

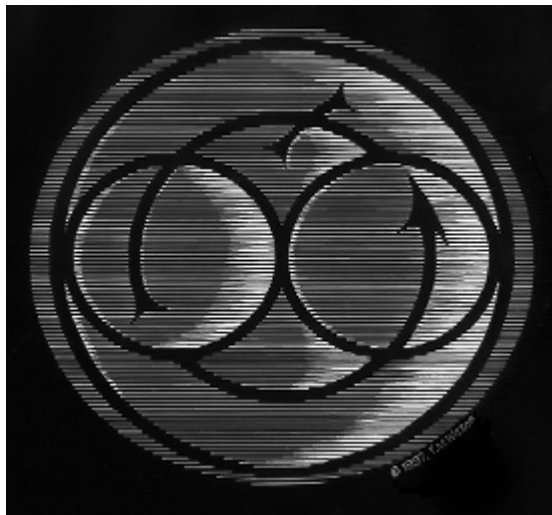
**GENDER IDENTITY AND THE MILITARY:
TRANSGENDER, TRANSSEXUAL, AND INTERSEX-IDENTIFIED INDIVIDUALS
IN THE ARMED FORCES**

Part 1

A report commissioned by the Center for the Study of Sexual Minorities in the Military, University of California, Santa Barbara

by

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1.0 INTRODUCTION

"The military in fact discriminates on a variety of bases. For example, the military excludes--"discriminates against"--single parents, felons, handicapped individuals, transsexuals, conscientious objectors, and persons with any of a number of medical conditions. The military also discriminates on the basis of height and weight, physical and mental ability, visual acuity, political beliefs and religious affiliation, language, youth and age. To repeat--*all military personnel policies discriminate*. They discriminate between individuals or groups that have strong potential for successful soldiering and those that do not. And these discriminatory judgments are made by Congress, by the Secretary of Defense, or by the service secretaries in fulfilling their duty to compose strong, combat-ready, and efficiently administered armed forces (Well-Petry, 1993)¹."

In all forms of discourse, the role of the body is significant. The imagined body (Gatens, 1996)² "refers to the collection of images, symbols, metaphors, and representations which help construct various forms of subjectivity. The content of the collection can be structured and given a marking. That marking can be known as the corporate body, the body of law, or the military body." Whitford (1991)³ suggests that the "imaginary is not just confined to philosophers and psychoanalysts but is a social imaginary which is to be taken to be reality, with damaging consequences for women who, unlike men, find themselves 'homeless' in the symbolic order." Thus, any subversion of the imaginary alters semiotics of meaning-making and therefore subverts the stable dominant paradigm. We will see that, for the intersex and transgender-identified individual, by definition they subvert the discourse of the dominant imaginary and consequently create a threat to the institutional order. This is also supported by Gatens (1996), who further points out that

"To insist on two bodies [male and female] is strategically important given that we live in a patriarchal society that organizes itself around pure sexual difference, that is male and female, and will not tolerate sexual ambiguity, for example, hermaphrodites, but forces a definite either/or sex on each person. However, even the biological determination of sex is not so straightforwardly clear and we must acknowledge sex as a continuum and bodies as multiple (Gatens, 1996)⁴."

In the upcoming discussion, we shall see how the construct of the social imagined body is used to generate the meanings involved in the military body discourse and how that leads to the current military policies surrounding how transgender, transsexual, and intersex-identified individuals are handled within the context of military code.

1.1 Overview

The fact that military service involves the routine practices of physical training and strict attention to discipline is widely known (Moon, 2002)⁵. Similar comments could be made about Olympic training. In fact, Kidd and Donnelly (2000) point out that,

¹ Wells-Petry, M. (1993). *Exclusion: Homosexuals and the right to serve*. Washington, D.C.: Regnery Gateway.

² Gatens, M. (1996). *Imaginary Bodies: Ethics, power, and corporeality*. London, England: Routledge Press.

³ Whitford, M. (1991). *Luce Irigaray: Philosophy in the feminine*. London, England: Routledge Press.

⁴ Gatens, M. (1996). *Imaginary Bodies: Ethics, power, and corporeality*. London, England: Routledge Press.

⁵ Moon, S. (2002). *Beyond equality versus difference: Professional women soldiers in the Korean army*. *Social Politics*. Summer: 213

“Few of the initial proponents of modern sports ever intended for them to be universal and inclusive. In particular, we see that athletic competition was regarded as a ‘male practice’ and the majority of social resources available for sports were reserved for boys and men (Kidd & Donnelly, 2000)⁶.”

Thus, like the military institution, the sports/athletics institution was initially homocentric and had to deal with the subsequent emergence of female athletic competition. Reeser (2005) points out that,

“In this context [the context of fair play and level playing fields to insure fair competition] transsexual and intersex-identified athletes are viewed as threats to fair competition which international sport federations have been forced to address (Reeser, 2005).⁷”

Clearly, the socio-political imagined body of the military, like that of athletic competition, has historical grounding in the dominance of the masculinities of power becoming the “habitus (Gatens, 1996)⁸” or “social background often below the threshold of conscious decision-making.” In the case of the military system, this habitus revolves around the discourses of body image and the fundamental importance of the discrimination of the body in numerous ways.

As we have already pointed out, The focus of military training is centered on the development of the body, both physically and mentally, as well as an indoctrination of the body into the larger “body” of the military and its superbody of rules and regulations in order to fulfill the need for combat-ready troops (Well-Petry, 1993)⁹. Thus, military training encompasses body-oriented dynamics at multiple psycho-socio-political and economic hierarchy levels. Moreover, the habitus is male oriented and this sets the standard against which everything is measured. In her paper, Moon (2002)¹⁰ provides the following remarks of a female Korean officer as an insight into both a woman’s view of the female military capability, as well as a Korean view of a woman’s military capability:

Soldiering involves a lot of physical activities like running, jumping up and down, and crawling. Some women can do these just as well as men do. On average, however, women cannot do as well as men do (Moon, 2002, p. 222)

In this brief statement we see that, as Fausto-Sterling (1987)¹¹ argues, the interplay of biological knowledge and social construction/interpretation is never null. This fact, coupled with the innate need of the military to categorize and discriminate, provides the perfect context for the military interpretation of the difference in the bodies of men and women as being a deficiency/weakness on the part of the female body. Gatens (1996) points out that that the idea of rigidity (in this case we could argue rigid rule structure, hardness, strength, *etc.*) is manifested in the masculinity of power (*i.e.*, the penis) whereas the imagined body of the female is one of acceptance, softness and in that weakness (*i.e.*, the vagina). However, a critical facet of this construct is that one can still discriminate between the dichotomous bodies and their capabilities, despite any real or perceived weakness.

⁶ Kidd, B. and Donnelly, P. (2000). Human rights in sports. *Int. Rev. for the Sociology of Sport*. 35(2): 131-148.

⁷ Reeser, J.C. (2005). Gender identity and sport: Is the playing field level? *Brit. J. Sports Med.* 30: 695-699.

⁸ Gatens, M. (1996). *Imaginary Bodies: Ethics, power, and corporeality*. London, England: Routledge Press.

⁹ Wells-Petry, M. (1993). *Exclusion: Homosexuals and the right to serve*. Washington, D.C.: Regnery Gateway.

¹⁰ Moon, S. (2002). Beyond equality versus difference: Professional women soldiers in the Korean army. *Social Politics*. Summer: 213

¹¹ Fausto-Sterling, A. (1987). Society writes biology/biology constructs gender. *Daedalus* (Winter): 61-77.

Moreover, in doing so, one can subsequently ascertain “military weakness, military potential, military utility.”

Thus, discrimination between bodies is essential to the military agenda. In addition, one can, through this ability to discriminate dichotomy, protect the military from the “encroachment of women on one of the few remaining masculinized domains, Moon (2002, p. 243).” This encroachment can be generalized to protecting the military from the encroachment of the “non-male” individual in much the same way that Reeser (2005)¹² argued that the Olympics must deal with the “threat” of the transsexual and intersex-identified athletes because of the lack of ability to discriminate between the body types. What is interesting is that based upon the requirement of “fair play and level playing fields (Cole, 2000¹³; Pilgrim, Martin & Binder, 2003¹⁴)” and the fear of male athletes competing against women (Dickinson, *et al.*, 2002¹⁵; Elsas *et al.*, 2000¹⁶) sex/gender identity testing, only against women, became acceptable in Olympic competition for a period of time. Reeser (2005) states that, “... the issue of how best to integrate athletes who have undergone reassignment surgery into sex-specific sports competition continues to be vigorously debated. The issues involved are far from straightforward and ultimately force us to re-examine our definition and understanding of what it means to be a female.” Note that we are not asked to redefine gender or what it means to be male. Rather, we see the female/feminine as subordinate. Here again we see the role of discrimination of the “birth body” as important. Mandatory sex verification policies were eventually abandoned because of the substantial harm imposed on female athletes with less common genetic variations (*i.e.*, androgen insensitivity syndrome, 5- α -steroid-reductase deficiency, and chromosomal mosaicism) (de la Chapelle, 1986¹⁷; Hipkin, 1993¹⁸; Pilgrim, Martin & Binder, 2003; Kirby & Huebner, 2002¹⁹; Dickenson *et al.*, 2002) as well as the embarrassment inflicted upon women who were tested and subsequently found to be innocent (Simpson *et al.*, 1993²⁰). However, as Cole (2000) so appropriately points out, “... it is not surprising that sex-testing narratives are populated by a wide range of boundary creatures: drug-crafted athletes, steroid men/women, intersexed, transsexed, hypermuscular females, hypernormal females, innocent victims” Thus, within the historical evolution of the Olympics, we see many similarities to the historical evolution of the institution of the armed forces.

The institution of the military must likewise deal with a wide range of boundary creatures. When discrimination becomes difficult or where the lines are blurred, problems emerge. These problems emerge, independently of the individual military participants, through the concretization of the habitus – as implemented through military legal, behavioral, and medical codes – in the present time.

