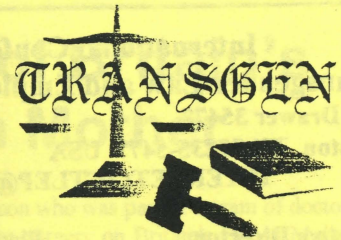


The ICTLEP Reporter



Newsletter of the International Conference on Transgender Law and Employment Policy, Inc.
Dedicated to education concerning legal and human rights issues related to persons identifying as transgendered -- both masculine and feminine gender identities and expressions -- lesbian, gay and bisexual, and welcoming the diversity of people of all racial, ethnic and religious belief categorizations

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The Legal Needs of Transgender People of Color to Receive Considerable Attention During 5th Transgender Law Conference

The 5th TG Law Conf will be held at the Ramada-Astrodome Hotel in Houston, TX USA from 3-7 July. The conference is sponsored by the letterhead 501-c-3 legal organization (ICTLEP). On Friday afternoon, 05 July, immediately following the luncheon speaker, there will be a three hour workshop (with no competing workshops) devoted to the Legal Needs of Transgendered People of Color. This workshop is not just for people of color, although we hope that many will attend. This workshop is all transgendered people: our so-called "white" community needs to hear and even participate and to learn the extra and unfair legal burdens faced each day by transgendered people who are also people of color.

This workshop format was specifically set up because of the misperception that being transgendered is a white problem. ICTLEP asserts that it is a people problem, and that until we address the multi-racial diversity of the problem and the multi-racial diversity of our community, then we are addressing a mere portion of the problems with a mere portion of the available human resources and funding.

ICTLEP states unequivocally that any remaining racism in the worldwide transgender community MUST end, and that ICTLEP will devote its conference resources towards that end.

The panel will be headed by Dawn Wilson of Kentucky. Dawn is a long-time, out, tg activist who spent part of her career as an aide to an US Senator. Also on the panel is Elvia Arriola, University of Texas Law Professor, out, Chicana, lesbian activist and writer.

The three hour workshop format will be a short intro by the above two and other panelists followed by an open forum wherein the legal needs of tg people of color are presented by audience members and discussed by the entire workshop. On Saturday, a 1/2 hour report will be made to the assembled conference, which will be transcribed by a court reporter and included in Proceedings V.

For more information about the conference contact Dee McKellar at letterhead contact information.

For pre-conference discussion with Dawn Wilson, contact DWILS00@ukcc.uky.edu.

For pre-conference discussion with Prof Arriola, contact earriola@mail.law.utexas.edu.

Hate Crimes Testimony

The following testimony was submitted to the Senate Judiciary Committee on behalf of transgenders at the request of the Human Rights Campaign. I want everyone to know that the reason transgenders were not included in this bill is because a deal was made between the two sponsors (Senator Hatch and Senator Simon), not to open the bill to any amendments. Indeed, the HRC testimony (of which I have a copy) specifically asks for our inclusion. This testimony will be published at a later date.

"My name is Sarah DePalma, and I am a National Director of It's Time, America! (ITA), a national civil and political rights organization working on behalf of transgendered individuals of all colors and sexual orientations. In addition, I chair It's Time, Texas!, (ITT) the single largest chapter both in size and in membership of our parent organization. I have been asked to prepare this report because ITT has made hate crimes legislation our number one legislative priority, and because we have been collecting nation wide information about this issue for nearly three years.

Continued on page 8.

FTM and Masculine Appearing Women Workshop

will be held during TRANSGEN '96. The workshop, headed by Attorney Spencer Bergstedt will feature Professor Stephen Whittle as a panelist. For more information about this and other workshops turn to page 14.

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BRIEFS

Transgendered Youth Study

From: Channel Q News Desk <newsdesk@channelq.com>
Subject: Request for Participation in Queer Youth Study

A national research project on issues faced by lesbian, gay, bisexual and transgendered youths is being conducted by Dr. Tony D'Augelli, a psychologist at Penn State University. The research is conducted from a lgbt-affirming perspective. We are seeking a large group of lgbt youths and young adults from different parts of the country who are at least 18 years of age to complete a survey about their experiences. The survey takes about an hour and has questions about personal background, family relationships, and experiences with different kinds of victimization.

We are seeking organized groups who can help. Only groups with an advisor, facilitator, counselor, or coordinator of some kind can be involved. This adult contact person will be sent a packet of surveys and will send them back to Penn State when they're completed. The requirement of having someone help with the surveys is intended to protect the privacy of people taking the survey and to be sure that they are informed about the project. Research on youth is extremely important so that we can develop programs to provide support in the most useful way. Your participation in the project will be of tremendous help in bringing the needs of youths to the attention of legislators, school officials, and policy-makers.

If you are able to help, email Nathan Williams, Dr. D'Augelli's research coordinator, at nlw104@psuvm.psu.edu, sending the name and mailing address of the contact person who will help. Or you can mail Williams c/o Dr. D'Augelli at the Department of Human Development and Family Studies, Penn State University, University Park, PA 16802. Phone: 814-863-0241; fax: 814-863-7963. The contact person will first be sent information about the project that describes the role of the contact person. A form that must be sent back to Penn State will also be included; this form asks how many surveys are needed.

The project has been approved by Penn State's office for research on human subjects. You may contact the office at 814-863-8699 if you have any concerns about the way the project is conducted.

Thanks in advance for any help you can offer. Tony D'Augelli/Nate Williams

PFC Homepage

If you would like to keep up to date with the events in the U.K. concerning TS/TG rights, the contact the Press For Change home page at:

<http://ourworld.compuserv.com/homepages/ChristineBurns/pfc.htm>

Surgeon of Britain's Queen Mother

LONDON (Reuter) - A top surgeon who was part of a team of doctors which carried out hip replacement surgery on Britain's Queen Mother has admitted he is a transsexual.

William Muirhead-Allwood, 49, decided to reveal his secret life and issued a statement as a British Sunday newspaper was about to publish the story.

"For years I have called myself Sarah, and that is how many of my friends know me," Muirhead-Allwood, a father of two, said in a statement.

A transsexual is a person who is strongly predisposed to identify with the opposite sex, sometimes so strongly as to undergo surgery and hormone injections to effect a change of gender.

The surgeon said his wife has known about his double life for years and his two sons learned about it several months ago. He separated from his family last year but they and his medical colleagues have been supportive, the doctor said.

He dismissed suggestions that he was a homosexual.

"I am a transsexual and that is nothing to do with homosexuality. I would rather be a woman than a man. I haven't decided about a sex-change yet..."

Muirhead-Allwood helped to replace the arthritic hip of the Queen Mother, the mother of Queen Elizabeth, last November.

The 95-year-old matriarch of the royal family was one of the oldest people in the country to undergo the delicate operation. She made a quick and complete recovery from the surgery.

TS Approval by the Shaikh of Al Azhar Mosque, Cairo

Excerpt from the Jordan Times (AFP)

Seven years after throwing out a medical student who changed from a man to a woman, Al Azhar, the highest Sunni Islam authority in Egypt has permitted transsexuality under certain conditions.

