through puberty, or that exhibit pubertal changes many years ahead of the usual schedule, or go through pubertal changes usually associated with the opposite sex, or experience some of the pubertal changes of both sexes. Conditions such as congenital absence of the vagina (1 in every 5000 female births) and hypospadias, in which the urethral opening does not occur at the tip of the penis (1 in every 200 male births) are also considered by many physicians to be intersexed conditions.12

Around the late 1950s, it became widespread practice to subject intersexed children to surgeries and hormone treatments intended to ensure that the child is viewed as clear-
ly female or clearly male. These procedures are not medically necessary; instead, they are designed to make the child’s genitals look more "normal." In recent years a growing number of people who were subjected to genital surgeries as infants and children have spoken out against these medical interventions as harmful, unethical, and based upon nothing more than social prejudice. Their voices have now begun to create dissent among the doctors who recommend and perform these surgical interventions. Medical practice has been based upon the idea that sexual ambiguity is shameful and must be surgically "disappeared." For that reason, doctors have been taught that they must not give intersexed children or adults accurate information about procedures, or about their medical history. Often intersexed people are able to adapt somewhat to their assigned gender, but sometimes this does not work out the way the doctors believe it will. Sometimes the person’s gender turns out to be the opposite of their surgically assigned sex; in other cases, the person always feels "in between." Some intersexed people have a problematic relationship with their own genitalia, and struggle with doubts about their ability to relate intimately with other people because of surgically created sexual dysfunction. A sense of inadequacy created by years of disapproving medical attention to their bodies, and a medical posture that sexual ambiguity is shameful and freakish can create severe problems with self-esteem. In some cases, intersexed people must undergo the same medical treatments as transsexual people and face the same social obstacles and prejudices.

The view that there is a continuum of sexual development along which all individuals fall is parallel to the contemporary understanding that gender identity and sexual orientation also reside on a continuum. Contemporary theorists hold that every point on this continuum is a manifestation of human diversity—not a matter of "correct or incorrect" or "right or wrong," but just what happens in life. These views have been quickly gaining favor in the medical/psychological profession since the advent of an organized self-advocacy movement by intersexed people, led by the Intersex Society of North America.

Most intersexed conditions are not visible in the course of ordinary social interactions. Nonetheless, in addition to being stigmatized and in some cases physically damaged by inappropriate medical treatments, intersexed people are often discriminated against in employment and other areas if their intersexed identity becomes known. Like other transgendered people, intersexed people have mostly been excluded from any legal protection under existing anti-discrimination laws.

**WHAT’S THE GLBT CONNECTION?**

The struggle to establish civil rights protections for transgendered people cannot be separated from the struggle to win freedom and equality for gay, lesbian, and bisexual people.

- Many transgendered people are gay, lesbian, or bisexual.
- Many gay, lesbian, and bisexual people are also transgender.
• Trans people have always been present in the GLB community. Drag and butch/femme culture, as well as androgyny and gender-bending are hallmarks of transgender influence.

• Lesbian, gay and bisexual people frequently challenge gender boundaries in their social (in addition to sexual) behavior, and are often victims of hate crimes because of their gender presentation.

Despite these strong connections, there are also historically based reasons for misunderstanding and mistrust between gay and transgendered people. When homosexuality was first being defined and studied by Richard von Krafft-Ebing, Magnus Hirschfeld, and Havelock Ellis in the late 19th and early 20th century, many of the first identified homosexual people (then called "inverts") were what we would now term transgendered individuals. These were visibly gender-variant people, many of whom expressed a strong identification with the "opposite sex" to the point of wishing (in some cases) that they could change their bodies to become members of the opposite sex. This led some physicians and researchers to believe that transgendered (and particularly transsexual) people were simply homophobic homosexuals. It also led some people to believe that doctors invented transsexualism as a cure for homosexuality.

It is important for GLBT activists to understand that a hundred years ago the only people labeled as homosexual or lesbian were those who exhibited transgender characteristics. There was no label for masculine men who had sex with other men or for feminine women who had sex with other women. The effort to move away from the term "invert" and to define homosexuality as same-sex love or sexual behavior, and the drive to accept gay and lesbian people as "normal," contributed to the marginalization of trans people.

Beginning in the 1950s, the availability of hormone therapy and sex reassignment surgeries for transsexual people drove another wedge between gay and trans people. The doctors and other medical professionals who controlled access to treatment were deeply homophobic and often projected their homophobia onto their patients. To gain access to medical treatment, transsexual people had to censor their own experiences and beliefs and, in particular, had to renounce any similarity to or affiliation with lesbians and gay men. This coercive dynamic perpetuated many inaccurate stereotypes about trans people, including the widespread misconception (which is unfortunately shared by many GLB people) that transsexual people are homophobic and reactionary and have no political goals other than being accepted as "normal" heterosexuals. It has also perpetuated confusion about the relationship between sex, gender and sexual orientation.

In reality, whether a person is transsexual has no direct or predictable connection to his or her sexual orientation, as evidenced by the fact that transsexual people have the same diverse range of erotic experiences, desires and identifications as non-transsexual people. Although erotic desire and self-image are components of every person's psyche and certainly constitute powerful drives motivating our behavior, there is no evidence that sexuality plays a direct or uniformly causative role in the development of all transgendered or transsexual people. Similarly, while some trans people would undoubtedly prefer to disappear into mainstream society without ever disclosing their transgender status, many are unable to do so because of prejudice and discrimination. Many others believe we should not have to hide who we are in order to lead safe and productive
lives. Ultimately, the fact that transgendered people have made a collective effort to find a political voice and to be reintegrated into GLB communities in the 1990s is the best evidence that they have larger social needs that must be met than those which can effectively be addressed by "passing for normal."

One basic truth about trans people should be apparent by now. There is no one way to be "trans." It is impossible to encompass an entire human being with any label. The only thing you can count on knowing about a person who is trans is that there's a lot you don't know. One of the great lessons of trans experience is the ability to let go of one's preconceptions about other people. For me, the prefix trans is a signal to be ready for anything, to allow others to define themselves regardless of my own preferences in defining another's appearance or characteristics.

**SEXISM AND GENDER STEREOTYPING: THE ROOTS OF ANTI-GLB AND ANTI-TRANSGENDER BIAS**

Like discrimination against transgendered people, discrimination against GLB people is rooted in sexism and gender stereotyping.

- There is a strong and consistent relationship between anti-GLB prejudice and a desire to maintain traditional concepts about appropriate gender roles.

- Anti-GLB bias is based on and perpetuates the same stereotypes and oppressive practices that have long been used to deny equal opportunities to women and to keep men and women in their "proper" roles.

- Men and women who are perceived to deviate from traditional gender expectations are routinely stigmatized as gay or lesbian regardless of their actual sexual orientation.

As described above, gender identity is a person's internal sense of being male or female. Gender expression includes all of the external personal characteristics that are visible to others: appearance, clothing, mannerisms, and behaviors. Sexual orientation refers to whether a person is attracted to men, women or to both.

Everyone, of course, has a sex, a gender identity, a gender expression, and a sexual orientation. Just how all those factors are related, or what causes any given individual to have the particular mix of characteristics that defines his or her identity, is not yet known and may never be known. What is known, however, is that there is no necessary connection between a person's gender identity, gender expression and sexual orientation. For example, a woman who would rather wear blue jeans than skirts is not necessarily a lesbian (or transsexual), just as a man who would rather wear feminine clothing than a suit and tie is not necessarily gay (or transsexual). In addition, the fact that a person is transsexual does not reveal or predict anything about his or her sexual orientation; some transsexual persons are lesbian, gay or bisexual, and others are heterosexual.16

In American society, however, a person's gender expression is often mistakenly assumed to reveal that person's sexual orientation. For example, men with feminine characteristics are often assumed to be gay, and women with masculine characteristics are often assumed to be lesbian. Transsexual people are often assumed to be lesbians or gay men...
who cannot accept their sexual orientation and who therefore undergo sex reassignment in order to "hide" or "deny" their true natures. These stereotypes are not only unreliable and untrue, they are dangerous. By creating an atmosphere in which anyone whose gender identity or gender expression varies from the norm is at risk of being stigmatized, shunned, or even physically assaulted, they perpetuate discrimination and intolerance.

Educating legislators and policymakers about the damage inflicted by sexism and gender stereotyping is a critical component of winning basic civil rights protections for GLBT people. Almost every family includes some family members who have been hurt or suffered discrimination because their gender identity or gender expression is "different" from the norm in some way—for example, a brother or son who has been ridiculed as a "sissy," a sister or mother who was discouraged from pursuing a traditionally "masculine" career, a daughter or grandchild who has been harassed because of gender stereotypes on the job. When legislators and policymakers have an opportunity to hear the facts about gender-based discrimination and to understand these facts on a human level, most will eventually be sympathetic to the need for enhanced legal protections.

There is no necessary connection between a person's gender identity, gender expression and sexual orientation.

WHAT ARE TRANSGENDER ISSUES?

Transgender issues have many areas of overlap with gay, lesbian and bisexual issues, but there are also certain issues that are unique to transgendered people. Legal and medical issues are especially critical for transsexual people.

Personal Issues

Much like coming to terms with one's identity as lesbian, gay or bisexual, coming to terms with one's identity as a transgendered person often involves a tremendous inner struggle for self-acceptance. Personal issues include:

- Shame, fear, and internalized transphobia and homophobia
- Disclosure and coming out
- Adjusting, adapting, or not adapting to social pressure to conform
- Fear of relationships or loss of relationships
- Self-imposed limitations on expression or aspirations

Policy Issues

Like many other minority groups, transgendered people are often unable to engage in everyday activities, such as renting an apartment or buying groceries, without confronting bias and discrimination or being targeted by violence or threats of violence. In contrast to most other minorities, however, trans people rarely have recourse to any legal protection against discrimination in employment, public accommodations or other areas. Social issues include:
• Access to social services such as homeless shelters, rape crisis centers, medical clinics
• Access to education
• Hate violence
• Fear of repercuSSION or reprisal in retaliation for exerting one's ordinary rights, such as speaking out in public
• Chronic unemployment or underemployment
• Abusive treatment by law enforcement personnel
• Public humiliation, derision, ridicule, marginalization and exclusion
• Denial of employment
• Denial of housing
• Denial of access to public accommodations such as shops, restaurants, and public transportation

Because it affects so many trans people, hate violence deserves special mention. Based on data from 1995 to 1999, the National Coalition of Anti-Violence Programs Annual Report on Anti-Lesbian, Gay, Bisexual, and Transgender Violence reported that although anti-transgender violence accounted for only about 2-4% of all reported incidents, those incidents accounted for approximately 20% of all reported anti-GLBT murders, and approximately 40% of the total incidents of police-initiated violence. Ninety-eight percent of the reported incidents involved male-to-female (MTF) transgendered people. As these figures indicate, hate violence against transgendered people tends to be particularly violent and brutal, and is disproportionately (though by no means exclusively) directed at MTFs. Despite the seriousness of this problem, transgendered people are excluded from any protection under the vast majority of state hate crimes statutes, and violent crimes against transgendered people are often neither investigated nor prosecuted.

Legal Issues

Legal issues can be complex for people who change sex, as well as for those who are gender variant. Legal issues include:
• Legal status as a man or a woman
• Marriage
• Divorce
• Adoption and child custody
• Inheritance, wills and trusts
• Immigration status
• Employment discrimination
• Access to public and private health benefits

Although anti-transgender violence accounted for only about 2-4% of all reported hate violence incidents, those incidents accounted for approximately 20% of all reported anti-GLBT murders, and approximately 40% of the total incidents of police-initiated violence.
• Protection from hate violence
• Identity papers and records (name change, driver’s license, birth certificate, passport, school transcripts, work history)

Because the ability to obtain or retain a job is generally a prerequisite for obtaining housing and health care and for being able to support oneself and one’s family, employment-related discrimination is a particularly critical issue for transsexual people, who are currently unprotected against such discrimination in almost every state. When an employee discovers that he or she is transsexual and transitions (changes sex) on the job, employers often become very nervous and assume the worst, falling back upon a whole host of negative stereotypes and assumptions. There is a great deal of ignorance about the motivation and mental state of transsexual people. In the overwhelming majority of cases, transsexual people are competent and successful, providing they receive ordinary social support. Ostracism, ridicule, and other social barriers create situations in which anyone would fail. Not wanting to endure such treatment is why most transsexual people do not want their status known to others in the workplace. Increasingly, however, greater numbers of transsexual people are refusing to give up their careers and are transitioning openly on the job. As more transsexual employees are open about their identities and as more employers have an opportunity to see that being transsexual has no relevance to a person’s job performance, there is more hope for securing basic civil rights protections for transgender employees than ever before. In the meantime, however, disclosing one’s transgender identity or transitioning on the job still results in automatic and often permanent unemployment for far too many transsexual people.

Medical Issues

Along with being able to find or keep a job, access to health care is undoubtedly one of the most critical issues for transgendered people, due to the extreme degree of discrimination against trans people in our health care system. Although some individual medical professionals have been advocates for trans people, the heroic efforts of individual providers are unfortunately outweighed by the pervasiveness of mistreatment and denial of treatment within the health care system as a whole. Medical issues include:

• Denial of medical treatment
• Ridicule and mistreatment by providers
• Inability to obtain ongoing, routine medical care
• Inability to obtain or pay for hormone therapy and sex reassignment surgeries
• Exclusion of transition-related services under Medicaid, Medicare, and private health insurance plans

Transgendered people routinely experience discrimination and barriers to obtaining medical services from hospitals, clinics, and private practitioners. Many providers treat trans people only with great reluctance, sometimes pointedly harassing them and embarrassing them, or condoning harassing behavior on the part of other patients or

As more employers have an opportunity to see that being transsexual has no relevance to a person’s job performance, there is more hope for securing basic civil rights protections for transgender employees than ever before.
clients. Transgender writer and activist Leslie Feinberg has described many incidents of health care transphobia: being turned out of an emergency room after the doctor in charge determined that her anatomy was female, being called a "freak" by a resident, being told by a doctor that "the devil had driven her down the wrong path in life." Transsexual people in particular can have difficult relationships with the medical system because once they are diagnosed as transsexual, insurance companies discriminate against them by excluding them from coverage for necessary treatments and procedures related to their transsexualism, as well as for any complications or conditions that may arise from these treatments and procedures. In addition, these exclusionary policy statements are often so broad in scope that they may effectively condone the denial of any medical treatment to a transsexual person. Stories abound of trans people being denied emergency (or non-emergency) care for conditions not even remotely related to transsexualism. Ignorant or prejudiced providers often assume that any adverse medical condition is a direct result of transsexualism. Even more stories of sub-standard care and neglect are easy to find at almost any transsexual support group meeting. Moreover, professionals who serve the transgender community may also become stigmatized by their peers because of their association with transgendered people, and this stigmatization, or fear of it, prevents many providers from serving transgendered patients.

**TRANSGENDER RIGHTS ARE HUMAN RIGHTS**

Basic civil rights protections for trans people ensure their ability to live and work as productive members of society. Even from a purely pragmatic perspective, the social cost of discrimination is much greater in the long run than the cost of inclusion. Anti-trans discrimination forces many trans people into a deadly cycle of poverty and unemployment. It prevents them from putting their abilities and skills to constructive uses, and often forces them into illegal activities in order to survive.

Ultimately, however, the most compelling arguments in favor of providing transgendered people with basic legal protections are those rooted in our common humanity. Transgender rights are simply human rights, based on the recognition that transgendered people are human beings deserving of common respect and dignity, regardless of their appearance or their choices about how to manage the transgender aspect of their lives. Just as gay, lesbian and bisexual people wish to be treated fairly and respectfully, and not discriminated against based upon whom they love or their consensual expression of sexuality, transgendered people seek the same levels of social safety and security and the same affirmation of our inherent equality.
F. M. CHESTER

A transgender lesbian speaks on gender identity

F.M. Chester gave this speech at the Lexington-Fayette Urban County Council Meeting, July 1, 1999 in support of a fairness ordinance. The ordinance, which included gender identity, passed a week later.

Hello, my name is Chester and I am here to talk about Gender Identity. I am a Nurse Practitioner and Co-Coordinator of the Fairness Campaign Louisville. I am also a transgendered lesbian.

Gender Identity is an umbrella term and is not linked to a person's sexual orientation. Gender Identity refers to people who manifest characteristics not traditionally associated with one's biological maleness or femaleness. Gender Identity is the "protected class." "Transgendered" is the term used by people who identify as alternatively gendered. Transgendered people include transexuals, cross-dressers, effeminate men and masculine women.

Transsexuals are people who go through sex reassignment. They are people who are born one sex and go through a medical process, including hormones and surgery, to change their body to the desired sex. Part of the process of sex reassignment is called the "Real Life Test." Prior to sex reassignment surgery, transsexuals must live for one year successfully as the desired sex. They must be identified or "read" as the desired sex by society. They must pass.

Some transexuals choose not to have surgery. There is no way to tell a pre-operative or non-operative transexual from a post-operative transexual unless you look at their genitals or ask them. Some transexuals are heterosexual, some are homosexual.

Cross-dressers are primarily heterosexual men who sometimes wear female clothing. Most cross-dressers hide their cross-dressing from their spouses, family and friends for fear of reprisal. Most of these people are identified by others as a gender that is not their biological sex. Most times there is no way to tell a full time cross-dresser from a transexual or someone biologically male or female except to look at their genitals or to ask them.

Effeminate men and masculine or "butch" women are people who don't conform to traditional gender norms. Not all effeminate men or masculine women are homosexual.

Transgendered people are people who do not present characteristics traditionally associated with one's biological sex.

Many of the people in this room probably thought I was male when they first saw me. I am not. I am biologically female. However, my gender presentation is very masculine. I am a "mannish" woman. I also wear men's clothes. I cannot wear women's clothes comfortably. They feel wrong. When I wear women's clothes I feel angst. I feel like I am in "drag" and that I am "passing" as a woman. I have always been like this. When I was a child, I was a "tomboy." I remember telling everyone "I'm not a boy, I'm a girl" because everyone thought I was a boy. In sixth grade I moved and changed schools. In that school the boys sat on one side of the room and the girls on the other. I walked into class for the first time and heard "Yeah another boy for our side!" In High School I was tormented with
the nickname "Birl." B-I-R-L. Which was short for Boy-Girl.

I am not transsexual. At this point in my life, I do not want to become a man. I have considered changing my sex and have rejected it for me right now.

It is difficult to go through life as ambiguously gendered. I am frequently mistaken for male in women's restrooms. I have been chased into women's restrooms by male security guards [questioning my gender]. I have been told by women in women's restrooms that I do not belong there.

I am also the victim of discrimination on the basis of gender identity. I was told my gender presentation was not appropriate in graduate school. While I was in my second-to-last semester at Vanderbilt University School of Nursing I was told that a few patients and my preceptor had complained, and that if I did not dress and present myself as recognizably female, I would not be allowed to progress in my program and to graduate. This was incredibly damaging to me. I was, like any victim of discrimination, deeply shamed. I was outraged, hurt and embarrassed. I almost left my chosen profession over this.

I am currently employed as a nurse practitioner at a clinic in Louisville. I provide primary health care for primarily indigent patients. I have been there for 5 years. I wear tennis shoes, khaki pants, a polo shirt and a lab coat. Sometimes children ask me if I am a boy or a girl. I always tell them that I am a girl. If I were not able to wear clothes that were comfortable to me at work, I would have to find another profession. If I did there would be approximately 1500 people a year in Louisville who would have no health care.

I am angry at society that tells women like me I should work construction or be an auto mechanic. I am an educated professional and deserve to work in my chosen profession.

Much of the discrimination that occurs against gay, lesbian and bisexual people is not because of their sexual orientation but is because that person has presented themselves as gender deviant. Effeminate men and mannish women are primary targets of discrimination.

One last thought. I live in Louisville, what am I doing here in Lexington? I am standing up and speaking out as transgendered for all of the transgendered people who are afraid to speak up. Many transgendered people, especially ones who pass, are fearful for their livelihood and their lives. There is no protection against discrimination on the basis of gender identity.

Please continue to include gender identity in the Fairness ordinance. Everyone deserves to live free from discrimination. And people like me deserve to be protected.
Key Issues:

⇒ What is the definition of Transgender?

⇒ Where does the definition go?
The two key issues in drafting statutory language: How to define transgendered people and where to place the definition

To ensure that civil rights statutes are as precise as possible, they almost always contain explicit definitions of the statute’s key terms, even words that might seem obvious, such as “landlord,” “discrimination,” “educational facility,” or “sexual orientation.” In drafting bills, most questions about trans-inclusive language revolve around two critical definitional issues: first, which words should be used to indicate that discrimination against transgender people is prohibited, and second, where should those words appear in the statute. (We have included the definitions from existing statutes in the charts on page 37.)

Issue one: How to define transgendered people

As you can see from the charts below, different jurisdictions have adopted slightly different language. In Minnesota, for example, the state law defines trans people in very broad and general terms, prohibiting discrimination against persons “having or being perceived as having an identity or self-image that is not traditionally associated with one’s biological maleness or femaleness.” In contrast, the original ordinance in Seattle, which was first amended to include trans people in 1986, was far more specific, prohibiting discrimination on the basis of “transsexuality and transvestism.” Benton County, Oregon and the city of Olympia, Washington, among others, also define the protected class in very specific terms. In those localities, gender identity is defined to include the status of being transsexual or transgender (in Benton County) and the status of being transsexual, transvestite or transgender (in Olympia).

Unfortunately, there are few if any published court decisions interpreting these statutes, so we don’t yet have much guidance from the courts as to problems or limitations that may be associated with particular kinds of language. In 1999, however, the City of Seattle Commission on Sexual Minorities recommended that the words used to include trans people in their 1986 ordinance (transsexuality and transvestism) be changed. In an extensive report, the Commission concluded that “the terminology used by the City of Seattle on this matter could be changed to be made more accurate, inclusive, and more easily administered in its attempts to protect gender non-conforming persons.” They found that:

The words transsexuality, transvestism, but not the word transgendered appear in current housing, employment, public accommodation and provision of City services protective ordinances for gender non-conforming people in Seattle. This leaves transgendered people at risk of being left unprotected. The term transgendered could simply be added, but doing so could allow the term transgendered to be read in its narrowest definition, and thus leave unprotected some other members of the gender identity community.62

In September of 1999, the Seattle City Council accepted the Commission’s recommendation and voted to add a definition of gender identity that combined the general and the specific approaches: “‘gender identity’ means having an identity, expression, or physical characteristics not traditionally associated with one’s biological sex or one’s sex at birth, including transsexual, transvestite and transgendered, and including a per-

"Every few years, there's a new word. When we passed the law in the '80s, 'transgender' wasn't something anyone used. With all these words of the week, the real objective is to find the most inclusive set of words.”

—Marsha Botzer
son's attitudes, preferences, beliefs and practices pertaining thereto." Commission member Marsha Botzer, who is also the founder of the Ingersoll Gender Center, explained the reasoning behind the recommendation. "Every few years, there's a new word. When we passed the law the first time in the '80s, 'transgender' wasn't something anyone used. With all these words of the week, the real objective is to find the most inclusive set of words." The City of Tucson has also opted for this combination approach. The Tucson ordinance includes both a general clause defining gender identity to mean "an individual's various attributes as they are understood to be masculine and/or feminine," and a more specific clause stating that the ordinance "shall be broadly interpreted to include pre- and post-operative transsexuals, as well as other persons who are, or are perceived to be, transgendered."

Similarly, when activists in Minnesota fought to include trans-people in the Minnesota law, they were advised to avoid using specific terms that might lose or change their meaning over time (e.g. transvestism), and instead to use less potentially time-bound words that reflect more general concepts. "We had considered doing a laundry list, but the house legislative counsel recommended that we go instead with a list of behaviors," activist Diana Slyter said. As Brett Beemyn explained at an Iowa City public hearing on the Iowa City ordinance, "I can foresee a future where somebody who is not transsexual or does not define himself as a transvestite faces discrimination and doesn't have protection because they're not officially included in the ordinance wording."

Based on the wording of statutes in jurisdictions that have opted either for the more

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**Figure 2: Common components of trans-inclusive legislative definitions of gender, gender identity, or orientation**

<table>
<thead>
<tr>
<th>Gender Identity:</th>
<th>Gender Expression:</th>
<th>Others* Perceptions:</th>
<th>Incongruence:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• gender identity</td>
<td>• gender expression</td>
<td>• understood to be</td>
<td>• different from that traditionally associated with one's sex at birth</td>
</tr>
<tr>
<td>• status</td>
<td>• appearance</td>
<td>• perceived</td>
<td>• incongruent with the person's biological sex</td>
</tr>
<tr>
<td>• self-image</td>
<td>• projecting a self-image</td>
<td>• presumed</td>
<td>• not traditionally associated with one's biological maleness or one's biological femaleness</td>
</tr>
<tr>
<td>• attitudes</td>
<td>• behavior</td>
<td>• assumed by others</td>
<td>• appropriate to the biological or legal sex other than one's biological sex at birth, as when a male is perceived as feminine or a female is perceived as masculine</td>
</tr>
<tr>
<td>• preferences</td>
<td>• practices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• beliefs</td>
<td>• presenting or holding oneself out to the public</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• displaying</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• manifesting</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
general or for the combination approach, it is possible to identify some common components of these definitions. In general, these types of definitions include some reference to:

1) One's own internal identification as male or female (often referred to as "gender identity");

2) The external manifestation or expression of one's gender identity, through clothing, appearance, demeanor, personality characteristics, etc. (often referred to as "gender expression");

3) How others perceive one's gender identity and/or gender expression;

4) The fact that one's biological sex, gender identity, and/or expression may not be associated with one's birth sex.

Why is it important to draft statutory language that addresses all of these components? Simply put, it is important because the more clarity there is in the text of the statute itself—the plain meaning of the law—the less trouble there will be when the law gets interpreted later, by employers, by the local human rights commission, and, eventually, by the courts. Even transsexuals who have undergone complete sex reassignment and who meet traditional expectations for people of their (new) biological sex need the fourth component to be sure that employers and others who discover that their birth sex differs from their current biological sex are prevented from discriminating. Language should be drafted to apply to as wide an array of transgendered and gender variant people as possible, recognizing, for example:

- that female-to-male transsexuals (FTMs) often have different routes to transition than male-to-female transsexuals (MTFs), and that many FTMs may never have genital ("bottom") surgery;

- that many transsexuals are non-operative, either because they cannot afford or choose not to undergo sex reassignment or are prevented from doing so for health reasons;

- that some transsexual people may transition with hormone therapy only;

- that some transgendered people may choose to take hormones but not to transition from their birth sex, or may choose to take low doses of hormones to bring about some physical changes;

- that some transsexual people who are transitioning or have transitioned may not be under a doctor's care;

- that many transsexual people are not readily identifiable as such and do not challenge prevailing gender norms in any visible way;

- that other transsexual people are more visible, either because they cannot or do not wish to conceal their transsexual status.

In sum, the legislation has to accomplish two things at once. It has to be clear and specific enough to make it obvious that that the purpose of the law is to prohibit discrimination against transgendered people. At the same time, the language used to define transgendered people has to be flexible and general enough to ensure that the full range
of transgendered identities are protected. Experience has shown that it is impossible to list all of the different types of transgender identities that exist now or that may exist in the future. Experience with other types of civil rights statutes has also shown that courts typically interpret such lists to be exhaustive and will likely refuse to extend protection to particular types of transgendered experience not specified. In light of that experience, the safest course is to include at least some general language that describes the prohibited discrimination in broad terms.

Issue two: where to place the definition

Another issue is where to place the definition of transgendered people. As reflected in the accompanying chart, there are three options: (1) adding trans people as a new, freestanding category of protected persons; (2) including transgendered people in the definition of sexual orientation; and (3) including transgendered people in the definition of sex or gender. In San Francisco, for example, local legislators opted for the strategy of including trans people as a new protected group. The local ordinance, which already prohibited discrimination on the basis of sex, sexual orientation, race, religion, and various other attributes, was amended to prohibit discrimination on the basis of "gender identity" as well. In the state of Minnesota, as well as in Toledo, Ypsilanti and several other cities, trans people are included in the definition of "sexual orientation." Finally, in the state of California, as well as in Santa Cruz, Cambridge, and some other local jurisdictions, trans people are included in the definition of "sex" or "gender." There are arguments in favor of all three strategies.

(1) Arguments in favor of adding trans people as a new protected category: Some activists have argued that it is important to make "gender identity" or "gender variance" a separate category in order to underscore the point that trans people are being treated equally with other protected groups. These activists have also pointed out that including transgendered people in the definition of sexual orientation or gender or sex may make it more difficult to educate the public and human rights department investigators about transgendered and gender different people, and the specific kinds of discrimination they face. For example, while most people will never read the complete ordinance, they may see gender identity in widely-distributed general policy statements listing all the bases on which it is illegal to discriminate. As trans activist Dawn Atkins pointed out at the Iowa City hearing on a trans nondiscrimination bill, "most people in this community will never read the complete ordinance...What they will see...is the list that you give....If gender identity is subsumed under sexual orientation most of them will never know that....Some people will violate the law not knowing that it is illegal." 

(2) Arguments in favor of including trans people in the definition of sexual orientation: Others, such as activists from It's Time, Illinois, point out that there may be "pitfalls in setting yourself up as a separate category [because it] may result in a very cumbersome, narrowly defined category." "For example," those activists have noted, "in the New Orleans ordinance there is a four-part definition of gender identification as well as an exclusion of cross-dressing at the workplace unless the employee can certify with a letter from a doctor that the employee has been diagnosed with gender identity disorder." Instead, they and other groups are in favor of using the Minnesota definition of sexual orientation, both because it highlights the connections between homophobia and transphobia, and because it is inclusive.
of all GLBT people. "The [Minnesota] definition is very broad. It covers the entire GLBT community and then some. Not only are transgenders included, but also all other gender variant peoples who may or may not identify as 'trans' anything. It also defines sexual orientation without using the words 'homosexuality, heterosexuality or bisexuality.' It includes affection and choice of partner and self-expression. It protects as many people as possible.""70

(3) Arguments in favor of including trans people in the definition of gender or sex: Still others believe that including transgendered people under the definition of "gender" or "sex" is the best option, because it helps to establish the general principle that existing sex discrimination laws should be interpreted to include trans people. In Santa Cruz County, for example, the ordinance includes trans people under the category of gender, which is defined as follows: "Gender" has the same meaning as 'sex' as that term is used in state or federal anti-discrimination legislation and shall be broadly interpreted to include sexual stereotyping and persons who are known or assumed to be transgendered."71 In addition, statutory language that also explicitly equates "gender" with "sex," such as that used in Santa Cruz County, conveys the principle that gender stereotyping is a kind of sex discrimination. In keeping

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**Figure 3: Different categories used to include trans people**

<table>
<thead>
<tr>
<th>Trans protections adopted at the same time as a sexual orientation provision</th>
<th>Trans language included in the definition of sex or gender</th>
<th>Trans language included in the definition of sexual orientation</th>
<th>Trans language included in a separate category (gender identity, gender variance, or transsexuality)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ypsilanti, MI, 1997</td>
<td>Cambridge, MA, 1997</td>
<td>Louisville, KY, 1999</td>
<td></td>
</tr>
<tr>
<td>Evanston, IL, 1997</td>
<td>City of Santa Cruz, CA, 1992</td>
<td>Ann Arbor, MI, 1999</td>
<td></td>
</tr>
<tr>
<td>Seattle, WA, 198672</td>
<td>County of Santa Cruz, CA, 1998</td>
<td>Atlanta, GA, 2000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Iowa City, IA, 1995</td>
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<tr>
<td></td>
<td></td>
<td>New Orleans, LA, 1998</td>
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<td>Olympia, WA, 1997</td>
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<td></td>
<td></td>
<td>San Francisco, CA, 1994</td>
<td></td>
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<tr>
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<td></td>
<td>Tucson, AZ, 1999</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>West Hollywood, CA, 1998</td>
<td></td>
</tr>
</tbody>
</table>

* This chart is based on an examination of 26 jurisdictions with trans-inclusive human rights laws. It omits Grand Rapids, MI, because "gender orientation" is an atypical category and is not defined in their ordinance.
with this strategy, five of the six jurisdictions that have amended their definitions of sex or gender to include trans people explicitly state that sex has the same meaning as gender or vice versa.\textsuperscript{13}

While some people may have very strong opinions about which of these three strategies is the best, the bottom line in most cases may be that the "best" strategy is the one that has the most chance of success in a given city or state. From a purely philosophical perspective, there is no universal agreement and probably no "right" answer to the question of whether trans people should be (1) identified as a separate and distinct group; (2) included in the definition of "sexual orientation"; or (3) included in the definition of "sex" or of "gender."

From a practical perspective, there may be very good reasons to opt for one of these strategies over the other, depending on the circumstances in your particular city or state. For example, it may be easier to persuade your local legislators to amend the definition of "sexual orientation" or of "sex" or "gender" than to add a whole new category of persons to the law. If you live in a city or state that does not already have a law prohibiting discrimination on the basis of sexual orientation, it may make a lot more sense to band together with lesbian, gay, and bisexual people and include trans people under the definition of sexual orientation.

Empirically, an analysis of existing laws shows that ordinances that added trans people to laws that already covered sexual orientation have been slightly more likely to place trans people in a separate category than to amend the definition of gender or sexual orientation. In contrast, laws that were passed to protect gay and trans people at the same time have been almost evenly split between including trans people under the rubric of sexual orientation and adding trans people as a new category. Similarly, most of the state-wide non-discrimination bills with trans language that have been introduced though not yet passed in 1999/2000 legislative sessions have followed Minnesota's lead, placing the trans-inclusive language under the category of "sexual orientation."\textsuperscript{74} The two state bills that do not, California and Vermont, already have sexual orientation non-discrimination laws.

In sum, there is no one right way to amend a civil rights law to include gender variant and transgendered people. Moreover, the final decision on how to include trans-protective language will ultimately be up to the legislators. Their decision will take into account the opinions of different participants in the process: the transgendered activists pushing hardest for the bill, legislative counsel, and human rights commission officials.
TRANS-INCLUSIVE DEFINITIONS IN NON-DISCRIMINATION AND HATE CRIMES LAWS

Figure 4: Statutory definitions of "gender identity" and "gender variance"

**Ann Arbor, MI, 1999**

"Gender Identity." A person's actual or perceived gender, including a person's gender identity, self-image, appearance, expression, or behavior, whether or not that gender identity, self-image, appearance, expression, or behavior is different from that traditionally associated with the person's sex at birth as being either female or male."

(Ordinance No. 10-99, effective March 17, 1999.)

**Atlanta, GA 2000**

"Whereas, gender identity, meaning self-perception as male or female…"

(Ordinance No. 00-0074, adopted by City Council February 21, 2000; approved by Mayor, March 14, 2000.)

**Benton County, OR, 1997**

"Gender identity" includes the status of being transsexual or transgender.

(Benton County Ordinance No. 98-0139, passed July 1998, effective August 14, 1998.)
Boulder, CO, 2000

"Gender variance" means a persistent sense that a person's gender identity is incongruent with the person's biological sex, excluding the element of persistence for person's under age twenty-one and including, without limitation, transitioned transsexuals.

(Ordinance No. 7040, passed January 20, 2000.)

Iowa City, IA, 1995

"GENDER IDENTITY: A person's various individual attributes, actual or perceived, in behavior, practice or appearance, as they are understood to be masculine and/or feminine."

(Iowa City, Oct. 95, Ordinance No. 95-3697.)

Jefferson County, KY, 1999

"GENDER IDENTITY. Manifesting an identity not traditionally associated with one's biological maleness or femaleness."

(Ordinance No. 36, Series 1999. Adopted October, 12, 1999.)

Lexington-Fayette Urban County Government, KY, 1999

"gender identity' shall mean: (a) "having a gender identity as a result of a sex change surgery; or (b) manifesting, for reasons other than dress, an identity not traditionally associated with one's biological maleness or femaleness."

(Lexington-Fayette Urban County Government Ordinance, approved July 8, 1999.)

Louisville, KY, 1999

"GENDER IDENTITY."

(1) Having a gender identity as a result of a sex change surgery; or
(2) Manifesting, for reasons other than dress, an identity not traditionally associated with one's biological maleness or femaleness.

(Ordinance, No. 9, Series 1999, 1-26, 1999.)

New Orleans, LA, 1998

"Gender identification' is the actual or perceived condition, status or acts of:

Identifying emotionally or psychologically with the sex other than one's biological or legal sex at birth, whether or not there has been a physical change of the organs of sex.

Presenting and /or holding oneself out to the public as a member of the biological sex that was not one's biological or legal sex at birth.

Lawfully displaying physical characteristics and/or behavioral characteristics and /or expressions which are widely perceived as being appropriate to the biological or legal sex other than one's biological sex at birth, as when a male is perceived as feminine or a female is perceived as masculine, and /or being physically and /or behaviorally androgynous.

(Adopted By The Council Of The City Of New Orleans July 1, 1998.)

Olympia, WA, 1997

"Gender Identity' includes the status of being transsexual, transvestite, or transgender.

(Olympia, WA, Ordinance passed February 1997, Ordinance No. 5670.)
San Francisco, CA, 1994

"Gender Identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

(Passed December 1994. San Francisco Ordinance No. 433-94.)

Seattle, WA, 1999

(Definition changed from 1986)

"Gender Identity means a person's identity, expression, or physical characteristics, whether or not traditionally associated with one's biological sex or one's sex at birth, including transsexual, transvestite, and transgendered, and including a person's attitudes, beliefs, preferences, and practices pertaining thereto."

(Seattle Ordinance no. 119628, passed August 1999.)

Tucson, AZ, 1999

"Gender identity means an individual's various attributes as they are understood to be masculine and/or feminine and shall be broadly interpreted to include pre- and post-operative transsexuals, as well as other persons who are, or are perceived to be, transgendered."