¹² Reeser, J.C. (2005). Gender identity and sport: Is the playing field level? *Brit. J. Sports Med.* 30: 695-699.

¹³ Cole, C.L.(2000). Testing for sex or drugs. *J. Sport & Social Issues*, 24(4): 331-333.

¹⁴ Pilgrim, J. Martin, D. & Binder, W. (2003). Far from the finish line: Transsexualism and athletic competition. *Fordham Intellectual Property, Media & Entertainment Law Journal*. 13 (2): 495-549.

¹⁵ Dickinson, B., Genel, M. Rabinowitz, C.B., Turner, P.L., and Woods, G.L. (2002). Gender verification of female Olympic athletes. *Medicine, Science, Sport & Exercise*. 34 910: 1539-1542.

¹⁶ Elsas, L.J., Ljungqvist, A. Ferguson-Smith, M.A., Simpson, J.L., Genel, M., Carlson, A.S., Ferris, D., de la Chapelle, A., Ehrhardt, A.A. (2000). Gender verification of female athletes. *Genetics in Medicine*. 2(4): 249-254.

¹⁷ de la Chapelle, A. (1986). The use and misuse of sex chromatin screening for ‘gender identification’ of female athletes. *JAMA*. 256: 1920-1923.

¹⁸ Hipkin, L.J. (1993). The XY female in sport: the controversy continues. *Brit. J. Sports Med.* 27: 150-156.

¹⁹ Kirby, S. & Huebner, J. (2002). Athlete’s bodies: Fluid corporealities new realities talking about sex: Biology and the social interpretations of sex in sport. *Canadian Women’s Studies*. 21 (3): 36.43.

²⁰ Simpson, J.L., Ljungqvist A, de la Chapelle A. (1993). Gender verification in competitive sports. *Sports Med.* 16:305–15.

What is more, both the individual and the systemic response to ambiguity are quite visceral in nature. Nowhere was this initially more clearly seen than in addressing the issue of “gays in the military.” Much has been already written on the issue of “homosexuality” in the military. It is beyond the scope or the mission of this report to review that particular literature. Of importance to the gender identity discussion is the understanding that the GLB (Gay, Lesbian, and Bisexual) literature focuses on the issue of sexuality alone; discriminating between what is sexually allowed and what is sexuality not allowed. Moreover, what emerges from that dialogue is one of the legal precedents used to define how ambiguous gender-identities are treated in the military.

The predicated arguments of the aforementioned literature are grounded in the classical ideology of a Western biomedical, Judeo-Christian-Islamic, heterosexual construct of a dichotomous binary body derived from the binary of the reproductive genitalia (more so from the binary of the act of reproduction itself) and from the internalized second nature of the embodied history (Gatens, 1996)²¹ or habitus

“... the active presence of the whole past of which the current time is the product ... [it] is also the means through which agents partake of the history objectified in institutions, [it] is what makes it possible to inhabit institutions, to appropriate them practically, and so to keep them in activity ... (Bourdieu, 1990²²)”

This dichotomous binary is reinforced by a religious/biblical mandate that homosexuality is spiritually unacceptable (a sin)²³⁻²⁴⁻²⁵. In this the Bible (Leviticus 20:13) states that “If a man has intercourse with a man as with a woman, both commit an abomination. They must be put to death.” Consequently, the military, an arm of the Judeo-Christian-Islamic institution of the U.S and embedded within the embodied history of this country, is not so subtly mandated to police the binary. They are agents that partake of this history as it is objectified in the various institutions of the United States. The armed forces currently execute this process through the mandate of “don’t ask, don’t tell²⁶.”

From the habitus of the binary emerges U.S. government’s ongoing marginalization of the GLBTIQ (Gay, Lesbian, Bisexual, Transgender, Intersex, Queer and Questioning) population in such social institutions as healthcare. For example, the HP2010 (2000)²⁷⁻²⁸ document purports to have, as a primary goal, the mission to “improve access to comprehensive, high-quality care services.” The Chapter 1 HP2010 authors state that “Access to quality care is important to eliminate health disparities and increase the quality and years of healthy life for all persons in the United States.” The

²¹ Gatens, M. (1996). *Imaginary Bodies: Ethics, power, and corporeality*. London, England: Routledge Press.

²² Bourdieu, P. (1990). *The logic of practice*. Trans. Richard Nice. Stanford, CA: Stanford University Press.

²³ Sheard, A. (2000). Bible’s stance on homosexuality. *British Medical Journal*. 320.

²⁴ Hester, J.D. (2005). Eunuchs and the postender Jesus: Matthew 19:12 and transgressive sexualities. *J. Study of the New Testament*, 28: 13-40.

²⁵ Smith, M.D. (1996). Ancient bisexuality and the interpretation of Romans 1:26-27. *J. Am. Acad. Relig. LXIV*: 223-256.

²⁶ The “Don’t ask, don’t tell” rule only applies to sexuality (homosexual/lesbian/bisexual). It does not apply to transgender/transsexual/non-normative gender-identity individuals.

²⁷ GLMA. (2000). *Healthy People 2010: Companion Document for Lesbian, Gay, Bisexual, and Transgender (LGBT) Health*. U.S. San Francisco, CA. Gay and Lesbian Medical Association. [Available at <http://www.glma.org/>]

²⁸ Healthy People 2010. (2000). U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA. [Available at <http://www.glma.org> or <http://www.health.gov/healthypeople/Document/tableofcontents.htm>]

authors then illustrate data from the 1997 National Health Interview Survey (NHIS), CDC, and NCHS showing the percentages of individuals under the age of 65 years having health insurance. The table incorrectly identifies “sex” as “gender” and lists only the options of male or female as data collected²⁹. Thus, by invisibilizing the GLBTIQ population, the federal government marginalizes them and simultaneously sanctions the *status quo*. However, in the case of being a member of the GLB population, because the body dichotomy is still discernable (discriminable), the viscosity of the social response and hence of the military response to such an individual, while strong, is manageable within the “Don’t ask, Don’t tell” mandate. For the transgender- and intersex-identified populations, this is not the case.

Issues of gender identity (also labeled by the military as transvestitism, cross-dressing, transsexualism, Army Medical Services Standards of Medical Fitness, 2002³⁰) bring a new and profoundly deeper problem to the door of the armed forces establishment. They stand in direct contradiction to the habitus of the Western sociology and particularly to that of the Western military establishment. The assumptions of the dichotomous body and of the consequent sexual derivative of heterosexuality also eliminate any theoretical constructs dealing with the dynamics of non-normative gender roles in a heterosexual society (Currah & Minter, 2000³¹; Witten, 2004³²). As of this report, little has been written concerning the topic of non-traditional (non-Western dichotomous, Witten *et al.*, 2003³³) gender identities in the military. Such identities blur the carefully delineated distinctions of body, sex, sexuality and social role, thereby creating perceived disorder in the rigid order of a military structure³⁴. This disorder and the consequent inability to discern (discriminate) raises the viscosity of the reaction³⁵ (“Police in Los Angeles shot a U.S. Marine to death after he allegedly killed a transsexual prostitute, officers said Monday.”) to non-conforming gender identities to a far more powerfully intense level³⁶⁻³⁷. Such actions are existent throughout the world. Ungar (2000³⁸) points out that,

²⁹ Problems of conflating terminology (gender for sex) are prevalent in the literature. For discussions on this problem, see Pryzgod, J. & Chrisler, J.C. (2000). Definitions of gender and sex: The subtleties of meaning. *Sex Roles*. 43(7/8): 553: 569. Gentile, D.A. (1993). Just what are sex and gender anyway – a call for a new terminological standard. *Psychological Science*. 4 (2): 120-122. Witten, T.M. & Evan, A.E. (1999). Hate crimes against the transgendered: An invisible problem. *Peace Review*. 11(3): 461-468. Witten, T.M. (2004). Life course analysis: The courage to search for something more: Middle adulthood issues in the transgender and intersex community. *J. Human Behavior in a Social Environment*. 8(3-4): 189-224.

³⁰ Army recruiting regulation 601-210 (2004).

³¹ Currah, P. & Minter, S. (2000). *Transgender Equality*, NGLTF Policy Institute, N.Y.

³² Witten, T.M. (2004). Life course analysis: The courage to search for something more: Middle adulthood issues in the transgender and intersex community. *J. Human Behavior in a Social Environment*. 8 (3-4), 189-224.

³³ Witten, T.M., Benestad, E.E.P., Ekins, R.J.M., Ettner, R., Harima, K., King, D., Landén, T.M., Nodin, N., P'yatokha, V., & Sharpe, A.N. (2003). *Transgender and Transsexuality*. (in) Ember, C.R. & Ember, M. (eds.) *The Encyclopedia of Sex and Gender: Men and Women in the World's Cultures*. New York, N.Y.: Kluwer/Plenum.

³⁴ One could make the argument that such blurred distinctions can be seen as castrating to a rigid (penile) structure and therefore demasculinizing and subsequently threatening. Thus, a transsexual (at the level of an individual) is a metaphor for what might happen to a military structure at a more institutional level if the binary is not policed and the rigidity (read male/masculine) is not perpetuated.

³⁵ Agence France Presse. (2004). 27 December 2004. US Marine shot by police after killing transsexual prostitute

³⁶ Agence France Presse. (2004). 27 December 2004. US Marine shot by police after killing transsexual prostitute.

³⁷ Paylor, N. (2005). 23 July. Disarm these Yobs - Shot transsexual's call for BB gun ban. Denise Moss (Britain) has been targeted “eight times in 22 months.”

“The high levels of legal, semi-legal, and extra-judicial violence against lgbt people in many of the world’s new democracies result from the explosive combination of authoritarian legacies, weak governments, powerfully unacceptable police forces and deep levels of societal homophobia. These three forms of violence blend into each other: written laws, governmental measures, official rhetoric, police violence, undemocratic police measures, and extra-judicial activity.”

In addition, these same issues are further exacerbated when one considers the impact of intersex identities (Greenberg, 1998³⁹; Goodnow, 2000ab⁴⁰) on gender roles, gender self-perception, and gender identity as it is perceived by individuals external to the intersex-identified person.