"A man can undergo an operation to become a woman and a woman can do the reverse if a doctor deems the intervention necessary to bring out signs of femininity or masculinity which are present but hidden", a new fatwa, or religious decision, said.

"Since 1988 around 20 sex change cases have been registered in Egypt. Most of them involve men who become women," the head of the new civil status bureau, Ibrahim Beseila, told AFP.

"Sex change operations are authorized by Egypt's doctor's union but are done quietly due to the sarcasm they raise from the public", a union source said.

Sayed Abdullah, the first known case in Egypt, ran into more than just sneers. Al Azhar University threw him out of its medical school in 1988 after he underwent the operation and emerged Sali Abdullah.

At the time the University condemned the transsexual as a "disgusting imitation of a woman forbidden by Islam".

An administrative court later overturned the university's ruling and ordered Sali placed in Al Azhar's medical school for women...

(Now THAT's Progress! -- Phyllis)

MILITARY POLICY ON GAYS RULED "IMPERMISSIBLE"

SAN FRANCISCO-- A federal judge ruled Friday that the military's "don't ask, Don't Tell" policy violates the Constitution by discriminating against homosexuals, the second such ruling in the nation.

The discharge of a California Army National Guard officer, who disclosed his sexual orientation to his commanding officer, was ordered under a policy that "impermissibly relies on irrational prejudices against homosexuals as a group," said U.S. District Judge Sandra Brown Armstrong.

The federal law and regulations "target and punish service members who simply acknowledge who they are," Armstrong said. "This is impermissible under our Constitution."

She dismissed the government's argument that the policy was necessary to keep military units cohesive, calling it a thinly veiled attempt to justify prejudice.

Armstrong ordered the Guard to reinstate 1st Lt. Andrew Holmes. It was the first time a judge had overturned a discharge under the policy said Paul Wotman, a lawyer for Holmes.

Last year, a federal judge in New York blocked the discharge of six homosexual service members who had challenged the policy.

Holmes said he was fighting for "tens of thousands of gay and lesbian service members who have served their country with courage and distinction, yet whom the government would willingly toss out because of its collective homophobia."

Prosecutors could not be reached for comment. The ruling was obtained after business hours.

Holmes went on active Guard duty in 1991, and won several medals while serving in Germany in support of troops in the Gulf War.

In June 1993, after President Clinton took office with a promise to eliminate discrimination against gays in the military, Holmes wrote to his commanding officer saying, "As a matter of conscience, honesty and pride, I am compelled to inform you that I am gay."

About six weeks later, the administration announced its new policy, which later was accepted by Congress. It repealed the previous ban on homosexual men and women in the military and prohibited officials from asking about sexual orientation, although it allows discharge for homosexual conduct.

A declared homosexual can avoid discharge only by proving that he or she will not engage in homosexual conduct while in the service.

Holmes was discharged as a federal officer in October, 1994 and as a state National Guard member in January 1995.

ICTLEP Needs Your Help

Reality **MUST** be faced: the fight for transgender rights is as expensive as it is important. For as little as \$10 a month you can help us continue the struggle. Donations can be made by cash, or as a monthly debit on your Visa/MC card. Please contact Dee McKellar at ICTLEP for details.

ICTLEP is a non-profit, 501 (c) (3), Texas corporation.

Proud Gay Vet Speaks Out

CONTACT: Tom Swann
Proud Gay Veteran
(805) 271-1157

(The GLBVA is inclusive of transgendered people and has two T women on their National Board -- ed.)*

Proud Gay Veteran Responds to Pentagon Decision to Probe SLDN Charges of Increasing Harassment and Witch Hunts by the U.S. Military Against Homosexuals in Uniform.

The ACLU Represented Navy Employee Tom Swann in a Successful Case Alleging Anti-Gay Harassment. Exactly 3 Weeks After the Case Settled; Navy Secretary Issued a Revised EEO Policy Adding Sexual Orientation Protection for Gay Civilian Workers in May 1994.

Democratic Party Releases Statement on Don't Ask, Don't Tell Which is Read at a Gay Democratic Party Club Meeting in Southern California; Clinton-Gore '96 Campaign Official is Present to Respond to Questions.

HUNTINGTON BEACH, CA (March 2, 1996) -- Members of the Eleanor Roosevelt Democratic Club of Orange County California packed a Huntington Beach residence Wednesday February 28 to hear program speaker Tom Swann. The predominantly gay, lesbian, bisexual & transgender Democratic Party organization has over 150 members. Orange County has a very high number of conservative Republican voters and is the home "turf" of Republican Presidential candidate Rep. Robert Dornan. To demonstrate the importance of Orange County, a Clinton-Gore Campaign official was present. Chris Norman said she would be in Orange County for 4 weeks to meet with voters and hear their concerns.

The meeting was an opportunity for club members to hear Tom Swann describe the anti-gay harassment he endured at the Point Mugu Navy Base starting in 1990. Club vice president Steve Valkenburg of Redlands CA said, "we wanted to hear about the alleged assaults, anti-gay harassment, HIV/AIDS discrimination and other issues. We have all heard reports about the military attitude toward lesbians and gays and people with AIDS. This meeting gave us a chance to hear from someone who won an important case against the military."

The meeting was scheduled weeks ago but the timing was ideal. On Tuesday February 27 Defense Secretary William Perry ordered an investigation into charges of increasing harassment and "witch hunts" by the U.S. military against homosexuals in uniform. This was in response to a report published by the Servicemembers' Legal Defense Network (SLDN) that showed significant increases in the number of people being discharged from the military since the don't ask, don't tell policy was enacted 2 years ago.

In his remarks, Swann described the 4 unfounded investigations conducted by the U.S. military against him even though he was a civilian GS-11 program analyst. One was a Hatch Act investigation because he (Swann) met with Rep. Barney Frank during the 1993 Inauguration. Swann was cleared of any wrong doing and the ACLU alleged it was an attempt to suppress his First Amendment rights and intimidate other gay civilian workers from endorsing efforts to lift the military ban.

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Transsexuals Test Limits of N.J. Law Against Discrimination

By Ronald J. Fleury
New Jersey Law Journal
March 18, 1996

The scope of the New Jersey Law Against Discrimination's (LAD) protections against sexual bias in the workplace is being tested by two suits by men who claim to have been the victims of disparate treatment because they chose to become women.

One suit, filed March 6 in Bergen County, alleges that Robert Trepanowski was fired the day after he advised his Allendale employer that he was taking female hormones and planned to have a sex-change operation. The plaintiff, now known as Laura Trepanowski, claims that the termination was motivated by "affectional orientation, sexual orientation and her new gender." *Trepanowski v. Komori America Corp. et al.*, BER-L-2095-96.