(Ordinance number 9199, Adopted by the Mayor and City Council February 01, 1999.)

West Hollywood, CA, 1988

"Gender Identity refers to a person's actual or perceived sex, and includes a person's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's sex at birth."

(Ordinance No. 98-520, passed, approved, and adopted July 20, 1998.)

Vermont, Hate Crimes Law, 1999

Vermont's law includes gender identity without defining it: "Protected category' includes race, color, religion, national origin, sex, ancestry, age, service in the armed forces of the United States, handicap, sexual orientation and gender identity, and perceived membership in any such group."

(Chapter 33, Section 1458, amended to include sexual orientation and gender identity, 1999)

Figure 5: Statutory definitions of sexual orientation or affectional preference that include transgendered people

Evanston, IL, 1997

"Sexual orientation is defined as: Having or perceived as having emotional, physical, or sexual attachment to another without regard to the sex of that person or having or being perceived as having an orientation for such an attachment, or having or being perceived as having a self image or identity not traditionally associated with one's biological maleness or femaleness."

(Ordinance No. 61-0-97.)

Minneapolis, MN 1975

"Affectional Preference: Having or manifesting an emotional or physical attachment to another consenting person or persons, or having or manifesting a preference for such attachment, or having or projecting a self-image not associated with one's biological maleness or femaleness."

(Code of Ordinances, City of Minneapolis, Title VII, Chapter 139.20.)
<table>
<thead>
<tr>
<th>Location</th>
<th>Definition</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minnesota,</td>
<td>&quot;Sexual orientation’ means having or being perceived as having an</td>
<td>(Minnesota Statutes, section 363.01, subdivision 45.)</td>
</tr>
<tr>
<td>1993</td>
<td>emotional, physical, or sexual attachment to another person without</td>
<td></td>
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<td></td>
<td>regard to the sex of that person or having or being perceived as having</td>
<td></td>
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<tr>
<td></td>
<td>an orientation for such attachment, or having or being perceived as</td>
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<tr>
<td></td>
<td>having a self-image or identity not traditionally associated with one's</td>
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<tr>
<td></td>
<td>biological maleness or femaleness. 'Sexual orientation’ does not</td>
<td></td>
</tr>
<tr>
<td></td>
<td>include a physical or sexual attachment to children by an adult.”</td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>&quot;Sexual Orientation’, male or female heterosexuality, homosexuality</td>
<td>(Senate Bill No. 328, Signed by Governor, July 1, 1999.)</td>
</tr>
<tr>
<td>Hate Crimes</td>
<td>or bisexuality by inclination, practice, identity or expression, or</td>
<td></td>
</tr>
<tr>
<td>Law,</td>
<td>having a self-image or identity not traditionally associated with one's</td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>gender.”</td>
<td></td>
</tr>
<tr>
<td>St Paul, MN,</td>
<td>&quot;Sexual or affectional orientation means having or being perceived as</td>
<td>(St. Paul Code of Ordinances, Sec. 183.02, passed 1991.)</td>
</tr>
<tr>
<td>1990</td>
<td>having an emotional or physical attachment to another consenting adult</td>
<td></td>
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<tr>
<td></td>
<td>person or persons, or having or being perceived as having an orientation</td>
<td></td>
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<tr>
<td></td>
<td>for such attachment, or having or being perceived as having a self-image</td>
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<tr>
<td></td>
<td>or identity not traditionally associated with one’s biological maleness</td>
<td></td>
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<tr>
<td></td>
<td>or one’s biological femaleness.&quot;</td>
<td></td>
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<tr>
<td></td>
<td>[Note also that how the St. Paul code defines sex: &quot;Sex means being</td>
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<td></td>
<td>identified as having or being perceived as having male or female</td>
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<tr>
<td></td>
<td>characteristics and encompasses, but is not limited to, pregnancy,</td>
<td></td>
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<tr>
<td></td>
<td>childbirth, disabilities related to pregnancy or childbirth, and sexual</td>
<td></td>
</tr>
<tr>
<td></td>
<td>harassment.”</td>
<td></td>
</tr>
<tr>
<td>Toledo, OH,</td>
<td>&quot;Sexual Orientation’ means a person’s actual or perceived heterosexuality,</td>
<td>(Toledo Ordinance No. 1183-98.)</td>
</tr>
<tr>
<td>1998</td>
<td>bisexuality, homosexuality, or gender identity, by orientation or practice.</td>
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<td></td>
<td>bisexuality, or any other gender identity by practice as perceived by</td>
<td></td>
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<tr>
<td></td>
<td>others.”</td>
<td></td>
</tr>
<tr>
<td>Ypsilanti, MI</td>
<td>&quot;Sexual Orientation.’ Heterosexuality, male or female homosexuality,</td>
<td></td>
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<tr>
<td>1997</td>
<td>bisexuality, or gender identity.”</td>
<td></td>
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<tr>
<td>Location</td>
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<td><strong>California Hate Crimes Law, 1998</strong></td>
<td>&quot;gender&quot; means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.&quot;</td>
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<td>(Bill Number: AB 1999 Chaptered 09/28/98.)</td>
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| **Cambridge, MA, 1997** | "'Gender' means the actual or perceived appearance, expression or identity of a person with respect to masculinity and femininity."

"'Same sex' means occupying the same social and identity roles as another with respect to being male female."

(Ord. 1182, Amended, 02/24/1997.) |
| **City of Santa Cruz, CA, 1992** | "'Gender' shall have the same meaning as 'sex' as that term is used herein and shall be broadly interpreted to include persons who are known or assumed to be transgendered." |

(City of Santa Cruz prohibition against Discrimination Chapter. Chapter 9.83.) |
| **County of Santa Cruz, CA, 1998** | "'Gender' has the same meaning as 'sex' as that term is used in state or federal anti-discrimination legislation and shall be broadly interpreted to include sexual stereotyping and persons who are known or assumed to be transgendered."

(County of Santa Cruz, Ordinance no. 4501, passed April 1998.) |
| **Harrisburg, PA, 1983** | "Sex' means the gender, male or female, of a person, including those persons who are changing or have changed their sex." |

(Harrisburg City Code, Title 4.) |
| **Pittsburgh, PA, 1997** | "'Sex' means the gender of a person, as perceived, presumed or assumed by others, including those who are changing or have changed their gender identification."

(Pittsburgh City Code, Chapter 651.04 (ii)) (Amendment. Ord. 1-1997. Effective 2/7/97.) |
Debunking Common Myths and Misconceptions

The purpose of trans-inclusive civil rights legislation is to ensure that transgendered people are able to live and work with dignity and to participate in society on equal terms. In practice, however, those who are working to secure the passage of such laws are often forced to spend more time and energy debunking irrational stereotypes and fears about transgendered people than engaging in a rational discussion of why legislation is needed. What follows is a list of some of the most common myths and misconceptions, along with suggestions on how to address them.

Misconception #1: "Including trans people will kill the bill"

This objection usually arises in localities and states that do not yet have non-discrimination laws relating to sexual orientation. It is often voiced by GLB people who fear that lobbying for a trans-inclusive bill will undermine efforts to secure civil rights for gay people. Perhaps because of this fear, trans people were excluded from almost 80% of the local laws prohibiting sexual orientation discrimination in employment that were enacted from 1996 through 1999.

In fact, the fear that including trans people "will kill the bill" is almost always exaggerated and based far more on unfounded speculation than on a realistic assessment of what is possible. Civil rights protections for trans people have been won in a broad range of local jurisdictions, including some that are widely perceived to be quite conservative. In those and many other jurisdictions, experience has shown that even conservative legislators will respond to reasoned arguments and education about trans people—particularly when GLBT advocates present a united front and work together to plan and implement a coordinated strategy. Conversely, experience has also shown that nothing is more destructive of efforts to win civil rights protections for our communities than internal conflicts and divisions. Those conflicts drain our collective energies and engender bitterness and mistrust that may poison working relationships for years. They also play
directly into the "divide and conquer" strategy of our opponents, who are only too happy to see us focusing our limited resources on battling one another. In the long run, making a good faith effort to work for and include trans people is by far the most pragmatic strategy.

In addition, there is little evidence that omitting transgendered people actually increases a bill's chances of passing. For example, Dan Farrell is a gay activist who has been involved with the Kentucky Fairness Campaign for many years and who participated in the successful effort to pass a local law prohibiting discrimination against gay and transgendered people in Louisville, Kentucky in 1999. In Farrell's view, attempting to gain more votes by compromising on trans-protective language does not work. "Over the years, sponsors had made other compromises at the suggestion of opponents without ever gaining a yes vote. I think this shows that this is just a ploy that legislators use," he said.

Although the Fairness Campaign itself never offered to drop gender identity, the bill's sponsors had dropped trans-inclusive language from the proposed ordinance in previous years in an attempt to get more votes. According to Farrell, dropping gender identity from ordinances never resulted in getting even one more vote in favor of a bill. "In 1999, we made the decision early on that we wouldn't let our sponsors compromise on the categories. We decided that we would keep gender identity in, and that we would eventually get the bill passed. We felt that if we had to sacrifice transgendered people to get a sexual orientation bill passed, it would have set us back 15 years." Instead of causing any delay, the decision to present a united front helped to secure the passage of a comprehensive non-discrimination ordinance, including both gay and transgendered people, in 1999.

Including trans-protective language is also extremely important for the many gay, lesbian and bisexual people who are affected by gender-based discrimination, even if they do not identify as transgender. For example, one study of workplace discrimination in the legal profession found that "[l]esbian and gay lawyers are sometimes advised to conceal their sexual orientation or to alter their appearance to look less stereotypically gay." One lesbian survey respondent said that her employers "told me that I was not 'feminine' enough and that I should let my hair grow long, wear make-up, and wear more jewelry." In short, discrimination on the basis of gender variance is not an exclusively "transgender" issue. Including language that prohibits discrimination on the basis of gender variance and gender stereotypes also protects the rights of many lesbian, gay and bisexual people, as well as some heterosexual people.

Finally, it would be unprincipled and unethical for GLB people to exclude transgendered people from legislative advocacy for fear of being associated with a group that has suffered even more discrimination and stigmatization. For example, just as it would have been unthinkable and unacceptable to support the exclusion of people with HIV and AIDS from the Americans with Disabilities Act, in the interest of dissociating that civil rights law from the "stigma" of HIV, it is equally wrong to support the exclusion of trans people from proposed civil rights laws that prohibit discrimination against gay, lesbian and bisexual people, in the interest of dissociating those laws from the "stigma" of gender variance.
DAWN JOSEPHINE WILSON

In 1999, three separate Kentucky jurisdictions—the City of Louisville, Lexington-Fayette Urban County, and Jefferson County—passed human rights laws that prohibited discrimination on the basis of gender identity. In 2000, the Kentucky Fairness Alliance and other GLBT organizations mounted a serious campaign to pass a statewide bill that would prohibit discrimination on the basis of sexual orientation and gender identity. Dawn Wilson is one of the many dedicated activists in Kentucky working on these efforts.

Wilson has been an active member of several transgender political groups and initiatives since 1995. As a board member of the Louisville Gender Society, she served as that group’s representative to the Congress of Transgender Organizations in Atlanta. Wilson also participated in the first "Coming Together Kentucky," a gathering of GLBT youth attending state colleges in Kentucky, where she served as the only transgender instructor. She is also a co-founder of the Bluegrass Belles.

As a participant at Transgender Lobby Days in Washington in October 1995, Wilson was able to draw on her experience as a former legislative assistant to Senator Mitch McConnell to lobby and educate congressional representatives and staff. "For the first time," Wilson notes, "we in the transgendered community were willing to take a stand, one that has gained momentum over the years."

Wilson received the Wasson Volunteer of the Year Award from the Lexington Pride Committee in 1999 in recognition of her advocacy on behalf of GLBT people and her leadership role in securing passage of the Lexington ordinance.

Because the three Kentucky ordinances simultaneously added sexual orientation and gender identity to their non-discrimination codes, transgendered activists worked closely with the GLBT activists in those communities. (The City of Henderson passed a non-discrimination ordinance that included sexual orientation, but not gender identity.)

Wilson played a key role in educating GLBT activists about the importance of including gender identity in these nondiscrimination laws. In 1997, she and Angela Bridgeman organized a group of transgendered people who protested the removal of gender identity from a pending ordinance in Lexington. According to Wilson, "that version of the ordinance didn’t go forward, partly due to protests against it from transgendered people. Without those protests, gender identity would not have had such strong support from the Fairness Alliance in 1999."

Once trans-inclusive bills were on the legislative agenda, Wilson, a former resident of Lexington and now a resident of Louisville, participated in a number of lobbying meetings and attended the public hearings on the Louisville transgender-inclusive ordinance. Wilson also took part in public hearings on the Jefferson County Fairness Ordinance and on the Lexington Ordinance, both of which passed. (The Louisville Fairness Campaign was responsible for the victories in Louisville and Jefferson..."
County. The Kentucky Fairness Alliance chapter in Lexington was responsible for the Lexington win.)

"Those hearings were the worst thing I've ever been through. My own family was assaulted; I received death threats," Wilson says.

Wilson has also taken a leadership role in addressing racism within GLBT communities and in creating resources for transgendered people of color. In 1998, after hearing a racist joke at an international transgender conference, Wilson not only protested the joke, but decided to start an online organization for transgendered people of color. Although yet to be named, the group has attracted participants from across the country and is developing a number of projects to increase the visibility of people of color in transgender communities. As Wilson recently told a reporter, "Prejudice, bigotry, and racism are the children of fear and ignorance. The best way to defeat them is through education and one-on-one contact. Because laws can only change the actions, not the heart or the mind."

Wilson is now the interim chair of NTAC, the National Transgender Advocacy Coalition. She is also a member of the Board of Directors of the Robert H. Williams Cultural Center in Lexington, and has taught over 600 inner-city young people to use modern computers in a laboratory that she designed and built. She is also a deaconess at Woodland Christian Church in Lexington.

Considering the successes in Kentucky in 1999, Wilson muses, "How did we get this successful? Simple. We all worked together—churches, gay, bisexual, lesbian, and trans people. We in the Kentucky transgendered community are very proud of our GLB brothers and sisters in their efforts."

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Misconception #2: "Civil rights protections for trans people will force employers to hire a man in a dress"

One of the most irrational fears that has been used to oppose civil rights protections for transgendered people is the misguided notion that such laws will result in an outbreak of cross-dressing in the workplace. In the words of Brett Beemyn, a transgendered activist and scholar who worked on passing the Iowa City ordinance:

The argument took us by surprise at first because it seemed so silly. But when we realized how much of an issue this was for some legislators, we explained that employers would still be able to have reasonable, equitable dress codes at their places of employment.44

After reasoned discussion between city councilors, human rights officials, and activists at the city council hearing, the Iowa City council members passed the Iowa City ordinance intact, without so-called "cross-dressing exclusions." In other places, however, irrational fears about cross-dressing have led to some defeats. For example, officials in DeKalb, Illinois, pulled the trans-inclusive language from the local ordinance at the last minute after it occurred to them that the expansive definition of sexual orientation would include people whose gender expression differs from that traditionally associated with their physical sex. (Unfortunately, trans activists had not been present at the hearing where these fears were raised and could not address their concerns.)
Invariably, concerns about "cross-dressing" in the workplace are focused almost exclusively on fears that transgender employment protection will result in "men in dresses" showing up to work. One doesn't hear the reverse alarm—that these laws will cause "women in suits" to overwhelm the workplace—sounded nearly as often. Why not? Because women have already begun to wear clothing that was once reserved only for men. The tremendous social changes of the last decades have resulted in much more flexibility in dress and far less rigid lines and distinctions between exclusively "male" and exclusively "female" clothing—particularly for women. Lyone Feine, testifying at a public hearing in favor of a trans civil rights bill, put it this way:

I just want to say some words about cross dressing because I noticed some discomfort amongst the members of the council when that issue was being discussed. I just want to point out that at this moment, I am cross dressing. I'm wearing a pair of boys' jeans. I also see that there are a number of female members of the council who at the moment are cross dressing. They're wearing these kinds of blazers that are really designed for men to wear or an adaptation of male clothing. The reason I'm saying this is because the issue that made some people squirm really comes down to an issue of fashion. And fashion changes. Louis IV wore clothing which we would see these days as more appropriate for women, or maybe not appropriate for anybody but a five year old getting dressed up on Easter Sunday...In 50 years that fashion will change and constitutes cross dressing will probably change also.45

As social norms continue to evolve, discrimination against those who wear clothing traditionally associated with the other gender will continue to dissipate and to be recognized as a type of gender discrimination, as both the United States Supreme Court and many other courts have already done. As a result, jurisdictions that have incorporated these kinds of gender-based dress exclusions in their human rights laws are not only out-of-step with social reality, but may well find that these exclusions are impermissible even under existing sex discrimination laws.

Opposition to cross-dressing in the workplace is perhaps the most commonly voiced objection to transgender rights. In practice, however, there is not a shred of evidence that protecting trans people against discrimination leads to any increase in the number of employees who cross-dress on the job. Employers in jurisdictions that have passed trans-Inclusive ordinances have not reported or complained of any such increase, and human rights departments in those jurisdictions have not been inundated with complaints from cross-dressing employees.46

Passing civil rights protections for gender variant and transgendered people does not mean that employers may not impose dress codes requiring employees to present a neat, well-groomed and professional appearance. Rather, it simply means that employees may dress in the type of clothing that conforms with their gender identity. Nonetheless, the issue of "men in dresses" has led some jurisdictions to exclude many, though not all, trans people from their human rights laws.47 For example, the ordinances in both Louisville and Lexington, Kentucky define "gender identity," in part, as "manifesting, for reasons other than dress, an identity not traditionally associated with one's biological maleness or femaleness" [emphasis added].48 One's choice of clothing is a vital part of the expression of one's gender identity; omitting dress from the definition excludes many people, especially non-transsexual transgendered people whose gender variance is expressed primarily through dress. In addition to the limited definition of gender identity, the Louisville and Lexington ordinances also contain an exclu-
sion designed to prohibit cross-dressing in the workplace: “Nothing herein shall be construed to prevent an employer from...enforcing an employee dress policy which policy may include restricting employees from dress associated with the other gender” [emphasis added]. Many employers have gender-based dress codes. One problem with these particular exclusions, however, is the phrase “the other gender.” How one proves that one is not dressing in the other gender’s clothes but rather that one is “the other gender” is ambiguous. Another problem is that it appears to contradict existing trends in jurisprudence on gender-based stereotyping.

As other jurisdictions have recognized, exemptions of this kind are unnecessary and lead to unintended ambiguities in the interpretation of the law and perhaps even to unintended exclusions. For example, in July and August of 1999, the city council of Boulder, Colorado debated whether or not to limit those who would be protected on the basis of gender identity to those “under the care of a licensed physician to change his or her gender identity, or who has successfully made such a change, as certified by a licensed physician.” Christine Kriesel is the coordinator for a Boulder County Health Department program for GLBT youth. She is also the partner of a female-to-male transsexual. Kriesel argued that this limitation would be “tragic because the licensed physician requirement brings up issues of classism and ageism, since everyone does not have equal access to medical care.” Boulder Human Relations Commissioner Liz Padilla agreed, stating that “I don’t want to be responsible for somebody’s pain just because they don’t have the money for a doctor or they haven’t gone that route.” And asking people to “prove” their identity is a radical departure from the usual practice of human rights laws. “The idea of singling out people and making them carry a bit of documentation to have access to the most basic human rights — that is most offensive to me,” said Kathy Wilson of the Gender Identity Center of Colorado.

After a robust public debate on this issue, the Boulder City Council decided to omit this restriction when it extended civil rights protections to gender variant people. Similarly, in Kentucky, just three months after the Louisville ordinance passed, Jefferson County, which encompasses the city of Louisville, passed a law defining gender identity as “manifesting an identity not traditionally associated with one’s biological maleness or biological femaleness,” which would include dress. While this ordinance explicitly allows employers to enforce a written employee dress policy, it does not require transgendered people to prove their gender identity by providing documentation from someone in the medical profession. This wording extends employment and other protections to gender variant people who are not transsexual.

In general, then, it is highly advisable that supporters and legislators resist these kinds of exclusions, as legislators in Jefferson County and many other jurisdictions with trans-inclusive human rights laws have done. But, if the legislators demand them, these unrealistic and unsupported fears can be addressed in other venues, or in less confusing and exclusionary ways in the language itself. One strategy is to omit this issue from the legislation itself, and leave the interpretation of the law to the agency responsible for overseeing it, the human rights commission in your jurisdiction. For example, the compliance guidelines drawn up by the San Francisco Human Rights Commission to aid in the interpretation of San Francisco’s transgender non-discrimination law address this issue: “Employers have the right to implement employee dress codes including those according to gender. Transsexual employees have the right to comply with sex-specific dress codes according to their gender identity.” Because the definition of “transsexual”
in these guidelines include non-operative transsexuals, "who may or may not be undergoing any medical treatment in relation to their gender identity," the determination of one's gender identity is left to the individual.  

But if legislators demand that the legislation itself address the cross-dressing question, there are much better solutions than the ones employed in the New Orleans, Louisville, and Lexington laws. It is not difficult to craft language that reasonably addresses this fear about dress but that does not put the many different kinds of gender variant people who need employment protection outside the statute's reach. A statute might allow the employer to set standards for a gender-specific dress policy, but leave the determination of gender identity up to the individual. Gender identity is, after all, one's own sense of being male or female. In contrast, exclusions that rely on psychiatric diagnoses put many transgendered people at a real disadvantage. Phyllis Frye, the founder of the International Conference of Transgender Law and Employment Policy, suggests that employers be allowed to require a consistent gender presentation in the workplace.  

The City of Boulder, Colorado, adopted a version of this rule, requiring that all persons claiming protection maintain a reasonably consistent gender role in the workplace. Finally, it is very important that dress code rules not apply when the employee is not on the job.

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**JAMISON GREEN**

A discussion with a human resources director about bathrooms and transsexual employees

The HR director of a San Francisco subsidiary of a major New York-based corporation received advice from his New York legal department to instruct a local newly-transitioning FTM employee that he couldn't use the men's bathroom until he had had genital reconstruction (which many transmen never have) and until he was listed with the health insurance carrier as male.

The HR Director had called me at the request of the very agitated and frustrated FTM employee. I told him that it would soon be very inappropriate for the transman to be using the women's room, and that he would be using a stall in the men's room, so there would be no forced or required nudity (as in a shower situation), and no violation of privacy. He seemed to understand me, and he was relieved that I had a sense of humor about the matter while I explained to him about the puberty-like nature of hormonal transition and its biochemical processes, surgery issues, and the fact that social maleness is really more important on a day-to-day basis than the shape of one's genitals. But somehow I had to bring the point home, because I wasn't sure he was getting it in a way that would resolve the transman's problem and solidify the HR Director's position with respect to his corporate legal department.

"How many men do you meet every day, feel comfortable with, do business with, etc., etc.?" I asked him. "And how many of those men do you know for a fact has a penis?"

He was stunned. "So how important is a man's penis in your employer/employ-
transition he is making, and he is not masquerading or playing games. He is required by established medical standards to live completely as a man before he can have surgery. Your corporate refusal to cooperate feels like a game to him and is highly frustrating and demoralizing. He gets along with his co-workers and they accept him as a man, so your refusal to accept him becomes a productivity obstacle for your entire staff. It unnecessarily calls attention to a personal situation that should be none of your business beyond your privileged awareness that it exists and is a condition of his life."

The transman was permitted to use the men’s restroom; his employment records were changed to reflect his new sex. Further, the company built a single-occupant unisex restroom for all employees’ use to alleviate any future instances of similar difficulty, and the transman was NOT required to use that facility. This result is also in compliance with the San Francisco Public Ordinance.

Misconception #3: “What about bathrooms?”

It’s no secret—everyone has to go to the bathroom. But some employers, legislators, and co-workers seem to forget that simple fact of life when it comes to transgendered people. Like everyone else, transgendered people need to use bathroom facilities with safety and dignity. (See the story boxed below.) As in the "cross-dressing" objection, the bathroom objection tends to be voiced in gender-specific terms—the fear that transgender inclusive laws or policies will lead to “men in dresses” invading women’s bathrooms and posing a threat to the security of the women using them. However, without reasonable bathroom policies allowing trans people to use the bathroom appropriate to their gender identity, transsexual employees may be forced to use the bathroom of their birth sex. For example, in the absence of such a policy, a female-to-male transsexual man who has been taking male hormones and whose external appearance is completely male may have no choice but to use the women’s bathrooms, despite the obvious disruptions and problems that would cause.

In fact, the bathroom objection is very similar to the homophobic myths that were raised during the debate over the ban on gays in the military. Both objections are based
EVERY CIVIL RIGHTS MOVEMENT HAS A BATHROOM MOVEMENT

It all seems to boil down to bathrooms. Every civil rights movement has a bathroom movement. The Disabilities Rights Movement? Bathroom accessibility. The Black Civil Rights Movement? Bathroom sharing. The Equal Rights Movement? Anti-ERA forces said that if the amendment were passed there would be unisex bathrooms. This panicked people who had apparently been raised in households very different from mine. "Don't go in there! That's the men's bathroom in this household!" No women could even be elected to the Senate until bathrooms were built for them, lest they have to excuse themselves from an important hearing to go to Bethesda to find a women's room.

The Gay Rights Movement was specifically about towel-snapping gay men in showers. At first I was disheartened that the whole issue of gays in the military was reduced to porcelain, but then I thought it was good, because it meant we had arrived as a genuine civil rights movement.

—Kate Clinton, Don't Get Me Started (NY: Ballantine Books 1999) p.126

on the false notions that GLBT people are predatory creatures whose elimination and hygiene needs come second to their supposedly voyeuristic desires. The bathroom objection puts transgendersed people in other good company, historically speaking: more than one debate over civil rights has revolved significantly on the bathroom issue: white segregationists objected to sharing bathrooms with blacks; one of Phyllis Schlafly's many arguments against passage of the Equal Rights Amendments was that it would lead to unisex bathrooms.88

While it is important never to discount an individual's fear—emotions are real, after all—the truth of the matter is that the "bathroom issue" gets sorted out best through face-to-face communication, as transgendered people educate their peers and supervisors, rather than through legislation. For example, Boulder's City attorney recommended to city council members that, "With regard to bathrooms, the proposal is that the ordinance remain silent, allowing social norms to sort themselves out."100 The city councillors agreed with this recommendation, deciding not to legislate who, and in what stage of transition, should use which bathroom.

Legislators who wish to design a policy designating bathroom access on the basis of genitals may raise other, unintended problems for employers, governments, and providers of public accommodations. The San Francisco Human Rights Commission compliance guidelines recognizes the troubles raised by the idea of "genital" gender checks: "Challenging someone's gender may be considered as harassment, and an invasion of privacy."101 Kentucky gay activist Dan Farrell addressed this issue when lobbying for trans-inclusive laws. "Sure," he said, "lawmakers worried about the bathroom question. But we told them, listen, 'Everyone has to go to the bathroom. But if you know what's between someone's legs—you're the one who is being inappropriate.'102

There are practical solutions to this objection that do not discriminate against or dehumanize transgendered people. For example, some employers have simply installed a

Debunking Myths and Misconceptions
KIM COCO IWAMOTO
A historical perspective on bathrooms

After being harassed for using the women's bathroom, then law student Kim Coco Iwamoto distributed a statement to her University of New Mexico Law School community. What follows is an excerpt from that statement.

Once upon a time...the entire UNM Law School community was just one gender: "MALE." The lavatories reflected the needs of the population at that time; they were all MEN'S rooms.

One day, a differently gendered student body arrived at the law school.

In order to accommodate these new students, some of the MEN'S restrooms underwent sex-changes and became WOMEN'S restrooms.

Despite the success of these sex-changes, there were still other student bodies that did not fit into these lavatories; so the restrooms underwent further reconfiguration and were made wheelchair accessible.

Since then, transgender bodies have arrived at the law school; these bodies do not always fit in to the MEN'S room or the WOMEN'S room. Because of our law school's commitment to diversity, yet another change must be made to accommodate the vast array of gendered and non-gendered bodies.

lock on the inside of the bathroom door or provided a sign that can be placed on the outside of the door when the bathroom is in use. Others have provided a single-occupant bathroom facility. As New Orleans transgender activist Courtney Sharp says, "Employers who want to find solutions have found solutions. Those who do not want to find solutions tend to use the issue as an excuse to terminate the employee." In the end, transgendered and gender variant people must have access to safe and dignified bathroom facilities.

In this section, we discussed common misconceptions that legislators and allies might have about transgender-inclusive legislation. In the next section, we list some "talking points" that you might use to frame your message proactively, as you educate legislators, the media, and the public about the need for civil rights legislation covering transgendered and gender variant people. In addition to preparing talking points about your proposed legislation and discrimination against transgendered people in your community, it is also a good idea to prepare a sheet of simple and clear terms and definitions. Examples of the kinds of education materials that trans groups have used are listed in the resource section.
Question: Why is this legislation needed?

Answer: Transgendered people face serious discrimination, not only in the workplace, but also in housing, and in public accommodations.

- Many pre-operative transsexuals are fired the moment their employers find out about their plan to undergo sex reassignment surgery.
- Transgendered people who cross-dress only outside the workplace live in fear that their employer will discover that fact and fire them.
- Transgendered people often face severe discrimination when we try to find a place to live.
- Many transgendered and gender variant people are denied equal treatment in public accommodations. We are asked to leave restaurants, hotels, stores, medical facilities, and educational institutions. We are denied credit. We are refused access to restroom facilities.
- Our community should take a stand against this invidious gender-based discrimination. Everyone deserves to live and work with equality and dignity. No one should lose their job, or be denied a place to live, because of their gender identity or expression.

Question: Isn't this kind of discrimination already illegal? Isn't it covered by sexual orientation or gender discrimination laws?

Answer: So far, most courts have not found that laws prohibiting sexual orientation or gender discrimination apply to transgendered people. We would be happy to provide you with a brief overview of the case law on this question.

Over nine and a half million people, or 3.8% of the US population, live in jurisdictions with non-discrimination laws that apply to transgendered people.
Question: Does this mean women will have to share bathrooms with men?

Answer: This law will prevent people from being forced to use bathrooms that do not correspond to their gender identity. Like everyone else, transgendered people need access to safe and dignified restroom facilities.

- Right now, in our community, there already are cases in which people are required to use bathrooms inappropriate to their gender identity—when trans women are forced to share bathrooms with men, or trans men are forced to share bathrooms with women because employers and providers of public accommodations do not have a sensible bathroom policy in place. This legislation will help resolve those awkward situations, not create them.

- Many employers have successfully dealt with the issue of restroom usage on a case-by-case basis. Human rights departments in cities that have transgender non-discrimination laws, such as San Francisco, have produced compliance guidelines that take the needs of transgender employees and their employers into account.

Question: Will this law encourage cross-dressing in the workplace?

Answer: There has been no "outbreak" of cross-dressing in workplaces in the jurisdictions that have adopted such anti-discrimination provisions. The City of Minneapolis has had a transgender-inclusive non-discrimination law since 1975, and there has been no influx of cross-dressers into the workplaces in that jurisdiction.

- Like non-transgendered people, transgendered people simply want to go to work in clothes that conform to their gender identity, clothes that they feel the most comfortable wearing.

- Nothing in this bill would prevent an employer from enforcing a written dress policy. This legislation simply means that employees may dress in the type of clothing that conforms to their gender identity.

- Many women already “cross-dress” in the workplace by wearing what used to be considered traditionally male clothing, such as pant suits. The case law is beginning to catch up with changing ideas about gender-based clothing; so should our human rights bill.

Question: Are we going out on a limb here? Is our jurisdiction going to be the first to adopt this kind of law?

Answer: As of March 2000, 27 jurisdictions in the US had passed non-discrimination laws that protect transgendered people.

- Transgender civil rights legislation has passed in jurisdictions as varied as Ann Arbor, Boulder, Pittsburgh, Toledo, Tucson, San Francisco, and Seattle. The state of Minnesota added trans-inclusive language to its human rights law in 1993.

- Lucent Technologies and Apple Computers have adopted non-discrimination policies that protect transgendered people. Other high tech corporations are also currently considering adding gender identity and expression to their equal opportunity policies.

- By March 2000, over nine and a half million people, or 3.8% of the US population, lived in jurisdictions with non-discrimination laws that apply to transgendered people.
ALEXANDER JOHN GOODRUM

The circumstances leading up to the Tucson City Council’s vote to add “gender identity” to its non-discrimination law in 1999 actually began with an oversight. The previous fall, after the murder of Matthew Sheppard, Tucson’s mayor at the time, George Miller, called a meeting with representatives from the GLB community to find out what the city could do to prevent hate crimes in Tucson. Transgendered activists Alexander Goodrum and Jerry Armsby were left off the invitation list for the meeting. “Both of us just went anyway, after we heard about the meeting,” Goodrum recalled. “It was an accidental oversight.”

Goodrum and Armsby, both female-to-male transsexuals, took advantage of that community gathering to educate participants about transgender issues and people. They began by calling out “and transgender” whenever speakers referred to gay, lesbian, and bisexual people. “The response was uniformly positive. The gay and lesbian activists there realized they didn’t have a clue about transgender issues, and they wanted to learn,” Goodrum said.

At this forum, when the discussion turned to amending the archaic language of “sexual preference” to the more usual “sexual orientation” in the city’s non-discrimination law, Goodrum asked that gender identity also be added to the law. “Here were lots of nods, no serious disagreement,” he recalled. “And later, there was no problem with the Tucson city council. It was predominantly Democratic and progressive.”

In addition to the decision to amend Tucson’s law, the meeting led to the creation of the Mayoral Task Force on GLBT Issues, divided into legal, education, and social services subcommittees. Goodrum was appointed to the Task Force and became the co-chair of the social services committee. “Working on the mayor’s task force, I began to realize how little the gay and lesbian community knows about transgendered people. My primary goal on that task force was to educate the gay and lesbian community. Many of the gay and lesbian folks in that meeting were using the word ‘transgender,’ but they were appropriating it without knowing what it meant, and what transgender issues are.” Goodrum made it his mission to transform the gay, lesbian, and bisexual community’s willingness to add the “T” to GLB into more concrete policy initiatives.

It wasn’t the first time that Goodrum had been involved in lobbying for GLBT rights legislation. Goodrum’s activism began in Chicago in 1979 when he testified at a hearing in favor of a gay and lesbian civil rights ordinance. At the time, he was 19 and had just come out as a lesbian. “A friend got me involved in working for the bill and that was my introduction to activism.”

Goodrum had mixed feelings about his role in lobbying for the Chicago bill. “Supporters of the bill had asked me to testify because I’m black and many of the bill’s opponents were religious black people. In many ways, it was a positive experience. But it was also a bad experience in other ways. My first experi-
ence in activism was as a figurehead in the gay community—I was the only black person to testify. Other blacks just weren't able to testify."

Still, that experience led to Goodrum on to more activism. "It made me want to work for gay rights and let people know there were lots of black gay and lesbian people who for one reason or another just could not speak out." Soon after testifying, Goodrum joined the Illinois Gay and Lesbian Task Force and worked on youth issues.

When Goodrum transitioned—by then he lived in San Francisco—he stopped his advocacy work for a time. "When I first began my transition, I didn't have the energy to do activism," he said. Eventually, though, Goodrum got involved, helping organize the first FTM conference in San Francisco in 1995. Goodrum moved to Tucson later that year, and by the time of the mayor's GLBT community meeting in 1998, he was eager to start working again on GLBT advocacy work in Tucson.

In Tucson, Goodrum again took on the job of providing a voice for a disenfranchised community. Reverend Joyce L. Cook, the pastor of the Water of Life Metropolitan Community Church in Tucson, worked closely with Goodrum on the social services committee. "He is such an important spokesman for the transgender community," she said. "Alexander, along with two of my transgendered parishioners, have taught me so much about the transgender community and the issues they face," she said. "The transgender community can be a very silent community, but by speaking out and sharing their stories, Alexander made me aware how huge it is."

Goodrum now serves on the City of Tucson Commission on Gay, Lesbian, Bisexual and Transgender Issues, the official successor to the mayoral task force, focusing his work there on access to social services and proactive outreach to the business community. That work, Goodrum said, provides an "an opportunity to do a preemptive strike. The first time a business hears from the GLBT community, it's not a punitive thing, but as a resource for the business community so they can start talking about it so when they deal with GLBT issues, they're not caught off guard. It's more like, 'What can we do to help your business running smoothly and help GLBT people in the workplace?'"

Goodrum does not believe the struggle for transgender rights should be separated from the struggle for GLB rights. "When transgendered people are denied rights, it's often the because of the perception that they're homosexual. With gay people, it's often as not because they're perceived to be violating gender norms. It's the same fight against the same enemies. GLBT people have to realize that in order to move ahead."

Alexander lives in Tucson with his partner of seven years, Daniel Goodrum, an artist. Alexander is a writer, speaker and activist. His "Gender 101" primer is available on the web at http://www.users.uswest.net/~ajgoodrum/gender101.htm.
Resources

GENERAL REFERENCE MATERIAL


LEGAL AND POLITICAL ADVOCACY

Bergstedt, Spencer. Translegalities: A Legal Guide for MTFs; and Translegalities: A Legal Guide for FTMs. These publications may be ordered for $25 by emailing Spencer Bergstedt at MstrSpence@aol.com.


Cope, Allison and Darke, Julie. “Trans Accessibility Project: Making Women’s Shelters Accessible to Transgendered Women.” To get a copy, email Juliet Darke at jdarke@kos.net.

Currah, Paisley. Gender Law and Policy Page. (Updates of the legislative material in this handbook and selected articles.) [http://www.genderlaw.org].


Horton, Mary Ann. Transgender at Work. (Substantial internet resources.) [http://www.tgender.net/taw/].