No longer is the dichotomous body and its concomitant reproductive dichotomy (read sexuality) an absolute authority. No longer is the military training dichotomy based upon the dichotomy of the body (male vs. female) and of the subsequent derivatives of weakness of those bodies and therefore easily managed. Instead, far more complex questions are raised. Where does the female-to-male transsexual train? Does he train with the men because he is so identified or does he train with the women because his chromosomes are female? How does one handle the XY female (Hipkin, 1993⁴¹)? And, as we have pointed out, similar problems were faced by the International Olympic Committee (2004⁴², 2005⁴³). Rather, in the truest sense, the rigid structure that epitomizes the natural flow of the Armed Forces habitus/imagined body, at both the individual and institutional levels, is sabotaged by those who blend, bend or erase the reality of dichotomous binary genders, changing the rules of military “discrimination and engagement” and in doing so fundamentally alters the core tenet of the habitus⁴⁴ that the military is the domain of the dichotomous and discriminable body. Such gender non-conforming individuals are then perceived as gender terrorists at many different hierarchy levels. They are seen as deeply invading the culture of the military⁴⁵, of the U.S. as a whole, and of masculinity and discriminability in particular.

Cassell (1997)⁴⁶ elucidates the body/gender complexity issue exceptionally well when she states:

“Although I believe gender differences are deep and relatively resistant to change, I am convinced that social factors can explain my findings. To

³⁸ Ungar, M. (2000). State violence and lesbian, gay, bisexual and transgender (lgbt) rights. *New Political Science*. 22(1): 61-75.

³⁹ Greenberg, Julie A. (1998). Defining male and female: Intersexuality and the collision between law and biology, *Arizona Law Review*, 41(2): 265-328.

⁴⁰ Goodnow, C. (2000a). Task force is studying effects of cross-gender surgery on kids, 13 March 2000. *Seattle Post-Intelligencer*. Goodnow, C. (2000b). A tragically maimed boy, raised as a girl, comes to terms with his identity, 13 March 2000, *Seattle Post-Intelligencer*.

⁴¹ Hipkin, L.J. (1993). The XY female in sport: the controversy continues. *Brit. J. Sports Med.* 27: 150-156.

⁴² International Olympic Committee. (2004). Statement of the Stockholm consensus on sex reassignment in sports. Viewed August 25, 2005 from http://multimedia.olympic.org/pdf/en_report_905.pdf

⁴³ International Olympic Committee. (2005). IOC approves consensus with regard to athletes who have changed sex. http://www.olympic.org/uk/news/olympic_news/full_story_uk.asp?id=841

⁴⁴ Gatens, M. (1996). *Imaginary Bodies: Ethics, power, and corporeality*. London, England: Routledge Press.

⁴⁵ Notice that, through the use of the construct of “invasion,” we alter the imagined body so that the military (being invaded) is no longer rigid (penile/male) but has, in fact, been penetrated (vaginal/female) and is therefore seen as weak. Such a construction violates the essence of the habitus and therefore sets up a conflict that is felt viscerally, in the background.

⁴⁶ Cassell, J. (1998). *The Surgeon in the Woman’s Body*. Cambridge, MA: Harvard University Press.

supplement explanations that describe gender as an ongoing social construction, I use the notion of embodiment – meaning the way in which people experience and inhabit their bodies, and the way in which these bodies incorporate and express social information. I argue that certain male-identified death-haunted pursuits, such as surgery, test piloting, race car driving, are embodied occupations, and that the body of a woman who aspires to be subject (she who acts rather than object (she who is acted upon) seems bizarrely out of place to their martial masculine practitioners (Cassell, 1997, pg.12)⁴⁷”.

This comment accurately reflects the complexities of the interaction between the body, as a physical entity in space and time, as it is self-perceived in an abstract internal way, and as it is understood through reflexive interaction in both a symbolic interactionist construct and a socially constructed metaphor of reality. Moreover, Cassell’s comment lays the groundwork for understanding the inherent confusion and visceral negativity of a military faced with the reality of a non-dichotomous and potentially ambiguous body/sex/sexuality and the implications inherent in admitting the existence of such an identity. The bizarre “out of place-ness” of a woman in a “male-identified, death-haunted pursuit, Cassell (1997)⁴⁸” such as the military is replaced by a more primitive and visceral response to an ambiguous and unknown identity attempting to invade that same domain. Moreover, this entity stands – as we have pointed out earlier – in direct contrast to the core habitus of the military. Once constrained by the habitus of their system, members of the military – even if they are open-minded and willing to work with transgender/transsexual/intersex-identified individuals – are forced to follow the rules of the armed forces institution. And those rules are clear.

The subtleties of meaning evoked by members of the transgender-identified and intersex-identified communities in any context can be difficult, if not confusing to understand (Pryzgoda & Chrisler, 2000⁴⁹, Basu (2000)⁵⁰, and Birke (2000)⁵¹ address such difficulties in the healthcare domain, see also Witten & Eyler, 1999⁵² and Greenberg, 1998⁵³, Jacobs & Cromwell, 1992⁵⁴). Moreover, these subtleties are viscerally provocative in terms of precipitated violence and abuse against these communities (Witten & Eyler, 1999⁵⁵; Paylor, 2005⁵⁶; <http://www.rememberingourdead.org>) and it is within this socio-ecological construct that transgender and intersex-identified individuals must navigate both the normative processes of the life course⁵⁷ as well as the concomitant issues arising

⁴⁷ Cassell, J. (1998). *The Surgeon in the Woman’s Body*. Cambridge, MA: Harvard University Press.

⁴⁸ *Ibid.*

⁴⁹ Pryzgoda, J. & Chrisler, J.C. (2000). Definitions of gender and sex: The subtleties of meaning, *Sex Roles*, 43(7/8): 553-569.

⁵⁰ Basu, A.M. (2000). Gender in population research: Confusing implications for health policy, *Population Studies*, 54: 19-38.

⁵¹ Birke, L., (2000). Sitting on the fence: Biology, feminism, and gender-bending environments. *Women’s Studies International Forum*, 23(5): 587-599

⁵² Witten, T. M. & Eyler, A.E. (1999). Hate crimes against the transgendered: An invisible problem, *Peace Review*, 11(3): 461-468.

⁵³ Greenberg, Julie A. (1998). Defining male and female: Intersexuality and the collision between law and biology, *Arizona Law Review*, 41(2): 265-328.

⁵⁴ Jacobs, S.E. and Cromwell, J. (1992). Visions and revisions of reality: Reflections on sex, sexuality, gender, and gender variance, *J. Homosex.*, 23: 43-69.

⁵⁵ *Ibid.*

⁵⁶ Paylor, N. (2005). *Gazette Media Company, Ltd. Evening Gazette*. 23 July 2005. Shot transsexual’s call for a BB-gun ban.

⁵⁷ DeMare, C. (2005). 29 March. Transgender bias law dropped. The Hearst Corporation. The Times Union. “After six months on the table, a legislator withdrew a proposal Monday amending a county law to extend

from their perceived position as sociologically deviant, not just sociologically, but also biomedically as well, while further addressing their interactions with the Military Estate in such areas as right to serve, right to express their gender identity, legal rights, military separation rights, as well healthcare rights and other military benefits both during and post-service.

1.2 Study Overview

This study begins by reviewing the fundamental concepts and constructs of the body, sex, gender identity, both within the United States as well as internationally. It introduces the concepts of habitus and imagined body (Gatens, 1996)⁵⁸ as a means of providing a construct within which we can discuss the military view of transgender/transsexuality and intersexuality. The study then explores the literature on gender identity rights, quickly reviewing some of the current scholarly and legal materials around general rights and then focuses both primarily and intentionally on military rights. This paper also reviews some of the “lay”/non-technical literature on the military and gender identity. Finally, the paper concludes with an overview of foreign military views on gender identity and service in the military for individuals who claim a non-traditional (non-Western) gender identity.

1.3 Brief Study Conclusions

The study’s primary conclusion is that, within the habitus of the military, the presence of non-traditionally “gendered,” ambiguously gendered, and/or non-normatively gendered individuals, in any aspect of the U.S. military environment, creates a formidable viscerally negative response in the military system and among many military personnel; particularly those who would self-define as falling within the stereotypically accepted traditional male heterosexual roles. Furthermore, the study finds that American military personnel are not able to interact with and/or work successfully with acknowledged transgender-identified personnel from either U.S. or foreign militaries due to institutionalized constraints on how transgender/transsexual/intersex-identified individuals must be medically and legally handled. Moreover, even if military personnel were open to working with such individuals, their institutional constraints would prevent that from occurring. Such an inability occurs even when the trans-identified or intersex-identified person is a decorated war hero or when the gender change has occurred post-military service.

In addition, the study finds that military treatment of trans-identified/non-normatively gendered individuals is dual-edged: (1) preventative; do not let trans/intersex/non-normatively-identified persons into the military and (2) acute; remove them from the military when they are so-identified. This treatment emerges from direct legal precedent and is independent of both individual and/or group desires to do otherwise. Moreover, when conflicts or an “outing” do arise, they are typically non-trivial and the military response is swift and surgical, excise the “disease⁵⁹⁻⁶⁰” from the body of the Armed Forces; in other words, to return the perturbed habitus⁶¹ to the norm.

protections against discrimination to transgender individuals... It would have prohibited discrimination in jobs, public accommodations, and housing. It also barred discrimination against domestic violence victims and military personnel.”

⁵⁸ Gatens, M. (1996). *Imaginary Bodies: Ethics, power, and corporeality*. London, England: Routledge Press.

⁵⁹ US Army (2002). *Standards of medical fitness*. AR 40-501

⁶⁰ American Psychiatric Association (2000). *Diagnostic and Statistical Manual of Mental Disorders 4th Edition - DSM IV-TR*. Washington, D.C.: American Psychiatric Association Press.