The same issue has arisen, in a different context, in a suit filed in November by Janet Aiello, a transsexual Hoboken police lieutenant claiming biased treatment based upon her sex change. Aiello, a 24-year veteran of the department, is suing under the LAD and, taking a buckshot approach, also raises invasion of privacy and other state and federal claims. *Aiello v. La Bruno et al.*, HUD-L-9111-95.

The suits pose questions that have not been answered by New Jersey courts interpreting the LAD. One is whether transsexual status is a "sex" such that it would trigger the statute's protections.

A related question is whether transsexuality is or could be perceived as an "affectional or sexual orientation." The LAD defines such orientations in terms of male or female heterosexuality, homosexuality or bisexuality, but it makes no mention of transsexuality.

Federal law offers no prospect for relief. U.S. courts that have considered the issue have unanimously held that the protections of Title VII of the Civil Rights Act do not apply to transsexuals.

Like Trepanowski, Aiello is in the preoperative or transitional stage of a sex change. During that time, hormonal treatments begin to alter physical characteristics, and the individual begins to adapt to living as the opposite gender. According to her complaint, Aiello was diagnosed in 1994 as having "gender identity disorder". And, when she began her transitional stage the next year, she claims, she was the recipient of disparate, harassing and retaliatory treatment that was motivated by a perception that her transsexualism was a disability.

"If you are perceived to be handicapped, you are", says Aiello's lawyer, Linda Kenney, a Red Bank solo practitioner who represents employees in labor-related disputes. "If that is the motivating factor for the action taken, then it's discriminatory."

But David Corrigan, who represents the city of Hoboken in the suit, says that the actions of the police department have been nondiscriminatory and accommodating. "We were extraordinarily compassionate concerning Lt. Aiello's gender change," says Corrigan, a partner with Little Silver's Murray, Murray & Corrigan. "In fact, she was given an unprecedented amount of time off to solve her gender identity crisis problem. We went so far to accommodate her as to schedule a seminar to give sensitivity training to other officers."

Corrigan calls the discrimination claims, "utterly absurd and specious," saying that Aiello has "the same assignments which she had prior to embarking on this sexual change."

NO REPORTED PRECEDENT

Both matters appear to be cases of first impression. There is no reported New Jersey precedent finding discrimination in the firing or biased treatment of a man in the process of becoming a woman. The closest case is one decided under New York City's anti-discrimination

statute -- which is virtually identical to New Jersey's -- in which a trial court held that transsexuality is a protected subclass of sex.

Kenney and other lawyers who deal with labor and employment issues say the fact that the LAD is a remedial statute, coupled with the lack of clear case law, may work in favor of plaintiffs in such cases, provided that they can show that transsexual status is at the heart of the company's decision to treat them differently. As one in-house counsel puts it, "whatever he or she is, it is a gender."

Trepanowski's employer -- Komori America Corporation, a Rolling Meadows, Ill., subsidiary of a Japanese company, which manufactures, sells and services printing presses -- has not answered the complaint. The company's lawyer, Nancy Sasamoto, a partner with Chicago's Masuda, Funai, Eifert & Mitchell, did not return a telephone call seeking comment.

But in a memo issued the day before the firing, a vice-president of the company stated that Trepanowski -- by wearing makeup, lipstick, long hair and dangling earrings -- was violating the company manual's rules governing employee appearance and grooming.

The memo stated further that the attire represented possible safety threats to Trepanowski and liability to the company, and it ordered her to stop wearing the attire immediately or face termination. Trepanowski was fired March 16, 1995, the same day the memo was delivered to her.

The plaintiff's lawyer, Roy Konray, says that the other service technicians employed by the Allendale office are men, that some of them wear ponytails and earrings and that the type of service work performed does not create safety concerns. "It's a red herring," says Konray, a partner with Ravich, Koster, Tobin, Oleckna, Reitman & Greenstein in Rahway. "If the men wear ponytails, why can't she?"

While companies can generally establish codes requiring an appropriate style of dress for their employees, the LAD requires that the conditions and limitations imposed be "applicable alike to all persons." The statute prohibits employers from using dress codes to discriminate based on "race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, or sex."

Thus, if the company's dress code is used to prevent a man but not a woman from wearing makeup and jewelry, "that smacks of gender bias," says one in-house counsel.

Continued on page 7.

Colorado DMV Victory

Or, (She came, She saw, She kick some DMV a#S!!!!!! -- ed.)

Contact: Melissa Chapman

Hello all. I have some good news for people who live in Colorado. First I am sorry about the subject heading above, but I am soooo happy, with news that I have to report. For people who have been following my struggle with the Colorado DMV, on getting them to change the sex on the license before surgery, I have great news. About 3 or 4 days ago, the Attorney General's office of Colorado, came own with a ruling, meaning that all

I was asking them was approved. Then all the people in the Colorado DMV admin got together, mainly Don Burton, John Duncon, and Dee Hartman. And sat down to discuss the change of policy. THAT I HAD BEEN CONSTANTLY ASKING THEM ABOUT.

Because of my efforts of constantly bugging the AG'S office and the DMV people, and MOST IMPORTANTLY GETTING INFORMATION FROM YOU ALL, ON WHAT STATES WILL CHANGE THE LICENSE BEFORE SURGERY. The DMV people entirely based their decision on information that you people had sent me, from the TRANSGEN AND TSMENACE LIST.

The driver's license admin people are sending me a letter on State of Colorado letterhead showing the new policy. WHICH MEANS NOW THAT PRE-OP TRANSSEXUALS CAN CHANGE THE SEX ON THE DRIVER'S LICENSE BEFORE SURGERY NOW. It is: the state driver's license people will change the sex on the license if you have had the surgery already, OR, if you can bring a letter from your therapist or M.D. saying that you are going through all the gender reassignment stuff, basically saying that your are on hormones or in therapy. For more specifics, please e-mail and give me your SNAIL ADDRESS, my address will be blacked out for security purposes. The letter that I will send will be the letter I get from the DMV, people on State of Colorado letterhead, which will probably be in about 3 or 4 days.

"I am happy that I came out a winner on this, but then again when I think about it, we are all winners...."

This new policy is to be started effective MARCH 1, 1996. I am sorry to other people on the list here, about making such a big deal on this, but for people living in Colorado, this was a hard fought battle, for me I did this all on my own, I asked other people for help and got little. However, I WANT TO SAY A BIG THANK YOU TO THE PEOPLE ON THE LIST HERE FOR YOUR INFORMATION ON WHAT OTHER STATES DO AND THEIR POLICYS, BECAUSE JOBBY RAE OF THE COLORADO DRIVER'S LICENSE ADMIN SAID, THAT THEY LOOKED HEAVILY AT THE INFORMATION YOU ALL PROVIDED THEM. Thanks!