Iowa City Human Rights Commission. “Transgender: The Law and Employers” (edu-
cational video). The check for $50 should be made out to the City of Iowa City and sent to City of Iowa City, Attn: Heather Shank, 410 East Washington Street, Iowa City, Iowa 52240. Or call 319-356-5022.


The International Conference on Transgender Law and Employment Policy. Proceedings I-V. (Transcribed presentations and appended papers dealing with the multitude of legal challenges faced by transgendered people, along with strategies for progressive change in the law.) Order forms at http://www.abmall.com/ctclep/logord.html.


Xavier, Jessica. "TS Feminism and TG Politicization." [http://www.tgender.net/ita/].


April 2, 2002

MEMORANDUM

Dr. Norman Abeles
Executive Committee of Academic Council
5 Olds Hall

Dear Dr. Abeles:

The University Committee on Faculty Affairs (UCFA) was asked by the Executive Committee of Academic Council to review and make recommendations on an ASMSU proposal to insert the term "gender identity" in the University Anti-Discrimination Policy. It was also asked to meet with Robert A. Noto, Vice President for Legal Affairs and General Counsel.

On Tuesday March 26, 2002 the UCFA met. Both the UCFA and Mr. Noto had read the document on gender identity circulated by ASMSU that has the quotation from former MSU President John DiBiagio on the cover. Mr. Noto suggested several questions for UCFA to consider in evaluating the proposal. A general discussion followed in which the following points were raised.

1. It is possible to insert a variety of terms (e.g., gender identity, gender expression, gender characteristics) in the Anti-Discrimination Policy depending on the individuals intended to be protected by the amendment. The materials circulated give an idea of the many definitions and scopes of protection possible. Consideration needs to be given to exactly what the amendment is trying to accomplish, and whom it is intended to protect, and a careful and clear definition should be constructed based on that goal.

2. In connection with that, the question of when and how members of the protected class will be identified needs some thought. Discussion focused on the somewhat individual subjective nature of gender identity as compared with the (mostly) more readily identifiable categories protected in the
2. Continued,

current document. Individuals can deeply feel or perceive themselves to be
gendered differently from their physiological genitalia but this may not
become a problem for them unless they announce it or explicitly dress or
behave in a manner consistent with their inner perceptions. On the other
hand, it is important to respect people's privacy.

3. Adding gender identity to the Anti-Discrimination Policy raises some unique
issues that do not occur in policies limited to the employment context. Two
examples are assignment of roommates in residence halls and participation
on same sex sports teams. We believe that these issues are substantially
different from prohibiting discrimination based on gender identity in
admissions, grading, hiring, or promotion decisions. Thus, the scope of
protection to be given needs further examination.

4. While the law is changing in areas relating to gender identity and sex
stereotyping, it is not presently possible to definitively state that the
categories presently included in the Anti-Discrimination Policy necessarily
encompass all aspects of gender identity. If they did, protecting gender
identity through the current Policy would not address the nuances
mentioned in the previous paragraphs.

5. The current piecemeal approach of having individual Academic Governance
Committees comment on the proposed amendment to the Anti-
Discrimination Policy will lead to a fragmented perspective and not to a
sound decision on how or whether to include gender identity in the Anti-
Discrimination Policy.

The UCFA therefore recommends that:

The Executive Committee of Academic Council appoint a working committee
to consider this matter further.

The composition of this committee should be small but diverse, including
faculty, students and individuals with special competency or expertise on
the matter. The Office of the General Counsel should provide legal advice
to the committee.

This committee would meet during the spring and summer and report back
to the Executive Committee by the first meeting of fall semester 2002.
UCFA recommends, continued

Relevant Academic Governance Committees should be provided a month for comment. Deliberation on the proposal to include "gender identity" under the University Anti-Discrimination Policy should be completed no later than the end of fall semester, 2002.

Sincerely,

Dr. Ved Gossain and Dr. Gwen Wyatt
Co-Chair of UCFA

c. Lou Anna K. Simon, Provost
   Robert Noto, Vice President for Legal Affairs and General Counsel
The University Committee on Student Affairs supports and recommends the inclusion of the term "gender identity" in the University Anti-Discrimination policy. However, the committee also believes that given the various statutory definitions of gender identity in the handout provided, the definition of gender identity should be clarified by the General Counsel before implementing this policy change.

Attachment 4a
University Committee on Student Affairs (UCSA)
March 11, 2001

To: Norm Abeles, Chair, ECAC

From: Judith Stoddart, Chair, UGC

The University Graduate Council has discussed the ASMSU recommendation to add “gender identity” to the list of protected classes in the University’s anti-discrimination policy. UGC is forwarding the following statement in response to this recommendation:

“If ‘gender identity’ is determined by the general counsel’s office and by the ADJB not to be already covered by categories listed in the university anti-discrimination policy, we favor its being added to the list as a protected class.”
March 12, 2002

MEMORANDUM

To:          Norman Abeles, Chairperson
              Executive Committee of Academic Council

From:        Samuel B. Howerton, President
              Council of Graduate Students

Subject:     Inclusion of Gender Identity in the Anti-Discrimination Policy

Per your request the Council of Graduate Students discussed the proposed change to the Anti-Discrimination Policy. On February 21, 2002 the Full Council approved the following language:

"The Council of Graduate Students supports the proposed amendment to the Michigan State University Anti-Discrimination Policy that seeks to include the phrase 'gender identity' to the list of protected categories."

In addition to the language, a number of representatives expressed concerns over the practical implications of such a change and whether or not it would require modifications to existing forms and procedures that the university employs. There were also concerns that the repeated addition of protected groups could grow unchecked. As a result, COGS seeks information regarding any current or proposed mechanisms that would insure that future additions are necessary and distinguishable from current language.
## CIC AA Panel
### Non-discrimination Policy Report

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<th>Institution</th>
<th>Non-Discrimination Policy attachments</th>
<th>Q2. Does your institution's non-discrimination policy apply to the entire community? (faculty, staff, and students)</th>
<th>Q3. Does your institution's non-discrimination policy specifically reference &quot;transgender&quot; as a protected characteristic?</th>
<th>Q3a. If no, is it interpreted to prohibit discrimination on the basis of &quot;transgender&quot;?</th>
<th>Comments</th>
<th>Q4. Does your Institution's non-discrimination policy specifically reference &quot;gender identity&quot; as a protected characteristic?</th>
<th>Q4a. If no, is it interpreted to prohibit discrimination on the basis of &quot;gender identity&quot;?</th>
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*Awaiting responses

Prepared by AACM - May 6, 2002

Attachment 5
Results from CIC-AA Panel Survey & Non-discrimination policies

See attached for responses to questions 5 and 6.
CIC AA Panel
Non-Discrimination Policy Report
Survey Responses

Indiana University
Question 3a.
If no, is it interpreted to prohibit discrimination on the basis of "transgender"?
Transgender is not mentioned explicitly but in practice the policy has been used to protect transgender.

Question 5.
If your institution's policy does not include "transgender" or "gender identity" as protected characteristics, do you "informally" attempt to resolve issues that might arise related to claims of discrimination based on either, e.g., how have/would you address access to facilities where a woman who identifies as transgender requests access to the women's floor in residence hall.
Have not had a specific residence hall situation. However, we have had cases regarding use of public dressing rooms/restrooms. In one case the individual was told not to use the facilities (several years ago). In most cases it was agreed that the individual would change clothes in a restroom stall or private dressing area only.

Question 6.
If your campus has had experience with this issue, i.e., application of your non-discrimination policy to "transgender" and "gender identity", what would you identify as the most significant concerns or issues that have occurred over the course of your experiences, and how did your institution handle them?
Use of dressing rooms, restrooms, participation in lesbian support groups, unequal treatment in workplace.

Ohio State University
Question 5.
If your institution’s policy does not include “transgender” or “gender identity” as protected characteristics, do you “informally” attempt to resolve issues that might arise related to claims of discrimination based on either, e.g., how have/would you address access to facilities where a woman who identifies as transgender requests access to the women’s floor in residence hall.
Yes we attempt to address the issues informally via meetings with the employee and management.

Question 6.
If your campus has had experience with this issue, i.e., application of your non-discrimination policy to “transgender” and “gender identity”, what would you identify as the most significant concerns or issues that have occurred over the course of your experiences, and how did your institution handle them?
We had only 1 reported case. The case involved the usage of bathroom facilities by an individual who was a male going through the initial stage of a sex change operation but the operation had not been completed at the time. The person wanted to use the women's bathroom but women in the unit were uncomfortable with this. The person contacted the Office of Human Resources for assistance. Discussions took place but the person resigned before any resolution was implemented. The case was not analyzed under the non-discrimination policy as the person did not raise the issue under that policy. The stand taken was more to review the situation and assist in "accommodating" the individual.
Penn State University

Question 5.
If your institution's policy does not include "transgender" or "gender identity" as protected characteristics, do you "informally" attempt to resolve issues that might arise related to claims of discrimination based on either, e.g., how have/would you address access to facilities where a woman who identifies as transgender requests access to the women's floor in residence hall.
No experience with this issue.

Question 6.
If your campus has had experience with this issue, i.e., application of your non-discrimination policy to "transgender" and "gender identity", what would you identify as the most significant concerns or issues that have occurred over the course of your experiences, and how did your institution handle them?
No experience with this issue.

University of Chicago

Question 3a.
If no, is it interpreted to prohibit discrimination on the basis of "transgender"?
I have not been called upon to interpret it this way, but I would if the situation presented itself.

Question 5.
If your institution's policy does not include "transgender" or "gender identity" as protected characteristics, do you "informally" attempt to resolve issues that might arise related to claims of discrimination based on either, e.g., how have/would you address access to facilities where a woman who identifies as transgender requests access to the women's floor in residence hall.
In 1995 or 1996 an individual who was in the process of a sex change asked for permission to use the facilities of the "future" sex. This person was told, "at the point in the change process when one begins to dress in the clothes of the "future" sex, one should commence using facilities of that sex".

Question 6.
If your campus has had experience with this issue, i.e., application of your non-discrimination policy to "transgender" and "gender identity", what would you identify as the most significant concerns or issues that have occurred over the course of your experiences, and how did your institution handle them?
In 1995 or 1996 an individual who was in the process of a sex change asked for permission to use the facilities of the "future" sex. This person was told, "at the point in the change process when one begins to dress in the clothes of the "future" sex, one should commence using facilities of that sex".

University of Illinois-Chicago

Question 5.
If your institution's policy does not include "transgender" or "gender identity" as protected characteristics, do you "informally" attempt to resolve issues that might arise related to claims of discrimination based on either, e.g., how have/would you address access to facilities where a woman who identifies as transgender requests access to the women's floor in residence hall.
Sensitively; on a case-by-case basis. We have gathered a group to discuss and develop and action plan. Group: legal counsel, office for access and equity, student affairs and unit.

Question 6.
No comment
University of Iowa

Question 3a.
If no, is it interpreted to prohibit discrimination on the basis of "transgender"?
Gender identity is a protected status and that covers those who are transgendered.

Question 5.
No comment

Question 6.
If your campus has had experience with this issue, i.e., application of your non-discrimination policy to "transgender" and "gender identity", what would you identify as the most significant concerns or issues that have occurred over the course of your experiences, and how did your institution handle them?
The office of affirmative action investigates formal and informal complaints pursuant to the policy on human rights. The complaints filed based on gender identity has usually centered on employment, with the complainant feeling harassed or discriminated against on the job. We have sought to resolve these situations and to ensure that the complainant's gender identity was not a factor in the employment action in question. Aside from complaints filed with affirmative action, we are aware that there have been a few instances of concern over a person who is in transition using a restroom or other facility designated for use by individuals of the sex to which he or she is transitioning. The departments involved have dealt with those situations. In one situation involving a restroom, the resolution was to allow the individual to use the restroom and to put up an "occupied" sign on the door when she was inside. In a residence hall situation, there was discussion of allowing the individual a single room instead of the standard double.

University of Minnesota

Question 5.
If your institution’s policy does not include “transgender” or “gender identity” as protected characteristics, do you “informally” attempt to resolve issues that might arise related to claims of discrimination based on either, e.g., how have/would you address access to facilities where a woman who identifies as transgender requests access to the women’s floor in residence hall.
We have a GLBT program office set up as a result of a task force study (in the early 90s) we include them in our enforcement implementation but it doesn’t come up very often.

Question 6.
If your campus has had experience with this issue, i.e., application of your non-discrimination policy to “transgender” and “gender identity”, what would you identify as the most significant concerns or issues that have occurred over the course of your experiences, and how did your institution handle them?
The primary issue is usually bathrooms and the primary response is to get the GLBT program office involved. The director or other staff members work with the individuals and the department that is involved, and has always been able to work out satisfactory arrangements and provide needed education. So far an estimated 8-12 situations have been handled.

University of Wisconsin-Milwaukee

Question 5.
If your institution’s policy does not include “transgender” or “gender identity” as protected characteristics, do you “informally” attempt to resolve issues that might arise related to claims of discrimination based on either, e.g., how have/would you address access to facilities where a woman who identifies as transgender requests access to the women’s floor in residence hall.
Not certain.
Question 6.
If your campus has had experience with this issue, i.e., application of your non-discrimination policy to “transgender” and “gender identity”, what would you identify as the most significant concerns or issues that have occurred over the course of your experiences, and how did your institution handle them?
No experience with this issue.

University of Michigan

Question 3a.
If no, is it interpreted to prohibit discrimination on the basis of "transgender"?
So far as I know, no case has been brought for legal interpretation in the matter of whether the term "sex" in the University of Michigan's non-discrimination policy may be construed to include "transgender" or "gender identity". The University of Michigan's Division of Student Affairs has attempted to respond affirmatively insofar as possible to the concerns of transgender students.

Question 4a.
If no, is it interpreted to prohibit discrimination on the basis of "gender identity"?
So far as I know, no case has been brought for legal interpretation in the matter of whether the term "sex" in the University of Michigan's non-discrimination policy may be construed to include "transgender" or "gender identity".

Question 5.
If your institution’s policy does not include “transgender” or “gender identity” as protected characteristics, do you “informally” attempt to resolve issues that might arise related to claims of discrimination based on either, e.g., how have/would you address access to facilities where a woman who identifies as transgender requests access to the women’s floor in residence hall.
Yes, "informal" resolution of issues is attempted.

Question 6.
If your campus has had experience with this issue, i.e., application of your non-discrimination policy to “transgender” and “gender identity”, what would you identify as the most significant concerns or issues that have occurred over the course of your experiences, and how did your institution handle them?
Restroom Facilities: A survey of unisex (single-stall/lockable) restrooms on the University of Michigan campus is in progress. A two-stall women's restroom has been converted to a two-stall unisex restroom.
Student Housing: Requests from transgender students for any particular housing accommodation have been handled on a case-to-case basis.
Discrimination and harassment in employment: Allegations that University of Michigan employees have experienced discrimination and harassment on the basis of "gender identity" have been addressed by management in consultation with Dr. Sandra Cole (Professor, University of Michigan Medical School and Founder of the University of Michigan Health System Comprehensive Gender Services Program) and other University of Michigan staff, including myself (James Toy, Diversity Consultant for Gender Identity, Sexual Orientation, and Religion University of Michigan). Consideration of adding "gender identity" to policy in the University of Michigan's "Standard Practice Guide" is expected to go forward during the fall 2002 term, presumably after the next President of the University has been chosen and installed.

1 The Standard Practice Guide or SPG is furnished to provide University of Michigan employees with convenient access to the operating policies and practices of the various departments, facilities, and services that are available.
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION POLICY OF INDIANA UNIVERSITY

December 4, 1992

WHEREAS, the University Faculty Council has requested that this Board approve a Policy Statement entitled "Equal Opportunity/Affirmative Action Policy of Indiana University" adopted by the Council at its October 13, 1992, meeting that reads as follows:

"Equal Opportunity/Affirmative Action Policy of Indiana University

Indiana University pledges itself to continue its commitment to the achievement of equal opportunity within the University and throughout American society as a whole. In this regard, Indiana University will recruit, hire, promote, educate, and provide services to persons based upon their individual qualifications. Indiana University prohibits discrimination based on arbitrary considerations of such characteristics as age, color, disability, ethnicity, gender, marital status, national origin, race, religion, sexual orientation, or veteran status.

Indiana University shall take affirmative action, positive and extraordinary, to overcome the discriminatory effects of traditional policies and procedures with regard to the disabled, minorities, women, and Vietnam-era veterans."

and, WHEREAS, this Board considers the Policy Statement to be consistent with expectations held by the students, staff and faculty of this University;

RESOLVED, that this Board now approves and adopts the Policy Statement set out above as the Equal Opportunity/Affirmative Action Policy of Indiana University, superseding and replacing previous policy statements, and reaffirms its support of the ROTC program as set forth by its Resolution adopted in its meeting of May 3, 1991.

Attachment 1
Indiana University
Human Resources Policy and Procedure Manual

Subject: NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Number: 1.10
Applies to: University faculty, staff and students

Issued: 10/1/73
Modified: 10/23/00

Policy

Non-Discrimination/Equal Employment Opportunity Statement

The Ohio State University is committed to nondiscrimination, equal employment opportunity and affirmative action. This commitment is both a matter of law and moral imperative consistent with an intellectual community in which individual differences and diversities are celebrated.

Accordingly, discrimination against any individual for reasons of race, color, creed, religion, sexual orientation, national origin, sex, age, disability or veteran status is specifically prohibited. Title IX of the Education Amendments of 1972 prohibits sex discrimination. Title I and Title II of the Americans with Disabilities Act (ADA) of 1990 provides equal employment opportunities and reasonable accommodation, and Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in education programs and activities. Equal access to employment opportunities, admissions, educational programs and all other University activities is extended to all persons.

The affirmative action section of this policy is under revision. The University's significant focus on diversity, in conjunction with the Diversity Action Plan, creates an environment where affirmative action must both complement and support the University's aspiration for diversity, while retaining an independent identity that meets the requirements of Executive Order 11246.

If there are questions, please contact the Office of Human Resources, Associate Vice President's office at 292-4164.

Back to Policy Index

Human Resources Home

Problems with this site? E-mail userwebmaster@ohio-state.edu

http://www.ohr.ohio-state.edu/policy/110pol.htm

Attachment 2
Ohio State University
Policy AD42 STATEMENT ON NONDISCRIMINATION AND HARASSMENT

Contents:

- Purpose
- Policy
- Definition
- Resolution of Discrimination Complaints
- Disciplinary Sanctions
- Cross References

PURPOSE:

To establish the University's policy prohibiting discrimination and harassment.

POLICY:

The Pennsylvania State University is committed to the policy that all persons shall have equal access to programs, facilities, admission and employment without regard to personal characteristics not related to ability, performance, or qualifications as determined by University policy or by state or federal authorities. It is the policy of the University to maintain an academic and work environment free of discrimination, including harassment. The Pennsylvania State University prohibits discrimination and harassment against any person because of age, ancestry, color, disability or handicap, national origin, race, religious creed, sex, sexual orientation or veteran status. Discrimination or harassment against faculty, staff or students will not be tolerated at The Pennsylvania State University.

DEFINITIONS:

Discrimination is conduct of any nature which denies equal privileges or treatment to a particular individual because of the individual's age, ancestry, color, disability or handicap, national origin, race, religious creed, sex, sexual orientation or veteran status.

Harassment may include, but is not limited to, verbal or physical attacks, written threats or slurs that relate to a person's membership in a protected class, unwelcome banter, teasing, or jokes that are derogatory, or depict members of a protected class in a stereotypical and demeaning manner, or any other conduct which has the purpose or effect of interfering unreasonably with an individual's work or academic performance or creates an offensive, hostile, or intimidating working or learning environment.

RESOLUTION OF COMPLAINTS:

The University will make every effort to promptly investigate and resolve complaints of discrimination.
or harassment, with due regard for fairness and the rights of both the complainant and alleged offender, and to conduct all proceedings in the most confidential manner possible.

Any member of the University community who experiences discrimination or harassment should immediately report the incident to the Affirmative Action Office, an administrator in his or her department or unit, or the Office of Human Resources. In cases where an individual reports alleged discrimination or harassment to an administrator, faculty member, or staff member, the person receiving the complaint should contact the Affirmative Action Office to discuss resolution and ensure consistent responses to issues across units.

The Affirmative Action Office has primary responsibility for resolving discrimination and harassment complaints. If unsuccessful at resolving the issue informally, the Affirmative Action Office may investigate to reach a formal determination on the merits of the allegations. Investigations will include notifying the alleged offender of the complaint and providing an opportunity to respond to the allegations.

If there is evidence of discrimination or harassment, the University will make every effort to ensure the discrimination and/or harassment immediately stops and does not recur. The complainant will be informed of the corrective measures taken.

The University prohibits retaliation against anyone who files a complaint and/or participates in an investigation involving alleged discrimination or harassment.

DISCIPLINARY SANCTIONS:

Disciplinary sanctions for violation of this policy, which may range from a disciplinary warning to expulsion from the University, will be imposed in accordance with applicable University policies.

CROSS REFERENCES:

Other Policies in this Manual may apply, especially:

AD29 - Statement on Intolerance,

AD41 - Sexual Harassment,

HR01 - Fair Employment Practices,

HR11 - Affirmative Action in Employment at The Pennsylvania State University, and

HR76 - Faculty Rights and Responsibilities

HR79 - Staff Grievance Procedure

Effective Date: September 6, 2001
Date Approved: September 6, 2001
Date Published: September 6, 2001
Most recent changes:

- Under the DISCIPLINARY SANCTIONS section, changed "reprimand to dismissal" to "disciplinary warning to expulsion."

Revision History (and effective dates):

- August 30, 2001 - vised definition of 'harassment'.
- January 03, 2000 - Significant revisions throughout policy. Added Purpose, Definitions, Resolution of Complaints, and Disciplinary Sanctions sections. Policy renamed from "Statement on Nondiscrimination" to "Statement on Nondiscrimination and Harassment".
- November 16, 1992 - New policy.
PERSONNEL MATTERS

STATEMENT OF NON-DISCRIMINATION

In keeping with its long-standing traditions and policies, the University of Chicago, in admissions, employment, and access to programs, considers students and employees on the basis of individual merit and without regard to race, color, religion, sex, sexual orientation, national or ethnic origin, age, disability, or other factors irrelevant to study or work at the University.

The Affirmative Action Officer (702-5671) is the University’s official responsible for coordinating its adherence to this policy and the related federal and state laws and regulations (including Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act).

NEPOTISM

Faculty and staff members may not be in the position of supervising, directing or setting the pay for spouses, children, other close relatives, or University-registered, same-sex domestic partners.

UNIVERSITY POLICIES ON DRUGS AND ALCOHOL

From “University Policies on Drugs and Alcohol,” Offices of the Provost and the Vice President for Administration, 1993.

The federal Drug Free Workplace Act of 1988, requires that the University advise all employees about its substance abuse policy and that all employees follow that policy as a condition of employment.

The University prohibits all students and employees from the unlawful manufacture, possession, use, distribution, sale, or purchase of alcohol and illicit drugs on University premises or as part of any University activities, and from working under the influence of alcohol or illicit drugs. Any violation of this policy may lead to sanctions, including invocation of the procedures for termination due to misconduct under University Statute §11.3. The only exception to this provision applies to moderate consumption and/or possession of alcohol on University premises at approved functions (e.g., receptions) by those legally permitted to consume or distribute alcohol; any such function must comply with University guidelines for such an event.

In addition to this requirement, the Act mandates that an employee directly engaged in the performance of work under a federal grant or contract must notify his or her employer "no later than five days" after a conviction under any criminal drug statute for a violation occurring in the workplace. The University is then required by law to notify the federal contracting or granting agency of that workplace related conviction. Should any faculty members be required to notify the University of such a conviction, they should contact the University’s Office of Legal Counsel (702-7241). The University recognizes both alcohol and drug abuse as potential health, safety and security problems and expects all of its faculty, staff and students to assist in maintaining a work environment free from the effects of alcohol or other drugs.

All employees are required to report to their jobs ready and able to work. If an employee may be impaired by medication taken according to a physician’s prescription or the medication’s directions, he or she is expected to discuss it with his or her supervisor.

Besides legal consequences, the unlawful possession, use or distribution of illicit drugs and alcohol and any violation of this alcohol and illicit drug policy by a student or employee may result in appropriate discipline under the student disciplinary system or the employee corrective action procedure...Employees may receive sanctions up to and including discharge from employment. The University, if appropriate, may also refer students or employees for criminal prosecution.

For both students and employees, the University retains full and final discretion on whether, when, and under what conditions a student may be reinstated or

Attachment 4a
University of Chicago
an employee returned to employment after an instance of alcohol abuse or improper drug use. The particular sanction in a given case will depend on a variety of factors, such as the nature of the violation, the seriousness of the offense, and the prior record of the individual or organization, and may include the successful completion of an approved rehabilitation or chemical dependency program.

In order for the University to comply with federal law, any employee (including student employees) convicted of any violation of any criminal drug statute (including misdemeanors) for a violation occurring either on University property or during working time must notify his or her Dean of Students (if a student employee), the Employee/Labor Relations Office of University Human Resources Management (if a non-student staff employee) [2-6010], or the Assistant Provost (if an academic employee) [2-5671] within five days of the date of conviction. A conviction includes any plea of guilty or plea of nolo contendere (no contest), and/or any imposition of a fine, jail sentence, or other penalty. Pursuant to federal law, if the convicted employee is working on a project funded through a federal grant or contract, the University is required to notify the relevant federal contracting or granting agency within ten days of receiving such notice of conviction.

Students and employees who believe they may have an alcohol or drug problem are strongly encouraged to seek assistance through resources available at the University. Employees may contact the Staff and Faculty Assistance Program (SFAP) at (800) 456-6327 or (630) 932-8008. This will connect employees with Perspectives, the firm with which the University has contracted to provide SFAP services. Such contacts will be kept confidential, except as required by law or by concern for the immediate health, safety, or security of the individual or others. The University has the right to take any necessary action to protect the health, safety, and security of the affected individual and other members of the University community, including deciding whether, when, and under what conditions a student may be reinstated or an employee may be returned to employment after an instance of alcohol abuse or improper drug use.

SEXUAL HARASSMENT POLICY

From "Policy and Procedures of the University of Chicago Concerning Sexual Harassment," adopted by the Council of the University Senate, 1990.

I. POLICY AND DEFINITION OF SEXUAL HARASSMENT

The University of Chicago is committed to maintaining an academic environment in which its members can freely work together, both in and out of the classroom, to further education and research. The University cannot thrive unless each member is accepted as an autonomous individual and is treated civilly, without regard to his or her sex or, for that matter, any other factor irrelevant to participation in the life of the University. Members of the University should understand that this standard must shape our interactions regardless of whether it is inappropriate even though not "illegal"; speech can be offensive even though allowed.

The University is also committed to the uninhibited, robust and wide-open pursuit of ideas. We must take great care neither to stifle that pursuit by a multitude of rules, nor to make it "dangerous" to speak one's mind.

At the same time, every member of the University community must recognize that sexual harassment compromises the integrity of the University. Its tradition of intellectual freedom, and the trust placed in its members. It is the intention of the University to take all necessary actions to prevent, correct, and, where indicated, discipline sexual harassment.

Sexual advances, requests for sexual favors, or sexually-directed remarks constitute harassment when either:

1. submission to such conduct is used or threatened to be used as the basis for academic or employment decisions; or

2. such conduct directed against an individual persists despite its rejection.

Sexual harassment by any member of the University community is prohibited. This prohibition includes peer harassment among students, staff or faculty. Sexual harassment by a faculty member, instructor or teaching assistant of a student over whom he or she has authority, or by supervisors of a staff member is
particularly serious. Such conduct may easily create an intimidating, hostile, or offensive environment.

Sexual harassment can take many forms. Some of these are overt and unambiguous while others may be more subtle and indirect. Direct forms of sexual harassment include sexual assault and sexual advances accompanied by an offer of reward or threats of reprisal. Such behavior constitutes serious misconduct, and a single incident establishes grounds for a complaint. Other forms of sexual harassment include sexual advances, physical or verbal, that are repeated and unwanted.

Romantic relationships that might be appropriate in other contexts may, within a university, create the appearance or fact of an abuse of power or of undue advantage. Moreover, even when both parties have consented at the outset to a romantic involvement, such consent does not preclude a subsequent charge of sexual harassment against the instructor or supervisor. Because of its relevance to sexual harassment, the University's policy on consensual relations in cases where one person has educational or supervisory authority over another is reproduced under section IV, "Policy on Consensual Relations between Faculty and Students," below, p. 60.

II. PROCEDURES FOR THE RESOLUTION OF COMPLAINTS

The University's procedures for handling incidents of sexual harassment place a strong emphasis on resolving complaints informally. The procedures include advising and mediation. It is important to note that the procedures do not preempt other formal or informal channels available within the University.

Without feeling constrained by specific definitions, any person who believes that his or her educational or work experience is compromised by sexual harassment should feel free to discuss the problem with a faculty member, dean, or supervisor and, if desired, to request that faculty member, dean, or supervisor to speak informally to the person complained about. If this does not resolve the matter, or if the individual prefers, he or she may make use of any or all of the following three avenues for resolution: No one at the University may reprimand or discriminate against an individual for having initiated an inquiry or complaint in good faith.

Advising

An individual who feels he or she has been sexually harassed may bring the matter to a Complaint Advisor whose role is to discuss with the complainant how to proceed. (A list of current Advisors appears in the University telephone directory.) The advising is intended to provide a forum for free and open discussion between the complainant and the Advisor. Consequently, no record will be kept of the advising conversation other than an incident report that will not contain the names of either the complainant or the accused and that will be used only to keep a yearly record of the number of different types of reported incidents. Every attempt will be made to protect the privacy of the individuals involved in a conversation about sexual harassment.

Complaint Advisors will be selected and supervised by the Coordinating Officer (a position filled by a member of the Provost's Office) for a two-year term and will be drawn from a variety of different areas throughout the University. (For example, they may be Resident Heads, Deans of Students, the Ombudsman, or faculty members.) The number of Advisors should be sufficiently large that individuals from all areas in the University are able to have access to the Advisors. Advisors will be required to participate in a program designed to make them familiar with the issues involved in dealing with sexual harassment cases.

Mediation

When a complaint is brought to the Complaint Advisor, the complainant may ask for a mediated resolution between him or herself and the accused. The goal of the mediation procedure is to provide a forum where the complainant and the accused can, with the aid of a third party, come to a mutually agreed upon resolution. Consequently, mediation will occur only if both the complainant and the accused are willing to participate in the process. The Complaint Advisor may serve as mediator or suggest a third party such as the Coordinating Officer or a faculty member of the Sexual Harassment Panel (see below) to act as mediator.
**Formal Hearing**

Any person who wishes to discuss a possible complaint of sexual harassment should feel free to use the informal advising and mediation avenues described above. But either the complainant or the accused may at any time ask that the matter under discussion be handled formally rather than informally. The appropriate procedure for a formal complaint depends on who is being accused of harassment.

When the person accused of harassment is a student, a formal complaint should be addressed within the procedures for student discipline described in the Student Manual of University Policies and Regulations.

When the person accused of harassment is a staff employee of the University, a staff member from the Office of Human Resources Management will guide a complainant through the appropriate formal review process.

When the person accused of harassment is a faculty member or member of the academic staff (such as a Research Associate, Lecturer, or Librarian), the formal complaint procedures described below apply.

**Procedures for Faculty and Academic Staff**

Once a hearing has been requested, the Sexual Harassment Panel will move to comply as quickly as possible. The Panel consists of three faculty members appointed by the Provost for three-year terms (with the possibility of reappointment) and the Student Ombudsman (as a non-voting student member). The Coordinating Officer will sit with the Panel *ex officio* but does not vote. A list of the current members of the Sexual Harassment Panel can be found in the University Directory.

It is the task of the Panel to determine the facts. At any time in its proceedings, the Panel may decide that the complaint should be rejected as clearly unfounded. The Panel will be provided with written statements from the complainant and the accused, if necessary, will interview persons with knowledge bearing on the matter, including the complainant and the accused. The proceedings will be kept confidential.

If the complaint is found to have merit, the Panel will relay its findings to the Provost who will take appropriate action (for example, a reprimand, leave of absence without pay, invocation of statutory procedures for termination). If the complaint is found to have no merit (or if the facts cannot be established), the complaint will be dismissed. Whatever the outcome, both parties must be informed of the Panel's findings and the Provost's action.

A report of a justified complaint, including the Provost's action, is placed in the accused's official file in the Provost's Office....

**IV. POLICY ON CONSENSUAL RELATIONS BETWEEN FACULTY AND STUDENTS**

Because those who teach are entrusted with guiding students, judging their work, giving grades for papers and courses and recommending students to colleagues, instructors are in a delicate relationship of trust and power. This relationship must not be jeopardized by possible doubt of intent, fairness of professional judgment, or the appearance to other students of favoritism.

One of the unstated tenets of our policy and our commitment to a climate free from sexual harassment has been the view that it is unwise and inappropriate for faculty who have romantic relations with students to teach such students in a class, supervise them in research or graduate work or recommend them for fellowships, awards or employment. Prudence and the best interest of the students dictate that in such circumstances of romantic involvement, the students should be aided to find other instructional or supervisory arrangements. Faculty should keep in mind that initial consent to a romantic relationship does not preclude a charge of sexual harassment in the future.

**AN ADDITIONAL WORD OF CAUTION**

The following paragraph is not part of the "Sexual Harassment Policy and Procedures" adopted by the Faculty Senate. It is intended to give a fuller picture of the direction the courts have taken in recent years.

In the eyes of the law, when an institution knows or should have known about a sexual harassment problem involving a supervisor (faculty, academic staff or non-academic staff) and a supervisee (faculty, academic staff, non-academic staff or student), the institution can be legally liable for that harassment. An institution is considered "knowing" when a dean, chair, or other faculty member has actual or constructive knowledge
In keeping with its long-standing traditions and policies, the University of Chicago, in admissions, employment and access to programs, considers students on the basis of individual merit and without regard to race, color, religion, sex, sexual orientation, national or ethnic origin, age, disability, or other factors irrelevant to participation in the programs of the University. The Affirmative Action Officer (Administration 501, 702-5671) is the University's official responsible for coordinating its adherence to this policy and the related federal and state laws and regulations (including Section 504 of the Rehabilitation Act of 1973, as amended).
THE UNIVERSITY OF CHICAGO
PERSONNEL POLICY GUIDELINES

Subject: Equal Employment Opportunity

Section: U201

Date: October 31, 1995

Prior version Date(s): October 10, 1985

Attachment 4c
University of Chicago

Purpose:
To express the University's continuing practice to nondiscrimination in employment.

Policy:
The University of Chicago offers equal opportunities in employment to all employees and applicants. No person shall be discriminated against in employment because of race, color, marital status, parental status, ancestry, source of income, religion, sex, age, national origin, handicap, sexual orientation or veteran status. This policy includes the commitment to maintain a working environment free from sexual harassment.

Guidelines:

1. This policy applies to all terms, conditions and privileges of employment including: recruitment, hiring, probationary periods, training and development, job assignments, supervision, promotion, rates of pay or benefits, transfer, educational assistance, layoff and recall, social and recreational programs, terminations and retirement.

2. The Associate Vice President for Human Resources Management, under the Vice President for Administration, is responsible for assuring that University policies regarding the fair and equitable treatment of employees are carried out, including the equal employment opportunity policy.

3. The Affirmative Action Officer interprets the equal employment opportunity policy and advises employees, supervisors and managers about such policy as requested.

4. Department heads, managers and supervisors have primary responsibility for ensuring that employment decisions and the work environment are in compliance with this policy. They should understand that their work performance will be evaluated, in part, on the basis of their efforts and result in the area of EEO.

5. Employees should normally bring any work-related complaints under the policy to their supervisor as with other types of employee complaints. However, an employee may elect to take such a complaint to the Human Resources Management staff or the Affirmative Action Officer. Every effort will be made to treat complaints promptly, impartially, and confidentially with a view to arriving at fair resolutions.

6. The University shall provide, upon request by the applicant, accommodations for the applicant's disability in order to complete the application process.

7. The University shall provide upon request by the employee reasonable accommodations for the employee's disability when doing so will enable him or her to successfully perform the essential duties of the
job.

Return to Personnel Policy Index.

Return to University Human Resources Management Home Page
Nondiscrimination Statement

The commitment of the University of Illinois to the most fundamental principles of academic freedom, equality of opportunity, and human dignity requires that decisions involving students and employees be based on individual merit and be free from invidious discrimination in all its forms.

It is the policy of the University of Illinois at Chicago not to engage in discrimination or harassment against any person because of race, color, religion, sex, national origin, ancestry, age, marital status, disability, sexual orientation, unfavorable discharge from the military, or status as a disabled veteran or a veteran of the Vietnam era and to comply with all federal and state nondiscrimination, equal opportunity, and affirmative action laws, orders and regulations. The nondiscrimination policy applies to admissions, employment, access to and treatment in the University programs and activities. Complaints of invidious discrimination prohibited by University policy are to be resolved within existing University procedures.