⁶¹ Gatens, M. (1996). *Imaginary Bodies: Ethics, power, and corporeality*. London, England: Routledge Press.

On an institutional level, this study finds that the U.S. military has taken the stand that non-traditional gender identities fall under the aegis of disease, in particular psychopathology⁶² and that individuals claiming such identities are therefore to be removed from service or to be prevented from entering the service wherever and whenever possible. Nowhere is this more clearly delineated than in the Army Medical Services Standards of Medical Fitness (2002)⁶³ which states, in Section 2-30 on Psychosexual Conditions that,

“The causes for rejection for appointment, enlistment, and induction are transsexualism, exhibitionism, transvestitism, voyeurism, and other paraphilias, p. 13, Section 2-30.⁶⁴”

clearly lumping transsexualism (a non-paraphilia, DSM IV-TR, APA (2000)⁶⁵, Dx 302.6/302.85) with the sexual paraphilias (transvestic fetishism, *etc.*), not only misidentifies transsexualism as a paraphilia (which it is not, DSM IV-TR, 2000⁶⁶), but further stigmatizes those individuals who do so identify, further perpetuating the habitus of the military machine. Identified case law illustrates the military’s use of GLB-based case-law surrounding “cross-dressing” as the pathway to prosecute transsexuals (principle cases are U.S. v. Guerrero⁶⁷ and U.S. v. Modesto⁶⁸ – see Appendix III).

Lastly, this study finds a diverse international response to transgender and intersex persons in the military. Some countries such as Canada⁶⁹, Israel⁷⁰, Czech Republic⁷¹, Spain⁷² and Thailand⁷³ allow such service, while most Western nations studied do not⁷⁴⁻⁷⁵.

⁶² American Psychiatric Association (2000). Diagnostic and Statistical Manual of Mental Disorders 4th Edition - DSM IV-TR. Washington, D.C.: American Psychiatric Association Press.

⁶³ US Army (2002). Standards of medical fitness. AR 40-501

⁶⁴ *Ibid.*

⁶⁵ American Psychiatric Association (2000). Diagnostic and Statistical Manual of Mental Disorders 4th Edition - DSM IV-TR. Washington, D.C.: American Psychiatric Association Press.

⁶⁶ *Ibid.*

⁶⁷ U.S. v. Guerrero, 33 M.J. 295 297-298 (C.M.A.) 1991

⁶⁸ U.S. v. Modesto, 39 M.J. 1055 (A.C.M.R.) 1994

⁶⁹ Campbell, M. (2000). 25 Feb. South China Morning Post. Transsexual praises army for financing operation. “The army defended its move saying it was necessary to correct ‘a very well defined medical disorder’.”

⁷⁰ Sasson-Levy, O. (2003). Feminism and military gender practices: Israeli women soldiers in “masculine” roles. *Sociological Inquiry*, 73 (3): 440-465. Sasson-Levy, O. (2002). Constructing identities at the margins: Masculinities and citizenship in the Israeli army. *Sociological Quarterly*, 43 (3): 357-383. Sasson-Levy, O. (2003). Military, masculinity and citizenship: Tensions and contradictions in the experience of blue-collar soldiers. *Identities-Global Studies in Culture and Power*, 10 (3): 319-345.

⁷¹ Czech News Agency. (2004). 11 November 2004. Global News Wire – European Intelligence Wire. Change of sex cannot prevent admission to army – Kuehnl. Czech News Agency. (2004). 18 November 2004. CTK National News Wire. Transsexual Brokesova appeals against discrimination in army. Czech News Agency. (2005). CTK National News Wire. 3 February 2005. Events February 3 afternoon. Czech News Agency. (2004). CTK National News Wire. 22 November 2004. Transsexual not to sue army for discrimination. Czech News Agency. (2004). CTK National News Wire. 16 November 2004. Transsexual plans to sue army for discrimination. Czech News Agency. (2004). CTK National News Wire. 20 January 2005. Transsexuals appeal against army non-admission fails.

⁷² ANSA English Media Service. February 5, 2004. Spain: First transsexual sailor. Stark, M. (2004). CNBG News Transcripts. 29 March 2004. Transsexual in Spain will be allowed to serve her country in the military.

⁷³ Agence France Press (2005). August 11, 2005. Thai military mulls scrapping mental disorder tag for gays. 365gay.com. (2005). 10 August 2005. Thailand OK’s gay, transsexual soldiers. <http://www.365gay.com/newscon05/08/081005thaiArmy.htm>. Curtis, C. (2005). 11 August 2005. Thai military lifts transgender restriction. <http://uk.gay.com/headlines/8886>. People’s Press Printing Society Ltd. 11 August 2005. World – Thailand ends defamation of transsexual conscripts.

2.0 STUDY METHODOLOGY

2.1 Literature/Case Law Extraction – Search Engine Details

The first phase of the study involved collecting all relevant information on the military and gender/intersex identity. This information was systemically gathered from publicly available primary and secondary sources. The search protocol included the use of $n_1 = 7$ general web search engines (*i.e.*, alltheweb⁷⁶, Lycos⁷⁷, A9⁷⁸), $n_2 = 10$ meta-search engines (search engines that submit searches to other search engines and perform clustering functions, *i.e.*, Kartoo⁷⁹, Clusty⁸⁰, Exalead⁸¹), $n_3 = 20$ literature search and legal search engines (public and private, *i.e.*, Google Scholar, Lexis-Nexis, Ovid) which were used to search the web and the professional literature in a recursive keyword/key phrase fashion. In addition, $n_4 = 17$ professional journal and journal corporation websites were searched for keyword specific literature relating to the topic (*i.e.*, Blackwell Synergy, Cross-ref, SageLink, SpringerLink). Legal search engines for case law searching were also used. $n_5 = 5$ engines (*i.e.*, Westlaw, Lexisone, Lawcrawler, Findlaw and JagNet) were used in the study. Lastly, $n_6 = 5$ military websites and search engines (*i.e.*, STINET, JAGnet, Merlin) were used to search for literature within the armed forces domain. In addition, the librarian at the U.S. Military Court of Appeals provided assistance in finding case law through resources not publicly available. A detailed discussion of the different search engines and gateways can be found in Appendix I of this paper.

2.11 Literature/Case Law Extraction – Keywords/Key Phrases and Search Algorithms

Initial List Creation. An initial list of keywords and key phrases was created. This list was based upon the author's research experience, dialogue with Dr. Aaron Belkin, and discussion with members of the intersex-identified and transgender-identified legal communities. In addition, the author consulted with members of the Serviceman's Legal Defense Network (SLDN)⁸², the Transgender Law and Policy Institute⁸³, and the Transgender Law Center⁸⁴ for further input and assistance in identifying possible keywords and key phrases that would maximally extract study-relevant information. Lastly, keywords and mesh groups were extracted from Ovid and Medline and related searches performed on these additional keywords and mesh groups.

2.12 Search Algorithms. All web engines were searched using the same set of keywords and key phrases (see detailed list of engines provided in Appendix I). As new phrases or words were detected through reading web or literature contents, the keywords/key phrases list was augmented with the new additions and the search engines were re-searched using the additional keywords/key phrases. Eventually, the list closed and a final list of phrases and words became apparent (see Appendix I for the final closed list which contains $m = 13$ keywords/key phrases with additional concatenated/global phrase search keys).

⁷⁴ European Intelligence Wire, 20 Jan 2005. Transsexual's appeal against army non-admission fails. (Czech/East Bohemia).

⁷⁵ Chicago Tribune. (2000). Turkish transvestites, transsexuals still must live on fringe of society. Knight-Ridder/Tribute News Service. 19 December 2000.

⁷⁶ <http://www.alltheweb.com/>

⁷⁷ <http://www.lycos.com/>

⁷⁸ <http://A9.com/>

⁷⁹ <http://www.kartoo.com/> - note this needs the most recent version of Flash in order to run it

⁸⁰ <http://www.clusty.com/>

⁸¹ <http://www.exalead.com/>

⁸² Serviceman's Legal Defense Network - <http://www.sldn.org/templates/index.html>

⁸³ Transgender Law and Policy Institute - <http://www.transgenderlaw.org/index.htm>

⁸⁴ Transgender Law Center - <http://www.transgenderlawcenter.org/>

2.13 Handling Search Joins and Phrases. Many search engines do not allow search merges such as “transgender AND military,” for example. In the case where merges were not allowed, the advanced search mode of every engine was used and the choice “exact phrase” was chosen. Hence, to locate all information related to “transgender AND military,” we entered, “transgender military” and utilized the exact phrase search mode. In most cases, search engines handle such entries as either an exact phrase appearance or as a JOIN of the form previously discussed. Many search engines also utilize a parenthesis mode or a quotation mode as a way of indicating a phrase. All searches involving phrases were entered using (1) the phrase, (2) the phrase in quotes, and (3) the phrase in parentheses. The Ovid search engine does actually allow search “joins.” When searching Ovid, we chose the multiple database search mode and used the following databases: (1) Journals@Ovid Full Text, (2) Biosis Reviews 1969 - 2005, (3) CINHALL 1982 - 2005, (4) Health and Psychosocial Instruments 1985 – 2005, and (5) PsychINFO 1872 – 2005. By means of an example, using the keyword “military,” with no search restrictions yielded 42,100 literature hits. Using the keyword “transsexual,” with no search restrictions yielded 1,367 literature hits. A JOIN of these two searches yielded 21 articles containing the words “military and transsexual” in the article/book/document. Only one of those articles (Brown, 1988) proved to be relevant to military policy and transsexuals. Similarly, if we used “transgender” followed by “military” followed by the join command for the two searches, this would yield the join results of “transgender AND military.”