I am happy that I came out a winner on this, but then again when I think about it, we are all winners. I will write more about me soon to the list. And to the people in Colorado, please provide me with your SNAIL MAIL ADDRESS and I will send you a Xerox copy of the letter that I will get soon from the Colorado DMV. IT IS POSITIVE AND WILL EXPLAIN ALOT MORE OF WHAT I HAVE DONE. Along with other important information. I HAD TO DO SOMETHING ON THIS ISSUE, I COULD NO LONGER PUT UP WITH THE DISCRIMANTION THAT THE COLORADO DMV DID FOR ALITTLE WHILE THERE. PLUS, I WAS HURT SEEING OTHER TRANSSEXUALS GETTING TREATED BADLY BY THEM, SO I MADE MY MOVE AND WON. I AM SO HAPPY ABOUT THIS.

The next agency I will try to get to change their policy is the Passport agency, SO THAT IT is favorbale to pre-op's. I will tell you all about that later. I do have support from a couple of Congressman on this issue. Gotta go, but I will write more later about this, sorry if I wrote this choppy, but where I am typing this is in a student computer room, it is noisy, plus I am anxuios to get this out. Talk to you all soon. I am 23 years old, pre-op TS male to female, makes me wonder what other good I will do in the future, since I am so young and still learning about things. Oh well. Talk to you all soon!!!!!!

ICTLEP Reporter

The *ICTLEP Reporter* is the quarterly newsletter of the International Conference on Transgender Law and Employment Policy, Inc., a Texas non-profit corporation with IRS 501(c)(3) tax exemption as an educational institution. *ICTLEP* is dedicated to providing knowledge and awareness of transgender law and legal issues as they pertain to fundamental human and civil rights. This newsletter follows the same philosophy. Articles contained in this newsletter are the views of the author and do not necessarily reflect overall policy of the *ICTLEP*. *ICTLEP* retains the rights to the contents of this newsletter; however, articles may be reprinted by other non-profit organizations without prior permission, provided the *ICTLEP Reporter* is cited as the source and no significant editorial changes are made. Commercial publications require prior written permission to reprint articles. Articles pertinent to *ICTLEP's* mission may be submitted to Tere Fredrickson via FAX at (210) 545-4888 or through Internet, TereF@aol.com. Article submission dates are no later than January 15, April 15, July 15, and October 15. This newsletter was printed using Word for Windows v.6.0.

Do you have a similar story of triumph that you would like to share with the rest of our community? If so, please e-mail it to me at moconnor@txdirect.net, or snail-mail it to: Mary Ellen O'connor, Box 500133, San Antonio TX 78280. All articles submitted will be reviewed for inclusion in future issues of the REPORTER! -- ed.

PFC Victory at European Court

Contact: Christine Burns and Stephen Whittle of Press for Change

The European Court of Justice, today (April 30, 1996 -- ed.), gave their decision in the case of P v S and Cornwall County Council. The result is MONUMENTAL and will hopefully have a profound effect on how employers treat transsexuals in the future.

In a ground breaking decision, the European Court of Justice has today confirmed the recommendation of Advocate General Tesaurò, and said that it IS against European law to discriminate against a transsexual person in employment.

The decision means that many transsexuals who have been dismissed from their jobs, because of their transsexuality, since the implementation of the Directive in 1976, may well have a claim for "sex discrimination", and they are urged to visit a solicitor as soon as possible -- sex discrimination claims must be made within 12 weeks of when you KNEW that you had a claim.

Go for it! we cannot guarantee whether the UK courts will uphold the time frame, but as they say "Revenge is a dish best served cold".

The decision, which affects an estimated 40-50,000 European transsexuals, and most importantly those 4-5,000 in the UK who currently have no legal protection whatsoever, comes as the result of an unfair dismissal case brought by Press for Change activist, "P", against her former manager, "S", and employers Cornwall County Council.

You can read the full recommendation of the Advocate General in the Press for Change library on the world wide web. The direct page URL is: {<http://ourworld.compuserve.com/homepages/ChristineBurns/PFCECJR1.HTM>} from there you can also read a review published by Press for Change legl expert, Dr. Stephen Whittle, along with a recent article of his, published in the UK's New Law Journal. (Stephen is a lecturer in Law at the Manchester Metropolitan University, Manchester, England).

It will be necessary for the UK government to respond, if necessary by amending the Sex Discrimination Act and the Equal Pay Act, to close the loophole until now enjoyed by employers who had argued along with the government that by having a policy to dismiss both M-F and F-M transsexuals, they were acting within the letter of the UK's equality laws.

The ECJ judgement now confirms: "Articles 2(1) and 5(1) of Council Directive 76/207/EEC must be interpreted as precluding the dismissal of a transsexual on account of change of sex."

Other rights implications are bound to follow, of course, as a result of applying the broader implications of the community's "Equal Treatment Directive". The announcement comes following a disappointment for "P", earlier in March of 1996, when a High Court judicial review ruled that the UK's registrar of Births, Deaths, and Marriages had not acted unreasonably "at the time" in refusing to alter her birth certificate so that her change of gender status was not immediately apparent to those, like potential employers, who have reason to request sight of the document. (UK citizens have no other legal form of identity). The loss of that case resulted in "P" now facing a personal bill for approximately (British Sterling) 6,000 in legal expenses. Readers world-wide are urged to help her meet this.

Hundreds of UK transsexuals are now applying to have their birth certificates changed so that the registrar's policy can be reexamined by the courts in terms of contemporary medical opinion and knowledge. We will keep you posted via the web site and e-mail as this aspect of the campaign develops.

Press for change activists are naturally delighted with the ECJ decision. It marks another step toward the organization's final goal of achieving full civil rights for transsexual people and their families in the United Kingdom. We do this on one of the tightest campaign budgets of modern time. Activists give their time for free and expenses are seldom claimed. The organization operates on a shoe-string, yet by patient and repeated persuasion the organization is altering the face of not only the UK, but European and (hopefully) world law.

Campaigning need not be a hopeless exercise. Our successes show this. Reporters and Interviewers welcome us into their studios now with friendship and respect. Politicians admit that the lobby mounted by Press for Change to support the Alex Carlisle rights bill in the UK parliament was one of the most effective in recent memory. Medical professionals are requiring the courage to stand up for transsexual people before their peers, and to contribute knowledge to the growing body of research which is drawing back the veil of ignorance and fear surrounding this syndrome.

Compare all this with as little as five years ago. We are changing the world! Nevertheless, we could do more... With just a few pounds we can pay for more leaflets to be printed, more stamps to be licked, and more people to be educated.

We need money. I'm sorry to be so blunt, but we do. Just a few pounds, dollars, guilders, franc, lire, or whatever, can make a tremendous difference. If you would like to help, please send your money to:

PRESS FOR CHANGE
BM Network
London, WC1N 3XX
England

Continued from page 5.

Last June, in deciding Trepanowski's claim for unemployment compensation, the Department of Labor's appeals tribunal found that because the company manual did not address the issue of a male employee wearing makeup and earrings, Trepanowski had violated no company policy and thus was not terminated for cause.