University of Illinois
Official Notice
Revised May 1, 1997

For additional information or assistance with the equal opportunity, affirmative action, and harassment policies and procedures of the University of Illinois Chicago, please contact:

Office for Access and Equity (M/C 602)
717 Marshfield Avenue Building
809 South Marshfield Avenue
Chicago, IL 60612-7207
(312) 996-8670

Latino Statement | Sexual Harassment Awareness

Employment Accommodation Policy | ADA | Home

Attachment 5
University of Illinois-Chicago
PART II. COMMUNITY POLICIES
DIVISION I HUMAN RIGHTS, AFFIRMATIVE ACTION, AND EQUAL EMPLOYMENT OPPORTUNITIES

CHAPTER 3: HUMAN RIGHTS

The University of Iowa brings together in common pursuit of its educational goals persons of many nations, races, and creeds. The University is guided by the precepts that in no aspect of its programs shall there be differences in the treatment of persons because of race, creed, color, national origin, age, sex, disability, sexual orientation, gender identity, or any other classification that deprives the person of consideration as an individual, and that equal opportunity and access to facilities shall be available to all. Among the classifications that deprive the person of consideration as an individual are those based on associational preference. These principles are expected to be observed in the internal policies and practices of the University: specifically in the admission, housing, and education of students; in policies governing programs of extracurricular life and activities; and in the employment of faculty and staff personnel. The University shall work cooperatively with the community in furthering these principles.
DISCRIMINATORY CONDUCT POLICY

(Including Sexual Harassment)

No. S-47 (replacing 17.5 and 47a,b)
Date: May 12, 1998 (original, January 1982 and May 12, 1988)
Authority: Regent Resolution #2384 (amended 4/10/87), UWM Faculty Document #1605, #1607 a
UWM Administration

RATIONAL

The University of Wisconsin-Milwaukee ("UWM") remains steadfastly committed to the principles
of academic freedom and to the ideal that the "fearless sitting and winnowing by which alone the truth
found" is the definitive feature of an institution of higher education. This steadfast commitment req
ually strong obligation to foster respect for the dignity and worth of each person. Without this res
principles of academic freedom become meaningless. Moreover, relationships such as student-facu
employee-supervisor have inherent power differences that compromise the ability of some people t
their own rights. Therefore, the university must provide an environment that respects the value of e
person and that does not tolerate discriminatory conduct of any kind. The entire university commun
work together to promote an environment free of discrimination. To that end, deans, division heads
department chairs, directors and immediate supervisors are responsible for enforcing the policies ou
herein.

I. POLICY STATEMENT

Discriminatory conduct, which includes sexual harassment, is reprehensible and will not be tolerat
university. It is damaging to the academic community as a whole and threatens the careers, educat
experience, and well-being of students, faculty and staff. The university will not tolerate behavior b
among members of the university community which creates a hostile educational or working
environment. The university also recognizes that discriminatory conduct may occur in a variety of
circumstances. Therefore, the university will not tolerate discriminatory behavior by vendors and
contractors against members of the university community.

Sexual harassment is especially serious when it compromises the relationship between teacher and
or supervisor and employee because it involves an abuse of power inherent in the supervisor's posit
Through control over grades, evaluations, recommendations, wages and promotions, an instructor o
supervisor can have a decisive influence over the career of a student, staff person or faculty membe
the university and beyond. When, through fear of reprisal, a student, staff member or faculty memb
 submits to or is pressured to submit to unwanted sexual attention, the university's ability to carry ou
mission is undermined (#1).

It is the practice of UWM that all students and employees shall be fully informed of campus policy
procedures regarding discriminatory conduct. There shall be an active and continuing program to in
students and campus personnel of how and where to complain about discriminatory conduct both o
campus and to appropriate federal and state agencies. The Office of Diversity/Compliance has prim
responsibility to coordinate this publicity. Procedures governing complaint and appeal handling m
be found in The University of Wisconsin-Milwaukee Policies and Procedures S.45 - S.47 and UW
for faculty: UWS 13.01, Wis. Admin. Code and Chapter 111 of the Academic Staff Personnel Po
and Procedures, for academic staff; and UWM Student Discrimination Complaints S-49, and Wi
Stats, 36.12.

Attachment 7
University of Wisconsin-Milwaukee

Employees who engage in either discriminatory conduct or retaliation will be subject to appropriate
disciplinary action. Student conduct is governed by Chapter UWS 17 of the Wisconsin Administrative Code and is not affected by this policy. The dean of students is responsible for seeking resolution in which all parties are students or student organizations.

II. DEFINITIONS

A. Discriminatory Conduct

For purposes of this policy, "discriminatory conduct" is defined as conduct, either verbal or physical, employee which (1) occurs on property under the jurisdiction of the University of Wisconsin Board Regents or under circumstances where an affiliation with UWM is significant in the occurrence; an predicated on considerations of any of the following: race or color; national origin; creed; ancestry; sexual orientation; age (40 years or older); religion; disability (See the UWM Reasonable Accommodation Policy); or disabled veterans and veterans of the Vietnam era; and (3) has the purpose and effect of adversely affecting any aspect or condition of a person's education, employment, housing or participation in a university activity or program of study. UWS-System and the University of Wisconsin-Milwaukee obligated to protect students, faculty and staff from discriminatory conduct under all relevant state and federal anti-discrimination laws which include but are not limited to: Executive Order 11246, Title VII and IX of the 1964 Civil Rights Act, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act and Wisconsin Fair Employment Act.

B. Sexual Harassment

For purposes of this policy, "sex discrimination" includes sexual harassment. Sexual harassment is as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a nature, whether or not repeated, to a person of the same or opposite sex, when:

1. Submission to such conduct is made explicitly or implicitly a term or condition of an individual employment and/or status in the university course, program or activity; or

2. Submission to or rejection of such conduct is used as a basis for an employment or educational opportunity; or

3. Submission to or rejection of such conduct creates a hostile work or educational environment; or

4. Conduct is sufficiently severe and pervasive as to substantially interfere with a similarly situated reasonable person's work performance or educational experience, or create an intimidating, hostile offensive work or learning environment.

A complaint lodged against speech of a sexual nature used in the context of an instructional setting found to constitute sexual harassment only if the speech is persistent and pervasive, and not germane subject matter, or so singularly severe as to create a hostile environment. (See WSA 113.32, 20138 The following guidelines apply in allegations of protected and unprotected expressive behaviors in instructional settings:

1. An instructional setting is a setting in which a faculty member or instructor is communicating with student(s) regarding specific academic or curricular matters the instructor or faculty member is responsible for teaching. These situations include, but are not limited to, such communication in a classroom, in laboratory, during a field trip and in the instructor's office. Advising and counseling situations are not included nor are off campus social meetings regardless of the context.

2. "Expressive behavior" is conduct in an instructional setting through which an instructor seeks to communicate with students. It includes, but is not limited to, the use of visual materials, oral or written statements, and assignment of visual, recorded, or written materials. The assignment of these materials must be germane to the subject matter and have educational merit. The conduct may be found to be harassment, only if the speech is persistent, pervasive, and not germane to the subject matter, or so singularly severe as to create a hostile environment. A hearing must commence within 72 hours of to avoid disruption to the classroom.

a. Protected Expressive Behavior (¶2)
PURDUE UNIVERSITY
OFFICE OF THE PRESIDENT
EXECUTIVE MEMORANDUM NO. C-3
(Supersedes Executive Memoranda Nos. A-294, B-25, B-34, B-41, B-49, C-3 dated August 1, 1984)

November 1, 1986

To: All Officers, Administrators, Faculty Members, and all other Employees of the University

Re: Equal Employment Opportunity Program

1. Purpose

The purpose of this memorandum and its current reissue is to reaffirm University policy, and to inform all employees of University procedures for, and commitment to, equal employment opportunity, affirmative action, and nondiscrimination in employment.

11. Statement of Policy

It is the policy of Purdue University that all persons will be viewed, evaluated, and treated in any University-related activity or circumstance in which they may be involved solely as individuals on the basis of their own personal abilities, qualifications and other characteristics relevant to the situation.

The University provides equal opportunity in all phases of employment and in its policies without regard to race, religion, color, national origin, age or sex, except where age or sex is a bona fide occupational qualification. The University will not discriminate against any individual because of physical or mental handicap in regard to any position for which the individual is qualified, and shall take affirmative action to employ and advance in employment women, minorities, the handicapped, disabled veterans, and veterans the Vietnam Era.

The University promotes and reaffirms this policy through a program of positive action affecting all organizational units which are managed by, or affiliated with, Purdue University. Through this program, the University carries out the requirements of Titles VI and VII of the Civil Rights Act of 1964, as amended by the Equal Employment Act of 1972; Federal Executive Orders 11246 and 11375; the Rehabilitation Act of 1973; the Vietnam Era Veterans Readjustment Assistance Act of 1967; the Age Discrimination Unemployment Act of 1967, as amended; the Indiana Civil Rights Act of 1971, as amended; all other applicable state and federal law guidelines, and regulations, and indicates its active support of the principles of equal opportunity in employment. The University will furthermore, take affirmative action to see that these regulations and necessary activities are integrated into all University policies, procedures, and practices.

II. Authority and Responsibility

A. The President of Purdue University is responsible for the successful accomplishment of this policy. The President is authorized to take all necessary action and delegates further as follows:

1. Dr. John M. Huie, Executive Assistant to the President, has been designated as Equal Opportunity Officer (EO Office by the President and shall continue to be responsible for the University's overall compliance with the policies of equal opportunity, affirmative action, and nondiscrimination.

2. Mr. Paul C. Bayless, Director of Affirmative Action, reports to the Equal Opportunity Officer, and shall continue to be responsible for the day-to-day management of the affirmative action employment programs for both academic and nonacademic areas. This includes review of the programs; compilation, maintenance, and analysis of appropriate data conducting and encouraging action oriented programs; making periodic audits to measure effectiveness; documenting results; and giving counsel and assistance regarding equal opportunity matters.

3. Dr. Varro E. Tyler, Executive Vice President for Academic Affairs, is responsible for assisting in the identification of needs for, and facilitating the implementation of, the affirmative action plan in the academic areas, which include the faculty and professional staff of the various schools. The Executive Vice President, or designee, will confer with the E
Officer and/or the Director of Affirmative Action and advise or suggest possible remedies of alleged violations of pol
and problems arising from noncompliance.

4. Mr. Stanley J. McKnight, Director of Personnel Services, is responsible for assisting in the identification of needs for
and facilitating the implementation of, the affirmative action plan in the nonacademic areas, which include the
administrative, professional, clerical and service staffs. The Director will recommend and maintain personnel policies
consistent with the University equal opportunity program: bring to the attention of the EO Officer and/or the Director
Affirmative Action alleged violations of policy: and assist in resolving problems of noncompliance.

5. Regional Campus Chancellors will be responsible for implementing the University equal opportunity policies and pla
on their respective campuses. Each Chancellor will designate a staff member to assist in the administration and opera
of programs. In cooperation with the EO Officer and Director of Affirmative Action at the West Lafayette campus, th
designees will develop specific procedures for the conduct and monitoring of the program on their respective campus

6. The vice presidents, deans, directors, heads of schools, divisions, departments, offices, and all others exercising
supervisory or administrative control over any employee are responsible for performing their function without regard
race, religion, color, national origin, handicap, veteran status, age or sex, except where age or sex is a bona fide
occupational qualification, to identify needs for corrective and affirmative action, and generally to implement the
University's affirmative action and equal opportunity policy and plan.

B. Each individual employee is responsible for performing all duties and functions in a manner that clearly reflects and supports
Purdue University's policies of equal employment opportunity, affirmative action, and nondiscrimination in employment.

IV. Affirmative Action Plan

As a federal contractor, the University is required to develop and maintain written affirmative action plans for minorities and women
for Vietnam Era and disabled veterans; and for the handicapped. These plans further delineate individual responsibilities: present
comprehensive data analyses; identify problem areas; list action-oriented programs; and establish procedures to monitor progress in
affirmative action. Each affirmative action plan is a set of specific, result-oriented procedures to which the University commits itself
These procedures, and the efforts necessary to carry them out in good faith, are designed to ensure equal employment opportunity.
The plans are maintained by the Affirmative Action office and are available there for inspection.

V. Complaint Procedure

A. A systematic process is available (see Executive Memorandum B-29, as revised) to investigate and resolve alleged violations
equal opportunity policy. Complaints may be registered by employees, applicants for employment, and other qualified
complainants.

B. For information or assistance, persons on the West Lafayette campus should contact the appropriate person from the list belo

Faculty and Academic:
Dr. Varro E. Tyler
Executive Vice President for Academic Affairs 49-49709

Administrative/Professional or Clerical/Service:
Mr. Stanley J. McKnight
Director of Personnel 49-47395

Any employee desiring counsel or assistance:
Mr. Paul C. Bayless
Director of Affirmative Action 49-42753

C. The Affirmative Action office will be notified by the department of any complaint or grievance filed based on discrimination
harassment involving race, religion, color, national origin, age, sex or handicap.

D. All complainants are protected from interference, harassment, intimidation, or reprisal in any form.

Steven C. Beering
President
Comments are encouraged and may be directed to the Administrative Assistant to the Vice President for Business Services.

Purdue University is an equal opportunity/affirmative action employer

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URL=http://www.adpc.purdue.edu/VPBS/BPM/
Revised: September 26, 1997
EQUAL OPPORTUNITY STATEMENT

LONG FORMS
(for use in collegiate bulletins, employee handbooks and application forms)

The University of Minnesota is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, national origin, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation.

In adhering to this policy, the University abides by the Minnesota Human Rights Act, Minnesota Statute Ch. 363; by the Federal Civil Rights Act, 42 U.S.C. 2000e; by the requirements of Title IX of the Education Amendments of 1972; by Sections 503 and 504 of the Rehabilitation Act of 1973; by the Americans With Disabilities Act of 1990; by Executive Order 11246, as amended; by 38 U.S.C. 2012, the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended; and by other applicable statutes and regulations relating to equality of opportunity.

Inquiries regarding compliance may be directed to the Director, Office of Equal Opportunity and Affirmative Action, University of Minnesota, 419 Morrill Hall, 100 Church Street S.E., Minneapolis, MN 55455, (612)624-9547.

This publication/material is available in alternative formats upon request. Please contact (name, department, address, phone number).

MEDIUM FORM
(recommended for most other publications and advertising for positions)

The University of Minnesota is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, national origin, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation.

SHORT FORM
(for posters and cases of severe space limitation)

The University of Minnesota is an equal opportunity educator and employer.

DISABILITY ACCESS STATEMENTS

• For conferences, events, and activities, have someone in the unit be responsible for handling requests. In publishing registration brochures, invitations, or fliers use the following statement:

To request disability accommodations, please contact (name, department, address, phone number).

• Publications such as course syllabi, college bulletins, program brochures, class schedules, newsletters, and instructional publications must be provided in alternative formats upon request (Braille, large print, tape, electronic). For document conversion, call (612) 624-4037. In these publications, use the following statement:

This publication/material is available in alternative formats upon request. Please contact (name, department, address, phone number).

2/4/98

Attachment 9
University of Minnesota
2.1 University Policies and Statements

The University has a number of policies that relate to promoting diversity and preventing discrimination. Through University policies, as well as applicable state and federal laws, the University seeks to provide a supportive and tolerant environment in which members of this community can pursue their educational and professional objectives.

2.1.1 Regental Statement of Nondiscrimination Regarding Race, Sex, Color, Religion, Creed, National Origin or Ancestry, Age, Marital Status, Sexual Orientation, Disability, or Vietnam Era Veteran Status

As the governing body of the University of Michigan, the Regents have adopted the following policy on nondiscrimination, a version of which appears on all official University documents:

The University is committed to a policy of nondiscrimination and equal opportunity for all persons regardless of race, sex, color, religion, creed, national origin or ancestry, age, marital status, sexual orientation, disability, or Vietnam-era veteran status.

The University also is committed to compliance with all applicable laws regarding nondiscrimination and affirmative action.

Bylaw 14.06 (revised September, 1993)

2.1.2 Value of Diversity Statement

The Senate Assembly, representing the faculty of the University, passed the following statement on January 26, 1998:

The University of Michigan Senate Assembly, the elected governing body of the faculty, believes that the goals of an institution of higher learning should be to generate new knowledge, to convey knowledge to others, and to involve its faculty, students, and staff in using this knowledge to address contemporary social problems. For the University to excel in reaching these goals, the rich diversity of contemporary society is a resource that needs to be tapped. Not only does the education of students from diverse backgrounds itself address societal problems, but collaborative efforts within the University among persons with diverse points of view can facilitate the development of new ideas in our intellectual enterprise and help us to formulate creative solutions to societal problems. Civility in discourse and the generation of mutual empathy among diverse parties are crucial to the effectiveness of this process.

Our commitment to diversity means at the most basic level a willingness both to recognize the value of disparate experiences
and visions and to weave them into the fabric of our institution. Because of this, we are committed to a policy of recruiting and maintaining a culturally and racially diverse student body and faculty that are representative of contemporary society, and to assuring that these diverse influences are respected and incorporated into the structure of the University. In this way, we can provide students with the unique educational experience and intellectual stimulation that can only come from interacting with and learning to respect a broad range of people with differing backgrounds, life experiences, beliefs, and ideas.

In order for the University to retain its leadership role within the educational community, it must continue and expand upon these efforts to reach out and include all who comprise our diverse society in order to engage effectively its students, faculty, and staff with the major societal problems of the present and future. It is only through such a commitment that the University of Michigan can positively and effectively influence the future of American education and the world of the twenty-first century.

2.1.3 Interim Policy on Discriminatory Harassment

Harassing behavior based on race, color, creed, religion, national origin, sex, sexual orientation, ancestry, age, marital status, handicap, or Vietnam-era veteran status is a form of discrimination and is prohibited by University policy. Common forms of discriminatory harassment are racial, ethnic, and gender harassment. This kind of behavior threatens to destroy the environment of tolerance and mutual respect that must prevail if the University is to fulfill its purpose. The University is prepared to act to prevent or correct discrimination or discriminatory harassment on the part of its faculty and staff. See SPG 201.89.01, “Interim Policy on Discriminatory Harassment.”

2.1.4 Discrimination Based on Sexual Orientation Policy

It is the policy of the University that educational and employment decisions should be based on an individual’s abilities and qualifications and should not be based on irrelevant factors or personal characteristics that have no connection with academic abilities or job performance. An individual’s sexual orientation is among the factors which should be irrelevant to educational and employment decisions. See SPG 601.06, “Preventing Discrimination Based on Sexual Orientation.”

2.1.5 Policy Regarding Individuals with Disabilities

The University is committed to the principle of equal employment opportunities for individuals with disabilities. Towards that goal, it has a policy that sets forth the action to be taken by the University and its employees concerning employment opportunities for qualified individuals with disabilities and provides for implementation and self-policing. See SPG 201.84, “EEO Affirmative Action Policy for Individuals with Disabilities.”

2.1.6 Religious Academic Conflicts Policy

The University of Michigan as a public institution does not observe religious holidays. However, it is the University’s policy that every reasonable effort should be made to help students avoid negative academic consequences when academic requirements conflict with their religious obligations. The official University policy, which is published in the Ann Arbor Campus schedule of courses each term, states:

*It is the policy of the University of Michigan to make every reasonable effort to allow members of the University community*
to observe their religious holidays without academic penalty. Absence from classes or examinations for religious reasons does not relieve students from responsibility for any part of the course work required during the period of absence. Students who expect to miss classes, examinations, or other assignments as a consequence of their religious observance shall be provided with a reasonable alternative opportunity to complete such academic responsibilities. It is the obligation of students to provide faculty with reasonable notice of the dates of religious holidays on which they will be absent by the end of the fourth week of a full term or the end of the third week of a half term. Students who are absent on days of examinations or class assignments shall be offered an opportunity to make up the work, without penalty, unless it can be demonstrated that a makeup opportunity would constitute an unreasonable burden on the faculty. Should disagreement arise over what constitutes an unreasonable burden or any aspect of this policy, parties involved should contact the department chair, the dean of the school, or the ombuds.

2.1.7 Sexual Harassment Policy

The University seeks to provide an academic and work environment in which all members of the University community are treated fairly and equitably and with the respect and dignity necessary to allow each member of the community to realize his or her full potential. Sexual harassment is contrary to this goal and is not tolerated at the University. See SPG 201.89 and Chapter 11, “Sexual Harassment.”

Faculty Handbook: Diversity and Nondiscrimination:
UIUC Employee Handbook

Chapter Two - Introduction to the University

The University of Illinois at Urbana Champaign

Introduction to the University of Illinois at Urbana-Champaign
The University of Illinois was chartered in 1867 in response to the Federal Land Grant Act. The University has three major campuses, the University of Illinois at Chicago (UIC) the University of Illinois at Urbana-Champaign (UIUC) and the University of Illinois at Springfield (UIS).

Through departments and programs as diverse as Classics, Veterinary Medicine, Supercomputing Applications, Labor and Industrial Relations, and Housing, the University carries out its mission of advancing human welfare and knowledge through research, teaching, and public service. The University’s motto is Learning and Labor.

The structure of the University of Illinois at Urbana-Champaign
The chief administrative officer of the University is the President. Each major campus is directed by a Chancellor. The Chancellor is assisted in administering the campus by four vice chancellors in the areas of research, academic affairs, administration and human resources, and student affairs. All departments, schools, and colleges report to the Chancellor or to one of the four vice chancellors, usually through a dean or director. The beginning sections of the Student/Staff Directory provide detailed information on the place of each department in the University and campus structure and list the names of the current campus and University officers.

Enrollment at UIUC is typically near 36,000 students. Full-time staff include approximately 2,800 faculty, 2,000 administrative and academic professionals, and 5,500 Staff employees.

The administration of Staff employment
Staff employment is regulated by the Personnel Services Office and administered by employing departments and units across campus. Each Staff employee has a supervisor who is responsible for directing his/her work and for seeing that University and campus personnel policies affect that employee fairly and impartially. Each supervisor reports, directly or through a chain of command, to a dean, director, department head or administrative officer.

Your role as a staff member
No two jobs at the University of Illinois at Urbana-Champaign are exactly alike, nor are any two employees. You have a unique contribution to make to the accomplishments of this outstanding institution.

We value your past training and experience as well as your skill, dedication, and enthusiasm, and we look forward to your accomplishments as a member of the UIUC staff. As your skills and interests expand, we think you will find many opportunities here for job growth and advancement to match these changes.

Staff Employment at the University of Illinois

Civil Service System
Like all other state colleges and universities in Illinois, the University of Illinois is under the jurisdiction of the State Universities Civil Service System (SUCSS). Created by the state legislature in 1952, the SUCSS is intended to ensure fair and equitable treatment of all employment applicants and employees under its authority.

The policies and procedures of the SUCSS are contained in the State Universities Civil Service System Statute and Rules. A copy of Statute and Rules can be found in each departmental office and in the Reference Department of the Main Library. Employees may also review or obtain a copy by stopping by the Personnel Services Office, 52 East Gregory Drive, Champaign.

Other rules governing Staff employment
Additional or expanded policies governing Staff employment are found in Policy and Rules for Staff Employees, the official policy of the University of Illinois, and the Campus Administrative Manual, which contains policies in effect on this campus. Some topics—for example, the inclement weather policy—are found in only one policy source (in this case, the Campus Administrative Manual). Others, such as layoff, are discussed in Civil Service, University and campus policies. These manuals are maintained in each departmental office and in the Reference Department of the Main Library, and can be accesses via the Personnel Services home page at www.pso.uiuc.edu. Employees governed by
collective bargaining agreements are also bound by the terms of their agreement.

The Personnel Services Office has the major responsibility for the application and administration of all of the rules governing Staff employment at the University of Illinois at Urbana-Champaign.

Drug-free workplace
Employees are responsible for the maintenance of a drug-free workplace in compliance with applicable state and federal law. The unlawful possession, use, dispensation, sale or manufacture of controlled substances is prohibited on University premises.

Affirmative action/nondiscrimination policy
The University of Illinois is committed to the most fundamental principles of academic freedom, equality of opportunity, and human dignity. Decisions involving students and employees will be based on individual merit and be free from invidious discrimination in all its forms, whether or not specifically prohibited by law.

The policy of the University of Illinois is to comply with all federal and state nondiscrimination, equal opportunity, and affirmative action laws, orders, and regulations. The University of Illinois will not discriminate against any person because of race, color, religion, sex, national origin, ancestry, age, sexual orientation, marital status, disability, unfavorable discharge from the military, or status as a disabled veteran or a veteran of the Vietnam era. Nondiscrimination policies apply to admission, employment, and access to and treatment in all University programs and activities.

The Affirmative Action Office
The Chancellor has established the Office of Affirmative Action (OAA), 333-0885, to develop, coordinate, and monitor the Affirmative Action Program for UIUC. The OAA works to expand the employment opportunities of those protected under state, federal, and campus affirmative action/equal opportunity commitments and to secure those already employed from all forms of discrimination. In addition the office is responsible for activities designed to eliminate all forms of sexual harassment from the campus.

The OAA receives and investigates complaints alleging sexual harassment or discrimination. Staff members are available to respond to complaints and inquiries. They can answer your questions, take reports, and give you advice on informal complaint and formal grievance procedures. All discussions with the office are confidential. You may request information and advice anonymously.

Employment of relatives
The employment of relatives is permitted, subject to the following limitations:

- An individual cannot take part in or influence decisions involving a direct benefit to a member of his/her family. "Family" is defined as the individual’s grandparents and all their descendants, the spouses of the descendants, and the spouse of the employee.
- The University is barred from contracting with any individual or firm where an owner, officer, or primary employee is an employee of the University or the spouse of an employee.

Questions on the employment of relatives should be directed to Labor and Employee Relations, Personnel Services Office, 333-3105; questions on the regulation governing contracting should be referred to Purchasing, 333-3508.

Conflict of interest
As an employee, you may not engage in activities on or off the job that conflict with your hours of work or your job performance, or that might reasonably be considered to be in conflict with your University obligations and responsibilities. If you have questions about whether an activity constitutes a conflict of interest, discuss it with your supervisor. Questions may also be referred to Labor and Employee Relations, Personnel Services Office, 333-3105.

On to Chapter Three

Back to the Table of Contents

University of Illinois at Urbana-Champaign

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Personnel Services Office
University of Illinois at Urbana-Champaign

This page brought to you by:
Mark Overniner.................zorkahn@uiuc.edu
It is the policy of Northwestern University not to discriminate against any individual on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, age, disability, or veteran status in matters of admission, employment, housing, or services or in the educational programs or activities it operates, in accordance with civil rights legislation and University commitment.

Any alleged violations of this policy or questions regarding the law with respect to nondiscrimination should be directed to Director of Equal Employment Opportunity, Affirmative Action, and Disability Services, 720 University Place, Evanston, Illinois 60208-1147, phone (847) 491-7458; Office of the Provost, Rebecca Crown Center, Evanston, Illinois 60208-1101.
Affirmative Action and Equal Opportunity

True learning requires free and open debate, civil discourse and tolerance of many different individuals and ideas. We are preparing students to live and work in a world that speaks with many voices and from many cultures. Tolerance is not only essential to learning, it is an essential to be learned. The University of Wisconsin-Madison is built upon these values and will act vigorously to defend them. We will maintain an environment conducive to teaching and learning that is free from intimidation for all.

In its resolve to create this positive environment, the UW-Madison will ensure compliance with federal and state laws protecting against discrimination. In addition, the UW-Madison has adopted policies that both emphasize these existing protections and supplement them with protections against discrimination that are not available under either federal or state law.

Federal and state laws provide separate prohibitions against discrimination that is based on race, color, creed, religion, sex, national origin or ancestry, age, or disability. State law additionally prohibits discrimination that is based on sexual orientation, arrest or conviction record, marital status, pregnancy, parental status, military status, or veteran status. The application of specific state prohibitions on discrimination may be influenced by an individual’s status as an employee or student.

Department of Defense personnel policies governing enlistment and commissioning of armed forces personnel and awarding of Reserve Officer Training Corps scholarships to UW-Madison students do discriminate on the basis of sexual orientation. The University of Wisconsin Board of Regents and UW-Madison faculty, staff and student governance groups have registered their strong opposition to this discrimination and urge the Department of Defense to change its policy.

University policies create additional protections that prohibit harassment on the basis of cultural background and ethnicity. Inquiries concerning this policy may be directed to the appropriate campus admitting or employing unit or to the Equity and Diversity Resource Center, 179A Bascom Hall, 500 Lincoln Drive, Madison, WI 53706, 608/263-2378 or (TDD) 608/263-2473.

To top
Record of Committee Meetings

Below is a listing of all meetings of the Committee.

Committee Meetings: Dates, Times, and Number of Hours

(31 meetings, total time in meetings 74.5 hours)

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APPENDIX V

Faculty, Administrator, Community Resources

1. Bill Abbett  
   Former Dean, College of Human Medicine, and Senior Advisor to the Provost

2. Denise Anderton  
   Assistant Vice President for Human Resources

3. Brent Bilodeau  
   Student Services Assistant  
   Office of the Vice President for Student Affairs and Services

4. Jay Blanchard  
   Assistant to the Ombudsman  
   Office of the Ombudsman

5. Angela Brown  
   Director, University Housing and Food Services

6. Elsa Cole  
   General Counsel, NCAA

7. Lynn Conway  
   Member of University of Michigan Gender Identity Working Group  
   Professor Emeritus, University of Michigan

8. Rachel Crandall  
   Faculty Member  
   School of Social Work and Alumna

9. Alice Dreger  
   Associate Professor  
   Lyman Briggs School

10. Cynthia Fridgen  
    Associate Professor, College of Agricultural and Natural Resources  
    Consultant, Office of Affirmative Action Compliance and Monitoring  
    Acting ADJB Coordinator

---

Notes taken during the meetings/discussions with these individuals and used in the Committee's deliberations are available in the Office of the Secretary for Academic Governance.
11. Deborah Galvan  
   Senior Specialist-Advisor,  
   Assistant Director, Support Services Program

12. Susan Green  
   Administrative Assistant  
   ADJB and FOIA Offices

13. Rena Harold  
   Professor, School of Social Work  
   College of Social Science

14. Cindy Helman  
   Assistant Director, Department of Residence Life

15. Paul Hunt,  
   Associate Vice President for Research and Graduate Studies

16. TJ Jourian  
   Undergraduate Student

17. Lee June  
   Assistant Provost for Academic Student Services and Multicultural Issues  
   Vice President, Student Affairs and Services

18. Karen Klomparens  
   Assistant Provost for Graduate Studies  
   Dean of the Graduate School

19. Bill Latta  
   Assistant Director, Office of Planning and Budgets

20. Lisa Lees  
   Former MSU Employee

21. Jo Ann McFall  
   Senior Specialist, School of Social Work  
   Assistant Director for Field Education

22. Michael Rubner  
   Professor, James Madison  
   Faculty Grievance Official

23. Paulette Granberry Russell  
   Director of the Office of Affirmative Action Compliance and Monitoring  
   Senior Advisor, President's Office
24. Jayne Schuiteman  
   Assistant Professor, Women's Resource Center  
   Director of Women's Studies

25. Stanley Soffin  
   Professor, Journalism  
   University Ombudsman

26. Barbara Steidle  
   Assistant Provost for Undergraduate Education and Academic Services

27. Madeleine Townsend  
   Former MSU Employee

28. Joy Tubaugh  
   Former ADJB Coordinator
APPENDIX VI
Most of the written materials examined by the Committee are included as attachments to Dr. Abeles’ memo in Appendix III above. Attachment 1 is the MSU Anti-Discrimination Policy, the Procedures for the Anti-Discrimination Judicial Board, and the ADJB User’s Manual. Attachment 2 is the ASMSU proposal and the packet of materials provided by ASMSU. Attachments 3 and 4 include the UCFA, UCSA, UGC, and COGS responses to ECAC’s request for reactions to the ASMSU proposal. Attachment 5 is the survey of CIC institutions on gender identity/transgender issues prepared by the Office of Affirmative Action Compliance and Monitoring, plus a compilation of nondiscrimination policies from CIC institutions.

A sampling of other written materials reviewed by the Committee is attached.
Added to List of Protected Categories

Rutgers (1998): “people who have changed or are in the process of changing their sex”

Portland, Oregon (1998): gender identity, defined as “a person’s actual or perceived sex, and includes a person’s identity, appearance, or behavior, whether or not that identity, appearance or behavior is different from that traditionally associated with the person’s sex at birth.” (similar to Ann Arbor’s definition)

New Orleans (1998): in addition to the text quoted in the ASMSU supplied materials, the ordinance states, “Nothing in this Chapter shall prohibit an employer from prohibiting cross-dressing in the workplace or while an employer is acting in the course and scope of his or her employment.” Cross-dressing does not include “the regular wearing of clothing, cosmetics, footwear and/or other accoutrements which is appropriate to the gender other than his or her biological or legal gender at birth with which an applicant identifies if the employee or applicant provides the employer with the written statement of a licensed doctor or other health care professional certifying that the employee or applicant presents the characteristics of gender identification disorder or another similar status or condition and that the employee or applicant intends prospectively to attire and conduct himself or herself for the foreseeable future in the employee’s employment and workplace or workplaces in the manner appropriate for persons of the gender with which he or she identifies.”

Louisville (1999): in addition to the text quoted in the ASMSU supplied materials, the ordinance states, “Nothing herein shall be construed to prevent an employer from enforcing an employee dress policy which policy may include restricting employees from dress associated with the other gender.”, and “Nothing herein shall be construed to restrict an employer’s right to designate gender-specific restrooms or shower facilities.”

Definition of Sexual Orientation

Seattle (1998): “‘Sexual orientation’ means actual or perceived male or female heterosexuality, bisexuality, homosexuality, transsexuality, or transvestism and includes a person’s attitudes, preferences, beliefs and practices pertaining thereto.”

Ypsilanti (1997): In addition to the text quoted in the ASMSU supplied materials, the ordinance says: “[T]he following practices shall not be violations of this Chapter: (13) To restrict use of lavatories and locker room facilities on the basis of sex.”
Subj: ITNS Press Release - Rutgers Amends Anti-Discrimination Policy
Date: 98-02-26 21:40:07 EST
From: penn45@ma.ultranet.com

IT'S TIME, AMERICA! PRESS RELEASE FOR IMMEDIATE RELEASE
RUTGERS AMENDS NON-DISCRIMINATION POLICY
Contact: Ben Singer, bensing@eden.rutgers.edu.

[East Brunswick, NJ February 26, 1998.] After almost 2 years of difficult struggle over transgender and gender-variant inclusion in the Non-Discrimination Policy at Rutgers University, Executive Vice President Joe Seneca released a memo which expanded discrimination protections at Rutgers. University to include "transsexuality." The change effectively expands the policy to cover transgender.

The change marks the end of a long and difficult struggle, lead by Rutgers Graduate student Ben Singer, to advocate on behalf of all transsexual and gender-variant persons at Rutgers. A primary difficulty in the negotiations was the apparent confusion on the part of the Rutgers attorneys regarding the meaning of "transgender," which was resolved by re-interpreting the category of Sex, already covered by the University's policy, as "people who have changed or are in the process of changing their sex." While the final phrase ostensibly limits protections to those "transgender," it is believed that
the phrase may be useful in protecting gay gender-variant men and women.

Singer's view of the made-to-order administration's conserv

"Transgender," represent an apparent attempt on the part of the conservative, 
and sometimes reactionary, administration to maintain its transgender-status quo. He need to frame the protections in a framework in 

Transgenderism or transsexuality is evidence of the conservative

The questions asked by the university administrators indicate that the chief 
objections were fixated upon "men in dresses" showing up in classrooms.

This perspective resulted in resolving the negotiations by taking a 
minimalist approach: that of allowing people to change from one sex to the 
other.

"A more progressive solution would have been to recognize the inherent
fluidity of gender," said Singer. "So, people who choose not to use sex
bathroom facilities or who use the facilities of the opposite sex, or who look
like men..." In addition, he noted, the policy change includes a
necessity of intentionality -- and specifically the intent to change sex --
which was not included in the gender-variant protections put in place against
violations of the gender-variant protections. The need to self-identify as
necessary, he said. "The implication is that one must have access to
self-identified
language before they can be protected, a luxury many gender-variant people
don't have," he said.

It is believed that this is the first anti-discrimination change resulting
in transgender protections in the academic community which resulted from a
long and difficult series of negotiations.

Ben Singer is a co-founder of the Transgender Health Action Coalition
(THAC), an It's Time, America! (IT) affiliate based in Philadelphia, PA.

In addition,
he is a transman and activist in the gender community.

It's Time, America! has advocated on behalf of transgendered and other
gender-variant persons through state-level chapters since 1994.

When reposting, please credit the It's Time! News Service (ITNS). To
subscribe to ITNS, send email to penn45@ultranet.com. When doing so,
please indicate whether or not you wish to receive remailed news.
Ann Arbor Adopts Historic Policy on Gender-Identity Protection

On March 1, 1999, the Ann Arbor City Council voted unanimously to add "gender identity" to its nondiscrimination ordinance. Ann Arbor, one of a dozen U.S. cities offering this protection, now conceivably has the most progressive municipal policy in the nation in terms of nondiscrimination protection on the basis of gender identity;

Gay Council Member and Mayor Pro Tem Chris Kolb initiated the legislation. Sandra Cole, Ph.D., Professor and Director of the University of Michigan Health System Comprehensive Gender Services Program and WRAP Advisory Committee member, and Jim Toy, M.S.W., UM Equity and Diversity Consultant and WRAP Secretary, provided the language for the ordinance change. Jim was a co-drafter of Ann Arbor's 1972 nondiscrimination ordinance, in which "sexual orientation" was included as a protected class.

In the ordinance updated on March 1, "gender identity" is defined as "a person's actual or perceived gender, including a person's identity self-image, appearance, expression, or behavior, whether or not that identity, self-image, appearance, expression, or behavior is different from that traditionally associated with the person's sex at birth as being either female or male." The Ann Arbor City Council took the additional protective step of defining "perceived" as referring to "the perception of the person who acts [in a discriminatory manner], and not to the perception of the person for or against whom the action is taken."

Several transgendered people and their allies, including Sandra Cole and Jim Toy, testified before City Council in support of the proposed ordinance change. Sandra Cole read a letter in support of the change signed by attorney Rudy Serra, Co-Chair of the Sexual Orientation and Gender Identity Committee created by the Open Justice Commission, Michigan State Bar Association. Robert Trombley, WRAP board member, read a letter signed by WRAP President Linda Lombardini in support of the proposed amendment.