2.14 Handling Globals, Concatenations, Truncations, and Groups. In a search phrase, an asterisk after a word typically means “all words containing at least the letters up to the asterisk and with any sequence of letters following the asterisk.” Thus, the word “transg*” should pick up “transgender,” “transgendered,” and “transgenderism,” while “trans*” would pick up the additional “transvestite,” “transsexual,” “transsexual,” among many other non-related options. Some search engines, such as WorldCat use alternative notation to delineate their search modalities. In every case where alternatives were described, the alternative symbology was used to facilitate effective searching. Typically, the plus sign “+” indicates a join of the preceding phrase with the subsequent phrase or phrases. For example, “transgender + military” should pick up the same literature as “transgender AND military,” depending upon the search engine algorithm implementation. In addition, various perturbations of searches were performed. For example, “(armed AND forces) AND (gender AND dysphoria)” would have been used to further test whether or not the “join” search “(armed forces) AND (gender dysphoria)” was effective in detecting all possibilities in the literature. In addition, comma separators were used to further search web search engines. For example, to look for web items that contained military and transgender, we used “military, transgender.” In all search cases, search inclusion criteria required a return of all abstracts, articles, available relevant URL’s, books, internet resources, and serial publications. A discussion of the multi-faceted recursive methodology for searching for this literature is discussed, in detail, in Appendix I of this paper.

2.2 Search Results.

The final search results retrieved $k_1 = 53$ relevant websites (duplicates covering the same topics were removed by the author otherwise the number of websites would have been exponentially larger, see Appendix II), $k_2 = 8$ legal precedents/cases (recursively exhausting all legal search engines), and $k_3 = 1$ military document specifically addressing transvestitism/transsexualism. A number of documents address cross-dressing (see cases listed in Appendix III). However, the typical context of the cross-dressing is within a “gay/homosexual” environment and cannot be construed to be related to transgender identified individuals. However, in the case of *U.S. v. Davis* (1988)⁸⁵ (see Appendix III) an individual claimed to be transsexual but was tried by the court as a cross-dresser. One public

⁸⁵ *U.S. v. Davis*, 26 M.J. 445 (C.M.A.) 1988

document, SLDN (2003)⁸⁶ addresses trans-related issues in a lay discussion, but provides no formal case law or citations. No documents were retrieved relating to intersex and military in any of the search algorithms.

This portion of the study relies on a recursive search approach to compare and synthesize literature (scholarly and lay) evidence from a number of different sources to draw conclusions relating to gender identity issues and the armed forces, both U.S. and international. Whenever possible, independent observations from multiple sources are compared to draw out common findings that are consistent among observers in different sectors.

3.0 ESSENTIAL CONCEPTS AND CONSTRUCTS OF GENDER IDENTITY

In the upcoming discussion, we will address concepts of gender identity and its construction from basic biomedical, psychological, socio-cultural and evolutionary perspectives. We will review the concept of gender and gender identity and its interaction with the concepts of the body, sex, and sexuality. We will then follow this discussion with a discussion of scholarly and legal materials around gender identity rights, particularly as related to the military, intertwining this with a review of non-technical literature/lay literature on military and gender identity. We begin the discussion with a brief historical departure.

3.1 Historical Diversion.

Plato, in his Symposium, allows *intersexed*⁸⁷ Aristophanes the opportunity to speak on the concept of the power of love. In that speech, Aristophanes says

“... For one thing, the race was divided into three; that is to say, besides the two sexes, male and female, which we have at present, there was a third which partook of the nature of both, and for which we still have a name, though the creature itself is forgotten. For though “hermaphrodite⁸⁸” (now called “intersexed⁸⁹”) is only used nowadays as a term of contempt, there really was a man-woman in those days, a being which was half male and half female...The three sexes, I may say, arose as follows. The males were descended from the Sun, the females from the Earth, and the hermaphrodites from the Moon, which partakes of either sex ... (Harvey, 1997⁹⁰, pg. 32).”

The Greeks, forerunners of modern medicine, believed in the concept of more than two sexes. It was well within their mythological construct and cultural norms. However, somewhere in between then and now, this concept of a “third sex⁹¹/third gender” (Herdt, 1993⁹²) was lost.

⁸⁶ Serviceman’s Legal Defense Network (2003). Survival Guide. 4th edition. <http://www.sldn.org/templates/index.html>

⁸⁷ Intersex Society of North America – <http://www.isna.org/>

⁸⁸ Intersex Society of North America - <http://www.isna.org/hermaphrodite.html>

⁸⁹ *Ibid.*

⁹⁰ Harvey, A. (1997). *Gay mystics*. New York, N.Y.: HarperCollins Publishers.

⁹¹ Littlewood, R. (2002). Three into two: the third sex in Northern Albania. *Anthropology & Medicine*. 9(1): 37-50. Littlewood discussed the existence of a third sex construct in Northern Albania. Known as “Sworn virgins,” they are generally, “perceived as women ‘*virginesha*’ who become men (gender crossing) rather than as an additional engendered category (multiple gender).”

It is not hard to conjecture how this loss came about. The imposition of Judeo-Christian monotheism replaced the pantheistic view and brought the associated gender/sex continuum of the Greco-Roman era into the binary dichotomy age. From the perspective of the habitus of Gatens (1996)⁹³, what we see is the hegemonic suppression of one habitus over another. Perhaps the most amazing aspect of this disappearance of a conceptual construct is the fact that there has both historically as well as currently existed a population of individuals whose birth sex should be defined as a third choice (male, female, other) “*intersexed*”⁹⁴ – even within the realm of the Western dual sex perspective. Hence, from this viewpoint alone, the dichotomy of the body becomes a fallacious construct. We will discuss this in greater detail in a moment.

More recently, the advent of sexual political correctness has added to the variety of problems of dealing with sex/gender/sexuality terminology by creating an atmosphere of increased social confusion wherein the two words sex and gender became interchangeable and where gender is used to replace sex, even in scientific research. Referring to sex has become conflated with referring to gender and sexuality. For example, in the 2001 American College Health Association survey of college health attitudes, the ACHA asks for the respondent’s “gender” and provides the choices of male, female and transgender. The PC world provided the perfect atmosphere for the conservative perspective to squelch the use of “sex” in any document and to replace it with “gender.” As an exercise in curiosity, the first thing that this author did, while writing this report, was to ask MS Word to look up the word “sex” in its built-in dictionary. As it is programmed to do, MS Word automatically gives synonyms and it provided the word “gender” as a synonym for “sex.” Thus, one of the most widely used word-processing programs identifies and continues to perpetuate the mythology that sex and gender are interchangeable. The online Merriam-Webster’s Collegiate Dictionary yields three entries for gender, lists entry 2 as “sex.” What better way to point to the confusion between and the conflation of meanings of these words? Moreover, what better way to initiate a deeper investigation into how that confusion⁹⁵ can have significant effects on our understanding of gender identity and how the military addresses these issues?

3.2 Definitional Discussion.

Other investigators have examined the issues of misuse/conflation of gender and sex. For example, Basu (2000)⁹⁶ examines the implications for healthcare policy by including gender within the construct of healthcare research. Unfortunately, despite the insight that “great care must be utilized when talking about gender in healthcare research,” Basu still falls prey to the traditional bias of constructing gender using the Western biomedical perspective. Birke (2000)⁹⁷ also addresses the issue of gender in healthcare. In her paper, Birke makes use of the example of “gender-bending” chemicals to explore some of the ways that an individual could think about “nature.” She applies this

⁹² Herdt, G. (ed.). (1996). *Third Sex, Third Gender: Beyond Sexual Dimorphism in Culture and History*. Zone Books, N.Y., N.Y.

⁹³ Gatens, M. (1996). *Imaginary Bodies: Ethics, power, and corporeality*. London, England: Routledge Press.

⁹⁴ Intersex Society of North America Website – <http://www.isna.org/>

⁹⁵ It is relatively clear that the “confusion” need not be one that is without responsibility. That is, it is entirely possible that the confusion is socially perpetuated – perhaps even at the embodied socio-behavioral level (Cassell, 1997) – as a means of continuing the patriarchal, homophobic social dynamic currently existent within the Western world.

⁹⁶ Basu, A.M. (2000). Gender in population research: Confusing implications for health policy, *Population Studies*, 54: 19-38.

⁹⁷ Birke, L., (2000). Sitting on the fence: Biology, feminism, and gender-bending environments. *Women’s Studies International Forum*, 23#5: 587-599.

exercise of feminist analysis to understanding how these chemicals can affect women's bodies and the social contexts within which those effects operate. Again, while this is an excellent and highly constructive exercise, it operates within the classical Western biomedical construct.

Feminist deconstruction of realities of power attempts to address questions of gender and sex. Birke (2000) points to some of the conflicts within feminist theory as being "largely concerned with social construction of, say, gender or sexuality in ways that explicitly play down 'the biological' (Birke, 2000, p. 587)⁹⁸." Sadly, in their attempt to equalize the power hierarchy and to maintain the feminist empiricist perspective, these self-same individuals tacitly buy into the homocentric Western biomedical construct of two sexes/two genders (Boyd, 1999⁹⁹; Fausto-Sterling, 2000¹⁰⁰; Taylor, 1998¹⁰¹). This is particularly evident when reading Birke's (2000)¹⁰² own criticisms. Throughout Birke (2000), the only 'gender-ified' text consists of the words male and female/masculine and feminine, thereby further marginalizing all of those individuals who do not claim those labels.

More recently, Tauchert (2002)¹⁰³ has pointed out that "Recent theoretical work, from Butler ... 'deconstructs' sexual difference and in the process repeats erasing the specificities of female embodied subjectivity." This perspective can be seen as a not so subtle attempt to align with the Transgender/Intersex populations against the "unrelentlessly masculine body politic (Tauchert, 2002¹⁰⁴)." Moreover, by recasting the normative construct of gender in a more appealing and inclusive form such a stance simply recapitulates the dichotomous thought processes of the Western biomedical construct and attempts to modify the construct in order to create a larger army with which to defeat the masculine foe; this time attempting to align itself with the highly stigmatized and marginalized T/I populations in hopes of creating allies based upon manipulation of their feelings of exclusion. This is an alliance with marginalized populations that are typically ignored within the feminist hierarchy of power (consider the Michigan Wymon's Festival or the phrase 'womyn born womyn' as canonical examples). The justification for this "inclusive stance" is deceptively couched in a feminist theoretical reconstruction of gender that makes use of fuzzy set theoretic methodologies (Zadeh, 1965¹⁰⁵) so that gender is no longer "appears" as binary.