NOT JUST COSMETIC

However, the thrust of the LAD claim is not that the company is discriminating against a man by not allowing him to wear makeup and long hair. Rather, it is that the company terminated a transsexual as soon as it learned that the sex change procedure was in progress, and that the motivating reason was a bias against transsexuals. "In their view, she falls into the category of a non-heterosexual," says Konray. "They think that what they see is not the normal heterosexual in terms of its traditional definition."

According to Konray, Trepanowski was employed as a field-service electrical technician, handling service calls from Maine to Maryland and receiving her assignments by telephone. She seldom came in to the company's Allendale office. As a result, her supervisor, George Drew, was not in a position to observe personally her changes in appearance. When she came to the office on March 15, 1995, and first told Drew that she was undergoing hormone treatments for a sex change, he advised her that he would have to tell the company's Illinois headquarters.

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Continued from front page.

On behalf of our members in thirty five states, I would like to thank Chairman Hatch, Senator Simon, and the co-sponsors of this bill for their willingness to move this important legislation forward. Even though transgenders will not be included in the reporting statistics which will be compiled as a result of its passage, on behalf of our gay and lesbian brothers and sisters we ask that the bill be approved without delay.

It is my understanding that the only change to be made to the current law is the elimination of the expiration date or "sunset" provision. Even though we would like to see transgenders included as part of the reported hate crimes statistics, we understand the need for speedy passage of this important legislation and It's Time, America! will support this decision.

I also want to thank the Human Rights Campaign, and their Executive Director Elizabeth Birch, for giving us this opportunity to explain why we believe transgendered individuals should be incorporated into this legislation at a future date.

On November 19, 1995, a pre-operative transsexual named Chanell Pickett met William Palmer at a club in Watertown, Massachusetts. Both Pickett and Palmer were frequent customers of The Playland Cafe, a well known gathering place for members of the gay/lesbian/bisexual/transgender community of this Boston suburb. After a few drinks and some small talk, Palmer took Pickett to his apartment where he then strangled her to death.

On November 22, the Boston Herald ran a page one story under the headline, "Preppy Kills Date in Drag." The murderer was described as a "polite and clean cut" man who wore "khaki pants and a sports coat to his job." Palmer told police he strangled Ms. Pickett in a rage after discovering her sexual identity. Channele Pickett was 23 years old when she died.

In the days following her murder, friends of Ms. Pickett came forward to say that Palmer had been a frequent patron of The Playland Cafe. In fact, another transgendered person said that she had dated Palmer four times!

Despite this information, and over the objections of the District Attorney, Palmer was released on \$50,000 bail. His lawyer apparently plans to use a defense of "gender panic," claiming that the rage which induced a murder was justified as a result of the horror of discovering the sexual identity of Ms. Pickett.

One must ask, exactly how many crimes have been committed? Obviously there is the crime of murder. Then there is the calculated attempt by the press to devalue the life of Ms. Pickett while making the killer appear to seem "normal." Finally there is the failure of the justice system which allows an admitted murderer to go free on a mere pittance of a bond.

In 1994 two men by the name of John Lotter and Marvin Nissen drove for more than two hours from Lincoln, Nebraska, to Falls City, in search of a female to male transsexual named Brandon Teena. The two men carried a grudge against Brandon because he had reported them to the authorities for a previous rape and assault.

They remained free because the sheriff considered the transsexual "an it" and never filed charges against the two men. According to testimony, they also carried rope and a hatchet in their car along with a change of clothes because they anticipated the blood of their intended victim would splatter.

When they finally found Brandon Teena at a farmhouse hiding under a blanket, he was brutally murdered. They then allowed his female companion, Lisa Lambert, to put her baby in a crib before they shot and killed her. A friend named Philip Devine, who was simply visiting at the time, was pleading for his life when they put the gun to

his head and killed him. All this senseless violence simply because Brandon Teena had the audacity to report them for a rape/assault, and then was "outed" by the police department which completely failed in its duty.

Unfortunately the story was not quite over. On a February 24, 1996 episode of Saturday Night Live, Norm McDonald used the following comment as his last joke of the evening: "In Nebraska this week, a man was sentenced to death for attempting to kill a female cross dresser who accused him of raping her.

Sorry if this sounds harsh, but in my opinion, everybody in this case deserved to die."

One wonders if Mr. McDonald would have felt the same had Brandon Teena been his child.

The Hate Crimes Reporting Statistics Act has served as a wonderful communications vehicle between the gay/lesbian community and law enforcement officials. Communications between transgenders and law enforcement officials is severely lacking, and we believe our inclusion into this legislation could go a long way toward alleviating the often fatal misconceptions about us that currently exist.

Transgendered individuals are very much aware that law enforcement agencies know very little about us and what they believe to be correct is quite erroneous. Consequently few hate crimes are currently being reported to law enforcement officials. As one victim told me recently, "What's the point of reporting it? It's likely they will laugh at me, my name could become public, and my job could be jeopardized. It's a lose-lose-lose situation." Even the most cursory reading of the crimes we presented would indicate this reading of the situation is correct.

The victimization of transgenders seldom ends after the crime is committed. Victims of beatings, stabbings, rapes, and crimes of all kinds have stories to share of being humiliated and embarrassed by medical personnel who find their appearance or mixed anatomy to be humorous. In one case this attitude might have been fatal.

Tyra Hunter, a transgendered person of color, was thrown free of the vehicle in which she was riding as the result of a terrible wreck. A paramedic who arrived on the scene stopped treatment for several minutes after discovering that Ms. Hunter was a non-surgical transsexual who still retained the male genitalia. The paramedic reportedly made lewd comments and jokes about the bleeding victim as the gathered crowd grew restless and began to demand that treatment be resumed. A city supervisor who arrived on the scene finally did restart the treatment. Ms. Hunter died. This all took place in Washington D. C. in 1995.

Inclusion of transgenders into this legislation would give us our first quantitative number on the amount of hate crimes actually occurring. It would allow transgender groups around the nation to take a solid number to social service organizations such as rape crisis centers and say, "This is what we now know is going on. This is what can be expected. Let us help to teach and prepare you so that victims can receive help, not humiliation and rejection."

We have known for years that what makes hate crimes different from other crimes is the selection of the victim. It is no secret that victims are chosen for attack because they belong to a particular group that is stereotyped as being inferior or scapegoated for causing perceived problems.

Research shows that nearly all hate crimes offenders do not know the person they are attacking. They are spurred by a fear of the unknown and misconceptions about a group with which they have had little contact. The typical offender travels outside his or her neighborhood to commit the crime. One gay victim in Houston who

Continued on page 11.

SEAN O'NEILL SENTENCED TO 90 DAYS IN JAIL BY COLORADO JUDGE

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[COLORADO SPRINGS, CO - February 16, 1996]

Ending months of legal maneuvering and sometimes bizarre testimony, a 21 year old transsexual man, Sean O'Neill, was sentenced today in the Colorado Springs Courthouse to 90 days in jail and 6 years closely-supervised probation. Facing multiple charges brought by the Colorado Springs DA, which could have resulted in a total sentence of 48 years in prison, O'Neill had virtually no choice but to accept a plea bargain offered by the DA. On advice of his attorneys, he pled guilty to one count of felony sex offense. The hearing today was solely to determine his sentence.