Council member Kolb spoke passionately for six minutes in a prepared speech before the vote was taken. He said, "I know that [the law] wont end discrimination, it wont end bigotry and it wont end hate crimes, But it will help an individual faced with a discriminatory act ... to stop it."

After the Council's decision, community members shared their reactions. A transgendered member of the Ann Arbor community who had testified in support of amending the ordinance stated, "This is a great step forward for equality under the law for all people. Now its time to work on this inclusion at the state level." Jim Toy observed, "While no community is perfect, Ann Arbor's support of the civil rights of persons of any gender identity or sexual orientation sends the message that we all are welcomed and affirmed in these essential components of our identity."

Sandra Cole has declared, "This newly-amended ordinance further amplifies Ann Arbor's presence in the national effort toward nondiscrimination of transgendered individuals. I am proud to be a part of this continuing pursuit of justice and equality."

Frank Roehler/Laura Ashley, president of Crossroads Chapter, a peer social advocacy support group for
crossdressers, transgendered, and transsexual people, has issued a statement concerning the amendment: "The protection under the new ordinance] is extended to include actual or perceived gender identity, HIV status, as well as height and weight, and mental limitations. As president of Crossroads Chapter Inc., I wish to thank the Ann Arbor City"

Council for passage of this important human rights ordinance. Special thanks also to Chris Kolb, who sponsored the ordinance revision, and Sandra Cole and Jim Toy, who assisted in the research and wording to make it clear and comprehensive. This ordinance will offer protection to a large group of people that are usually the targets of the discrimination." Frank/Laura was one of the testifiers in support of the amendment at a City Council meeting prior to the vote.

For further information, contact Sandra Cole (734-528-0895, fax 528-0986, sscole@umich.edu) or Jim Toy (734-764-5191, fax 763-2891, ayetfin@umich.edu) -- Jim Toy

More information:

Text of the city ordinance.
A chronology of Ann Arbor progress.
Comments by Sandra Cole.
First announcement.
Date: Thu, 28 Jan 1999 01:25:15 -0500
From: Angela Bridgman <trollopl@earthlink.net>
Subject: Press Release - Fairness Campaign, ITKY join forces to pass anti-discrimina

PRESS RELEASE - IT'S TIME, KENTUCKY! - LOUISVILLE, KENTUCKY

In a landmark decision Tuesday night, Jan. 26, the Louisville Board of Aldermen passed what is popularly known as the Fairness Amendment...at least, part of it. Four previous failed attempts sought protection from discrimination in housing, public accommodations, and employment, based on sexual orientation.

This time, Fairness was introduced as three separate bills covering, respectively, Employment, Housing, and Public Accomodations. All three also had, for the first time, inclusive language for the transgender community. A previous failed attempt at passage of the Fairness Amendment, in 1997, had gender-inclusive language in it, originally, but it was removed prior to voting. This time, transgender protections made it into the final version. The Employment bill passed, the other two were tabled, and sent back to committee for further review. A bill can live for six months in Committee, so our struggle is not yet finished here.

Gender-inclusive language originally drafted in the bill was much more liberal than what made final draft, largely because of concerns from the local business community. Fairness' lawyers, and the Fairness Campaign itself fought to keep the more liberal transgender-inclusive language in the bill, right up to the eleventh hour, but, in the end, the lawyers representing the business community had the final say, since the swing vote, Aldermanic President Steve Magre marches to the beat of the Louisville business community.

"The language of this was altered to answer the concerns of the local business community," said Anne Casebeer, Vice-Chair of ITKY, and Chairwoman of It's Time, Kentuckiana!, a sub-group of both ITKY and ITIN, which handles the Louisville metro area, including Southern Indiana. "As a member of the local business community, I plan to concentrate my efforts for the future on building understanding for TG people's issues with business leaders, and refining language to get adopted later that has everyone's approval. I highly recommend that other TG activists do the same thing in their areas, because most cities' elected officials march to the beat of the local business community, and if we have their support, passage is certain. That is the difference this year - Alderman Magre's major concern was for the impact on business, and that was answered. We have imperfect language this time, but if we work and talk with the business community, I believe we can show them how our rights won't interfere with their business operations. Passage of Fairness as it stood Tuesday night, while flawed, will be good for Louisville, and is very good for our growing local TG community." Anne is also a member of the Okolona Business and Professional Association. (Okolona is a community located in the southern part of the Louisville metro area.)

Originally, Gender Identity was defined in the bill as simply "Having an identity not traditionally associated with one's biological maleness or femaleness." The final draft of the bill defined gender identity as 1) Having an identity as a result of having a sex change surgery, or 2) Manifesting, for reasons other than dress, characteristics not traditionally associated with an individual's biological maleness or femaleness." Additionally, these two provisions were added: "Nothing herein shall be construed to prevent an employer from enforcing an employee dress policy which policy may include restricting employees from dress associated with the other gender." "Nothing herein shall be construed to restrict an employers right to designate gender specific restrooms or shower facilities."
"That language is problematic to some segments of the transgender community," said Angela Bridgman, Chairwoman of ITKY, "particularly to the pre-operative, transitioning TS, or to the individual who may wish to begin a gender transition. Also, there is no provision in this legislation to afford protection to 'recreational crossdressers', who practice crossdressing only on their own time, and off company premises. Such an individual, with the above language, could still face repercussions at work for an activity which takes place on the employee's own time, and not on his or her company's premises. Particularly for the individual who wishes to begin a transition. One must live and dress, for one year, in the role of the 'target gender' before he or she can be considered a viable candidate for sex-reassignment surgery, and yet, with that language, an employer could block that individual's ability to ever transition, thus preventing them from becoming a candidate for sex-reassignment surgery, the one thing that would afford them protections under the law."

ITKY would like to commend the Fairness Campaign for their support of gender-inclusive language in the Fairness Amendment this time out. They have worked very hard on this for fifteen years. But it has been only within the last two that anything of significant has been achieved in regard to gender. "The nexus came when a young firebrand named Angela Bridgman came to Louisville, a mere one and a half years ago, and formed ITKY," said Dawn Wilson, longtime transgender activist, and Chair of It's Time, Lexington! a sub-group of ITKY, covering Lexington and the eastern half of Kentucky. By joining forces with Dawn Wilson, Anne Casebeer and others, ITKY became a driving force for gender inclusion.

The Fairness Campaign acknowledged in their victory celebration that, without the help of the transgender community, no one there would have had anything to celebrate last night, and they vowed to continue the struggle for better, fairer transgender-inclusive language. "This is amazing, the victory, and the unity which has been achieved in so short a time, between the trans-community, and the rest of the queer community", said Angela Bridgman. "Just two short years ago, who thought that we would be here tonight? I personally have lobbied, fought and struggled for transgender rights for five years now...but only for a year and a half in Louisville...the Fairness Campaign has struggled for fifteen years. We have just eradicated thirteen and a half years worth of work...I am quite pleased."

"It is not perfect by any means, but to win a battle at home such as this one is very significant, indeed. It shows that cooperation between the Trans and GLB community can produce positive results," said Dawn Wilson. "This has been a Team effort from start to finish. Fairness and ITKY worked together, no big I's or little u's. Marjorie and I worked in Lexington and the state, Anne and Angela worked Louisville and the state. When it was on the line, we came together and did our best as a unit, not as individuals."

"While the language for gender identity, in it's final form was far from perfect, it is, at least, in the bill...which is more than I can say for the other five metro areas I have lived in my life, all of whom are larger, more populous, and considered to be more cosmopolitan than Louisville...those areas being Chicago, Orlando, Austin, Texas, New York, and Philadelphia," commented Angela Bridgman.

Not that our work is by any means done. ITKY will not abandon the struggle until ALL people, regardless of gender identity, sexual orientation, and race are no longer discriminated against... we have the
same pledge from Fairness. What a difference two years makes! "A pyrrhic victory, to be sure," commented Angela Bridgman, "for the Louisville transgender community, and ITKY, for we did not get the language we needed, and wanted, but we got something...and it took us one and a half years to do it. That shows what can happen when the GLB and T communities unite, and stand together, all for one, and one for all!"

END

Louisville, Ky., February 1, 1999, 12:59 pm.

We just received word that Mayor Dave Armstrong of Louisville has just signed the Fairness Ordinance that was passed last Tuesday. The ordinance protects citizens against workplace discrimination on the basis of their sexual orientation or gender identity.

Angela F. Bridgman
Chairwoman, It's time, Kentucky!
From: Lori Buckwalter <transgal@yahoo.com>
Subject: Press Release: Portland Oregon Resolution For Gender Identity Protections

Date: Wed., Dec. 23, 1998 10:00 a.m.

IT'S TIME, OREGON! PRESS RELEASE
FOR IMMEDIATE RELEASE

Contact:
Lori Buckwalter
Director, It's Time, Oregon!
(transgal@yahoo.com)
(503-234-4704)

Portland Oregon City Council Passes Gender Identity Protections

Mayor Vera Katz and Portland City Council Mandate Anti-Discrimination Measures:
Portland Resolves to Respect Rights of Transgendered and Transsexual Employees

Landmark Resolution Is Hailed By Community Leaders

Portland, December 23, 1998:

Portland's City Council today unanimously approved a resolution to take specific steps to prohibit discrimination based on "gender identity" within its workforce, in session at Portland City Hall. The resolution will start a process of expanded involvement by the City in creating protections in the public and private sectors. It states that "the City is in a position to demonstrate, through its own internal policies and procedures, the viability of a workplace which respects the rights of transgendered and transsexual people..."

Specific items of resolution include:

1) Directions to city agencies to include gender identity in non-discrimination guidelines for "employees as well as appropriate guidelines for use of City facilities";

2) A request to expand employment "mediation services to resolve discrimination claims based on gender identity";

3) Exploring employee health insurance options "which could cover necessary medical treatment for transgendered and transsexual people";

4) Exploring "whether city EEO certification program can be expanded to include non-discrimination on the basis of gender identity".

For the purposes of this resolution, the definition of gender identity refers to "a person's actual or perceived sex, and includes a person's identity, appearance, or behavior, whether or not that identity, appearance or behavior is different from that traditionally associated with the person's sex at birth."

Gender identity is thus a universal human right, of great importance to individuals who may be considered "variant" from traditional gender stereotypes, including transsexual and transgendered people, who are particularly vulnerable to employment discrimination.

Other cities have made general statements of support for non-discrimination, but significantly, the City of Portland has made specific proposals to create a practical model workplace. Community leaders who testified expressed hope that this example of leadership on the part of the City will encourage expanded education and
protections in private industry.

The resolution was endorsed by representatives of groups such as the Human Rights Campaign, Basic Rights Oregon, It's Time, America!, the Metropolitan Community Church, the Lesbian Community Project, Equity Foundation, Northwest Gender Alliance, TransPort, Phoenix Rising, and others.

Lori Buckwalter, Director of It's Time, Oregon!, an organization that promotes civil rights initiatives concerning gender identity, was involved in the work leading to this resolution. She states, in response to the City Council vote: "We are deeply grateful for the leadership role which the City has taken, and for the individual courage and compassion of the Mayor and Commissioners. The concern for the dignity of all the people of Portland, which we've come to expect from this city, is reaffirmed by this historic action. This initiative is supported by a wide range of sexual minority community leaders as well, and this is a sign of growing mutual respect within these communities."

Buckwalter continues, "There is still much to be done, to develop constructive trust relationships between those who have experienced gender identity discrimination, and public and private officials. Issues of employment and healthcare are primary, and this resolution creates a tangible prospect that we can cooperate to dispel decades of misunderstanding, and make a real difference in people's lives. Portland is now a place of unique opportunity to start this important work."
9-0 vote tonight, the Boulder Colorado city council gave final approval to a new ordinance in the city's human rights ordinance, to include protections for gendered people.

"This vote, Boulder joins Denver in protecting TGs as well as GLBs -- both passed their human rights ordinances in 1991, setting the stage for the Denver2 and that law's ultimate defeat in the United States Supreme Court."

The Boulder ordinance was as non-controversial as it is possible for any ordinance to be -- even an editorial in the Boulder "Daily Camera" a few weeks ago that was clearly deliberately designed to stir debate and oversize around this proposal, failed to do so.

The changes for which the new ordinance will go primarily to Kathy Wilson of Ft Collins and Wendi Madsen of Boulder -- they did the bulk of the work to get the text and definitions, the concepts written into the proceedings for these specific language of the new ordinance, and the supporting documents, will be available within a day or so, on the web.

t: Boulder Colorado gets noticed! <g>
Thur, 10 Feb 2000 12:23:15 EST

FALWELL CONFIDENTIAL: FALWELL CONSPIRACY EXPLOSION!

MURDER OF BARRIE LEE WALKER: A PART OF THE FALWELL CONSPIRACY

Boulder City Council passes TG protections...
> flaunt their sexual deviances.
WE HAVE DONE IT! We started over 23 months ago working with our local Human Relations Commission and City Council Members, and tonight at midnight it becomes the law. The City of Pittsburgh passed legislation which amends their anti-discrimination ordinances to include TGs by defining the term "sex". This definition did not exist under the ordinance before. The definition is as follows: Sex: the gender of a person, as perceived, presumed or assumed by others, including those who are changing or have changed their gender identification.

This change was included in a bill that the Human Relations Commission of Pittsburgh proposed to City Council. The purpose of this bill was to re-codify existing ordinances to meet HUD standards. By making changes to the ordinances Pittsburgh is now entitled to an additional $27,000 annually in federal funds. The definition of sex was not actually necessary for this, but it was politically expedient to include this new definition in this bill. Sometimes a bitter but appropriate and right pill is easier to swallow if it's taken with something sweet.

We've been very quiet about what has been going on here in order not to bring a lot of attention to a very right and necessary piece of legislation. The final vote of the City Council was 8 to 1 in favor, all council persons understanding the significance of the gender language. There was never a call for a public hearing, which the one dissenting vote could have requested. Today is exactly 10 days after the vote. Midnight tonight it automatically becomes law with or without the signature of the mayor who could have vetoed the bill, and called for a public hearing also. As of 6:45 PM we don't know if Mayor Murphy signed it or not, however we believe it was his intention to do so, because he understands it's the right thing to do.

We here in Pittsburgh are all very proud of our local government officials and their understanding of these human rights issues. We worked with the system and the system worked for us. Now our hope is that others work locally to accomplish this same goal. It's a web of understanding and acceptance of diversity that is slowly growing and eventually will cover everyone of us, but we all have to continue to work for it to happen.

Wendi Miller
To: UGC06@MSUAI
From: @CGA.MSU.EDU <wilkin15>
Subject: RE: Transgender inclusion

Received: by TAOMLR3@MSU ; Mon, 10 Mar 97 14:50:10
Received: from MSU (NJE origin SMTP3@MSU) by MSU.EDU (LMail V1.2a/1.8a) with
BSMTP id 8617; Mon, 10 Mar 1997 14:50:07 -0500
Received: from pilot06.cl.msu.edu by msu.edu (IBM VM SMTP V2R3) with TCP;
        Mon, 10 Mar 97 14:50:05 EST
Received: from HTTP2.NT_CGA (cga135.cga.msu.edu [35.8.44.135])
        by pilot06.cl.msu.edu (8.7.5/MSU-2.10)
        id OAA118272; Mon, 10 Mar 1997 14:49:47 -0500
Received: by HTTP2.NT_CGA with Microsoft Exchange (IMC 4.0.837.3)
        id <01BC2D62.460C2FE0@HTTP2.NT_CGA>; Mon, 10 Mar 1997 14:49:36 -0500
Message-ID: <c=US%a=_%p=CGA%l=HTTP2-970310194935Z-7310@HTTP2.NT_CGA>
From: Roger Wilkinson <wilkin15@CGA.MSU.EDU>
To: "GROTY; C KEITH" <PER46@msu.edu>
Cc: "'Robert Noto'" <ugc06@msu.edu>
Subject: RE: Transgender inclusion
Date: Mon, 10 Mar 1997 14:49:35 -0500
X-Mailer: Microsoft Exchange Server Internet Mail Connector Version 4.0.837.3

PP 1=Help 2=Exit 3=Return 4=Query 5=Action 7=Backward 8=Forward
Keith, I am sending this on to Noto, in case you did not.

-----
From: GROTY; C KEITH
Sent: Monday, March 10, 1997 11:54 AM
To: wilkin15@pilot.msu.edu
Subject: Transgender inclusion

-----
To: wilkin15@pilot.msu.edu
From: PER46 <Keith.Groty>
Subject: Transgender inclusion

Date: Monday, 10 March 1997 11:52am ET
To: Roger.Wilkinson,
    Robert.Noto
From: Keith.Groty@MSUAIS
Subject: Transgender inclusion

FYI

-------------------------------------------- (Enclosure 1 follows)--------------------------------------------

To: PER46@MSUAIS
From: @cps.msu.edu <lees>
Subject: Transgender inclusion

Received: by TAOMLR3@MSU ; Fri, 07 Mar 97 13:38:08
Received: from MSU (NJE origin SMTP@MSU) by MSU.EDU (LMail V1.2a/1.8a) with
BSMTP id 5699 for <per46@MSU>; Fri, 7 Mar 1997 13:38:08 -0500
Received: from sargasso cps.msu.edu by msu.edu (IBM VM SMTP V2R3) with TCP;
Fri, 07 Mar 1997 13:38:06 EST
Received: from kate cps.msu.edu (kate cps.msu.edu [35.9.20.231])
   by sargasso cps.msu.edu (8.8.5/8.8.5) with ESMTP id NAA13719
   for <per46@msu.edu>; Fri, 7 Mar 1997 13:37:52 -0500 (EST)
Received: (from lees@localhost)
   by kate cps.msu.edu (8.8.5/8.8.5) id NAA12499;
   Fri, 7 Mar 1997 13:37:51 -0500 (EST)
Date: Fri, 7 Mar 1997 13:37:51 -0500 (EST)
Message-Id: <199703071837.NAA12499@kate cps.msu.edu>

PF 1=Help 2=Exit 3=Return 4=Query 5=Action 7=Backward 8=Forward  EMCC0000
Here is some detailed information on other recent legislation which may be of use to the MSU lawyers.

-- Lisa Lees

Cambridge Passes Historic Legislation

OR IMMEDIATE RELEASE

Contact: Nancy Nangeroni
3 New Orleans 3/7-3/11: 504-529-7269
3 Cambridge after 3/12: 617-497-6928, nrn@gendertalk.com

On Monday, February 24, by unanimous vote of the City Council, the City of Cambridge enacted legislation protecting freedom of gender expression and identity which is the most inclusive, comprehensive, and straightforward of any such legislation passed anywhere.
The groundbreaking amendment to the city's human rights ordinance protects the rights of all people to express and identify with whatever combination of masculinity and femininity suits them. It also provides for determination of sex, when required for application to same-sex housing, to be based on "social and identity roles, rather than anatomy." As such, it is the first legislation to recognize that for some people, gender and social role do not follow anatomy.

The amendment was sponsored by the Cambridge Lavender Alliance, a GLBT political action organization, and introduced by city councillor Katherine Triantafillou. To the amazement and delight of the measure's proponents, there was no opposition to the amendment at any time during the process of bringing it before the city council, to a public hearing, and then back to the city council again for the final vote. In passing the amendment, one councillor remarked "It makes you wonder why we haven't done this before now."
According to Nancy Nangeroni, author of the amendment, "This isn't about protecting some special interest group. This is about expanding the scope of everyone's personal freedom. It's no infringement on anyone else if I'm more masculine or more feminine, so there's no reason why I shouldn't have that freedom. Any woman who's been harassed because she looks too butch and any guy who's ever been harassed because he looks too feminine, is affected and protected by this."

The new law prohibits discrimination against any people on the basis of gender. It is the first gender-protective legislation passed in Massachusetts. It adds "gender" to the list of protected classes, including sex, race, religion, etc. It also adds the following definition of gender:

"Gender, as actual or perceived appearance, expression, or behavior, whether or not consistent with respect to masculinity and femininity..."
Since the Cambridge Human Rights Ordinance provides for the establishment of same sex facilities such as dormitories, the amendment also adds the following definition of "same sex":

"Same sex" means occupying the same social and identity roles as another with respect to being male or female.

The amendment is accompanied by extensive notes which provide detailed explanation of the intent and guidelines for its interpretation and implementation.

NOTES ON THE AMENDMENT TO THE CAMBRIDGE HUMAN RIGHTS ORDINANCE

1) There is no significance to the proposed location of "gender" between "sexual orientation" and "marital status". Any other position within the same list of protected classes would work as well.

2) The definition of gender is intended to provide
protection from and recourse against harassment of any individual because they are perceived by others as not sufficiently masculine or feminine, or too much of that which is expected to be opposite to their nature. It is intended to establish and protect the right of all individuals to behave as "masculine" or "feminine" without predisposition or censure because of their particular physiology.

3) The definition of "same sex" is provided as guidance for situations where a person's gender appears in conflict with their physiology, calling into question their actual "sex". Culturally, we tend to determine a person's "sex" by inspection of their gender. However, we are learning that there are significant numbers of persons whose gender is at apparent odds with their physiology. Since we have until now defined sex by physiology, but determined sex by gender, a conflict exists which demands redress. Furthermore, as some persons exercise greater variation of gender expression, there arises greater difficulty in applying conventional standards as a guide to determine...
if a person is a man or a woman. Yet there remain those desirous of segregation by sex for the purposes of housing and education, who need a sound basis for determination of a person's inclusion or exclusion.

Thus a means for determining "same sex" is needed. It should provide for the winnowing out of pretenders or others who would take hurtful advantage, while providing for the inclusion of those whose admission brings no harm to others, and who would be themselves harmed by exclusion.

There are significant numbers of persons whose physiology is opposite to what one would expect for their gender. We need to provide reasonable conditions for their inclusion in "same sex" categorizing in order to avoid their hurtful and inappropriate exclusion. Such persons include the transsexual who has not obtained and may not intend to obtain genital surgery. Also included is the intersexual, a person born of mixed male/female physiology, whose identity is often at odds with their apparent sexual polarity and imposed on them by well-meaning doctors.
parents.

The offered definition of "same sex" provides two tests for a person's "sex" for use as an admission test for sing schools and programs.

First test is social role. If a person generally and reasonably consistency relates to others as a member the "same sex" to which they desire admission, they should be regarded as such. However, it should be noted that relating "as a man" or "as a woman" is subject to a range of interpretations, and there is at this time rowing social movement to eschew or confuse such gregorization. It is not the intent of this writing to any way contribute to the exclusion of persons who for their apparent male/femaleness. However, this writing intends to protect the right to exclude from same sex gregorization for the purposes expressed in the mission document a person who currently appears etimes as a man and sometimes as a woman. At the same e, a person's past appearance should not be used as a

1=Help 2=Exit 3=Return 4=Query 5=Action 7=Backward 8=Forward
basis for exclusion.

The second test, identity role, allows for the buttressing of a person's claim to be "same sex" by virtue of their professed identity. A woman may appear as man-like as she wish, however, if in her mind she is clearly a woman, she should be allowed admission to women's "same sex" facilities. Thus the test of identity allows for changing expression of gender, including transgression of an established norm. Should this same person feel herself - himself, in this case - to be, in fact, a man, then admission to men's "same sex" facilities would be more appropriate. Likewise, a man may appear as feminine as he wishes, without giving up his claim on manhood, but one who identifies as a woman and interacts as such, may not be categorized as a man despite physical characteristics which would appear to contradict.

The intent of this definition of "same sex" is to protect transgenders, intersexuals, and others who do not fit the binary system. They are regularly perceived as opposite
to their self-image and identity. For example, a person born with a penis but identifying as a woman may be possessed of an appearance which is "unmistakably male", such as coarse facial features, facial and body hair, broad shoulders, deep voice, narrow hips, etc. When such a person identifies as a woman, and makes obvious attempts to be perceived as such, however ineffective they may be generally hurtful to categorize such a person as "other than woman", whereas categorizing the person as a woman does not in and of itself hurt others. It becomes traumatic to the individual by excluding them from roles that we honor their obvious visible attempts to be womanly and their self-identity as a woman, despite our expectations of how a woman should appear. The same is true for the similar but opposite case of a person born with female genitals but identifying as and making an obvious effort to be perceived as a man. We should regard such people for all intents and purposes as men. This approach is recognized and supported by leading medical and psychological experts in the gender field.
4) It is implied by this proposal that the gender appearance, identity, or expression of any individual should by itself warrant no presumption of unhealthy deviance, guilt or malfeasance whatsoever.

---------------------------------------------
Nancy Nangeroni, GenderTalk Host & Exec. Producer
nrr@GenderTalk.com Web site: www.GenderTalk.com

As posted in the Transgender Community Forum On America Online
(Keystwo: TCF). TCF Information: http://members.aol.com/ongwenn

-----------------( end of letter )-----------------------------
Atlanta, GA Adds T* Rights
(with thanks to GAIN)

The Atlanta, Georgia City Council voted on March 6 to add "gender identity" as a protected category in the city's employment nondiscrimination policy, along with age, color and disability. Atlanta defines gender identity as "self-perception as male or female." Marital status, national origin, race, religion, sex, and sexual orientation were already protected. The measure was introduced January 18 by Councilmember Michael Bond, Junior, at the behest of Mayor Bill Campbell's administration, and it was co-sponsored by all other Councilmembers present at that meeting. Only about 20 other U.S. cities protect transgenders from discrimination.

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: June 18, 1998

CALENDAR NO: 22.021

NO. 18794 MAYOR COUNCIL SERIES

BY: COUNCILMEMBER SINGLETON

AN ORDINANCE to provide for certain matters relating to gender and gender identification; to amend and re-ordain Section 54-379 of the Code of the City of New Orleans relative to defining and prohibiting the crime of intimidation; and otherwise to provide with respect thereto; and to ordain a new Section 86-____ of the Code of the City of New Orleans, relative to discrimination on the basis of gender identification; and otherwise to provide with respect thereto and with respect to related matters.

WHEREAS, the hate crimes sections and the anti-discrimination article the City Code already provide broad protections against victimization of and discrimination against individuals belonging to many of the diverse social groups that inhabit and visit New Orleans; and

WHEREAS, Sections 2-201 and 2-202(6) of the City’s Bill of Rights, a part of the City’s home rule charter provide:

Section 2-201. Preamble to the Bill of Rights.

This Bill of Rights is aspirational in nature. It incorporates guiding principles from the United States Constitution as well as the Louisiana Constitution. It reflects the beliefs, convictions and goals of the citizens of New Orleans.


(6) No law shall deprive any person of any rights, privileges, or immunities secured by the Constitution and laws of the United States or the State of Louisiana, nor shall any law discriminate against any person because of race, color, religion, or national origin. No law shall arbitrarily and capriciously or unreasonably discriminate against a person because of birth, disability, age, sex, sexual orientation, gender identification, culture, language, social origin, or political affiliations; and

WHEREAS, an overwhelming majority of the City’s voters approved the foregoing provision in an election held in November of 1995; and

WHEREAS, the Council has been requested by concerned citizens to implement the policy approved by the voters in their adoption of the foregoing provision in November of 1995 and finds and
declares that the revisions of the City Code ordained in this ordinance will serve to promote and implement that policy; now, therefore:

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY

ORDAINS that Section 54-379. Intimidation.

a) It is unlawful for any person to commit the crime of intimidation.

b) Intimidation is the commission of any act or omission against any person or property otherwise defined as an offense by this Code, when a motive for said crime is the actual or perceived race, age, color, creed, religion, national origin, ancestry, disability, gender, gender identification, or sexual orientation of another person or persons.

c) Any person who is convicted of a violation of this section shall be fined a penalty of $500.00 and imprisoned for six months. If any portion of the sentence required or authorized by this section is suspended, then the offender shall be required, as a condition of the suspension to provide complete financial restitution for all resulting damages, and participate in an anti-bias educational program or either similar community service program.

d) As used in this section, "gender identification" and "sexual orientation" shall have the meanings defined in Chapter 86 of this Code.

SECTION 2. That a new Section 86-____ of the Code of the City of New Orleans is hereby ordained to read as follows:

Section 86-___. Gender Identification

a) It shall be unlawful and prohibited discrimination under this Chapter to discriminate against any person on the basis of his or her gender identification if said discrimination would be prohibited by this Chapter when and if the act or omission that constitutes the
7 directed at or adversely affected a person on the basis of his or her sexual orientation. All
8 prohibitions, defenses, remedies, procedures and privileges established or recognized by
this Code,
9 and applicable to discrimination on the basis of sexual orientation shall also apply to
discrimination
10 based on gender identification.
11 b) "Gender identification" is the actual or perceived condition, status or acts of:
12 1) identifying emotionally or psychologically with the sex other than
one's biological or legal sex at birth, whether or not there has been a
physical change of the organs of sex,
2) presenting and/or holding oneself out to the public as a member of the
biological sex that was not one's biological or legal sex at birth,
3) lawfully displaying physical characteristics and/or behavioral
characteristics and/or expressions which are widely perceived as
being more appropriate to the biological or legal sex other than one's
biological sex at birth, as when a male is perceived as feminine or a
female is perceived as masculine, and/or
4) being physically and/or behaviorally androgynous.
23 c) Nothing in this Chapter shall prohibit an employer from prohibiting cross-dressing
24 in the workplace or while an employee is acting in the course and scope of his or her
employment.
25 For purposes of this section, a person shall be deemed to be acting in the course and
scope of his or
26 her employment if he or she would be deemed to be in the scope and course of his
employment for
27 the purpose of determining eligibility for worker's compensation; For purposes of this
"Cross-dressing" shall mean the wearing of clothing, cosmetics, footwear and/or other accouterments generally deemed or perceived as inappropriate to the gender that was or legal gender at birth and/or generally deemed or perceived as more appropriate to the was not one's biological or legal gender at birth. "Cross-dressing" shall be deemed not the regular wearing of clothing, cosmetics, footwear and/or other accouterments which to the gender other than his or her biological or legal gender at birth with which an applicant identifies if the employee or applicant provides the employer with the written statement of a licensed doctor or other health care professional certifying that the employee or presents the characteristics of gender identification disorder or another similar status or and that the employee or applicant intends prospectively to attire and conduct himself or the foreseeable future in the employee’s employment and workplace or workplaces in appropriate for persons of the gender with which he or she identifies.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS JUL 01

JAMES M SINGLETON
PRESIDENT OF COUNCIL

DELIVERED TO THE MAYOR ON JUL 02 1998

APPROVED: JUL 08 1998

MARC H. MORIAL
MAYOR

RETURNED BY THE MAYOR ON JUL 08 1998 AT 10:00 AM
EMMA J. WILLIAMS  
CLERK OF COUNCIL  

ROLL CALL VOTE  

YEAS: Carter, Glapion, Hazeur-Distance, Sapir, Singleton - 5  

NAYS: Thomas - 1  

ABSENT: Terrell (Out of Town) - 1  

RECUSED: 0  

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY  
[Emma J. Williams]  
 CLERK OF COUNCIL  

Top Back to NYAGRA's Policy Page  
[Home] [Mission] [Policy] [Join] [Events] [Action] [Links]  

NYAGRA, The New York Association for Gender Rights Advocacy  
Comments and queries, please email us at nyagra@nyagra.org.  
Email web suggestions/links to the webmaster.
About a Boy Who Isn't

At a California middle school, M. is a popular 13-year-old boy. Only a few of his teachers know what he's precariously hiding: He's a girl.

By Benoit Denizet-Lewis

STANDING IN A CIRCLE under the shade of a tall, skinny palm tree, five boys smile in unison as they recount a particularly absurd scene in the teenage comedy “Don't Be a Menace to South Central While Drinking Your Juice in the Hood.” The boys — who have watched it countless times on video — agree that it's a comedy classic, but they can't seem to settle on its funniest scene. “Man, the whole movie is dope,” says the tallest of the five, who wears a heavy Starter jacket even though it's 70 degrees outside.

It is a bright and sunny morning in California, and this middle-school recess is humming along lazily. Packs of 12-year-olds in dark pants and white-collar shirts (the school uniform) meander about, looking for something to do. Next to the palm tree, three haughty girls with pocket mirrors gossip as they reapply their makeup. A hundred yards away, groups of loud, cocky boys play basketball on outdoor courts. And surveying it all are smiling faculty members with walkie-talkies who easily negotiate this sea of 2,000 mostly Hispanic students.

A male teacher leans against a table in the outdoor lunch area, the quietest spot in this expansive courtyard. He is a well-liked teacher who also facilitates the school's discreet weekly support group for gay, lesbian, bisexual and transgender students.

In the courtyard, there are two kids who are regulars at the group’s meeting. One is a strikingly beautiful 13-year-old girl with piercing brown eyes and long black hair; she says she is bisexual. On this morning — as on most mornings — she is trailed by a group of fawning boys, who can't seem to get enough of the charming eighth grader in the tight white shirt, black pants and rainbow-colored belt.

If she is the darling of the school's boys, her male counterpart stands under the palm tree with his friends, who are still talking about movies. He is a well-liked and attractive 13-year-old with short-cropped black hair, brown eyes and a clear, soft complexion. His backpack is tied loosely around his thin frame, and his stylish, oversized gray sweater falls nearly to his knees.

He is also a regular at the school's weekly gay, lesbian, bisexual and transgender student group, although none of his friends know that. They have no reason to suspect it, either. He likes girls. He has a girlfriend (a high school-girlfriend, no less), and countless other girls are willing, should he ever want another.

So while his friends assume he is one of them, the support-group members presume — though they don't know for sure, because he doesn't say much during meetings — that he is probably secretly gay or bisexual or...
mate the prospect of a do-it-yourself bomb because they are thinking too professionally. All of our experience with these weapons is that the people who make them (states, in other words) want them to be safe, reliable, predictable and efficient. Weapons for the American arsenal are designed to survive a trip around the globe in a missile, to be accident-proof, to produce a precisely specified blast.

But there are many corners you can cut if you are content with a big, ugly, inefficient device that would make a spectacular impression. If your bomb doesn’t need to fit in a suitcase (and why should it?) or to endure the stress of a missile launch; if you don’t care whether the explosive power realizes its full potential; if you’re willing to accept some risk that the thing might go off at the wrong time or might not go off at all, then the job of building it is immeasurably simplified.

“As you get smarter, you realize you can get d unlike the means of a soloist.

by with less,” Albright said. “You can do it in facilities that look like barns, garages, with simple machine tools. You can do it with 10 to 15 people, not all Ph.D.’s, but some engineers, technicians. Our judgment is that a gun-type device is well within the capability of a terrorist organization.”

All the technological challenges are greatly simplified if terrorists are in league with a country — a place with an infrastructure. A state is much better suited to hire expertise (like dispersed scientists from decommissioned nuclear installations in the old Soviet Union) or to send its own scientists for M.I.T. degrees.

Thus Tom Cochran said his greatest fear is what you might call a bespoke nuke — terrorists stealing a quantity of weapons-grade uranium and taking it to Iraq or Iran or Libya, letting the scientists and engineers fashion it into an elementary weapon and then taking it away for a delivery that would have no return address.

That leaves one big obstacle to the terrorist nuke-maker: the fissile material itself.

To be reasonably sure of a nuclear explosion, allowing for some material being lost in the manufacturing process, you need roughly 50 kilograms — 100 pounds — of highly enriched uranium. (For a weapon, more than 90 percent of the material should consist of the very unstable uranium-235 isotope.) Tom Cochran, the master of visual aids, has 15 pounds of depleted uranium that he keeps in a Coke can; an eight-pack would be plenty to build a bomb.

The world is awash in the stuff. Frank von Hippel, a Princeton physicist and arms-control advocate, has calculated that between 1,500 and 2,100 metric tons of weapons-grade uranium exist — at the low end, enough for 26,000 rough-hewn bombs. The largest stockpile is in Russia, which Senator Joseph Biden calls “the candy store of candy stores.”

Until a decade ago, Russian officials say, no one worried much about the safety of this material. Viktor Mikhailov, who ran the atomic energy ministry and now presides over an affiliated research institute, concedes there were glaring lapses.

“The safety of nuclear materials was always on our minds, but the focus was on intruders,” he said. “The system had never taken account of the possibility that these carefully screened people in the nuclear sphere could themselves represent a danger. The system was not designed to prevent a danger from within.”

Then came the collapse of the Soviet Union and, in the early 90’s, a few frightening cases of nuclear materials popping up on the black market.

If you add up all the reported attempts to sell highly enriched uranium or plutonium, even including those that have the scent of security-agency hype and those where the material was of uncertain quality, the total amount of material still falls short of what a bomb-maker would need to construct a single explosive.

But Yuri G. Volodin, the chief of safeguards at Gosatomnadzor, the Russian nuclear regulatory agency, told me his inspectors still discover one or two instances of attempted theft a year, along with dozens of violations of the regulations for storing and securing nuclear material. And as he readily concedes: “These are the detected cases. We can’t talk about the cases we don’t know.”

Alexander Pakhayev, a former aide to the Defense Committee of the Russian Duma, said, “The vast majority of installations now have fences. But you know Russians. If you walk along the perimeter, you can see a hole in the fence, because the employees want to come and go freely.”

The bulk of American investment in nuclear safety goes to lock the stuff up at the source. That is clearly the right priority. Other programs are devoted to blending down the highly enriched uranium to a diluted product unsuitable for weapons but good as reactor fuel. The Nuclear Threat Initiative, financed by Ted Turner and led by Nunn, is studying ways to double the rate of this diluting process.

Still, after 10 years of American subsidies, only 41 percent of Russia’s weaponizable material has been secured, according to the United States Department of Energy. Russian officials say they can’t even be sure how much exists, in part because the managers of nuclear facilities, like everyone else in the Soviet industrial complex, learned to cook their books. So the bomb door is still pretty seriously ajar. We don’t know whether any horses have gotten out.