This ongoing confusion between sex and gender (Gentile, 1993¹⁰⁶; Fausto-Sterling, 1987¹⁰⁷) caused Pryzgoda and Chrisler (2000)¹⁰⁸ to ask the question "do people actually know what the word gender

⁹⁸ *Ibid.* See also, Gannon, L., Luchetta, T., Rhodes, K., Pardee, L., and Segrist, D., *Sex bias in psychological research*, American Psychologist, **47#3** (1992) 389-396. Doyal, L. (2001). Sex, gender, and health: the need for a new approach. *British Medical Journal*, 323: 1061-1063.

⁹⁹ Boyd, N.A. (1999) The materiality of gender: looking for lesbian bodies in transgender history. *J. Lesbian Studies*. 3#3, pp. 73-81.

¹⁰⁰ Fausto-Sterling, A. (2000). *Sexing the Body*. Basic Books, Inc., New York, N.Y.

¹⁰¹ Taylor, M.A. (1998) The masculine soul heaving in the female bosom: theories of inversion and 'The Well of Loneliness,' *J. Gender Studies*, 7#3, pp. 287-296.

¹⁰² Birke, L., (2000). Sitting on the fence: Biology, feminism, and gender-bending environments. *Women's Studies International Forum*, 23#5: 587-599.

¹⁰³ Tauchert, A. (2002) Fuzzy Gender: between female-embodiment and intersex, *J. Gender Studies*, 11#1, pp. 29-38.

¹⁰⁴ *Ibid.*

¹⁰⁵ Zadeh, L. (1965) Fuzzy sets, *Information and Control*, 8, pp. 338-353.

¹⁰⁶ Gentile, D.A. (1993). Just what are sex and gender, anyway – a call for a new terminological standard. *Psychological Science*, 4 (2): 120-122.

¹⁰⁷ Fausto-Sterling, A. (1987). Society writes biology/biology constructs gender. *Daedalus* (Winter): 61-77.

¹⁰⁸ Pryzgoda, J. & Chrisler, J.C. (2000). Definitions of gender and sex: The subtleties of meaning. *Sex Roles*. 43(7/8): 553: 569.

means.” They report that for a sample of $n=137$ study participants a “variety of understandings and beliefs about gender that range from the common response that ‘gender’ is the same as ‘sex’ to less common responses that associate gender with females or discrimination” occurred. Witten (2001)¹⁰⁹ repeated the work of Prysgoda and Chrisler (2000), using the sentence completion item test in Appendix [1] of their paper along with the Eyler-Wright Gender Continuum Rating Scale. A sample of $n=588$ undergraduate students, in three human sexuality classes, was studied. Her preliminary review of the data shows results consistent with those reported in Prysgoda and Chrisler (2000) in that there were a wide variety of understandings of the meanings of both “sex” and “gender.” Students were also allowed to write in comments about the survey. Approximately 200 students responded to the survey. Of those that responded, a number of them expressed vehement emotions concerning the concepts of gender and sexuality (all punctuation and spelling is preserved as written). One self-identified 24 year old, biological female medical student stated that,

“I feel that this survey is very sad, because the world as a whole does not understand that God in the book of Genesis made “Adam and Eve” not “Adam and Steve”! I hope that you turn from your immoral ways and know that God loves you and can deliver you from this evil immoral way of thinking. There is no way to survey people on what is wrong and ungodly! Turn away from your evil ways and submit yourself to the Lord before it is too late! God bless you. God is coming SOON!!”

One 19 year old, self-identified male nursing student wrote,

“If you were born a woman you’re a woman, If you were born a man you’re a man That’s that”

A 22 year old, self-identified biological male medical student wrote,

“Biology teaches us that men are XY and women are XX. There are no other possibilities, anything else is sick!”

As one can see from these three sample survey quotations, the biblical norm of sex (and implicitly of sexuality) is firmly entrenched in the U.S. social upbringing (at least within this sample). This firmness of entrenchment is (*habitus*), as Cassell¹¹⁰ has pointed, out is “embodied” and part of the background context. It is something that is so internalized that we do not even know where or how we have learned it. It is a concept that is so intrinsically part of us that anything that violates that embodied rule is viewed with vehement emotion. Observe then how such an embodied construct, when carried into the military as of a soldier or officer’s conceptual constructs, can profoundly affect that person’s viewpoint and consequently affect the actions such a person might take when confronted with an ambiguous gender identity or a transgender-identified individual.

Of additional importance fact that the U.S. social structure and legal system is not willing to acknowledge the possibility of other alternatives, even if individual members are, as these potential alternatives are perceived to threaten the system (“anything else is sick”). This further reinforces the pathology/deviance of those identities. This statement is supported by the military’s psycho-

¹⁰⁹ Witten, T.M. (2002b). On the epidemiology and demography of transgender and intersex: A white paper. TranScience Research Institute Preprint Series, 2: WP-2002-01. [Available at <http://www.transcience.org>].

¹¹⁰ Cassell, J. (1998). *The Surgeon in the Woman’s Body*. Cambridge, MA: Harvard University Press.

pathologizing of transgender/transsexual identities (Army Medical Services Standards of Medical Fitness, 2002¹¹¹). Note also that the first of the example quotations summarily reinforces this idea of the social dogma of dual sexes. Non-duality alternatives are then perceived as social deviance¹¹² and must be dealt with via whatever mechanisms are in place for handling social deviance in the society. Every societal institution, including the military, has mechanisms in place that are designed to manage and/or control deviance. Dvorak (2004)¹¹³ reports on the case of a 25-year Army veteran (Army Ranger) Diane Schroer who has sued¹¹⁴ the Library of Congress for withdrawing a job offer “after she revealed her gender change.” Dvorak also points out that “... as a former Special Forces commander, [David (now Diane)] spent a career hunting terrorists and often personally briefed the vice president, defense secretary or Joint Chiefs of Staff on sensitive operations.” She goes on to state that, “Legal protection or transgender people is not at all clear. ... Courts have not been as receptive as they need to be for providing discrimination protection for these people.”¹¹⁵ This existence of mechanisms for handling social deviance is particularly true for the military as it depends upon rigid structures that can be discriminated in order to manage the functions of an effective armed forces structure. Clearly, the strength of the previous medical student comments indicates the existence of an internal metaphor of reality that views the survey question as a deviant question worthy of intense emotional response. Consequently, anything outside of that viewpoint is, as we have pointed out, deviant and potentially vulnerable to attack. More so, in the case of the military, the deviance violates the dichotomous definitions upon which the military bases its training structure and its functional reality through which it operates.

In summary, the military’s dependence upon being able to discriminate “bodies” in order to assess their potential as soldiers, coupled with the ongoing socio-economic institutional structures that perpetuate the conflation of sex and gender and the dichotomy of the body for reproductive purposes, perpetuates the standard patriarchal, homophobic, Western biomedical model as the construct within which all military needs are assessed. Sasson-Levy (2003) points out that female, Israeli soldiers, in “masculine roles,” shape their gender identities according to the “hegemonic masculinity of the combat soldier ... [through] mimicry of the combat soldiers’ bodily and discursive practices¹¹⁶.”

¹¹¹ US Army (2002). Standards of medical fitness. AR 40-501.

¹¹² C. McCaghy and T. Capron, *Deviant Behavior: Crime, Conflict and Interest Groups* (Macmillan Publishing Co., N.Y., 1997).

¹¹³ Dvorak, P. (2005). Washington Post. 2 June 2005, B09. The right person for the job. Library of Congress accused of withdrawing job offer after applicant reveals gender change. <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/01/AR2005060101777.html> . Ashville Global Report. (2005) 9-15 June 2005. ACLU files transgender veteran discrimination lawsuit. http://mambo.agrnews.rack2.purplecat.net/index.php?option=com_content&task=view&id=408&Itemid=70. American Civil Liberties Union 2 June 2005. ACLU files lawsuit on behalf of Army veteran against Library of Congress for transgender discrimination - <http://www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=18380&c=105> American Civil Liberties Union. Schroer – legal complaint - <http://www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=18383&c=105>

Yost, P. (2005). 2 June. Transition from being a man to being a woman ran into trouble at Library of Congress, lawsuit says. Associated Press. Washington Dateline. See also, Yost, P. (2005). Transgendered ex-army ranger claims bias. Associated Press. Domestic News.

¹¹⁴ Associated Press. (2005). 4 June. Former N.C. soldier sues to ease transition from man to woman. Information from The Fayetteville Observer, <http://www.fayettevillenc.com/>. See also Brown, M. (2005). 2 June. Should gender matter when you want to serve? Chicago-Sun Times.

¹¹⁵ Dvorak, P. (2005). Washington Post. 2 June 2005, B09. The right person for the job. Library of Congress accused of withdrawing job offer after applicant reveals gender change. <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/01/AR2005060101777.html>

¹¹⁶ Sasson-Levy, O. (2003). Feminism and military gender practices: Israeli women soldiers in “masculine” roles. *Sociological Inquiry*, 73 (3): 440-465.

Thus, the body provides an essential core for the development of subsequent identity. Moreover, Sasson-Levy (2003) also points out that “transgender performances subvert the hegemonic norms of masculinity and femininity¹¹⁷.” In order to begin our understanding of gender identity and in concert with our understanding of the importance of the body to the armed forces, we start with a discussion addressing the conceptual constructions of the body. This discussion is not exhaustive. However, as we have observed, understanding the body and its relationship to gender and gender identity construction is critical as we have already observed that the body is an atomic fundamental through which the military constructs an operative reality.