In what may be viewed as the defining moment of a newly insurgent transsexual men's community, over 20 gender activists demonstrated outside the courthouse in response to a call-to-action issued by Mr. Tonye Barreto-Neto (TOPS, Transsexual Menace Men) and Mr. Jamison Green (FTM Int'l, Transsexual Menace Men). The issue came to national attention in the men's community following an article by Donna Minkowitz in the October issue of OUT Magazine.

The diverse group of demonstrators included members of the Lesbian Avengers, Bi-Net, Ground Zero, TOPS, and 4 other chapters of the Menace. Following the morning demonstration, activists packed the hearing courtroom in a show of support for Sean. Their demonstration and courtroom presence was referred to multiple times during the defenses summation, and noted by the presiding judge in his sentencing statement.

Both Green and Barreto-Neto were called by the defense to testify in Sean's behalf. They withstood vigorous cross-examination intended to use their testimony to paint Sean, and in particular his living as male, as proof of his being a dangerous sex offender. Barreto-Neto's testimony as a Sheriff's Deputy from Hillsborough County, Florida, was particularly effective in countering the DA's attempts to portray O'Neill's gender-variance as deceptive and exploitative.

Public Defenders Bill Martinez and Ilene Bonnet, O'Neill's attorneys, declared the testimony of Green and Barreto-Neto along with the presence of so many gender activists, pivotal to their case. Declared an elated Martinez, later seen at a popular local bistro in a Transsexual Menace Men t-shirt: "I am just so glad the transgender

community showed up. Without their participation, we just would have floundered at Sean's hearing. It's so rare to have that kind of support, especially in cases like this one. I walked around all day about 6 inches off the ground."

O'Neill was originally charged with sexual assault and statutory rape for sexual relationships involving 4 local girls, 2 of whom were under the statewide age-of-consent of 15 at the time (O'Neill was 18). The case was largely the product of a punitive DA and angry parents who were outraged to discover that the young man their daughters were seeing was "really" a woman. Although O'Neill lives as a male and identifies as such, he has yet to undergo any surgical or hormonal procedures.

The strange testimony was highlighted by the testimony of one girl that she had slept with Sean 51 times but had not noticed his genitals and thought his breasts were "rolls of fat." Another claimed to have had oral sex with him. One of the girlfriends, repeatedly heard saying loudly from the courtroom seats, "I'm going to kill her [Sean]," phoned O'Neill numerous times the day after the sentencing to express her unceasing love.

Especially noted by the presiding judge was the claim of of the parents of one girl that their daughter was completely "devastated" by

"I am just so glad the transgender community showed up. . . It's so rare to have that kind of support, especially in cases like this one. I walked around all day about 6 inches off the ground."

Sean's "deception," yet nonetheless appeared on the Jerry Springer Show to discuss the matter with O'Neill before a national television audience. Asked by the judge how their emotionally-shattered daughter came to be on national television, the father replied: "I don't know. It certainly wasn't my idea."

O'Neill's sentence was generally regarded as a victory for the defense and defeat for the prosecution, who had sought at least a year of hard time in the Colorado State Prison. Under Colorado State law, O'Neill could have been sentenced to up to 8 years in prison for the single count of felony sex offense, rather than 90 days in the local jail. In most

jurisdictions, consensual sex between 2 teenagers, where one is under the age-of-consent, customarily results in a misdemeanor and a warning.

In his cross-examinations and closing statement, the DA repeatedly referred to O'Neill, who weighs about 100 lbs and is just over 4 & 1/2 feet tall (somewhat smaller than some of his alleged "victims") as a dangerous and predatory pedophile, drawn to sex with "children," who would continue to "prey" on them if not imprisoned.

With time off for good behavior, O'Neill could serve as little as 30 days in jail and 2 years of probation. Under the terms of his sentence, O'Neill must report all contacts with females under the age of consent or which might lead to sexual intimacies, and undergo psychological counselling during probation. His attorneys confirmed that it will be difficult if not impossible for O'Neill ever to have his criminal record as a sex offender expunged.

Declare YOUR INDEPENDENCE at TRANSGEN '96
Make your reservations at
Ramada Astrodome Motel
Call 1-800-722-1368 and ask to reserve a room

Continued from page 4.

Here is the partial text of Tom Swann's remarks covering these issues:

In the two years since the don't ask, don't tell policy has been in effect, the Pentagon discharged more service members for being gay than at any time since 1991. In fact there has been a 17% increase. Despite the don't pursue aspects of the policy - the military has given their commanders a wide margin of room to conduct investigations of people who might be lesbian or gay. An August 1995 memorandum issued by the Pentagon's top lawyer (General Counsel Judith Miller) says that "each service is left to determine how to use them" (the guidelines).

Since the rules took effect approximately 7 of 43 service members who tried to rebut the presumption of homosexual activity have succeeded and avoided discharge. The others were kicked-out of the military. Navy Reserve Lt. Commander Zoe Dunning won her case but the Pentagon subsequently issued a memorandum specifically stating that the defense Dunning used should not be accepted in the future.

Meanwhile the SLDN, myself, Gay, Lesbian & Bisexual Veterans of America (GLBVA), Alexander Hamilton Post of The American Legion (San Francisco) and others are trying to secure the release of Air Force Captain Warren Dinges from the Fort Leavenworth, Kansas Federal Prison. Dinges is being incarcerated pending appeal of his November 15 conviction for having consensual sex with a civilian adult male. The Air Force allegedly used coercive tactics in the trial threatening to place the civilian male in jail for 6-months if he did not testify.

Michelle Benecke, Co-Executive Director of SLDN said recently that gay people "continue to face witch hunts, death threats, and pursuit -- asking -- which everyone agreed would stop with the new policy."

I have learned that SLDN has met with White House officials to show evidence that the new policy is vastly different from what President Clinton and the Democratic Congress intended in 1993. On June 11, 1993 my representative met with the military advisor to Vice President Al Gore to talk about my case and the cases of other plaintiffs like Margarethe Cammermeyer and Keith Meinhold.

Two hours after I told Point Mugu Navy Base officials about this White House meeting between former Air Force Captain Dave Schaub and Navy Commander James A. Carman the directorate head ordered a punitive job transfer for me. The ACLU objected and filed new legal documents against the Navy.

So in my opinion, the don't ask, don't tell is not working and the military harassment of lesbians and gays has not changed. It seems to be much worse. I believe lesbians and gays should have their First Amendment rights to share their sexual orientation with military and civilian co-workers. Nobody objects when heterosexuals describe their dating relationships.