And it is not the only barn. William C. Potter, director of the Center for Nonproliferation Studies at the Monterey Institute of International Studies and an expert in nuclear security in the former Soviet states, said the American focus on Russia has neglected other locations that could be tempting targets for a terrorist seeking bomb-making material. There is, for example, a bomb’s worth of weapons-grade uranium at a site in Belarus, a country with an erratic president and an anti-American orientation. There is enough weapons-grade uranium for a bomb or two in Kharkiv, in Ukraine. Outside of Belgrade, in a research reactor at Vinca, sits sufficient material for a bomb — and there it sat while NATO was bombarding the area.

“We need to avoid the notion that because the most material is in Russia, that’s where we should direct all of our effort,” Potter said. “It’s like assuming the bank robber will target Fort Knox because that’s where the most gold is. The bank robber goes where the gold is most accessible.”

**Weapons of Mass Disruption**

The first and, so far, only consummated act of nuclear terrorism took place in Moscow in 1995, and it was scarcely memorable. Chechen rebels obtained a canister of cesium, possibly from a hospital they had commandeered a few months before. They hid it in a Moscow park famed for its weekend flea market and called the press. No one was hurt. Authorities treated the incident discreetly, and a surge of panic quickly passed.

The story came up in virtually every conversation I had in Russia about nuclear terror, usually to illustrate that even without splitting atoms and making mushroom clouds a terrorist could use radioactivity — and the fear of it — as a potent weapon.

The idea that you could make a fantastic weapon out of radioactive material without actually producing a nuclear bang has been around since before the infamy of nuclear weaponry. During World War II, American scientists in the Manhattan Project worried that the Germans would rain radioactive material on our troops storming the beaches on D-Day. Robert S. Norris, the biographer of the Manhattan Project director, Gen. Leslie R. Groves, told me that the United States took this threat seriously enough to outfit some of the D-Day soldiers with Geiger counters.

No country today includes radiological weapons in its arsenories. But radiation’s limitations as a military tool — its tendency to drift afield with unplanned consequences, its long-term rather than short-term lethality — would not necessarily count against it in the mind of a terrorist. If your aim is to instill fear, radiation is anthropomorph. And unlike the fabrication of a nuclear explosive, this is terror within the means of a soloist.

That is why, if you polled the universe of people paid to worry about weapons of mass destruction (W.M.D., in the jargon), you would find a general agreement that this is probably the first thing we’ll see. “If there is a W.M.D. attack in the next year, it’s... Continued on Page 51
maybe just confused. The truth is, they all have it wrong. He isn’t gay. He isn’t confused. He isn’t even a boy.

FOR THE LAST FOUR years, M., who was born a girl, has secretly lived as a boy — meaning he (as I will refer to M.) has lived as the opposite sex. M. agreed to let me write about him because, as he put it: “I want to help other people. And I hope people will read the story and understand more about people like me.” To protect his identity, I will refer to him only by the first initial of the name that he has used since he started at his new school. I will not name his town, school or any person in his life. (He was not photographed for this article.)

While most transgender teenagers are unwilling or unable to cross-live, M. finds himself in a nearly unheard-of position: with the support of his family and a few teachers at his middle school, he lives as a boy.

The seventh child in a close-knit family of seven girls and two boys, M. showed early signs of Gender Identity Disorder (G.I.D.), the American Psychiatric Association diagnosis for people who repeatedly show, or feel, a strong desire to be the opposite sex and are uncomfortable with their birth sex. By age 5, M. refused to wear girls’ clothing. And while many children with G.I.D. don’t continue their gender-identification into their teens, M. only became more boy-identified with age.

“We always thought she would grow out of it,” M.’s 20-year-old sister says. She is sitting on the couch in her sparsely furnished one-story home, where she lives with her husband and infant son near a busy freeway in a working-class Hispanic neighborhood. “We would try to get her to wear dresses, but she would cry and cry and cry.”

M. lounges deep into the couch across from his sister, holding a small pillow in his lap and his pager in his right hand. He wears baggy black jeans and a hooded black sweatshirt, making him look like some sort of combination of a skater and a gangster. M. is neither. “This is just the style I like,” he says, his legs spread wide and his small head resting against the back of the couch. I ask him why he likes the style. “I don’t know,” he says after a few seconds of thought, during which he scratches his head. “It’s just cool.”

Except for his exceeding civility (particularly toward adults), everything about M. screams 13-year-old boy. His clothes are too big. His voice is boyish and disinterested. He bosses his younger sisters around. He answers multipart questions with one-word answers. He spends hours each night on the phone with his girlfriend. And he has only one real hobby to speak of: watching action and comedy movies with his friends.

“When I look at her now, I see a boy,” says M.’s 23-year-old sister, who sits next to M.’s 20-year-old sister on the couch. “I used to think she was just going to be a lesbian. But she doesn’t want to be a girl with another girl. She wants to be a boy with another girl. I know she is a girl, but I see a boy.”

“We used to ask her all the time: ‘How come you want to be a boy? You’re a girl!’” recalls the 20-year-old sister. “People would stop my mother on the street and say, ‘Oh, your son is so beautiful.’ And she would correct them and say, ‘No, this is my daughter.’”

M.’s mother, like his sisters, still can’t bring herself to refer to M. as “he.” A thin, delicate woman with a beautiful smile, she works as a housecleaner and speaks little English. “I accepted my daughter because she is my daughter and I love her,” she says in Spanish, sitting next to her eldest daughter, as M. and his sisters translate. “But I don’t understand it. Sometimes it makes me cry.”

Several family members cried after seeing “Boys Don’t Cry” on video, which tells the true story of Brandon Teena, a female-to-male transgender 21-year-old from Nebraska, who was raped and murdered when her biological sex was discovered. “We all say, ‘Look, what happened in that movie can happen to you, too,’” the 20-year-old sister says. “We all ways try to get her to tell the truth to people, because what would students at her school do if they found out she was lying to them?”

There is a long pause, during which M. glances down at his vibrating pager. A popular kid with a group of close eighth-grade friends, he gets teased about every 15 minutes, often by his girlfriend, who tells M. she loves him in pager code. I ask M. if many girls at school like him. “Girls flirt with me at school,” he says matter-of-factly, “but I tell them I have a girlfriend.”

M. hasn’t told his girlfriend about his secret. All they have done is kissed. “When she wants to do more, I just say, ‘No, I’m not ready,’” M. says. “I want to touch her, but then she would want to touch me back. So we just kiss. I want to tell her the truth so bad, but every time I try I can’t.”

Few transgender teenagers face M.’s unusual predicament. While M. is part of his school’s elite social group, most self-identified transgender teenagers can’t hide their biological gender and face daily harassment and ridicule at school. Ninety percent feel physically unsafe on campus, according to a 2001 study of transgender, gay and bisexual high-schoolers by the Gay, Lesbian and Straight Education Network.

M. says he feels safe everywhere; he has the confidence of a 13-year-old who rarely thinks beyond tomorrow. But as his female body develops, it will become increasingly difficult to live secretly as a boy. And if he continues romantic relationships with girls without disclosing the truth, the moment will inevitably come when a girlfriend initiates more sexual contact.

n his first day of fifth grade at a new school, M. stood sheepishly in the classroom doorway. His hair was cut short, and he wore baggy boys’ clothes, but he was still living as a girl. To the teacher, though, M. looked like any other boy. “Show the gentleman to his seat,” the teacher instructed another student.

The gentleman? Too embarrassed to correct him, M. — who at the time went by his birth name, which though primarily a girl’s name is occasionally a boy’s — shuffled to his seat and sat down. Minutes later, he grasped the significance of that moment. “That’s when I realized I could live as a boy, without anyone knowing,” he says. “People just assumed I was a boy.”

M. didn’t tell his family what happened at school, and that year he lived a secret double life: at home he was a girl; at school he was a boy. Because of his gender-neutral first name, teachers and students didn’t suspect anything.

Although he can be painfully shy around new people, M. soon made friends with both boys and girls. M. had to change schools again the next year for middle school, but he continued living secretly as a boy and started dating girls, who were drawn to his good looks and sweet, calm demeanor. M. even took gym class with boys, because the school didn’t require students to shower, and he never had to get fully naked in the locker room. The more M. lived as a boy, the less he worried about being discovered.

“I would go weeks without thinking about it,” he says.

That changed last year, when a counselor at the school discovered his secret during a routine call to his mother. The counselor referred to M. as “your son,” but his mother — unaware that M. was passing as a boy — corrected the counselor. “She’s not my son,” his mother said. “She’s my daughter.” The counselor was shocked. “She’s your what?”

M. says the school told him that he would have to take gym class with the other girls the following year when he went into eighth grade. If he didn’t want to do that, M. says, administrators suggested he transfer to another school and start fresh as a girl. At this point, M. wasn’t about to go back to living as a girl, so in the fall of this school year he transferred to his current school. Finally aware that M. was passing as a boy, his mother worried about his safety but told M. that she would support his wish to cross-live. She insisted, however, that M. tell administrators at his new school.

On his first day at the school, M., his mother and the school dean walked to the classroom of the openly gay teacher who runs the support group. He

Benoit Denizet-Lewis is a writer living in Boston.
M. hasn’t told his girlfriend about his secret. ‘I want to touch her, but then she would want to touch me back. So we just kiss. I want to tell her the truth so bad, but every time I try, I can’t.’

was in the middle of a lecture about Kabuki theater when the dean knocked on the classroom door and took the teacher aside. “You need to talk to this young... this young... the nervous-looking dean leaned in and whispered in the teacher’s ear. “This is a girl, and this is her mother.”

And so began the highly unusual transgender experiment at this California middle school. As far as the teacher knew, the school had not dealt with a transgender student before, let alone one who wanted to cross-live. Under the California Student Safety and Violence Prevention Act of 2000, which makes California one of eight states (plus the District of Columbia) to outlaw discrimination of public-school students based on sexual orientation (and one of two states to protect students on the basis of gender identity), state public schools are required to provide all students “equal rights and opportunities in the educational institutions of the state.”

But nothing in the law spells out, or even hints at, what to do with a student like M. Is the school legally required to take special steps to allow M. to secretly live as a boy? “No, there isn’t anything in the law that requires the school to provide a special bathroom or really do anything specific,” says Virginia Uribe, founder of the Los Angeles-based Project 10, the nation’s first public-school program dedicated to providing on-site educational support services to gay, lesbian, bisexual and transgender youth. “But to keep a student like M. safe, there are obviously specific things that need to happen.”

The teacher created a safety plan for M., but he realized that he couldn’t do it alone. According to the teacher, he consulted with the principal, counselor, a nurse and a representative from the school district. “I needed to tell the nurse, because I wanted [M.] to be able to use the private bathroom in her office,” says the teacher, a powerful personality who is renowned at the school for getting what he wants. “People were perpetuating a deception,” Zucker says after I explain M.’s situation to him. “What if [M.] starts dating a girl at school, and she finds out and is traumatized? The school is potentially liable, because they have actively perpetuated a deception. I would advocate that this youngster be encouraged to ‘come out’ as a transgender youth, so that everyone knows the score. But whatever decision is made, this kid needs to be evaluated by a local expert in gender identity — not by a well-meaning teacher.”

The teacher insists he is only doing what is necessary to keep M. safe, and other transgender youth experts say that having M. “come out” as transgender could be dangerous. “The consequences of being an ‘out’ transgender youth are too great,” says Gerald Mallon, an associate professor at the Hunter College School of Social Work and editor of the book “Social Services With Transgendered Youths.” “If [M.] gets found out at school as having a vagina, he will probably be beaten or raped.”

The teacher agrees: “In a more understanding and accepting world, my preference would be for this child to be able to be honest. But [M.] wishes to live as a boy, and it is my responsibility to protect him. According to the laws in this state, I am in compliance. If we didn’t take the basic steps, it would be impossible to protect his safety, short of hiring an armed guard to escort him from class to class.”

M. says he doesn’t worry about being discovered at school, where he walks around confidently with his friends. But he acknowledges that he is less sure about next year, when he will attend one of two area high schools. “I don’t know if the teachers there would want to lie for me,” he says.

The teacher doesn’t know either, but he has already spoken with a counselor at one of the schools who runs a similar support group and plans to meet with someone at the other. “I have to find someone who will look after him,” the teacher says. “That person won’t necessarily
muse over all my responsibilities, because I don't think my job with him will end when he graduates from here."

4. PULLS AT HIS apartment's courtyard gate and is surprised to find it locked. "They never lock this," he says, tugging at it a second time. "Hey, old!" he shouts toward a boy dribbling a basketball inside the courtyard. "Open the door!" The boy — who looks younger but is bigger than M. — bows his head slightly, apparently hurt to have been labeled a kid by another kid. He eventually dribbles the ball over to the gate and opens it, for which M. mumbles a quick "Thanks."

M. lives in this subsidized-housing community, in a small, two-bedroom apartment he shares with his mother, stepfather and two younger sisters. According to M., his father, a mechanic who lives nearby, is a regular and supportive presence in M.'s life. M.'s family has moved several times in the past few years, so his neighbors know him only as a boy. "There are always kids everywhere around here," M. says near the steps to his apartment, stopping to avoid a speeding shopping cart with a crazed boy at the controls. The door to M.'s apartment is open. His mother is in the kitchen, and his 6-year-old sister is running around the carpeted living room in overalls. M.'s 10-year-old sister says with whom he shares a small nondescript room with a bed, desk, television and no posters on the walls — it is at a friend's house. "Normally she's cool," M. says of his sister and bunkmate. "But when she gets mad at me, she calls me names, like 'lesbian' or 'boy-girl.'" M. tells me my mom, and my mom gets mad at her."

M. plops himself down on the living-room couch and takes off his black hooded sweatshirt, under which he wears three layers of shirts. His small breasts, which began developing last year, are not noticeable. "I don't want anyone to see them," he says. "When they first started growing last year, I just hoped that they wouldn't grow that big." In addition to wearing layers, M. often stands with his shoulders hunched, making it nearly impossible to see his chest from a profile position.

As M.'s mother brings him a glass of juice, I ask him if he has thought about someday taking hormones and having gender-reassignment surgery, which for female-to-male transgenders can include breast reduction, the construction of male genitalia and the ablation of the uterus and the ovaries. "If I could do surgery right now, I would," M. says without hesitation. "But I don't think they can do it at this age."

"Why would you want to take away what God gave you?" his mother says in Spanish, her voice soft and loving. "Why would you want to do that?" It becomes clear that this is the first time that the subject of surgery has come up, and M. doesn't have an answer prepared. There is a long pause, during which M. — who often pauses before answering a complicated question, visibly collecting his thoughts — takes a sip of juice, leans forward and scratches the side of his head. "I want to live as a boy," he says finally. "I want to do it because I want to be a guy."

I ask M. if he wants a penis as an adult, and he nods his head. I ask his mother if she would be supportive of that. "They can attach a penis?" she says in Spanish, unbelieving. She looks at M. "I don't know. Why would you want to do that?"

To M., the answer is obvious: he is a boy, and he wants a boy's body. In that pursuit, hormonal therapy could drastically change M.'s body, stopping menstruation and bringing on the onset of male puberty. (M. started getting his period two years ago.) But according to the Harry Benjamin International Gender Dysphoria Association's Standards of Care, the widely recognized blueprint for management of gender-identity disorders, hormonal treatment should not begin before age 16. In the United States, transgender teenagers under 18 need parental consent and psychological and physical evaluations before receiving hormones from a doctor.

"Hormones before puberty would be very hard to defend," says Kenneth Demsky, a psychologist and gender specialist in Boston, when I tell him about M. "When working with someone who is young, you want to delay irreversible physical intervention as long as clinically appropriate." But it is a dilemma, because, as Demsky says, "the earlier people get hormones, the better the effects."

One of the best arguments for delaying hormone treatment is that gender identity, like sexual preference, can be changing and fluid — particularly during childhood and adolescence. Does M., at age 13, truly know what he will want in 5 or 10 years? "Most likely, yes," says Zucker from the Child and Adolescent Gender Identity Clinic in Toronto. "The chance that M. could change his mind at this point is close to zero. If he has been so consistently boy-identified from an early age and is reasonably psychologically stable, he seems like a possible candidate for puberty-blocking medication. But to find that out, he needs to be evaluated by an expert. And he needs to be seeing a therapist who can help him in talking about this, planning ahead and in learning how to negotiate disclosure to his romantic partners."

M. has never seen a therapist (he has never asked to see one, although he says he would like to), and it is very unlikely his family could afford regular visits to a gender-identity specialist. Still, Zucker says that it is only through therapy that M. and his family, can better understand how and why M. chose to cross-live and how he should best navigate the next few years of high school. "I would be interested in understanding more about how he came to this very early and conscious choice," Zucker says. "Did he ever think about the possibility of being a lesbian, and was that abhorrent to him? And was that abhorrent to his friends? Do they see him as more normal living as a boy and liking girls, as opposed to being a girl and liking other girls?"

When I pose the questions to M., he is initially confused. He eventually says that he never felt like a lesbian because he always felt like a boy. But he suspects that his family prefers him as a boy rather than as a lesbian. "I don't know for sure, but they might think it was nasty if I was a girl into other girls," he says.
Sexual-harassment law is well intentioned, but it's intellectually incoherent. Nothing illustrates this better than strange new cases involving men victimizing men.

Men Behaving Badly

By Margaret Talbot

When you work at a car dealership, you spend a lot of time standing around, but that does not mean you relax. How can you, with the manager constantly hovering over you and the strains of "We Will Rock You" or some other sales-meeting anthem ricocheting around your brain? You've got to be on, you've got to be pumped, you've got to be ready to pursue a car that noses into the lot, and then be standing right there, hand extended, when the wary customer steps out. Body language is vital. Philip Reed, a writer who last year posted a diary on the Internet about his stint as a car salesman, described a seminar in which he was taught how to shake hands— with a "slight pulling motion" that represents "the beginning of your control over the customer." Reed observed that the car salesmen he worked with shook hands with one another often, too, practicing for "Mr. Customer" and "staying loose." There was also a lot of "high-fiving, fist-bumping, back-slapping and arm-squeezing" and during slow periods a lot of "tie-pulling, wrestling and shadowboxing."

And a fair amount of free-floating, adrenalized aggression. "At car dealerships, there's a lot of downtime," says Jean Clickner, a lawyer with the Equal Employment Opportunity Commission in Pittsburgh. "You work 12-hour days, and there's a lot of waiting around for customers. At the same time, there's big money to be made and a lot of pressure to make a deal, and when you're the one selling cars, you feel you can do no wrong." Clickner, who has represented several aggrieved car salesmen, sums up the problem this way: "Sometimes the guys get slap-happy." Car dealerships, in other words, are one of those American workplaces where masculinity and job performance are straightforwardly equated, which makes them fun for some men and not at all for others.

Consider what happened, back in the late 90's, at Burt Chevrolet in Denver, where two swaggering sales managers named Terry Franks and Jay Gaylord held sway for a time, and in unconstructed style. It was apparently their habit, for example, to address salesmen as "little girls" or "whores." They would upbraid a guy by asking if he used tampons.

One too many gross-out e-mail messages from his supervisor sent Joseph DePronio to court. Photograph by Doug DuBois.
When Men Harass Men

or tease him by saying that he had “to squat” when he urinated. The managers publicly derided struggling salesmen as “queers” or “steers” — because “steers try; bulls get the job done.” To motivate the troops during sales meetings, they showed raunchy video clips, including one depicting a bull stepping on the genitals of a rodeo cowboy. Gaylord signaled his boredom with what a subordinate was saying to him by simulating masturbarion while the employee talked. He grabbed at male employees’ genitals, sometimes making contact, sometimes not, but mainly (or so it seemed to the men who got used to jumping out of his way or even running when they saw him) hoping to make them flinch.

The reason we know about any of these antics is that 10 of the salesmen at Burt Chevrolet ultimately decided to register their objections. And to do so they chose what might seem to be an unusual means. With the help of the E.E.O.C., they filed a sexual-harassment lawsuit charging the car dealership with creating a hostile environment that discriminated against them as men. It was, in their case, an effective weapon: two years ago, the E.E.O.C. won a $500,000 settlement (and a promise to implement mandatory sexual-harassment training) from Burt Chevrolet, which had already fired the two managers in question.

The idea that by being raunchy, men might be discriminating against other men is not an intuitive one. Indeed, not all of the guys involved in the Burt Chevrolet suit realized that “this was discrimination at first,” says Mia Bitterman, one of the E.E.O.C. lawyers who handled the case. “But they certainly did not enjoy being afraid to bend over at the water fountain because they didn’t know what was coming. And they were certainly embarrassed that anything like this could have happened to them.”

Most people asked to envision a sexual-harassment complaint from a man would probably think of “Disclosure”-like scenarios starring rapacious female bosses in pinstriped Armani. Maybe, when reminded that men can file sexual-harassment suits against other men, they might think of a gay boss coming on to a subordinate. Both kinds of cases do occur (the latter more often than the former), but judging from law journals and court documents, they do not represent the typical harassment claim brought by men. A more common case involves heterosexual men, often in blue-collar and service-industry jobs, who object to the “hostile environment” created by the behavior of other heterosexual men.

Since 1992 the percentage of sexual-harassment charges filed by men with the E.E.O.C. and state agencies has been increasing steadily, to 13.7 percent in 2001, from 9.1 percent in 1992. A total of 2,129 such cases were filed last year. (The most common kind of harassment case by far still involves a woman accusing a male co-worker or supervisor.) Men’s claims of harassment often center on what is considered “horseplay,” or what Bruce McMorran, an employment lawyer in Tinton Falls, N.J., describes as “bullying, hazing, adolescent kinds of behavior.” Sexual-harassment lawsuits are not obvious or straightforward or even particularly sensible solutions to the problem of men treating another badly at work (or expecting other men to like their crude jokes), but they seem to be the solution we have hit upon.

Often the men who are targeted and later bring claims of harassment are the weakest of the herd — younger, smaller or more effeminate than the men they work with. But this is not always the case. Sometimes a big guy who is a seasoned worker is picked on anyway, maybe because he’s new to the job or quick to register his distaste for his workplace’s particular rituals of boredom and aggression.

At a Harbert-Yeargin construction site in Jackson, Tenn., where Joseph Carlton worked as a pipe welder in 1996, for example, there was a lot of what the men who worked there referred to as “goosing.” This could mean poking or pinching a guy anywhere on his body, but more often it meant swatting or grabbing his genitals. Carlton was goosed on two occasions soon after he took the job — once, he claimed, in a sneak attack while he was wearing his welding helmet — and he did not care for it. His attacker, he said, was his crew chief, Louis Davis, and Davis’s modus operandi struck Carlton as a curious way to get to know a new employee. As Carlton testified in court: “I meet a man, I shake his hand. I don’t reach down and touch him in his personal area.”

Carlton was not some weedy college boy. “Joe’s a big, good-looking country guy, maybe 6-foot-5 and 250 pounds,” says his lawyer, Michael Weinman. “The secretaries in my office called him the Marlboro Man.” Carlton wanted the job at the Jackson site because it was close to his girlfriend’s home. And he was used to having around — he had put in plenty of hours at construction sites and shipyards. Goosing, though, was not something he cared to put up with at work. “I like to weld,” Carlton testified. “That’s what I’ve always done. And I like to do a good job at it. But I ain’t never had nobody grab me.”

Carlton complained to a supervisor at the site, who did not reprimand Davis but who did transfer Carlton out of Davis’s crew. By then, though, some of Carlton’s co-workers had heard about his complaints. To make fun of him, Carlton said, they started to “grab each other” and “hunch on each other” whenever they saw him. It made work miserable in a new way. When Carlton got on a truck to be transported around the site, he said, everybody else would jump off, “like I had the plague.” Finally, Carlton decided that he had no choice but to quit. The E.E.O.C., which investigated Carlton’s claim of sexual harassment, found three other employees who told similar stories about life at Harbert-Yeargin, where workers built and repaired machinery for a food-processing factory. In the spring of 1999, the matter went to trial.

The proceeding was a curious three-day semantics-fest involving fraught and detailed discussions of the terms “goosing” and “horseplay.” Carlton testified that when he worked in a shipyard in Newport News, Va., he would “horseplay a bit at lunchtime,” but to him that meant doing something like covering a colleague’s welding visor with black tape. It wasn’t the same as some guy, out of the blue, grabbing another guy’srotch.

On the stand, Louis Davis denied goosing Carlton below the belt and said he didn’t recall doing it to other men. But he added that at Harbert-Yeargin somebody probably was goosed “every day.” You goosed some men, he said, because they were “goosey” — prone to startled reactions — and it was funny to see them jump. Davis said that he “probably” would have goosed the three women who worked in the office if he had been around them more often and “if they was goosey.” He allowed, however, that he did not think he would goose the women below the belt.

Carlton was not the only employee to testify about high jinks at the plant. Tony Warren told the court that the time when Davis started twisting his nipples and had felt compelled to tell him that he “didn’t mind cutting up a bit” but “didn’t go for stuff like that.” An instrument fitter named Terry Dotson said he put up with goosing — his tormentors, he said, were a couple of contract electricians known as Smurf and Possum — but he never really got used to it. He wanted to hit Possum when he grabbed him “down there,” but Possum was an old man, and besides, Dotson didn’t want to get fired for fighting. Sometimes he thought getting startled like that when you were working on, say, the pipe-threading machine, and trying your best to concentrate, might be dangerous — he’d seen guys get their sleeves ripped off their arms on that particular machine. But luckily, he testified, “I never did get hung up in any equipment or anything. It was just — I don’t know. It was just the aggravation of having to put up with it.”

Given the distribution of the work force today, it’s not surprising that some male-on-male sexual harassment takes place not in blue-collar strongholds but in the retail world and, in particular, in the fluorescently lit vastness of suburban superstores. Sometimes in these cases you find men who are offended by an almost perky demeaning atmosphere, one in which the insults

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The sales manager constantly grabbed at the genitals of his salesmen, hoping to make them flinch. He addressed employees as ‘little girls’ or ‘whores’ and tauntingly asked if they used tampons.

are sexual in tone mostly because there just aren’t that many insults to choose from in the English language. A lot of these harassers deride men by comparing them to women. Variations on “bitch,” which is so ubiquitous as to have lost its capacity to shock, if not its payload of contempt, abound. As in, “Come here, cashier bitch.” As in, “You talk like a bitch.” Even “sweetheart” can sound nasty if uttered in a certain tone of voice. Much of the rhetorical and gestural language of male-on-male sexual harassment is borrowed directly from adolescent rituals that have been around for decades: wedges, pants-yanking, rabbit punches to various parts of the body. They all thrive on restlessness, a sense of unfair containment, the itch to make something — anything — happen. Sexual insults are the ones lying around and the easiest to pick up when you’re bored with cranky customers and their cranky kids and feel like messing with somebody’s mind, just getting a response out of somebody, even if it’s to something really dumb. But in that kind of atmosphere — minimum-wage miles-of-ailes tedium — men and women often aren’t treated all that differently. The culture is hardly masculinist. And that complicates a sexual-harassment case.

When Christopher Lack worked the cash register at the Wal-Mart in Beckley, W.Va., for example, his boss, James Bragg, was a tenacious kidder. Bragg had a few favorite expressions, and he liked to toss them around the store, where he was an assistant manager and Lack was a salesclerk back in the mid-90’s. “Spank you very much” was the play on words Bragg favored for his telephone sign-off; “penis butter and jelly sandwiches” was his lunchtime joke; and “Oh, my rod!” was his preferred exclamation when he saw an attractive woman. Lack, who eventually brought suit against Bragg and Wal-Mart for sexual harassment, testified that Bragg wore him down with crass double-entendres, often delivered in front of customers or co-workers. Once, when Lack was helping a customer, Bragg came up to the counter and said, “I need a small bag, and not the one between your legs.” When Lack called Bragg over so that he could, for example, authorize a refund, Bragg would say, “I’m coming, Chrissy” in a “real sexual” tone, Lack charged. At the store Christmas party one year, Bragg sidled up to Lack and a group of co-workers, grabbed his own crotch and said, “Hey, Chris, here’s your Christmas present.”

Lack tried complaining to Bragg but claimed that Bragg did not stop and indeed retaliated by saddling him with a more punishing work schedule. “You can say it’s horseplay, and men are all alike, but not all men are Neanderthals,” says Sharon Iskra, the lawyer who represented Lack. “Chris was this decent, likeable guy in his 20’s. He was married, had a couple of kids and needed a job but didn’t want to put up with this kind of thing.”

You hear a lot about how workplaces are rife with surliness and small-scale thuggeries. You hear a lot too about how American culture in general is coarser, more vulgarly sexualized and less respectful of privacy than it once was. (“Contemporary vulgarity” will soon doom enforcement of all sexual-harassment law, a federal judge in Georgia argued last year, and compel American workers simply to accept a certain amount of “boorish behavior” on the job.) In one sense, male-on-male sexual-harassment claims, with their tales of “goosing” and “chuckleheaded verbal abuse, corroborate these observations — and indeed amplify them with an elaborate catalog of indignities. But in another sense they contradict them. It may well be that more men are using obscene language and indulging in aggressive hazing rituals at the car lot or the factory than they ever did. How would you ever measure such a thing? But it is certainly true that more men are complaining in public about these aspects of their working lives. (Sometimes they even complain about collateral damage, like the restaurant manager who charged that the owner’s harassment of female employees created a hostile working environment for him.) “Twenty years ago these kinds of things would have ended up with somebody getting beaten up in the parking lot,” Bruce McMorran says. “Now they’re more likely to end up in court.”

COMPLAINTS LIKE the ones brought by Carlton and Lack represent a peculiar development for sexual-harassment law and especially for the concept of “hostile environment.” Feminist legal scholars first introduced the idea of a hostile environment in the 80’s, in response to the fact that a lot of workplace harassment consisted of bluntly quid pro quo sexual solicitations (sleep with me, and I’ll give you a promotion) but of sexual jokes and vulgarity. Since women were presumed to be more offended by coarse behavior than men were, a workplace in which such joking was the norm was discriminatory by definition — and a violation of civil rights law, as opposed to a violation of sensibility or privacy or taste.

The hostile-environment idea has always been problematic, however, as the legal scholar Rosa Ehrenreich, among others, has pointed out. Rather than assuming that workplace harassment is wrong because women are human beings and all human beings deserve to be treated with dignity, it assumes that women are somehow “uniquely vulnerable to men,” as Ehrenreich puts it. And the reason they are is that men are supposedly “always vulgar and louche,” or that
women supposedly "have 'special' sensitivities and rights that men do not share." But the hostile-environment concept becomes even more dubious if it turns out that a growing number of men do share some of the same sensitivities, even when they work in blue-collar settings, which some courts have held to a lower standard.

And the truth is that male-against-male claims sit uneasily within the framework of sexual-harassment law, even as they expose, in their own peculiar way, some of the persistent weaknesses of that framework. Before 1998, it was not at all clear whether same-sex harassment was even actionable. Harassment law as we knew it awoke a great deal to the feminist legal scholar Catherine MacKinnon's gloss on Title VII, the provision of the 1964 Civil Rights Act prohibiting discrimination based on race, religion and sex. Starting in the 1970's, MacKinnon began elaborating an argument that sexual advances in the workplace constitute discrimination against women, the historically subordinated sex and the one most often on the receiving end of such advances.

But this neat division — men as harassers, women as victims — did not hold for long. Indeed, by the mid-90's, the courts were besieged with male-on-male harassment cases, the very last sort of cases that either the drafters of Title VII or its feminist interpreters had ever envisaged. There was some legal precedent for allowing that members of the same race could discriminate against one another. "Because of the many facets of human motivation," the Supreme Court declared in 1977, "it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against members of their group." But this still left the status of same-sex discrimination, let alone harassment, ambiguous. Between 1992 and 1997, four different federal appeals courts, asked to determine whether same-sex harassment was actionable, came up with four different answers.

The Fourth Circuit ruled that same-sex Title VII claims were actionable only if the accused harasser was homosexual and could therefore be motivated by sexual desire. The Eighth Circuit ruled that men could prove they had been sexually harassed by other men if they could show that women were not subject to the same debasing treatment. Since the treatment in question in that case was "bagging" — a variation on goosing that targets the testicles — anatomical literalism carried the day. Women didn't have testicles, ergo only men could be bagged, ergo men were bagged "because" of their sex and in violation of Title VII.

The Seventh Circuit, in a 1997 case known as Doe v. City of Belleville, drew a sweeping conclusion allowing for same-sex harassment cases of many kinds. Title VII was sex-neutral, the court ruled; it didn't specifically prohibit discrimination against men or women. Moreover, the judges argued, there was such a thing as gender stereotyping, and if someone was harassed on that basis, it was unlawful. This case, for example, centered on teenage twin brothers working a summer job cutting grass in the city cemetery of Belleville, Ill. One boy wore an earring, which caused him no end of grief that particular summer — including a lot of menacing talk among his co-workers about sexually assaulting him in the woods and sending him "back to San Francisco." One of his harassers, identified in court documents as a large former marine, culminated a verbal campaign by backing the earring-wearer against a wall and grabbing him by the testicles to see "if he was a girl or a guy." The teenager had been "singed out for this abuse," the court ruled, "because the way in which he projected the sexual aspect of his personality" — meaning his gender — "did not conform to his co-workers' view of appropriate masculine behavior."

Meanwhile, the Fifth Circuit, in Garcia v. Elf Atochem, issued an equally sweeping declaration of the opposite bent. Garcia complained that while working at a chemical-processing factory in Texas, a plant foreman continually grabbed him and "made sexual motions from behind." But the judges ruled that same-sex claims of harassment, even those with "sexual overtones," did not fall under Title VII, which in their view addressed only "gender discrimination."

When, in 1998, the Supreme Court set about resolving these formidable differences, it took up the case of Joseph Oncle, a roustabout on an offshore oil rig whose co-workers had selected him for various sex-related humiliations. Not all sexual conduct in the workplace was unlawful, the court emphasized. It had, first of all, to be "sufficiently severe or pervasive" to "alter the conditions of the victim's employment." Just as important, it had to be demonstrated that "members of one sex are exposed to disadvantageous terms or conditions of employment, to which members of the other sex are not exposed," thereby establishing discrimination "because of sex." (In other words, the workplace would have to be one in which men were the victims of harassment but not women.) If these conditions were met, the court ruled, same-sex harassment was indeed actionable. There was no language in Title VII suggesting otherwise.

In same-sex harassment cases, the court elaborated, a plaintiff could prevail in one of three ways. He could present credible evidence that the alleged harasser was a homosexual and therefore motivated by sexual desire. He could present evidence that the harasser was animated by "a general hostility" to men in the workplace (or, if the plaintiff was a woman harassed by a woman, to women in the workplace). Finally, he could show evidence of differential treatment of the sexes in a place where people of both sexes worked. But if the Supreme Court clarified some questions — particularly by specifying that same-sex harassment need not be motivated by desire — it left others cloudier than ever. For one thing, as a practical matter it's hard to imagine many circumstances in which men would be motivated by a general hostility to other men in the workplace, while it is easy to imagine men motivated by a general hostility to women in the workplace. A man might be subject to annoying or even appalling assaults on his dignity every day at work — and they might be sexual in content — but defining them as discrimination is still a huge and awkward reach.

Moreover, the knotty logic behind the Supreme Court's ruling has had some peculiar unintended consequences, including the fostering of a rather perverse "equal-opportunity harasser" defense. Following the court's argument that same-sex harassment is an actionable offense only when there is disparate treatment of the sexes in a workplace, then a workplace boor who treated men with the same contempt is off the hook. The idea that you can defend yourself by being equally awful to both sexes is "just dumb," says David Sherwyn, a law professor at Cornell. "It couldn't be what anyone wanted out of this." Yet even Sherwyn has written that "employers are well advised to raise the prospect of such a defense in any litigation and in settlement talks."

In fact, the equal-opportunity-harasser defense has been argued successfully. In the 2000 case Holman v. Indiana, for instance, a husband and wife working for the state's Department of Transportation charged that the same supervisor sexually harassed them both. He asked the wife to go to bed with him and gave her negative job evaluations when she rejected him. But he was also accused of "grabbing the husband's head while asking for sexual favors," then getting back at him for not complying by opening his locker and throwing away his belongings. The Seventh Circuit Court of Appeals rejected both the husband's and the wife's claims (and exonerated their boss-from-hell) on the basis that "conduct occurring equally to members of both genders cannot be discrimination 'because of sex'". The Supreme Court declined to consider the case on appeal.

Christopher Lack, the former Wal-Mart employee, eventually fell afoul of the same paradox. A jury in West Virginia awarded him $80,000 in damages after a brief trial in April 1996. But an appeals court overturned Lack's victory in February 2001. He had not proved that he was subject to discrimination as a man, the court concluded, because he had proved all too well that his boss was an indiscriminate jerk. Bragg, the appeals court said, was a "vulgar and offensive supervisor, obnoxious to men and women alike."

Even Joe Carlton — the welder who didn't like being goosed — ran into similar trouble. A jury in Tennessee found in Carlton's favor in 1999 and awarded him $300,000. But a federal
Lack v. Wal-Mart

Lack, the court argued, failed to prove that he was subject to discrimination as a man. Instead, his tormentor had been revealed to be an equal-opportunity harasser, 'obnoxious to men and women alike.'

appeals court overturned the verdict in September 2001. "Since the conduct complained of in many of these sexual-harassment cases is so offensive," wrote Judge Ralph Guy, "a sense of decency initially inclines one to want to grant relief." But Guy overturned the decision because, in his view, the E.E.O.C. had failed to prove that Carlton's harasser discriminated against men. Even though Louis Davis had never goosed women at Harbert-Yargin, he might well have had there been more of them in goosing range. Besides, Guy argued, it could hardly be said that Davis was motivated by a general hostility to men in the workplace. "Mr. Davis liked nothing better than to have men in the workplace," he reasoned. "If not, who else would he roughhouse with?" (The E.E.O.C. recently asked for a rehearing of the case, though Carlton himself reached a settlement with Harbert-Yargin.)