3.3 Defining the Body.

Body¹¹⁸ exists as a shell (we see the body); it exists as a container (the person’s body). Meaning and metaphorical reality are inferred from and transmitted through this shell (skin and form). The body can act and be acted upon. The body can be active (initiating action) or reactive (responding to action). The body both displays and participates in the creation of the self (self-identity, the Meadean¹¹⁹ “I/Me”). The body provides an immediate definition of self and not self “boundary definition.” Moreover, in providing that boundary, it allows a person to develop a sense of individuality, as individuality requires a certain sense of the distinction between one’s body and the outer world. We can construct “body schema,” postural models of ourselves, and “body image,” the picture of our own body that we have in our mind. The body contains the brain, supposed seat of the mind, and yet the mind and spirit are viewed as both part of and yet not part of the body. It is possible for each of us to experience our body and for others to experience our bodies. It is possible to experience false images of the body, for example “phantom limb phenomena.” To a certain degree, the body is plastic in its ability to alter its physical construct to meet assorted needs, both internal as well as external. These alterations can lead to alterations that become learned behaviors, increased or decreased capabilities, and eventually even embodied actions that transcend the conscious attempt to understand them. The body can be viewed as separate from the mind or unified with it in a holistic fusion. The body has location in space and time. The body carries meaning, makes meaning and transforms as meaning is written upon it.

In a fundamental sense, the body is atomic and elemental. While it can be broken down into pieces that form hierarchies of systems (positrons, neutrons, *etc.*, physiological systems, organs, cells ...), it is atomic in that it is primal to any sociological discussion. Moreover, the body, as we have repeatedly noted, is elemental to the discussion of the military mind’s eye. In today’s technologically advanced world we may ask the following question, “What does the body mean when we can talk about such concepts as the cyber-body and the cyber-self?” Waskul and Douglass (1997)¹²⁰ attempt to address such questions in their paper, which examines the emergence of self in on-line chat rooms. This concept is further extended in Zizek (2001¹²¹) when he discusses the extension of the body to cyber-sex (where sex, here, means sexuality rather than a cyber version of natal sex). Observe that in the ether of the Internet and the binary construct of the digital generation, the concept of the body

¹¹⁷ *Ibid.*

¹¹⁸ Prosser, J. (1998). *Second Skins: The Body Narratives of Transsexuality*. New York, NY: Columbia University Press. See also Wickman, J. (2003). Masculinity and female bodies. *Nora: Nordic Journal of Women’s Studies*. 11 (1): 40-54.

¹¹⁹ G. Ritzer, *Sociological Theory* 3rd Edition (McGraw-Hill, N.Y., 1992)

¹²⁰ Waskul, D. and Douglass, M., *Cyberself: The emergence of self in on-line chat*, *The Information Society*, **13** (1997) 375-397.

¹²¹ Zizek, S. *No sex please! We’re post-human*, *Encyclopedia Britannica Online* (2001)

takes on a whole new meaning in that we can imagine talking about the “disembodied body” that is adaptive and presents itself as the need arises, creating a cyber-self that exists for the purposes of particular internet interaction experiences and which either disintegrates after the experience or perpetuates in the form of a cyber “alter.” These cybernetic avatars can even be given a sort of “digital life” if we embody them within certain computer code that will cause them to evolve into what is known as autonomous agents. In this newly emergent reality of cyber “alters,” how then do we define sex, gender identity¹²² or sexuality¹²³? Not surprisingly, the military cyber-training uses dichotomous avatars thereby recapitulating *in silico* the essentialist dichotomy of the military view of the body.

Within these different discussion areas, the body is traditionally seen as static in time; fixed in its temporal form. Rarely is the body seen as a process, discussed as a temporally changing entity¹²⁴ that is evolving over time under the influence of genetics, environment, and socio-cultural dynamics and constrained within the socio-political institutions of the U.S. Nor do we examine the psychosocial consequences of this temporal change. It is now well known that chronicity is critical to the understanding and treatment of depression. Why would we expect that the chrono-morphological evolution of the individual would not be important to understanding identity, sexuality and sexual lives? We realize that the body changes, grows up, grows old, perhaps weakens, can grow strong with exercise, lose or gain weight and thereby alter its shape, lose hair, whatever. However, rarely do we discuss the lifetime evolution of the body from androgyny to sexual definition and back to a degree of androgyny as it ages. We see the effects of aging on the body and are aware of how those changes can potentially affect the individual. We accept that age-related changes as normal and expected. Therefore, these changes are socially condoned and sanctioned. Moreover, by not considering these changes and their temporal consequences, we make assumptions that are incorrect. In addition, when that path of morphological development leads to morphological ambiguity, then the changes become problematic as is seen in the typical social response to facial hair in elderly women or the feminization of elderly men. Thus, the androgynous elderly serve yet again to remind us of our socially constructed reality that reinforces the negativity of non-discriminable body forms.

In summary, we close our discussion of the body with the understanding that the body is atomic in any discussion of sex, gender and sexuality, that it is not static, but temporal in nature, that it is part of a continuum of continua (shapes, colors, social identifications), that make it far more complex than the simple dichotomy of male and female/masculine or feminine. Moreover, this complexity must be incorporated into any discussion of sex, gender identity and/or sexuality. We observe that, in the military eye, the complexity of the body is restricted to the discriminable dichotomous body that is stripped of all of its diversity and homogenized into one of two possibilities. We argue that this dichotomous methodology is intrinsic to the habitus of the institution of the military and that even those individuals that are willing to step outside of the dichotomous construct and work with non-discriminable members of society are constrained by the rules of the military institution. Furthermore, those individuals that choose to either change within the categories (transgender/transsexual identities), those that choose to create ambiguity between the categories (androgynous, gender blending), or those that are born with genetic variation (intersex) and those that are born such that

¹²² Roberts, L.D. and Parks, M.R. (1999). The social geography of gender-switching in virtual environments on the internet. *Information, Communication & Society*. 2(4): 521-540.

¹²³ Sunden, J. (2001). What happened to difference in cyberspace? The (Re)turn of the she-cyborg. *Feminist Media Studies*. 1(2): 215-232.

¹²⁴ Witten, T.M. (2003). Transgender aging: An emerging population and an emerging need. *Review Sexologies*, XII (4): 15-20. Witten, T.M. (2004). Life course analysis: The courage to search for something more: Middle adulthood issues in the transgender and intersex community. *J. Human Behavior in a Social Environment*. 8 (3-4), 189-224.

they do not fall within one of these two categories, run afoul of the military mindset and are subsequently faced with the consequences of that choice.

3.4 Defining Sex.

To truly begin to define “sex” is to know of the body and its inherent diversity and plasticity. From our previous discussion, we have seen that even the question of understanding the body and its inherent reality along with the meaning of its existence, is a non-trivial endeavor. We have additionally observed that we live in a Western biomedical, homocentric, Judeo-Christian culture (“Adam and Eve, not Adam and Steve”). That culture is a body-morphic dichotomous culture, when it comes to looking at the subject of sex. This is due to the fact that the question of sex emerges from the body. When we ask a person “what sex are you,” the implied/understood question is “what birth sex (what birth body) are you, what are the genitalia between your legs?” Implicit in the answer is the immediate definition of a person’s reproductive capabilities and organs, a chromosomal identification, and a subsequent role in the social institutions of our world.

Duality of this type suggests an analogy to the concept of light in physics (Bohm and Hiley, 1993¹²⁵; Bohm, 1951¹²⁶; Witten, 2001¹²⁷). Light (a meta-object) takes on two forms, subject to the way in which we interact with it. It is either wave or particle. Following through with this analogy, two facts become important: (a) One can postulate the existence of an abstract meta-concept of sex which, when we interact with it, takes on one of the two accepted forms and, (b) unlike light, the interaction can be socio-culturally, as well as spatio-temporally mediated so that the form of the interaction (in space and time) creates the socially acceptable sex construct. The quantum physics analogy also suggests an approach that looks at sex as a consequent of an observation or an interaction with a more complex and less approachable meta-object (meta-sex). Making use of this conceptual analogy, we find that it leads us to the obvious conclusion that sex can be more than just a choice of two outcomes. Instead, like the wave functions of quantum mechanics¹²⁸ that describe probability distributions, we see that there exists a continuum of sex possibilities that emerge due to bio-psycho-socio-political interaction. Moreover, if we hold to this continuum perspective, we can see that it leads us to a far more complex definition of sex, not as a binary, but as a continuum. Furthermore, it is clear that this new viewpoint can lead to profound psychological consequences for the individual who does not conform to the socially acceptable binary viewpoint (Goodnow¹²⁹, 2000a; Beh et al., 2000¹³⁰; Bowles, 1995¹³¹; Fernandez, 1998¹³²).

¹²⁵ Bohm, D., and Hiley, B.J. (1993). *The Undivided Universe*. Routledge Press, London.

¹²⁶ Bohm, D. (1951). *Quantum Theory*. Dover Press, NY.

¹²⁷ Witten, T.M. (2001). *The transgender/intersex experience: Living in the quantum shadow*. A presentation at the International Gay and Lesbian Conference, Oakland, CA.

¹²⁸ In quantum mechanics, the wave function $\Psi(x,y,z,t)$ describes a probability density function for a particular event at a particular space/time coordinate. However, only when it is acted upon by a particular operation (observation), does the function “collapse” and appear as a particular outcome.

¹²⁹ Goodnow, C. (2000). Task force is studying effects of cross-gender surgery on kids , 13 March 2000. *Seattle Post-Intelligencer*. Goodnow, C., A tragically maimed boy, raised as a girl, comes to terms with his identity, 13 March 2000, *Seattle Post-Intelligencer*. <http://seattlepi.nwsource.com/lifestyle/sex13.shtml>

¹³⁰ Beh, Hazel Glenn, and Milton Diamond. (2000). An emerging ethical and medical dilemma: should physicians perform sex assignment surgery on infants with ambiguous genitalia? *Michigan Journal of Gender and Law*, 7. Available from Westlaw as 7 MIJGL 1.

¹³¹ Bowles, S. (1995). A death robbed of dignity mobilizes a community. *Washington Post*, (10 December), Metro Section. B01.

¹³² Fernandez, M.E. (1998). Death suite costs city \$2.9 million; Mother of transgendered man wins case. *Washington Post*, (12 December 1998), Metro Section, page C01.