As a member of the California State Democratic Party Central Committee I have inquired about the Clinton administration's response to the SLDN report and the prison sentence handed-out to Captain Dinges. The Democratic Party pointed to a speech given by Mr. George R. Stephanopoulos, Senior Advisor to the President. The remarks were made on October 20, 1995 at the 4th annual convention of the National Lesbian and Gay Journalists Association in Washington, D.C. The important Clinton administration official said:

"I know that many lesbian and gay Americans -- including many of you in this room -- saw the issue of discrimination in the military as an important reason to support the Clinton-Gore ticket. And as a campaign advisor and as a member of the President's staff, I worked very closely and very hard on that issue for a long time. And we tried - I know we didn't achieve what we set out to achieve. We'll continue to do what we can to ensure that at the very least, gays and lesbians serving honorably in the military, as they have always done, can do so without the harassment that has scarred too many lives and marred too many careers. I understand your disappointment. Don't ask, don't tell has not worked as well as we had hoped. But I also ask you to believe something else. This was an honest attempt to achieve an honorable compromise. The President did his best, and he will continue to do his best."

Let me say that I (Tom Swann) lost a great deal when Navy officials retaliated against me because I supported the President's efforts. Perhaps I have a right to be bitter toward the Clinton-Gore '96 campaign. I lost my 12-year career, my health when the Navy placed me on 7-months unpaid leave, and my freedom to express myself as a Proud Gay Veteran. I am not bitter and anger towards others harms

you and benefits no one. Thanks to the ACLU, my family and a host of friends across America who donated to my legal defense I was able to win my case and the Navy Secretary added sexual orientation protection. So never give up hope or give in to discrimination.

I had the pleasure of shaking hands with Mr. Stephanopoulos at a recent Los Angeles Democratic Party event co-hosted by the Stonewall Democratic

Club and Assembly candidate Robert Hertzberg. I listened to this Clinton Sr. Advisor talk about the Employment Non-Discrimination ACT (ENDA) and the new security clearance policy for lesbian and gay federal workers. Mr. Stephanopoulos asks that we believe him AND I DO because I was involved in the process and the ACLU and I won a historic case.

When I asked members of the Eleanor Roosevelt Democratic Club if they believe President Clinton did his best, and he (Clinton) will continue to do his best...the audience shouted YES!

Now we are preparing the California Democratic Party Platform which will be debated and adopted April 12-14 in Los Angeles. First Lady Hillary Rodham Clinton will be speaking to over 3,000 delegates which includes members of the Gay, Lesbian & Bisexual Veterans of America. Our gay veteran delegation is supportive of the Defense Secretary's investigation into charges of "witch hunts" by the U.S. military. We welcome the First Lady and hope she will mention this issue in her speech.

The California Democratic Party Platform will have enormous influence in shaping the 1996 national platform that our candidates will use in this crucial election. I am very pleased that the draft language includes the following sentence under Lesbians and Gay Men: "THE RIGHT TO SERVE IN THE ARMED FORCES WITHOUT QUESTION."

**"THE RIGHT TO SERVE
IN THE ARMED FORCES
WITHOUT QUESTION"**

TRANSGEN '96

The 5th annual International Transgender Law Conference will be held at the Ramada-Astrodome Hotel in Houston, TX USA from 3-7 July. See page 14 for details

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was beaten to death with a board full of nails was killed by a group of teenagers who lived more than thirty miles from where the attack occurred. I knew this person well. He was a member of my church.

The inclusion of transgenders into the Hate Crimes Reporting Statistics Act would help to put a face on these otherwise anonymous victims. Let's just tell the truth. What is being collected is information about horrible acts of violence against people. Each one of the numbers has a name, a background, and a story to tell. The victims are sons, daughters, mothers, fathers, engineers, secretaries, and folks who want nothing more than to live their life in peace. Suddenly their lives are being shattered in a senseless act of violence for no other reason than they don't look or act like so meone else thinks they should. Allowing these victims to go unreported and unknown may be the most violent act of all.

An Addendum

Current Legislation Protecting Transgendered Individuals

In 1974 the City of Minneapolis began to cover transgendered individuals under the term, "affectional preference," which is a protected class under their civil rights ordinance. "Affectional preference" was defined as including individuals having a projected self image not associated with one's biological maleness or femaleness.

The city of Seattle extended protection to transgenders in 1986, under legislation that considers sexual orientation a protected class.

In August of 1993, the State of Minnesota passed a omprehensive non-discrimination act which protects transgenders under the term "sexual orientation." The legislation states: "Sexual orientation means having or being perceived as having an emotional, physical, or sexual attachment to another person 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 identiy not traditionally associated with one's biological maleness or femaleness. Sexual orienta tion does not include a physical or sexual attachment to a child by an adult."

Santa Cruz, California, passed protective legislation in 1992 under the general term of gender, although the language of the ordinance specifically includes people who are known r seen to be transgendered.

The most sweeping and definitive piece of trangender protective legislation was passed by the City of San Franciso in 1994. This ordinance defines transgender as: "... an umbrella term that includes male and female cross dresses, female and male impersonators, pre-operative and post-operative transsexuals, and transsexuals who choose not to have genital reconstruction, and all persons whose perceived gender or anatomic sex may conflict with their gender expression, such as masculine appearing women and feminine appearing men."

IT'S TIME, TEXAS! 6726 HENDON, HOUSTON, TEXAS 77074
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REAUTHORIZATION OF THE HATE CRIMES STATISICS ACT

THE HONORABLE ORRIN G. HATCH, CHAIRMAN

TESTIMONY OF SARAH DEPALMA
NATIONAL DIRECTOR, IT'S TIME, AMERICA!
CHAIR, IT'S TIME, TEXAS

April 3, 1996.

ICTLEP ANNOUNCES AWARD WINNERS

Each year, ICTLEP has available three awards

1. The Transgender Advocate Award -- past winners include Connie Moore (and by association, her partner Debra Hunt) and Shelly Saliari.
2. The Transgender Pioneer Award -- past winners include Cissy Conley, Jane Fee and Jameson Green.
3. The Transgender Champion Award -- past winner was Raymond Hill.

(NOTE: None of these are available to ICTLEP Board Members.)

The Transgender Advocate Award is for any attorney or legal organization who has advanced the legal standing of the transgender community. The winner is **Law Professor Stephen Whittle** from the University of Manchester, England. Prof Whittle, an out transgendered man (MTM/FTM) has written several books on transgender legal issues in England. He is also involved with "Press for Change", and advocacy group in England. Recently, he took the British Courts to the European Court of Justice. The ECJ ruled that the British Courts were in error, and that "discrimination prohibited on the basis of being transexual" was the same as discrimination prohibited on the basis of sex." This is a quantum leap. In all three US Appeals Court rulings (this issue has never reached the US Supreme Court) the courts have held that transsexuals were NOT protected under Title VII prohibitions against discrimination based upon sex. Imagine, thanks to Prof Whittle, European transsexuals have more legal protection than do those of the USA and probably anywhere else in the world.