The case law is made all the more confusing by the fact that while some male victims of sexual harassment were clearly chosen because they are gay, sexual orientation is not covered by Title VII, and anyone who claims harassment on that basis, no matter how terrible the facts of the case, has no recourse. One way to get around this is to argue that a man was harassed not because he is a homosexual but because he is "effeminate" or "walks like a woman" or wears an earring with his mother and is therefore a victim of what is known as gender stereotyping. Sometimes he is or does one or more of these things and is heterosexual, like the teenager who worked at the Illinois cemetery. And sometimes he is gay, in which case he stands the best chance of winning if he has never acknowledged at work that he is gay.

Earlier this year, for instance, a judge allowed a Boston postal carrier named Stephen Centola to proceed with his Title VII claims case against his employer. Centola had been taunted by co-workers who demanded to know if he had AIDS yet and left pictures of Richard Simmons in pink hot pants and a sign that read "Heterosexual Replacement on Duty" in his work space. Centola is homosexual, but because he had not said so at work, the judge found sufficient evidence to support his claim that his co-workers had "punished him for being impermissibly feminine." Surely one interpretation of such a ruling is that it pays to stay cloistered at work. Deborah Zalesne, a CUNY law professor, sums up the problem this way: "Basically, if your harasser is gay, you stand a good chance of winning a same-sex harassment case. If you are gay, you lose."

But even this basic rule of thumb is subject to strange variations. Last month a federal appeals court in San Francisco overturned two earlier rulings dismissing the claims of a gay butler named Medina Rene who said he was harassed on the job at the MGM Grand Hotel in Las Vegas. Rene claimed that he had been repeatedly poked in the behind and forced to look at pictures of men having sex. In a 7-4 ruling by the Ninth Circuit Court of Appeals, Judge William A. Fletcher declared that a worker's sexual orientation is "irrelevant" in Title VII cases. By Fletcher's lights, the simple fact that the physical assaults Rene claimed to have endured had "a sexual nature" made them discrimination, and actionable under federal law. But Fletcher's reading was a highly idiosyncratic interpretation of Title VII. And the dissenting judges recognized this, concluding that however "appalling" the behavior alleged, it did not constitute a violation of federal antidiscrimination law. Meanwhile, two of the judges who sided with Fletcher offered a very different reason: Rene had a legitimate case not because he was being sexual in tone and context but because he had been gender-stereotyped. Of course, this argument raises its own questions: Does gender stereotyping cover cases in which the man harassed is straight-acting but gay or only those in which the victim, to put it bluntly, acts like a queen but doesn't say he's gay? The only thing made clear by the Rene ruling is that sexual-harassment law is messier and less coherent than ever.

Of course, when you're a man in the midst of making a sexual-harassment charge against another man, you're probably not thinking all that much about the vexed doctrine behind it. You probably couldn't care less about the historical contradictions of sexual-harassment law. Mostly you're thinking about how angry you felt at work and about how relieved you are to have a way of legally avenging yourself.

Not long ago I spent an afternoon with Joseph DePronio, a graphic designer from Buffalo, N.Y., who recently became a plaintiff in a same-sex harassment suit. DePronio is a handsome, angular 35-year-old with close-shaved hair, alert green eyes and the half-hopeful, half-exasperated manner of somebody who has always been a little more serious than the people around him. Since he has been struggling with the weird burden of his lawsuit, that divide has become even sharper. Relatives tease him about the case at family parties, trotting out some choice snotty lines. Though DePronio has a sense of humor, that kind of ribbing doesn't go over well with him these days. He got himself a T-shirt this summer whose slogan sums up his mood: "I Get Enough Exercise Just Pushing My Luck."

DePronio's wife, Tina, is a hairdresser whose fingernails that day were... Continued on Page 82
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painted with sparkly silver stripes. She had the air of a naturally effervescent person—good-heartedly striving for a more somber tone. We sat in their living room, watching their 3-year-old son, Joey, zip around in his Spider-Man costume. For a while we talked about Joe’s love of drawing, and how he’d wanted to be an artist for as long as he could remember. As a teenager he painted big portraits of his favorite rock bands: Black Sabbath, Motley Crue, Kiss. When he was older he had a job in Sarasota, Florida, turning architectural blueprints of new mini-malls and the like into drawings that clients could relate to—complete with brightly attired families and puffy trees. But eventually DeProvo found that he had a particular knack for designing large-scale signs: billboards, neon logos, multiplex marquees. He was delighted when, in 1999, a company called U.S. Signs recruited him for a job in its small office right outside Buffalo, DeProvo’s hometown. But it was in that office that his life took an unexpected, and unwelcome, turn into Neil LaBute territory.

Throughout the seven months he worked there, DeProvo says, a U.S. Signs employee named Corey Perez filled DeProvo’s e-mail in-box with lurid material ranging from off-color jokes to hard-core porn. (The complaint filed on DeProvo’s behalf by the E.E.O.C. says that there were “200 to 300” such messages; DeProvo says that those were the only ones he was able to retrieve and that in fact there were about 1,000.) Since Perez was a senior account representative who brought in clients and assigned work to DeProvo, DeProvo often felt obliged to open Perez’s e-mail, which might contain information he needed to know. But while DeProvo says he told Perez several times that he found the dirty jokes and images offensive, Perez “laughed off his protests and once sent him an e-mail message that said, ‘You love it, sweet cheeks.’” Perez would not comment for this article on any of DeProvo’s specific allegations, saying only that “the truth will come out at the trial.”

That afternoon at his home, while Tina searched for Joey away, DeProvo sat down at his computer and flipped through dozens of what he said were Perez’s e-mail messages. We were all used to unwanted e-mail about hot teenagers and to tasteless jokes sent to us and 50 other close personal friends. But this was, I must say, an extremely outré arrêt, sort of like the fever dream of somebody who had been locked up since childhood with a steady supply of Bourbon Street novelty items and “Girls Gone Wild” videos. There was a Ricky Martin cartoon adorned with dancing penises. A picture labeled “the perfect woman” showed a naked female body with two crotches and no head. There was a joke about something called “the girlfriend remote,” containing buttons marked “FMS: Off,” “Bra: Off,” “Vowell: Off.” There were a number of nude photographs, old, young, fat, anorexic, male, female—and several explicit video clips of sexual acts. And on and on, into the far reaches of grossness.

“Look, I’m 35, I’m not naïve,” DeProvo said, after he turned off the computer. “I know what’s out on the Internet. And I’m not an angel. I’m a normal person. I’m not going to sit here and say I’ve never seen a pornographic video. But this was in my office. This was my work. What if a woman—somebody I work with, a client—walks in and sees what’s on my screen? What’s she going to think? What’s she going to do?”
think some of this is offensive to women." He paused for a moment, looking genuinely puzzled, "I mean, is it just me, or is this really not funny?"

For a long time, DePonio did not think of Perez's behavior as sexual harassment. He thought of it as something he could stop by saying repeatedly that he didn't like it; he thought of it as a bewildering and embarrassing daily annoyance that put him in a lousy mood at work and at home too and made him rue the day he moved back to Buff-

talo. For several months he didn't even tell Tina about it — wouldn't she figure he was inviting this kind of e-mail somehow? — and that made him feel worse, detached from everybody around him. Perez sent many of the same e-mail mes-
tages to a couple of other people who worked in the office, including one woman. "I felt they kind of accepted it," DePonio said. "I was the one who wasn't going along."

What changed his mind, and made him start thinking about his experience under the rubric of sexual harassment, was what happened after he wrote a letter to the company president detailing his complaints about Perez. At first DePonio

tally implies some form of contempt for a class of people being singled out for disadvantageous treatment as a consequence of their shared char-
acteristics. Unwanted advances, by contrast, often involve a man's attraction to a particular woman because of her unique characteristics.

The explanations usually offered for thinking of sexual harassment as a civil rights violation are each in their own way unsatisfying. Is harassment discrimination, Rosa Ehrenreich asks, "because a man who propositions a female em-

ployee would presumably not have proposi-
tioned a male employee, and thus the proposi-
tioned woman has been treated differently than her male colleagues because of her sex? Is it because sexual harassment is motivated by hostility to the presence of women in the workplace? Is it because, in a context of patriarchy and sexual vi-

olence against women, the mere presence of sex-

uality in the workplace, however motivated, is inherently threatening to women and prevents them from enjoying their work and succeeding on the same basis as men?"

The first explanation relies on a limited and formalistic notion of equality. The second neglects the fact that while sexual harassment may be motivated by hostility to women in the

workplace, it frequently is not. (It may, for in-

stance, be motivated by attraction to a particular person.) The third offers a paternalistic view of women as paradigmatic victims in need of pro-
tection from all forms of sexual expression.

In her critiques of harassment law, Vicki

Schultz, a Yale law professor, points out that the emphasis on the specifically sexual content of harassment is unfortunate in two ways. On the one hand it ignores other kinds of unequal treatment that may in fact be more damaging: male supervisors refusing to provide required training or work materials to women, declaring that no woman could ever do the job in ques-
tion, announcing that women are dumb. (In

cases involving all of these examples, courts

have declined to consider them harassment.)

And on the other hand it can induce companies to clamp down on any hints of sexuality in the workplace, including friendly banter in which women might willingly engage. We've all heard

the stories of sexual-harassment codes gone

way overboard: the Miller brewing company

executive fired for retelling the "Seinfeld" joke

about the woman whose name rhymed with "clitoris"; the teaching assistant whose desktop

photo of his scantily clad wife elicited a hostile-

environment complaint. The prevailing legal

view of harassment is "both too narrow and too

broad," to Schultz's mind. "Too narrow because

the focus on rooting out unwanted sexual activ-

ity has allowed us to feel good about protecting

women from sexual abuse while leading us to

overlook equally pernicious forms of gender-

based mistreatment. Too broad because the em-
phasis on sexual conduct has encouraged some

companies to ban all forms of sexual inter-

action, even when those do not threaten

women's equality on the job."

But even when it is not stretched to absurd

extremes, sexual-harassment law has become a

clumsy substitute for manners. Useful and im-

portant as it has been in opening up some

workplaces to women and in reminding em-

ployers not to treat their offices as private dat-

ing pools, sexual-harassment doctrine and the

threat of a lawsuit cannot replace informal
codes of civil behavior. Yet we often seem to ex-
pect them to, pinning our hopes for fixing

workplace relations between the sexes — and

now within them — on litigation, as we pin so

many of our hopes for social regeneration.

If these problems have been in evidence for

some time now, though, the increase in male-

on-female sexual-harassment cases makes them

much starker. It underscores the intellectual in-

coherence of the whole doctrine. It raises the

awkward problem of the equal-opportunity ha-

rasser. It wreaks havoc with the notion, so cen-

tral to sexual-harassment law till now, that sex-

ual expression in the workplace hurts women

more than men. It casts into bold relief the ab-

sence of sexual orientation from Title VII's list of

protected characteristics.

And when sexual-harassment law is extended
to men attacking other men, it assumes that mo-
tivations for noxious behavior are straightfor-
ward — hostility to men in the workplace, for

instance — when they are more likely weird,
involuted and mysterious. Goosing, to take one
easy, might seem to be the simplest, or at least
simple-minded, of acts. (It only really makes sense when gooser and goosee are 12-

year-olds.) But its motivations are, in their own

way, fairly complex: boredom, repressed attrac-
tion, a need to humiliate a co-worker out of per-

sonal dislike or to establish one's dominance,

even a sense that participants are perpetuating

— don't laug — a tradition.

It is equally hard to demonstrate that gender

stereotyping — a provocative but slippery no-

tion — motivates harassment. As Joseph Carl-

ton's case shows, not all male victims fail to con-
form, in any clear-cut way, to their harassers' norms of masculinity. And associating harassment to "hos-

tility to men" in the workplace seems an even

thinner reed. You could imagine a situation in

which, say, a man employed in a nail salon might

feel oppressed by his female co-workers. But

most charges of sexual harassment brought by

men are probably not brought against women,

and the typical case seems to involve a mostly

male workplace.

None of this is to say that workers should

have no recourse when they suffer assaults on

their dignity and privacy. There's no good reason

that a man should go to work and be grabbed ev-

ey day. There's no good reason that Joe DePro-

nio should tolerate gross-out e-mail from a su-

pervisor every day. It's Continued on Page 93
HARASSMENT

Continued from Page 84

just to say that not all of these assaul

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for withdrawing his union membership.) Quick prevailed, not because he could prove a pattern of anti-male animus at the plant but because, to put it baldly, only men have testicles. Of course, no one could deny that Quick was subject to ill treatment. But was it discrimination based on sex? Only in the narrowest, most anatomically bound sense.

In any event, Quick isn’t all that happy with the outcome of his lawsuit. He wishes that his case had gone to trial, so that people he knew didn’t have the impression that his grievance was “all about money,” when it was really about “how you treat other people.” Nowadays he thinks that bringing a sexual-harassment suit was probably the hardest things he could have pursued. He says that people look down on him for going that route, even in his hometown in Iowa, where he counted on some good will. “Harsh things have been said to me by people I’ve known my whole life,” he says. “Not people I’d consider my friends, but still. There’s not much empathy in the general populace for men who make same-sex harassment claims. People just don’t understand; it’s easy to guess they think you’re weak or something.”

ANSWERS TO PUZZLES

OF OCTOBER 6, 2002

RODIN MEES HARE ASGET
SEREO ALOT ESSLH EOME
GRANT HULLL HILL TUN
RUDERGONER RUGRORON
EXSEO EREJ ETAH MTU
HEUERRE ELECREHICH
DAFE LAB TONER IKIC
PELCSO DAVE AMMY
FILLERMAN FILLERHAIR
FAT POTTO LIEENANE
DUMB ABER MA NEIKS RIC
OMUPROB DOMETIC
RODO TIT WAH ICER
DENSEADOMLDHER
TAD DMOMTAF
ADOC CAM SNALE ART MYRC
SCELERKTH CERBERG
ROBNOGANS ROBNOGANS
RORNBOS ROBNOGANS
FRED DOC PRED
PADRE CAEN TRA DJREY

(Robertson) Davies, What’s Bred in the Bone — “Much may be learned about … society by studying … its children, for [they] … are shadows of their parents. … What they believe and do are … what their parents believe in their hearts and would do if society would put up with it.”

A. Destiny
B. Audubon
C. Voluble
D. Irrawaddy
E. Eldridge
F. "Shogun"
G. Whoop-de-do
H. "Hiawatha"
I. Alewile
J. T-shirt
K. Sextet
L. Blair Witch
M. Radify
N. Empathy
O. Detest
P. "In the Mood"
Q. Nureyev
R. Tiberius
S. Heater
T. Eyewitness
U. "Beowulf"
V. Ophidian
W. Nether
X. Elysian
CASE STUDIES REVIEWED
IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 85,030

IN THE MATTER OF THE ESTATE OF

MARSHALL G. GARDINER, Deceased.

SYLLABUS BY THE COURT

1. Summary judgment is appropriate when there is no genuine issue of material fact.

2. The fundamental rule of statutory construction is that the intent of the legislature governs. When construing a statute, words in common usage are to be given their natural and ordinary meaning.

3. In determining legislative intent, courts are not limited to consideration of the language used in the statute but may look to the historical background of the statute, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested.

4. We apply the rules of statutory construction to ascertain the legislative intent as expressed in the statute. We do not read into a statute something that does not come within the wording of the statute. We must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be.

5. The legislature has declared that the public policy of this state is to recognize only the traditional marriage between two parties who are of the opposite sex.

6. The words "sex," "marriage," "male," and "female" in everyday understanding do not encompass transsexuals. The common, ordinary meaning of "persons of the opposite sex" contemplates what is commonly understood to be a biological man and a biological woman. A post-operative male-to-female transsexual does not fit the common definition of a female.

7. A traditional marriage is the legal relationship between a biological man and a biological woman for the discharge to each other and the community of the duties legally incumbent on those whose relationship is founded on the distinction of sex.

8. The stated purpose of K.S.A. 2001 Supp. 23-101 and K.S.A. 2001 Supp. 23-115 is to recognize that only traditional marriages are valid in this state. A post-operative male-to-female transsexual is not a woman within the meaning of the statutes and cannot validly marry another man.


2002.

Sanford P. Krigel, of Krigel & Krigel, P.C., of Kansas City, Missouri, argued the cause, and Karen S. Rosenberg, of the same firm, was with him on the briefs for appellant, J'Noel Gardiner.

William M. Modrcin, of Morrison & Becker, L.L.P., of Kansas City, Missouri, argued the cause, and David G. Watkins, of the same firm, and John F. Thompson, of Davis, Beall, McGuire & Thompson, of Leavenworth, were with him on the briefs for appellee, Joseph M. Gardiner, III.

Aronda Strutt Kerns, of Wichita, and Patrick T. Gillen, of Thomas More Center for Law & Justice, of Ann Arbor, Michigan, were on the brief for amicus curiae Thomas More Center for Law & Justice.

Lisa Nathanson, of American Civil Liberties Union of Kansas and Western Missouri, of Kansas City; Doni Gewirtzman, Ruth E. Harlow, Beatrice Dohrn, and Evan Wolfson, of the Lambda Legal Defense and Education Fund, Inc., of New York, New York; and Pamela Sumners, of the American Civil Liberties Union of Illinois, of Chicago, Illinois, were on the brief for amici curiae Gender Public Advocacy Coalition and American Civil Liberties Union of Kansas and Western Missouri.

The opinion of the court was delivered by

ALLEGRUCCI, J.: J'Noel Gardiner appealed from the district court's entry of summary judgment in favor of Joseph M. Gardiner, III, (Joe) in the probate proceeding of Marshall G. Gardiner. The district court had concluded that the marriage between Joe's father, Marshall, and J'Noel, a post-operative male-to-female transsexual, was void under Kansas law.

The Court of Appeals reversed and remanded for the district court's determination whether J'Noel was male or female at the time the marriage license was issued. See In re Estate of Gardiner, 29 Kan. App. 2d 92, 22 P.3d 1086 (2001). The Court of Appeals directed the district court to consider a number of factors in addition to chromosomes. Joe's petition for review of the decision of the Court of Appeals was granted by this court.

The following facts regarding J'Noel's personal background are taken from the opinion of the Court of Appeals:

"J'Noel was born in Green Bay, Wisconsin. J'Noel's original birth certificate indicates J'Noel was born a male. The record shows that after sex reassignment surgery, J'Noel's birth certificate was amended in Wisconsin, pursuant to Wisconsin statutes, to state that she was female. J'Noel argued that the order drafted by a Wisconsin court directing the Department of Health and Social Services in Wisconsin to prepare a new birth record must be given full faith and credit in Kansas.

"Marshall was a businessman in northeast Kansas who had accumulated some wealth. He had one son, Joe, from whom he was estranged. Marshall's wife had died some time before he met J'Noel. There is no evidence that Marshall was not competent. Indeed, both Marshall and J'Noel possessed intelligence and real world experience. J'Noel had a Ph.D in finance and was a teacher at Park College.

"J'Noel met Marshall while on the faculty at Park College in May 1998. Marshall was a donor to the school. After the third or fourth date, J'Noel testified that Marshall brought up marriage. J'Noel wanted to get to know Marshall better, so they went to Utah for a trip. When asked about when they became sexually intimate, J'Noel testified that on this trip, Marshall had an orgasm. J'Noel stated that sometime in July 1998, Marshall was told about J'Noel's prior history as a male. The two were married in Kansas
on September 25, 1998.

"There is no evidence in the record to support Joe's suggestion that Marshall did not know about J'Noel's sex reassignment. It had been completed years before Marshall and J'Noel met. Nor is there any evidence that Marshall and J'Noel were not compatible.

"Both parties agree that J'Noel has gender dysphoria or is a transsexual. J'Noel agrees that she was born with male genitalia. In a deposition, J'Noel testified that she was born with a 'birth defect'--a penis and testicles. J'Noel stated that she thought something was 'wrong' even prepuberty and that she viewed herself as a girl but had a penis and testicles.

"J'Noel's journey from perceiving herself as one sex to the sex her brain suggests she was, deserves to be detailed. In 1991 and 1992, J'Noel began electrolysis and then thermolysis to remove body hair on the face, neck, and chest. J'Noel was married at the time and was married for 5 years. Also, beginning in 1992, J'Noel began taking hormones, and, in 1993, she had a tracheal shave. A tracheal shave is surgery to the throat to change the voice. All the while, J'Noel was receiving therapy and counseling.

"In February 1994, J'Noel had a bilateral orchiectomy to remove the testicles. J'Noel also had a forehead/eyebrow lift at this time and rhinoplasty. Rhinoplasty refers to plastic surgery to alter one's nose. In July 1994, J'Noel consulted with a psychiatrist, who opined that there were no signs of thought disorder or major affective disorder, that J'Noel fully understood the nature of the process of transsexual change, and that her life history was consistent with a diagnosis of transsexualism. The psychiatrist recommended to J'Noel that total sex reassignment was the next appropriate step in her treatment.

"In August 1994, J'Noel underwent further sex reassignment surgery. In this surgery, Eugene Schrang, M.D., J'Noel's doctor, essentially cut and inverted the penis, using part of the skin to form a female vagina, labia, and clitoris. Dr. Schrang, in a letter dated October 1994, stated that J'Noel has a 'fully functional vagina' and should be considered 'a functioning, anatomical female.' In 1995, J'Noel also had cheek implants. J'Noel continues to take hormone replacements.

.....

"After the surgery in 1994, J'Noel petitioned the Circuit Court of Outagamie County, Wisconsin, for a new birth certificate which would reflect her new name as J'Noel Ball and sex as female. The court issued a report ordering the state registrar to make these changes and issue a new birth certificate. A new birth certificate was issued on September 26, 1994. The birth certificate indicated the child's name as J'Noel Ball and sex as female. J'Noel also has had her driver's license, passport, and health documents changed to reflect her new status. Her records at two universities have also been changed to reflect her new sex designation. 29 Kan. App. 2d at 96-98.

Before meeting Marshall, J'Noel was married to S.P., a female. J'Noel and S.P. met and began living together in 1980, while J'Noel was in college. They married in 1988. J'Noel testified she and S.P. engaged in heterosexual relations during their relationship. J'Noel believed she was capable of fathering children, and the couple used birth control so S.P. would not become pregnant. J'Noel and S.P. divorced in May 1994.

J'Noel Ball and Marshall Gardiner were married in Kansas in September 1998. Marshall died intestate in August 1999. This legal journey started with Joe filing a petition for letters of administration, alleging that J'Noel had waived any rights to Marshall's estate. J'Noel filed an objection and asked that letters of administration be issued to her. The court then appointed a special administrator. Joe amended his
petition, alleging that he was the sole heir in that the marriage between J'Noel and Marshall was void since J'Noel was born a man. J'Noel argues that she is a biological female and was at the time of her marriage to Marshall. There is no dispute that J'Noel is a transsexual.

According to Stedman's Medical Dictionary 1841 (26th ed. 1995), a transsexual is a "person with the external genitalia and secondary sexual characteristics of one sex, but whose personal identification and psychosocial configuration is that of the opposite sex; a study of morphologic, genetic, and gonadal structure may be genitally congruent or incongruent." A post-operative transsexual, such as J'Noel, is a person who has undergone medical and surgical procedures to alter "external sexual characteristics so that they resemble those of the opposite sex." Stedman's Med. Dict. 1841 (26th ed. 1995). The external sexual characteristics may include genitalia, body and facial hair, breasts, voice, and facial features.


On cross-motions for summary judgment, the district court denied J'Noel's motion by declining to give full faith and credit to J'Noel's Wisconsin birth certificate, which had been amended as to sex and name. Joe's waiver argument was based on a writing that purports to waive J'Noel's interests in Marshall's property. The district court declined to conclude as a matter of law that the writing constituted a waiver. The factual issue of fraud was not decided on summary judgment. The district court granted Joe's motion with regard to the validity of the marriage on the ground that J'Noel is a male.

J'Noel appealed from the district court's entry of summary judgment against her and in Joe's favor. Joe did not cross-appeal. The Court of Appeals affirmed the district court's ruling denying J'Noel's motion for summary judgment. J'Noel did not file a cross-petition for review of that ruling, and it is not before this court. Since Joe did not file a cross-appeal of the district court's decision on waiver and fraud, those issues are likewise not before the court. The sole issue for review is whether the district court erroneously entered summary judgment in favor of Joe on the ground that J'Noel's marriage to Marshall was void.

On the question of validity of the marriage of a post-operative transsexual, there are two distinct "lines" of cases. One judges validity of the marriage according to the sexual classification assigned to the transsexual at birth. The other views medical and surgical procedures as a means of unifying a divided sexual identity and determines the transsexual's sexual classification for the purpose of marriage at the time of marriage. The essential difference between the two approaches is the latter's crediting a mental component, as well as an anatomical component, to each person's sexual identity.

Among the cases brought to the court's attention not recognizing a mental component or the efficacy of medical and surgical procedures are Corbett v. Corbett, 2 All E.R. 33 (1970); In re Ladrach, 32 Ohio Misc. 2d 6, 513 N.E.2d 828 (1987); and Littleton v. Prange, 9 S.W.3d 223 (Tex. Civ. App. 1999), cert. denied 531 U.S. 872 (2000). Recognizing them are M.T. v. J.T., 140 N.J. Super 77, 355 A.2d 204, cert. denied 71 N.J. 345 (1976); and In re Kevin, FamCA 1074 (File No. SY8136 OF 1999, Family Court of Australia, at Sydney, 2001).

The district court, in the present case, relied on Littleton. The Court of Appeals relied on M.T. In re Kevin was decided after the Court of Appeals issued its opinion, and it cites In re Estate of Gardiner with approval; review of that case by the full Family Court of Australia has been heard, but an opinion has not yet been issued.
Littleton was the source for the district court's language and reasoning. The Texas court's statement of the issue was: "[C]an a physician change the gender of a person with a scalpel, drugs and counseling, or is a person's gender immutably fixed by our Creator at birth?" 9 S.W.3d at 224. For what purported to be its findings of fact, the district court restated the Texas court's conclusions nearly verbatim (See 9 S.W.3d at 230-31):

"Medical science recognizes that there are individuals whose sexual self-identity is in conflict with their biological and anatomical sex. Such people are termed transsexuals. . . .

"[T]ranssexuals believe and feel they are members of the opposite sex. . . . J'Noel is a transsexual.

"[T]hrough surgery and hormones, a transsexual male can be made to look like a woman, including female genitalia and breasts. Transsexual medical treatment, however, does not create the internal sexual organs of a woman, except for the vaginal canal. There is no womb, cervix or ovaries in the post-operative transsexual female.

"[T]he male chromosomes do not change with either hormonal treatment or sex reassignment surgery. Biologically, a post-operative female transsexual is still a male. . . .

"The evidence fully supports that J'Noel, born male, wants and believes herself to be a woman. She has made every conceivable effort to make herself a female.

"[S]ome physicians would consider J'Noel a female; other physicians would consider her still a male. Her female anatomy, however, is still all man-made. The body J'Noel inhabits is a male body in all aspects other than what the physicians have supplied.

"From that the Court has to conclude, and from the evidence that's been submitted under the affidavits, as a matter of law, she - J'Noel is a male."

The Court of Appeals found no error in the district court's not giving the Wisconsin birth certificate full faith and credit. 29 Kan. App. 2d at 125. With regard to the validity of the marriage, the Court of Appeals reversed and remanded for the district court's determination whether J'Noel was male or female, for the purpose of K.S.A. 2001 Supp. 23-101, at the time the marriage license was issued. 29 Kan. App. 2d at 127-28.

The Court of Appeals rejected the reasoning of Littleton "as a rigid and simplistic approach to issues that are far more complex than addressed in that opinion." 29 Kan. App. 2d at 127. The Court of Appeals "look[ed] with favor on the reasoning and the language" of M.T. 29 Kan. App. 2d at 128. The Court of Appeals engaged in the following discussion of the decision in M.T.:

"In M.T., a husband and wife were divorcing, and the issue was support and maintenance. The husband argued that he should not have to pay support to his wife because she was a male, making the marriage void. The issue before the court, similar to that before this court, was whether the marriage of a post-operative male-to-female transsexual and a male was a lawful marriage between a man and a woman. The court found that it was a valid marriage. 140 N.J. Super. at 90.

"In affirming the lower court's decision, the court noted the English court's previous decision in Corbett. 140 N.J. Super. at 85-86. The court rejected the reasoning of Corbett, though, finding that 'for marital purposes if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence
of these standards.' 140 N.J. Super. at 87. Since the court found that the wife's gender and genitalia were no longer 'discordant' and had been harmonized by medical treatment, the court held that the wife was a female at the time of her marriage and that her husband, then, was obligated to support her. 140 N.J. Super. at 89-90.

"The importance of the holding in M.T. is that it replaces the biological sex test with dual tests of anatomy and gender, where 'for marital purposes if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence of these standards.' 140 N.J. Super. at 87.

"The M.T. court further stated:

'In this case the transsexual's gender and genitalia are no longer discordant; they have been harmonized through medical treatment. Plaintiff has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled sexual attributes of gender and anatomy. Consequently, plaintiff should be considered a member of the female sex for marital purposes. It follows that such an individual would have the capacity to enter into a valid marriage relationship with a person of the opposite sex and did so here. In so ruling we do no more than give legal effect to a fait accompli, based upon medical judgment and action which are irreversible. Such recognition will promote the individual's quest for inner peace and personal happiness, while in no way disserving any societal interest, principle of public order or precept of morality.' 140 N.J. Super at 89-90.

"In M.T., the husband was arguing that he did not owe any support because his wife was a man. However, in the record, it was stated that the wife had a sex reassignment operation after meeting the husband. Her husband paid for the operation. The husband later deserted the wife and then tried to get out of paying support to someone he had been living with since 1964 and had been married to for over 2 years." 29 Kan. App. 2d at 113-14.

In his petition for review, Joe complained that the Court of Appeals failed to "ask the fundamental question of whether a person can actually change sex within the context of K.S.A. 23-101." On the issue of the validity of the marriage, Joe's principal arguments were that the Court of Appeals failed to give K.S.A. 2001 Supp. 23-101 its plain and unambiguous meaning and that the Court of Appeals' opinion improperly usurps the legislature's policy-making role.

K.S.A. 2001 Supp. 23-101 provides:

"The marriage contract is to be considered in law as a civil contract between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void. The consent of the parties is essential. The marriage ceremony may be regarded either as a civil ceremony or as a religious sacrament, but the marriage relation shall only be entered into, maintained or abrogated as provided by law."

Joe's principal argument is that the statutory phrase is plain and unambiguous. His statements of the issue and his position, however, go beyond the statutory phrase to pin down the time when the two parties are of opposite sex. The plain and unambiguous meaning of K.S.A. 2001 Supp. 23-101, according to Joe, is that a valid marriage must be between two persons who are of opposite sex at the time of birth.

Applying the statute as Joe advocates, a male-to-female transsexual whose sexual preference is for women may marry a woman within the advocated reading of K.S.A. 2001 Supp. 23-101 because, at the
time of birth, one marriage partner was male and one was female. Thus, in spite of the outward appearance of femaleness in both marriage partners at the time of the marriage, it would not be a void marriage under the advocated reading of K.S.A. 2001 Supp. 23-101. As the Court of Appeals stated in regard to J'Noel's argument that K.S.A. 2001 Supp. 23-101, as applied by the district court, denied her right to marry: "When J'Noel was found by the district court to be a male for purposes of Kansas law, she was denied the right to marry a male. It logically follows, therefore, that the court did not forbid J'Noel from marrying a female." 29 Kan. App. 2d at 126.

Joe's fallback argument is that the legislature's intent was to uphold "traditional marriage," interpreting K.S.A. 2001 Supp. 23-101 so that it invalidates a marriage between persons who are not of the opposite sex; i.e., a biological male and a biological female.

Joe also contends that the legislature did not intend for the phrase "opposite sex" in K.S.A. 2001 Supp. 23-101 to allow for a change from the sexual classification assigned at birth.


"All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state. It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman."

The Court of Appeals extensively reviewed cases involving transsexuals from other states and countries. Rather than restate what already has been well stated, the Court of Appeals' discussion of cases is, in part, quoted here:

"The cases generally fall into three categories: cases dealing with the amendment of identification records, usually birth certificate name and/or sex changes; cases dealing with discrimination, most pointedly in the workplace; and cases dealing with marriage between a transsexual and a nontranssexual. An additional case which will be discussed deals with transsexuals and competition in sporting events. The analysis will follow the cases chronologically.

"The first case in the United States to deal with transsexualism involved a petition for a change of sex on a birth certificate. In Mtr. of Anonymous v. Weiner, 50 Misc. 2d 380, 270 N.Y.S.2d 319 (1966), a post-operative transsexual who had assumed the name and role of a female applied to the Bureau of Vital Statistics in the New York City Health Department for a new birth certificate. The Bureau requested guidance from the Board of Health, who, in turn, called on a committee on public health of the New York Academy of Medicine to investigate the issue and make recommendations. The group called on to assist included gynecologists, endocrinologists, cytogeneticists, psychiatrists, and a lawyer.

"The transsexual's application in Weiner was denied. In a resolution passed by the Board of Health, it was stated that ""an individual born one sex cannot be changed for the reasons proposed by the request which was made to us. Sex can be changed where there is an error, of course, but not when there is a later attempt to change psychological orientation of the patient and including such surgery as goes with it."" 50 Misc. 2d at 383."
"However, a civil court in New York, in 1968 and then again in 1970, granted an application for a change of name to a post-operative transsexual. *Matter of Anonymous*, 57 Misc. 2d 813, 293 N.Y.S.2d 834 (1968); *Matter of Anonymous*, 64 Misc. 2d 309, 314 N.Y.S.2d 668 (1970). In the 1968 case of *Anonymous*, a male-to-female transsexual petitioned the court to order the Bureau of Vital Statistics of the Department of Health of the City of New York to change his birth certificate to reflect a name and sex change. Based on New York law, the civil court lacked jurisdiction to change the sex on the birth certificate. 57 Misc. 2d at 813-14. Even so, the court still criticized the findings of the Academy.

"The court noted that all male organs had been removed and that the petitioner could no longer have sex as a male. The court stated that where, with or without medical intervention, the psychological sex and the anatomical sex are 'harmonized,' then the social sex or gender of the individual should conform to the harmonized status of the individual, and if such conformity requires a change in statistical information, the changes should be made. 57 Misc. 2d at 816.

"Later, in *Mrt. of Hartin v. Dir. of Bur. of Recs.*, 75 Misc. 2d 229, 232, 347 N.Y.S.2d 515 (1973), the appellate court reaffirmed the decision in *Weiner*. We can conclude that as of the filing date of *Hartin*, New York was stating that its birth records should reflect the sex of an individual as determined at birth.

..."

"The next case, often cited, but perhaps colored by the fact that the parties lived together only 14 days of their 3-month marriage, is *Corbett v. Corbett*, 2 All E.R. 33 (1970), an English opinion dealing with transsexualism. One of the parties was a male-to-female transsexual and former female impersonator named April Ashley, who married Arthur Corbett. Arthur was a homosexual and transvestite 'prone to all kinds of sexual fantasies and practices.' 2 All. E.R. at 38. An English court in the probate, divorce, and admiralty division ruled that a marriage between a post-operative male-to-female transsexual and a male was void. 2 All. E.R. at 50.

"After the surgery, the respondent had her passport changed to reflect a female name. The respondent also had insurance papers changed to reflect her sex as female. An attempt to change the respondent's birth certificate failed.

"In *Corbett*, some dispute existed as to whether the respondent was 'intersexed,' which was described then as a medical concept meaning 'something between intermediate and indeterminate sex.' 2 All E.R. at 43. The court rejected this notion, finding enough evidence to support the view that the respondent was born a male. 2 All E.R. at 43.

"The court found that biological sex is determined at birth and cannot be changed by natural or surgical means. The respondent's operation, the court stated, cannot affect the true sex. The only cases where the term 'change of sex' is appropriate, the court opined, is when there has been a mistake as to sex at birth that is subsequently revealed in a medical examination. 2 All E.R. at 47.

"In dealing with the argument that it is illogical for the court to treat the respondent as a male while other paperwork may have been changed to say differently, the court declared: 'Marriage is a relationship which depends on sex and not on gender.' 2 All E.R. at 49. The court distinguished marriage from other social situations. 2 All E.R. at 49. Sex is clearly an essential determinant of the relationship in marriage, the court stated, as it is recognized as the union between a man and woman. The court established a three-part test in determining what is a person's sex for purposes of the law, stating:
'Having regard to the essentially heterosexual character of the relationship which is called marriage, the criteria must . . . be biological, for even the most extreme degree of transsexualism in a male or the most severe hormonal imbalance which can exist in a person with male chromosomes, male gonads and male genitalia cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage. In other words, the law should adopt in the first place . . . the chromosomal, gonadal, and genital tests, and if all three are congruent, determine the sex for the purpose of marriage accordingly, and ignore any operative intervention.' 2 All E.R. at 48.

"The unusual facts and the lack of a relationship in Corbett make it of questionable precedential value here. We recognize that it may have been the first time a court addressed these issues in the context of marriage.

"A change in thinking can perhaps be observed beginning in 1975 in Darnell v. Lloyd, 395 F. Supp. 1210 (D. Conn. 1975). The petitioner, called a male at birth, had a sex change operation and later requested that the Commissioner of Health change the sex on his birth certificate from male to female. The Commissioner refused to make such a change. The transsexual sued to have the Commissioner ordered to make this change, and the Commissioner moved for summary judgment.

"The court denied the motion for summary judgment, finding that the Commissioner of Health must show some substantial state interest in his policy of refusing to change a birth certificate to reflect current sexual status unless that was also the status at birth. 395 F. Supp. at 1214. The court found that this heightened level of scrutiny exists because the court felt that the fundamental right to marry could be implicated by the Commissioner's decision. 395 F. Supp. at 1214.

"The court held that the Commissioner of Health had not met his burden of proof. 395 F. Supp. at 1214. It indicated that the exact anatomical condition of the petitioner at birth was unclear, as were all of the details of the operation and present circumstances. 395 F. Supp. at 1213.