The Transgender Pioneer Award is for any NON-attorney transgendered person or organization who has advanced the legal standing of the transgender community. The winners are **Sarah DePalma of Texas and Jessica Xavier of Maryland**. Both were instrumental in having stand-alone, transgender protective legislation be introduced and be voted favorably out of committee of one house of their respective state legislature. In spring 1995, Sarah introduced a bill to allow pre-surgical and non-surgical ts folks to change there gender identification and sex designation in an upfront and streamlined fashion. After favorable testimony from assembled tg activists, the Bureau of Vital Statistics and the Department of Public Safety, the Family Law and Juvenile Justice Committee voted the bill out of committee and to the House with a favorable vote of 7-2. In the fall of 1995, Jessica introduced a comprehensive bill dealing with employment and housing discrimination into a similar committee of the Maryland House where again favorable testimoney was given and a favorable vote was given. It is expected that during the next legislative sessions, that these two Pioneers will carry their bills further along and that others from other states and nations will do the same.

The Transgender Champion Award is for any non-attorney, non-transgendered person or organization who has advanced the legal standing of the transgender community. There are no winners to announce at this time, although suggestions are invited and will be considered. These will be awarded at the Saturday evening Awards Banquest, 06 July.

To send congratulations and "Job Well Done":
Stephen Whittle at s.t.whittle@mmu.ac.uk
Sarah DePalma at ita@mail.phoenix.net
Jessica Xavier at thexgrrl@aol.com

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The company's response came in a memo by David Haier, the U.S. subsidiary's vice-president for service. Haier told Trepanowski that at least two customers had contacted the company "expressing their displeasure with their perception of Komori, as a result of them seeing you in your current appearance, at their place of business." Konray says that these customer complaints came in January or February of 1995.

In the memo, Haier instructed Trepanowski immediately to stop "wearing makeup and inappropriate jewelry while on the job." Trepanowski was given the choice of signing the memo, indicating acceptance of its terms, or being terminated immediately.

According to Konray, Haier flew to New Jersey the next day, March 16, to present the ultimatum personally, and Trepanowski asked for the opportunity to consult with a lawyer before signing. After consulting with a New York lawyer, Trepanowski signed and faxed back the memo the same day, but was fired anyway.

In addition to LAD claims against Haier, other employees and the company, Trepanowski is claiming that the company did not follow disciplinary procedures in the company manual that formed a handbook contract between employer and employee. The manual sets forth a "corrective action" program as an alternative to punishing employees for infraction of rules. But in his memo, Haier stated that Komori considered Trepanowski's situation so serious that it was "outside the realm of the corrective action program."

RETALIATION ALLEGED

Aiello's suit alleges a pattern of discriminatory disciplinary actions taken by the Hoboken Police Department after she began changing from a man to a woman.

The complaint alleges that in early 1995, Aiello took a sick leave after her decision to proceed with the sex change and that when she sought to work -- as a woman -- her supervisors began imposing requirements and conditions. Among them was the scheduling of a seminar Sept. 26 to sensitize the department's personnel; to her gender reassignment. The department wanted Aiello and her doctor to discuss the details of the sex change and to answer questions. The complaint alleges that Aiello, after consulting with her doctor, declined to appear in the seminar but she nevertheless wanted to return to work as scheduled on Sept. 27. When she failed to return until Oct. 6, allegedly because of miscommunication with her superiors, she became the subject of disciplinary action.

Aiello also claims that the police department has continued to discriminate against her by sending her harassing memos, treating her differently from other officers, and filing additional disciplinary charges against her for speaking out publicly against the charges already filed.

The LAD claims in the complaint raise bias based not only on gender and sexual orientation but also on handicapped status. Aiello alleges that a diagnosis by a police department psychiatrist that she is schizophrenic constitutes a perception that transsexuality is a handicap.

Corrigan, the attorney representing the Hoboken police department, denies all of Aiello's allegations, and moreover says that the LAD was never intended to apply to individuals who switch gender by choice. "It's our view that the Law Against Discrimination was patterned after the federal Civil Rights Act, and the federal courts have uniformly interpreted (Title VII) as covering only the most patently serious forms of discrimination.

Seeing improved chances in the federal venue led Corrigan to remove the suit to the U.S. District Court, but Kenney has moved for a remand back to Hudson County Superior Court. A status conference is

scheduled today before U.S. District Judge Alfred Lechner Jr., at which the remand motion may be decided.

NEW YORK LAW RELEVANT

Konray and Kenney agree that there is no case law in New Jersey interpreting the LAD to make transsexuality a protected class or subclass. In Aiello's complaint, Kenney cites the closest precedent, the 1995 New York case of Daniel M. Maffei v. Kolaeton Industry, Inc., in which a trial judge found that a hostile workplace directed against a transsexual constituted discrimination based on sex.

In Maffei, a female-to-male transsexual claimed that after the sex-change operation, his company's president began to degrade and humiliate him at the office, call him names, strip him of his duties, and ostracize him from the rest of the employees. He claimed that the harassment resulted in a hostile work environment and sought damages under New York's Executive Law 296. That law makes it unlawful for an employer to discriminate against an individual because of age, race, creed, color, national origin, sex, or disability, or marital status, and under New York City Administrative Code section 8-107, which adds sexual orientation to the list of protected classes.

The employer countered that even if the allegations were true, they failed to make out a cause of action because neither federal, state nor city law recognized transsexuals as a protected class.

New York Supreme court justice Edward Lehner found that the sexual orientation protection afforded by the city statute did not help the plaintiff, because the law -- just as the New Jersey LAD does -- defines sexual orientation in terms of sexual preferences and practices: heterosexuality, homosexuality or bisexuality. Because Maffei raised no claim that the claimed harassment was the result of sexual preferences he expressed, the court found no sexual-orientation discrimination.

But Lehner noted the principles that anti-discrimination statutes are remedial and the "New York City law is intended to bar all forms of discrimination in the workplace and to be broadly applied." Under these circumstances, Lehner wrote, "(T)he creation of a hostile work environment as a result of derogatory comments relating to the fact that as a result of an operation an employee changed his or her sexual status creates discrimination based on 'sex', just as would comments based on the secondary sexual characteristics of a person."

In the closest federal case on point, Ulane v. Eastern Airlines, a commercial airline pilot who underwent sexual reassignment surgery sued under Title VII for wrongful discharge. She had her birth certificate and her Federal Aviation Authority certification changed to show her sex as female. The trial court ruled that transsexuals are protected under Title VII, finding that "sex is not a cut-and-dried matter of chromosomes, and that . . . the term, 'sex', as used in any scientific sense and as used in the statute can be and should be reasonably interpreted to include among its denotations the question of sexual identity."

The 7th U.S. Circuit Court of Appeals reversed, finding that the term "sex" in Title VII had to be given its "plain meaning (which) implies that it is unlawful to discriminate against women because they are women and against men because they are men." By contrast, the judges found, the discrimination in this case was against a biological male who takes female hormones, cross-dresses, and has surgically altered parts of her body to make it appear to be female." Title VII, the court found, does not protect persons based on their sexual identity.

The only Third Circuit case on point, Grossman v. Bernards Twp. Bd. of Educ., reaches the same conclusion.

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