"In M.T., a husband and wife were divorcing, and the issue was support and maintenance. The husband argued that he should not have to pay support to his wife because she was a male, making the marriage void. The issue before the court, similar to that before this court, was whether the marriage of a post-operative male-to-female transsexual and a male was a lawful marriage between a man and a woman. The court found that it was a valid marriage. 140 N.J. Super. at 90.

"In affirming the lower court's decision, the court noted the English court's previous decision in Corbett. 140 N.J. Super. at 85-86. The court rejected the reasoning of Corbett, though, finding that 'for marital purposes if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence of these standards.' 140 N.J. Super. at 87. Since the court found that the wife's gender and genitalia were no longer 'discordant' and had been harmonized by medical treatment, the court held that the wife was a female at the time of her marriage and that her husband, then, was obligated to support her. 140 N.J. Super. at 89-90.

"The importance of the holding in M.T. is that it replaces the biological sex test with dual tests of anatomy and gender, where 'for marital purposes if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence of these standards.' 140 N.J. Super. at 87.
"The M.T. court further stated:

'In this case the transsexual's gender and genitalia are no longer discordant; they have been harmonized through medical treatment. Plaintiff has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled sexual attributes of gender and anatomy. Consequently, plaintiff should be considered a member of the female sex for marital purposes. It follows that such an individual would have the capacity to enter into a valid marriage relationship with a person of the opposite sex and did so here. In so ruling we do no more than give legal effect to a fait accompli, based upon medical judgment and action which are irreversible. Such recognition will promote the individual's quest for inner peace and personal happiness, while in no way disserving any societal interest, principle of public order or precept of morality.' 140 N.J. Super. at 89-90.

"In M.T., the husband was arguing that he did not owe any support because his wife was a man. However, in the record, it was stated that the wife had a sex reassignment operation after meeting the husband. Her husband paid for the operation. The husband later deserted the wife and then tried to get out of paying support to someone he had been living with since 1964 and had been married to for over 2 years.

"In 1977, the Oregon Supreme Court was faced with the issue of whether a birth certificate of a transsexual should be changed to reflect a different name and sex. K. v. Health Division, 277 Or. 371, 560 P.2d 1070 (1977). In K., the court first looked to the statutes regarding birth certificate changes. The court found limited circumstances existed under the law for birth certificate amendments. The amendments, further, only dealt with name changes and only in the case of adoption or if a parent name changes. 277 Or. at 374-75.

"Despite the Court of Appeals finding that the birth certificate could be amended, the Oregon Supreme Court held that no such authority existed in Oregon to change the birth certificate to reflect a change in sex or name in this instance. 277 Or. at 374-76. The court stated that 'it has not been demonstrated, by legislative history or otherwise, that it would be "at variance with the apparent policy" of either the legislature or the State Board of Health to deny the issuance of a "new birth certificate" to a transsexual.' 277 Or. at 375. The court further stated:

'In our opinion, it is at least equally, if not more reasonable, to assume that in enacting these statutes it was the intent of the legislature of Oregon that a "birth certificate" is an historical record of the facts as they existed at the time of birth, subject to the specific exceptions provided by statute.' 277 Or. at 375.

"In so finding, the Supreme Court declared that 'it is not for this court to decide which view is preferable. On the contrary, we hold that this is a matter of public policy to be decided by the Oregon legislature.' 277 Or. at 376.

... "In 1984, the United States Court of Appeals, Seventh Circuit, analyzed an issue concerning transsexualism and workplace discrimination. In Ulane v. Eastern Airlines, Inc., 742 F.2d 1081 (7th Cir. 1984), cert. denied 471 U.S. 1017 (1985), a post-operative male-to-female transsexual who was a pilot for Eastern Airlines was fired in 1981, shortly after sex reassignment surgery. The transsexual sued the airline, alleging that the employer violated Title VII by discharging her from her position as a pilot. A federal district court agreed with the transsexual, finding discrimination against this person as both a female and a transsexual, and the airline appealed. 742 F.2d at 1082."
"The Seventh Circuit disagreed with the district court. The court stated that while it does not condone discrimination in any form, it must hold that Title VII does not protect transsexuals. 742 F.2d at 1084. First, the court stated: 'It is a maxim of statutory construction that, unless otherwise defined, words should be given their ordinary, common meaning.' 742 F.2d at 1085. The court explained that the words of Title VII do not outlaw discrimination against a person who has a sexual identity disorder. It noted that the law clearly prohibits discrimination against women because they are women or men because they are men; it does not protect a person born with a male body who believes himself to be female or a person born with a female body who believes herself to be male. 742 F.2d at 1085.

"After noting that nothing was said in the legislative history about transsexuals, the court stated that it appears clear that Congress did not intend the legislation to apply to anything other than 'the traditional concept of sex.' 742 F.2d at 1085. Had Congress intended it to apply, surely it would have said so, the court explained. 742 F.2d at 1085. Thus, the court declined to expand the definition of 'sex' as used in Title VII beyond its 'common and traditional interpretation,' stating: 'We agree with the Eighth and Ninth Circuits that if the term "sex" as it is used in Title VII is to mean more than biological male or biological female, the new definition must come from Congress.' 742 F.2d at 1087. See Sommers v. Budget Marketing, Inc., 667 F.2d 748, 750 (8th Cir. 1982); Holloway v. Arthur Andersen & Co., 566 F.2d 659, 662-63 (9th Cir. 1977).

"The two most recent decisions in the United States in the area of transsexualism have dealt with the precise issue before this court, that is, whether two individuals, biologically and legally of the same sex at birth, may contract to marry each other.

"In 1987, a probate court in Ohio addressed the question in the case of In re Ladrach, 32 Ohio Misc. 2d 6, 513 N.E.2d 828 (1987). In Ladrach, a post-operative male-to-female transsexual and the transsexual's fiancé, a biological male, applied for a marriage license. The application indicated that the transsexual had been married two times before to spouses of the female gender and that both marriages had ended in divorce.

"After reading the application, the clerk at the license bureau called a judge who reviewed the application. The judge also reviewed a signed letter by a physician indicating that the transsexual had undergone sex reassignment surgery. After reviewing the marriage statute in Ohio, the judge concluded that the application must be denied. Later, the transsexual also filed a petition to have the sex corrected on the transsexual's birth certificate to state 'Girl' instead of 'Boy.' This application was dismissed, and the transsexual filed a complaint for declaratory judgment to have the birth certificate changed and the marriage license issued.

"The Ohio Probate Court found that the birth certificate, based on Ohio law, should not be changed. The court stated that its statute is a 'correction' type statute, which permits a court to correct errors such as spelling of names, dates, race and sex, if in fact there was an error. 32 Ohio Misc. 2d at 8. Since there was no error in the designation of the transsexual as a boy, the application, the court stated, must be dismissed as to the birth certificate change. 32 Ohio Misc. 2d at 8.

"The court concluded, after a review of prior case law, law review articles, and the posthearing brief of the applicant, that no authority existed in Ohio for the issuance of a marriage license to a post-operative male-to-female transsexual and a male person. 32 Ohio Misc. 2d at 10. If it is to be the public policy of the state of Ohio to issue marriage license in such cases, the court stated, 'it is this court's opinion that the legislature should change the statutes.' 32 Ohio Misc. 2d at 10.
"The most recent decision in the United States regarding transsexualism was decided by the Texas Court of Appeals in Littleton v. Prange, 9 S.W.3d 223 (Tex. Civ. App. 1999), cert. denied 531 U.S. 872 (2000). In J'Noel's case, the district court appears to rely heavily on this case in rendering its decision that J'Noel is a male, quoting some of its language verbatim. In Littleton, a transsexual, now called Christie, who was a man but had undergone sex reassignment surgery, brought a medical malpractice suit under Texas' wrongful death statute as a surviving spouse of a male patient. The doctor who was sued filed a motion for summary judgment, asserting that Christie was a male and, therefore, could not be the surviving spouse of another man. The trial court granted summary judgment to the doctor, and Christie appealed.

"Christie had a name and sex change made on her birth certificate during pendency of the suit. During the surgical procedures, Christie's penis, scrotum, and testicles were removed, and a vagina and labia were constructed. Christie also had breast construction surgery. One of Christie's doctors testified that Christie 'has the capacity to function sexually as a female' after the surgery. 9 S.W.3d at 225. Doctors testified that medically Christie was a woman.

"Christie married a man by the name of Jonathon in 1989, approximately 9 or 10 years after sex reassignment surgery. The two lived together until Jonathon's death in 1996, after which time Christie filed suit against Jonathon's doctor. In Christie's affidavit, Christie asserted that Jonathon knew about Christie's background and sex reassignment surgery.

"The court in Littleton stated that in Texas, marriage must be between two parties of the opposite sex. 9 S.W.3d at 225. Further, in order for Christie to sue under the wrongful death statute in Texas, Christie must be the surviving spouse. 9 S.W.3d at 225. Thus, if Christie was a man, summary judgment would be appropriate. After a brief review of what transsexualism is, the court next examined the case law in this area. The court discussed Corbett and the case of Anonymous v. Anonymous, 67 Misc. 2d 982, 325 N.Y.S.2d 499 (1971). The court also referenced such cases as M.T. v. J.T., In re Ladrach, and K. v. Health Division. 9 S.W.3d at 227-29.

"After a review of the case law, the court concluded that Christie was a male as a matter of law. 9 S.W.3d at 231. The court noted that this was an issue of first impression in Texas. 9 S.W.3d at 230. In line with previous cases, the court stated: 'It is for the legislature, should it choose to do so, to determine what guidelines should govern the recognition of marriages involving transsexuals... It would be intellectually impossible for this court to write a protocol for when transsexuals would be recognized as having successfully changed their sex.' 9 S.W.3d at 230.

"While Christie argued that amputation was "a pretty important step," the court, while agreeing, explained that it had 'no authority to fashion a new law on transsexuals, or anything else. We cannot make law when no law exists: we can only interpret the written word of our sister branch of government, the legislature.' 9 S.W.3d at 230.

"Thus, the court found that even though surgery and hormones can make a transsexual male look like a woman, including female genitalia, and in Christie's case, even breasts, transsexual medicine does not create the internal sex organs of a woman (except for a man-made vaginal canal). There is no womb, cervix, or ovaries in the post-operative transsexual female. The chromosomes do not change. Biologically, the post-operative female is still a male. 9 S.W.3d at 230. Even though some doctors would consider Christie a female and some a male, the court concluded: 'Her female anatomy, however, is all man-made. The body that Christie inhabits is a male body in all aspects other than what the physicians have supplied.' 9 S.W.3d at 231.
"A petition for writ of certiorari of the Littleton holding was denied by the United States Supreme Court on October 2, 2000." 29 Kan. App. 2d at 1100-06.

J'Noel submitted a supplemental brief to this court in order to bring to the court's attention a decision of the Family Court of Australia, which is dated October 12, 2001. J'Noel refers to the new decision as In re Kevin, FamCA 1074 (File No. SY8136 OF 1999, Family Court of Australia, at Sydney, 2001). In that case, applicants, Kevin and Jennifer, sought a declaration of the validity of their marriage. Kevin (f.k.a. Kimberley) is a female-to-male transsexual. His birth certificate recorded his sex as "female," but Kevin always considered himself to be a male. Kevin met Jennifer in October 1996. He told her of "his transsexual predicament." They began living together in February 1997 and agreed to marry. In November 1997, Kevin had breast reduction surgery, and in September 1998 he had "a total hysterectomy with bilateral oophorectomy." Slip op. at 8. Kevin has elected not to undergo further surgery involving construction of a penis or testes. Due to hormone treatments, Kevin's voice has deepened and he has coarse hair growth on his face, chest, legs, and stomach. In October 1998, Kevin was issued a new birth certificate showing his sex as "male," and he and Jennifer were married.

Jennifer became pregnant through in vitro fertilization with donated sperm and gave birth in November 1999. The couple plans to have another child in this way. Kevin's history of transsexuality was made known to the infertility clinic where he and Jennifer applied for treatment, and after full consideration by a team of scientists, physicians, and nurses "it was decided that Kevin and Jennifer be considered a heterosexual couple with infertility consequent to absent sperm production." Slip op. at 10.

Two psychiatrists examined Kevin. Both concluded that Kevin is and always has been psychologically male. One wrote that he believed Kevin's "brain sex or mental sex is male," and then stated his agreement with the opinion of Milton Diamond, an American professor of anatomy and reproductive biology, "that further research will confirm the present evidence that brain sex or mental sex is a reality which would explain the persistence of a gender identity in the face of or contrary to external influences." Slip op. at 11.

The record in the Australian case was richly and comprehensively developed, in sharp contrast with the record in the case before us. In In re Kevin, the court had the benefit of the testimony of many people who were colleagues, friends, and family of Jennifer and Kevin, as well as volumes of medical and scientific evidence.

Here, the district court's conclusion of law, based on its findings of fact, was that "J'Noel is a male." In other words, the district court concluded as a matter of law that J'Noel is a male and granted summary judgment on that basis.

The district court stated that it had considered conflicting medical opinions on whether J'Noel was male or female. This is not the sort of factual dispute that would preclude summary judgment because what the district court actually took into account was the medical experts' opinions on the ultimate question. The district court did not take into account the factors on which the scientific experts based their opinions on the ultimate question. The district court relied entirely on the Texas court's opinion in Littleton for the "facts" on which it based its conclusion of law. There were no expert witnesses or medical testimony as to whether J'Noel was a male or female. The only medical evidence was the medical report as to the reassignment surgery attached to J'Noel's memorandum in support of her motion for partial summary judgment. There was included a "To Whom It May Concern" notarized letter signed by Dr. Schrang in which the doctor wrote: "She should now be considered a functioning, anatomical
female."

The Court of Appeals found deficiency in the district court's entry of summary judgment. Supplying some of what the district court omitted, the Court of Appeals included in its opinion a review of some scientific literature. As courts typically do, the Court of Appeals also turned to a law journal article that reported on scientific matters relevant to legal issues. The Court of Appeals quoted extensively from Greenberg, Defining Male and Female: Intersexuality and the Collision between Law and Biology, 41 Ariz. L. Rev. 265, 278-92 (1992). 29 Kan. App. 2d at 101-09. Professor Greenberg's thesis is that sexual identification is not simply a matter of anatomy, as demonstrated by a number of intersex conditions - chromosomal sex disorders, gonadal sex disorders, internal organ anomalies, external organ anomalies, hormonal disorders, gender identity disorder, and unintentioned amputation.

Thus, the essential difference between the line of cases, including Corbett and Littleton, that would invalidate the Gardiner marriage and the line of cases, including M.T. and In re Kevin, that would validate it is that the former treats a person's sex as a matter of law and the latter treats a person's sex as a matter of fact. In Littleton, the thread running throughout the majority's opinion was that a person's gender was immutably fixed by our Creator at birth. 9 S.W.3d at 224. Summing up its view of Christie's mission to be accepted as a male, the court stated: "There are some things we cannot will into being. They just are." 9 S.W.3d at 231. Corbett was approvingly described by the Texas majority as holding, "once a man, always a man." 9 S.W.3d at 227. The Texas court decided that there was nothing for a jury to decide, and '[t]here are no significant facts that need to be decided." 9 S.W.3d at 230. Because "Christie was created and born a male," the Texas court "h[e]ld, as a matter of law, that Christie Littleton is a male." (Emphasis added.) 9 S.W.3d at 231.

In contrast, the Australian court stated:

"It will be necessary to identify whether particular propositions in the reasoning are statements of fact or of law. I take it to be a question of law what criteria should be applied in determining whether a person is a man or a woman for the purpose of the law of marriage, and a question of fact whether the criteria exist in a particular case." In re Kevin, slip op. at 17.

The Australian court's analytical approach echoes that of our Court of Appeals. Indeed, Gardiner is cited and discussed by the Australian court. Slip op. at 44-45, 51-52.

The Court of Appeals rejected the district court's sex-at-birth-answers-the- question rationale in part, at least, because the Court of Appeals opined that there are a number of factors that make sexual identification at birth less than certain. In chromosomal sex disorders, the chromosomal pattern does not fit into the XX and XY binary system. Among the chromosomal sex disorders described by Greenberg are Klinefelter Syndrome, which affects approximately 1 in 500 to 1,000 babies identified at birth as males based on the appearance of external genitalia, in which multiple X chromosomes may become manifest in puberty with breast development. Turner Syndrome affects babies identified at birth as females, who in fact typically have only one X chromosome. As a result, a person with Turner Syndrome will have female appearing genitalia but may have unformed and nonfunctioning gonads. What the district court said about J'Noel, that "[t]here is no womb, cervix or ovaries," also could be true for a person with Turner Syndrome who had been identified as a female at birth. Other anomalies and conditions that could not be accounted for in the district court's approach are discussed in the Court of Appeals' quotation of Greenberg at 29 Kan. App. 2d at 103-07. However, that is not the issue that is before this court in this appeal.

The district court concluded as a matter of law that J'Noel was a male because she had been identified on
the basis of her external genitalia at birth as a male. The Court of Appeals held that other criteria should be applied in determining whether J'Noel is a man or a woman for the purpose of the law of marriage and remanded in order for the district court to apply the criteria to the facts of this case. In this case of first impression, the Court of Appeals adopted the criteria set forth by Professor Greenberg in addition to chromosomes: "gonadal sex, internal morphologic sex, external morphologic sex, hormonal sex, phenotypic sex, assigned sex and gender of rearing, and sexual identity," as well as other criteria that may emerge with scientific advances. 29 Kan. App. 2d at 127.

The harmonizing of psychological and anatomical sex was the touchstone for the New Jersey court. It also was the touchstone for the Australian court. The New Jersey court reasoned that a person who has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled psychological sexual attributes should be considered a member of the reassigned sex for marital purposes:

"In this case the transsexual's gender and genitalia are no longer discordant; they have been harmonized through medical treatment. Plaintiff has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled sexual attributes of gender and anatomy. Consequently, plaintiff should be considered a member of the female sex for marital purposes. It follows that such an individual would have the capacity to enter into a valid marriage relationship with a person of the opposite sex and did so here. In so ruling we do no more than give legal effect to a fait accompli, based upon medical judgment and action which are irreversible." M.T., 140 N.J. Super at 89- 90.

The Australian court, too, concluded that the law should treat post-operative transsexuals as members of their reassigned sex. Critical to the court's determination was successful reassignment surgery.

On appeal, J'Noel argues that the marriage is valid under Kansas law. However, in the district court, J'Noel's sole argument was that the marriage was valid under Wisconsin law and Kansas must give full faith and credit to Wisconsin law. In fact, J'Noel argued that the validity of the marriage under Kansas law was not an issue in this case and intimated the marriage would be prohibited under K.S.A. 2001 Supp. 23- 101. She argued, in part:

"The way that counsel for Joe Gardiner portrayed this issue, I think, is perhaps very clever and it's probably something that I would have done if I were in his shoes. He said, can someone change their sex? Does a medical doctor or a judge have the right to change somebody's sex?

"And the answer to that may, in fact, be no, but I think the more interesting question, and the question that's really before the Court is one which I think was addressed by Counsel, and that is--perhaps that is an issue for the State legislature to deal with. In Wisconsin the State legislature has clearly held this issue. The statute in Wisconsin is clear, and this statute has been cited in the brief.

"However, we would urge the Court to rule on our motion favorably with respect to the sexual identity of Miss Gardiner and we would urge the Court to rule that as a matter of summary judgment she is, in fact, a female entitled, under the listed very narrow interpretation of Wisconsin law.

"... Does this, in fact, make J'Noel Gardiner a man--from a man to a woman?
"I think the answer is, well, no, not technically speaking, but we’re not talking about technically. We’re talking about that as a matter of law, not technically, not talking scientifically.

"In this case, the Wisconsin legislature clearly contemplated a person who had sexual reassignment surgery is allowed to change her sexual identity in conformance with the surgery that transpired.

"Going onto the sexual identity question, I think that counsel for Joe Gardiner have very cleverly tried to posture the questions differently than it actually exists. This is really a very simple, straightforward matter. The question is, does Kansas need to give full faith and credit to the Wisconsin statute and court order and the birth certificate that order created under Wisconsin law?

"I think the answer to that is clearly yes. This Court is not being asked to determine whether or not J’Noel Gardiner is, in fact, a male or female. That is simply not a matter that is before this Court on this motion for summary judgment, and we would submit even at the time of trial. Surgeons may testify as to certain scientific facts and they may disagree as to whether or not that Miss Gardiner is, in fact, a male or a female.

"There is no need for this Court to make a decision of whether or not Miss Gardiner is in fact, a man or a woman. That’s simply not a matter before this Court. The issue is whether or not Wisconsin is allowed to create their own laws and whether those laws and those decisions made by a Wisconsin tribunal and the administrative acts that follow that court order are in fact something that this Court is bound to follow.

"[W]e're not asking the Court to approve or disapprove of issues that relate to transsexuals marrying. We really encourage the Court to look at the very, very narrow issue here.

"Clearly, there's issues for the Kansas legislature to look at, and I don't think this Court or any other Court in Kansas should impose its own opinions on the legislature, but I think this Court does have a responsibility to enforce the law as it applies in other states to Kansas and give those other states full faith and credit."

The district court granted summary judgment, finding the marriage void under K.S.A. 2001 Supp. 23-101. Summary judgment is appropriate when there is no genuine issue of material fact. Bergstrom v. Noah, 266 Kan. 847, 871, 974 P.2d 531 (1999). Here, the parties have supplied and agreed to the material facts necessary to resolve this issue. There are no disputed material facts. We disagree with the decision reached by the Court of Appeals. We view the issue in this appeal to be one of law and not fact. The resolution of this issue involves the interpretation of K.S.A. 2001 Supp. 23-101. The interpretation of a statute is a question of law, and this court has unlimited appellate review. State v. Lewis, 263 Kan. 843, 847, 953 P.2d 1016 (1998).

The fundamental rule of statutory construction is that the intent of the legislature governs. In determining legislative intent, courts are not limited to consideration of the language used in the statute, but may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested. Sowers v. Tsamolias, 23 Kan. App. 2d 270, 273, 929 P.2d 188 (1996). Words in common usage are to be given

The words "sex," "male," and "female" are words in common usage and understood by the general population. Black's Law Dictionary, 1375 (6th ed. 1999) defines "sex" as "[t]he sum of the peculiarities of structure and function that distinguish a male from a female organism; the character of being male or female." Webster's New Twentieth Century Dictionary (2nd ed. 1970) states the initial definition of sex as "either of the two divisions of organisms distinguished as male or female; males or females (especially men or women) collectively." "Male" is defined as "designating or of the sex that fertilizes the ovum and begets offspring: opposed to female." "Female" is defined as "designating or of the sex that produces ova and bears offspring: opposed to male." [Emphasis added.] According to Black's Law Dictionary, 972 (6th ed. 1999) a marriage "is the legal status, condition, or relation of one man and one woman united in law for life, or until divorced, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex."

The words "sex," "male," and "female" in everyday understanding do not encompass transsexuals. The plain, ordinary meaning of "persons of the opposite sex" contemplates a biological man and a biological woman and not persons who are experiencing gender dysphoria. A male-to-female post-operative transsexual does not fit the definition of a female. The male organs have been removed, but the ability to "produce ova and bear offspring" does not and never did exist. There is no womb, cervix, or ovaries, nor is there any change in his chromosomes. As the Littleton court noted, the transsexual still "habits... a male body in all aspects other than what the physicians have supplied." 9 S.W.3d at 231. J'Noel does not fit the common meaning of female.

That interpretation of K.S.A. 2001 Supp. 23-101 is supported by the legislative history of the statute. That legislative history is set out in the Court of Appeals decision:

"The amendment to 23-101 limiting marriage to two parties of the opposite sex began its legislative history in 1975. The minutes of the Senate Committee on Judiciary for January 21, 1976, state that the amendment would 'affirm the traditional view of marriage.' The proposed amendment was finally enacted in 1980.

"K.S.A. 23-101 was again amended in 1996, when language was added, stating: 'All other marriages are declared to be contrary to the public policy of this state and are void.' This sentence was inserted immediately after the sentence limiting marriage to two parties of the opposite sex.

"In 1996, K.S.A. 23-115 was amended, with language added stating: 'It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman.'" 29 Kan. App. 2d at 99.

The Court of Appeals then noted:

"The legislative history contains discussions about gays and lesbians, but nowhere is there any testimony that specifically states that marriage should be prohibited by two parties if one is a post-operative male-to-female or female-to-male transsexual. Thus, the question remains: Was J'Noel a female at the time the license was issued for the purpose of the statute?" 29 Kan. App. 2d at 100.

We do not agree that the question remains. We view the legislative silence to indicate that transsexuals
are not included. If the legislature intended to include transsexuals, it could have been a simple matter to have done so. We apply the rules of statutory construction to ascertain the legislative intent as expressed in the statute. We do not read into a statute something that does not come within the wording of the statute. Joe Self Chevrolet, Inc. v. Board of Sedgwick County Comm'rs, 247 Kan. 625, 633, 802 P.2d 1231 (1990).

In Ulane v. Eastern Airlines, Inc., 742 F.2d 1081 (7th Cir. 1984), the federal district court, like the Court of Appeals here, held sex identity was not just a matter of chromosomes at birth, but was in part a psychological, self-perception, and social question. In reversing the district court, the Seventh Circuit stated:

"In our view, to include transsexuals within the reach of Title VII far exceeds mere statutory interpretation. Congress had a narrow view of sex in mind when it passed the Civil Rights Act, and it has rejected subsequent attempts to broaden the scope of its original interpretation. For us to now hold that Title VII protects transsexuals would take us out of the realm of interpreting and reviewing and into the realm of legislating. See Gunnison v. Commissioner, 461 F.2d 496, 499 (7th Cir. 1972) (it is for the legislature, not the courts, to expand the class of people protected by a statute). This we must not and will not do.

"Congress has a right to deliberate on whether it wants such a broad sweeping of the untraditional and unusual within the term 'sex' as used in Title VII. Only Congress can consider all the ramifications to society of such a broad view. We do not believe that the interpretation of the word 'sex' as used in the statute is a mere matter of expert medical testimony or the credibility of witnesses produced in court. Congress may, at some future time, have some interest in testimony of that type, but it does not control our interpretation of Title VII based on the legislative history or lack thereof. If Congress believes that transsexuals should enjoy the protection of Title VII, it may so provide. Until that time, however, we decline in behalf of the Congress to judicially expand the definition of sex as used in Title VII beyond its common and traditional interpretation." 742 F.2d at 1086.

We agree with the Seventh Circuit's analysis in Ulane. It is well reasoned and logical. Although Ulane involves sex discrimination against Ulane as a transsexual and as a female under Title VII, the similarity of the basic issue and facts to the present case make it both instructive and persuasive. As we have previously noted, the legislature clearly viewed "opposite sex" in the narrow traditional sense. The legislature has declared that the public policy of this state is to recognize only the traditional marriage between "two parties who are of the opposite sex," and all other marriages are against public policy and void. We cannot ignore what the legislature has declared to be the public policy of this state. Our responsibility is to interpret K.S.A. 2001 Supp. 23-101 and not to rewrite it. That is for the legislature to do if it so desires. If the legislature wishes to change public policy, it is free to do so; we are not. To conclude that J'Noel is of the opposite sex of Marshall would require that we rewrite K.S.A. 2001 Supp. 23-101.

Finally, we recognize that J'Noel has traveled a long and difficult road. J'Noel has undergone electrolysis, thermolysis, tracheal shave, hormone injections, extensive counseling, and reassignment surgery. Unfortunately, after all that, J'Noel remains a transsexual, and a male for purposes of marriage under K.S.A. 2001 Supp. 23-101. We are not blind to the stress and pain experienced by one who is born a male but perceives oneself as a female. We recognize that there are people who do not fit neatly into the commonly recognized category of male or female, and to many life becomes an ordeal. However, the validity of J'Noel's marriage to Marshall is a question of public policy to be addressed by the legislature and not by this court.
The Court of Appeals is affirmed in part and reversed in part; the district court is affirmed.

DAVIS, J., not participating.

BRAZIL, S.J., assigned.

END
United States Court of Appeals, Eighth Circuit.

Carla CRUZAN, Appellant, v. SPECIAL SCHOOL DISTRICT, No. 1; Dr. Robert McCauley, principal, in his official and individual capacity, Appellees. American Civil Liberties Union; Outfront Minnesota; Gay, Lesbian and Straight Education Network of Minnesota; Harry Benjamin International Gender Dysphoria Association; National Center for Lesbian Rights, Amicus on Behalf of Appellee, Special School District, No. 1.

No. 01-3417.

Submitted: June 12, 2002.
Filed: June 20, 2002.

Teacher brought suit against school district alleging that she had suffered discrimination due to her religion and gender. The United States District Court for the District of Minnesota, David S. Doty, J., granted summary judgment for school district, 165 F.Supp.2d 964. Teacher appealed. The Court of Appeals, held that: (1) teacher failed to inform school district that transgndered male's use of women's restroom discriminated against her religious beliefs, and (2) school's policy of allowing transgndered male to use women's faculty restroom did not create hostile work environment.

Affirmed.

West Headnotes

[1] Civil Rights 151 78k151

In order for a teacher to establish a prima facie case of religious discrimination, she has to show that she has a bona fide religious belief that conflicts with an employment requirement, that she informed the school district of her belief, and that she suffered an adverse employment action.

[2] Civil Rights 145 78k145

[2] Civil Rights 151 78k151

Teacher's expression directly to principal of her concern about her personal privacy and of her general disapproval of school's policy of allowing transgndered male's use of women's restroom was not sufficient to inform school district that such policy discriminated against teacher because of her religious beliefs thereby creating hostile work environment; even though teacher sent questionnaire to school district, school district asserted that it did not receive questionnaire until discovery phase of litigation and questionnaire alleged sex discrimination, not religious discrimination.

[3] Civil Rights 141 78k141

[3] Civil Rights 152 78k152

A plaintiff has to establish a tangible change in duties or working conditions that constitute a material employment disadvantage to show that she suffered an adverse employment action; mere inconvenience without any decrease in title, salary, or benefits is insufficient to show an adverse employment action.

[4] Civil Rights 167 78k167

School's policy of allowing transgndered male to use women's faculty restroom did not create hostile work environment, since school district's policy was not directed at female teacher who asserted the claim, teacher had convenient access to numerous restrooms other than women's faculty restroom, and male did not engage in any inappropriate conduct other than merely being present in women's faculty restroom.

[5] Civil Rights 167 78k167

To establish a sexual harassment claim based on hostile work environment, a plaintiff has to show, among other things, that the harassment affected a term, condition, or privilege of her employment and the harassment must be so severe or pervasive that it
alters the conditions of employment and creates an abusive working environment; to make this showing, a plaintiff has to establish the work environment was permeated with discriminatory intimidation, ridicule, and insult.

[6] Civil Rights ‡145
78k145

In a hostile work environment claim, courts examine the totality of the circumstances and consider whether a reasonable person would have found the environment hostile or abusive.

[7] Judges ‡49(1)
227k49(1)

Male judge could decide if there was genuine issue of material fact as to whether reasonable women could not find their working environment was abusive or hostile when they were required share bathroom facilities with coworker who self-identified as female, but who was biologically male; judges routinely decide hostile environment sexual harassment cases involving plaintiffs of opposite sex.

*982 Francis J. Manion, argued, New Hope, KY (Gregory R. Troy, St. Paul, MN, on the brief), for appellants.

Sandra L. Conroy, argued, Minneapolis, MN (Donald M. Lewis, Minneapolis, MN, on the brief), for appellees.

BEFORE: HANSEN, Chief Judge, FAGG and BOWMAN, Circuit Judges.

PER CURIAM.

Carla Cruzan, a female teacher at Minneapolis Special School District, # 1, brought this action alleging the school district discriminated against her on the basis of her sex and her religion by allowing a *983 transgendered coworker to use the women’s faculty restroom. The district court [FN*] granted summary judgment to the school district. Cruzan v. Minneapolis Pub. Sch. Sys., 165 F.Supp.2d 964 (D.Minn.2001). Cruzan appeals, and we affirm.

FN* The Honorable David S. Doty, United States District Judge for the District of Minnesota.

David Nielsen began working for the school district in 1969. Nearly thirty years later, in early 1998, Nielsen informed school administration that he was transgendered, that is, a person who identifies with and adopts the gender identity of a member of the other biological sex. Nielsen informed administration he would "transition from male to female" and be known as Debra Davis in the workplace. To plan for the transition, the school district collaborated with Davis, legal counsel, the parent teacher association, students' parents, and psychologists. Cruzan asked whether Davis would be allowed to use the school’s women’s restrooms, and administration informed her other arrangements would be made. Later, legal counsel informed the school that under the Minnesota Human Rights Act (MHRA), which prohibits discrimination on the basis of a person’s "self-image or identity not traditionally associated with one’s biological maleness or femaleness," Minn.Stat. § 363.01 subd. 45 (1998), Davis had the right to use the women’s restroom. Thus, after Davis’s transition in the spring of 1998, the school district permitted Davis to use the women’s faculty restroom.

A few months later, in October 1998, Cruzan entered the women’s faculty restroom and saw Davis exiting a privacy stall. Cruzan immediately left, found the principal in the hallway among students, and complained about encountering Davis in the restroom. The principal asked Cruzan to either wait in his office or to make an appointment to discuss the matter. Cruzan did not do so, and never approached the principal about her concerns again.

Instead, Cruzan filed a complaint with the Minnesota Department of Human Rights, which dismissed Cruzan’s charge, concluding there was no probable cause to believe an unfair discriminatory practice had occurred. The Department stated the MHRA neither requires nor prohibits restroom designation according to self-image of gender or according to biological sex. See Goin’s v. West Group, 635 N.W.2d 717, 723 (Minn.2001) (stating same). After exhausting administrative remedies, Cruzan filed this action under Title VII and the MHRA asserting claims of religious discrimination and hostile work environment sex discrimination. Davis retired in 2001.

We review the district court’s grant of summary judgment de novo, and affirm if the evidence,
viewed in the light most favorable to Cruzan, shows there is no genuine issue of material fact and the school district is entitled to judgment as a matter of law. Rheineck v. Hutchinson Tech., Inc., 261 F.3d 751, 755 (8th Cir.2001).

[1] To establish a prima facie case of religious discrimination, Cruzan had to show she had a bona fide religious belief that conflicted with an employment requirement, she informed the school district of her belief, and she suffered an adverse employment action. Seaworth v. Pearson, 203 F.3d 1056, 1057 (8th Cir.2000) (per curiam). The district court concluded that assuming without deciding Cruzan had a bona fide religious belief that conflicted with the restroom policy, she failed to inform the school district of her belief and did not suffer an adverse employment action because of it. Cruzan, 165 F.Supp.2d at 967-68.

[2] Although Cruzan expressed general disapproval of Davis’s transition and the school district’s decision to allow Davis to use the women’s faculty restroom, Cruzan *984 did not disclose or discuss the reason for her disapproval with her employer beyond asserting her personal privacy. Cruzan argues that she met the notice requirement by completing paperwork for her MDHR charge. We disagree. Even assuming such paperwork could satisfy the notice requirement, the school district did not receive the MDHR intake questionnaire until the discovery phase of this litigation, and Cruzan’s MDHR charge of discrimination alleges sex discrimination, not religious discrimination.

[3][4] To show she suffered an adverse employment action, Cruzan had to establish a "tangible change in duties or working conditions that constitute a material employment disadvantage." Cossette v. Minnesota Power & Light, 188 F.3d 964, 972 (8th Cir.1999) (quoting Manning v. Metropolitan Life Ins. Co., 127 F.3d 686, 692 (8th Cir.1997)). Mere inconvenience without any decrease in title, salary, or benefits is insufficient to show an adverse employment action. Harlston v. McDonnell Douglas Corp., 37 F.3d 379, 382 (8th Cir.1994). Here, it is undisputed that Davis’s use of the female staff restroom had no effect on Cruzan’s title, salary, or benefits. Cruzan concedes that to avoid sharing a restroom with Davis, she used the female students’ restroom, which is closer to her classroom and was never used by Davis. Single-stall, unisex bathrooms are also available. We thus agree with the district court that the school district’s decision to allow Davis to use the women’s faculty restroom does not rise to the level of an actionable adverse employment action. Because Cruzan failed to establish a prima facie case of religious discrimination, the district court properly granted summary judgment to the school district on this claim.

[5][6] To establish a sexual harassment claim based on hostile work environment, Cruzan had to show, among other things, that the harassment affected a term, condition, or privilege of her employment. Rheineck, 261 F.3d at 755. The harassment must be so severe or pervasive that it alters the conditions of employment and creates an abusive working environment. Id. at 756. To make this showing, Cruzan had to establish the school was "permeated with discriminatory intimidation, ridicule, and insult." Id. at 756-57. Courts examine the totality of the circumstances, and consider whether a reasonable person would have found the environment hostile or abusive. Id. at 757. We agree with the district court that Cruzan failed to show the school district’s policy allowing Davis to use the women’s faculty restroom created a working environment that rose to this level. Cruzan, 165 F.Supp.2d at 968-69. The school district’s policy was not directed at Cruzan and Cruzan had convenient access to numerous restrooms other than the one Davis used. Cruzan does not assert Davis engaged in any inappropriate conduct other than merely being present in the women’s faculty restroom. Given the totality of the circumstances, we conclude a reasonable person would not have found the work environment hostile or abusive.

[7] Cruzan argues it is an abuse of the summary judgment procedure for a male judge to decide that reasonable women could not find their working environment is abusive or hostile when they must share bathroom facilities with a coworker who self-identifies as female, but who may be biologically male. No case law supports Cruzan’s assertion, however. Judges routinely decide hostile environment sexual harassment cases involving plaintiffs of the opposite sex.

We thus affirm the district court.