3.4.1. Intersex and the Body. We have already pointed out that the ancient Greeks clearly recognized that there was a “third sex” which they called *hermaphrodite* and which is now considered a pejorative term for an individual who displays both sexual organs at birth¹³³ (actually, the anatomical presentation can be quite varied and does not necessarily require both complete organs to be displayed, hence an abstract “continuum” of sex). The preferred current terminology is “intersexed”¹³⁴. The prevalence of intersexuality is estimated at anywhere from 1/200 to 1/2000 births. Additionally, it is estimated that there are nearly 65,000 intersex births worldwide per year¹³⁵. Others estimate prevalence at between 1.7% and 4% worldwide (Haas, 2004¹³⁶).

Intersex condition may be described as being born having primary and secondary sex characteristics that are neither clearly male nor clearly female¹³⁷. Intersexed individuals may be generally categorized into two groups: “genetically intersexed” or “hormonally intersexed.” This is a very loose categorization and used only as a means of providing a focused discussion. We have all been taught that the male chromosomal structure is XY, while the female chromosomal structure is XX. It is possible, for example, to have a genetic mosaic in which the individual has a chromosomal structure XX/XY. In this case, the individual is said to be “genetically intersexed.” Alternatively, it is possible that an individual may be XX (genetically female) and be subsequently subjected to elevated in utero levels of testosterone thereby partially masculinizing the individual. Likewise, an individual may be XY and be subjected to reduced levels of testosterone, thereby feminizing the body. These individuals are said to be “hormonally intersexed.” However, an individual can be intersexed in other ways. For example, in congenital adrenal hyperplasia (the adrenal glands are located above the kidneys make too much male hormones) the individual, while genetically female, may appear and develop intersexed. An interesting side effect of this genetic fault is that 30% of these individuals will have a chance of being bisexual and/or homosexual (Intersex: A Training Video, ISNA, 2000¹³⁸). Partial androgen insensitivity is a genetic male fault that causes the testosterone receptors not to bind testosterone as efficiently as they should. Consequently, the individual subsequently develops as an intersex-identified person. In some small villages in the Dominican Republic, there is an elevated prevalence of another genetic fault in that there are individuals who cannot convert testosterone to dihydrotestosterone, and while born genetically XY, they are born looking female. However, at the onset of puberty, they eventually start looking male. These individuals are given the name “*ouevodolce*” (eggs at 12) meaning the testicles descend at twelve years of age. If we search the Online Mendelian Inheritance in Man¹³⁹ at the National Library of Medicine, we find that congenital adrenal hyperplasia¹⁴⁰ has over 30 different variants. Current citations in the PubMed¹⁴¹ database at the National Library of Medicine, for congenital adrenal hyperplasia, number over 3000¹⁴².

¹³³ Intersex Society of North America - <http://www.isna.org/>

¹³⁴ Greenberg, J. A. (1999). Defining male and female: Intersexuality and the collision between law and biology. *Ariz. Law Rev.* 265: 267.

¹³⁵ *Ibid.*

¹³⁶ Haas, K. (2004). Who will make room for the intersexed. *Am. J. Law & Medicine.* 30: 41-68.

¹³⁷ Beh, H.G. and Diamond, M. (2000). An emerging medical dilemma: Should physicians perform sex reassignment surgery on infants with ambiguous genitalia? *Mich. J. Gender and Law.* 7: 1.

¹³⁸ ISNA Training Video

¹³⁹ Online Medelian Inheritance in Man <http://www3.ncbi.nlm.nih.gov/Omim/searchomim.html>

¹⁴⁰ Congenital adrenal hyperplasia

¹⁴¹ PubMed <http://www.ncbi.nlm.nih.gov/80/entrez/query.fcgi?db=PubMed>

¹⁴² An excellent discussion of the difference facets of intersex can be found at <http://www.isna.org>

Because the Western medical culture specifically, and the Western culture in general, is steeped in the biblical norm of dichotomous sex, the concept of multiple genitalia or atypical genital anatomy has been deeply and profoundly problematic for a number of institutions within the establishment. Up until very recently, intersexed children were “sexed”¹⁴³ as soon after birth as was medically reasonable, a practice that continues to be sanctioned by the American Pediatric Association, despite voluminous protestation on the part of the ISNA and other agencies (see ISNA website¹⁴⁴ for comprehensive discussions). Current estimates are that sexing operations are performed five times per day across the United States alone¹⁴⁵. The term “sexed” is a verb that is used to mean that these children were subjected to genital surgery to remove the “non-dominant” genitalia¹⁴⁶. Hence, a baby with a “micro-phallus” and a predominant “vaginal canal” would be sexed as a woman, the micro-phallus removed surgically or surgically “sized” (thereby risking permanent sexual response reduction). This “sexing” operation is intended to “fix” the child. The fixing is intended to bring the child out of social deviance and within the accepted norms of society. Clearly, this is an obvious example of how the sociological concept of a system policing deviance within the system. The Western biomedical society handles the situation in which a person deviates from the biblical norm of sex (the socially mandated norm) by fixing the child. Unfortunately, this normative view has surgical and psychological consequences and it has led to many problems for these intersexed children; the most famous of them is the very recent case of John/Jane (Goodnow¹⁴⁷, 2000b). Briefly, as Goodnow describes it

“At eight months, his name was Bruce. Then a gruesomely botched circumcision obliterated his penis. In 1967, at 22 months, Bruce was surgically castrated and renamed Brenda. The sexual switch was made on the advice of a renowned researcher who said gender identity is malleable and largely shaped by upbringing. Known in medical annals as the “John/Joan” case, its reported success became a treatment model for other infants with genital anomalies. Feminists saw it as proof of “nurture over nature.” At 14, Brenda finally learned the truth -- that she and her brother, Brian, were born identical male twins. Determined to bring this hell to a close, Brenda renamed herself David,

¹⁴³ The tie between sex, gender, genitalia (the body) and stigmatization/destigmatization via labels is also important here. For example, intersexed children have been sexed without parental permission or even with the parents’ knowledge of the fact that their child is intersexed. It is almost as if it is “unspeakable.” Therefore, politically correct language or medicalization terminology, such as non-dominant genitalia or micro-phallus, is used to remove the stigma of the intersexuality. On the other hand, transsexuality and transgenderism is immediately stigmatized. Words like neo-clitoris, neo-phallus, pseudo-testicles, and neo-vagina disenfranchise the transsexual from the contra-gender status they so strongly desire to attain. This disenfranchisement and stigmatization is best illustrated by terminology used by the radical lesbian feminist movement. While they are willing to stretch their metaphor of reality to allow a male-to-female transsexual to be classified as a “woman,” they do not consider her a real woman. Rather, she is labeled as not “woman born woman.” See also Beh, H.G. and Diamond, M. (2000). An emerging medical dilemma: Should physicians perform sex reassignment surgery on infants with ambiguous genitalia? *Mich. J. Gender and Law*. 7: 1.

¹⁴⁴ Intersex Society of North America - <http://www.isna.org/>

¹⁴⁵ Haas, K. (2004). Who will make room for the intersexed. *Am. J. Law & Medicine*. 30: 41-68.

¹⁴⁶ Beh, Hazel Glenn, and Milton Diamond. (2000). An emerging ethical and medical dilemma: should physicians perform sex assignment surgery on infants with ambiguous genitalia? *Michigan Journal of Gender and Law*, 7. Available from Westlaw as 7 MIJGL 1.

¹⁴⁷ <http://seattlep-i.nwsourc.com/lifestyle/gndr13.shtml>

underwent a painful double mastectomy and began the long road to reclaiming her true sexual identity.^{148,,}

These operations are primarily performed because our culture demands it. Moreover, they are primarily cosmetic and often for the benefit of psychological stress reduction in the parents of the intersex child¹⁴⁹⁻¹⁵⁰. Sadly, these operations can leave the child with permanent physical and emotional scars¹⁵¹. Fausto-Sterling (2000)¹⁵² further addresses the complexity of the issues associated with the interplay of the body and sex. Similar issues arose in the Olympic committee discussions of whether or not to allow male-to-female transsexual-identified athletes to compete against “genetic girls/women.” (ASC, 2001¹⁵³; Dickenson *et al.*, 2002¹⁵⁴; Hipkin, 1993¹⁵⁵, IOC, 2005¹⁵⁶). Similar discussions have surrounded the participation of intersex-identified athletes. For example, women with Marfan’s Syndrome will be quite tall and have long bone structures well within the normative ranges of males. One could imagine a scenario in which one team has a male-to-female transsexual-identified athlete competing against an opposing team with a Marfan’s Syndrome player. Who is the “real” female in this scenario? Congenital adrenal hyperplasia (CAH) causes an over-supply of testosterone in women and produces extreme muscularity. Should a team of CAH players be allowed to compete against a team of non-CAH players?

To summarize, we have now seen that there are a number of ways in which we can define “sex.” For example, we have seen that there is chromosomal sex, anatomical/morphological sex, physiological, and reproductive sex. These definitions are not independent of each other and, as such, define a system that has emergent properties – properties that exist as a function of the whole, not of the parts – and therefore mandate that we examine the system and its definitions as “complex systems.” Further, we have seen that these definitions are “*somatic*,” of the body. Moreover, by virtue of this fact, these definitions are inherently tied to how the body is understood¹⁵⁷ (*habitus*), seen, displayed, characterized, and embodied within the sociology of a culture. We have seen that this is particularly important when dealing with the U.S. military as the armed forces sees non-normative body/sex-

¹⁴⁸ Goodnow, C. (2000). Task force is studying effects of cross-gender surgery on kids , 13 March 2000. Seattle Post-Intelligencer. Goodnow, C., A tragically maimed boy, raised as a girl, comes to terms with his identity, 13 March 2000, Seattle Post-Intelligencer. <http://seattlepi-nwsource.com/lifestyle/sex13.shtml>

¹⁴⁹ Intersex Society of North America – <http://www.isna.org/>

¹⁵⁰ Haas, K. (2004). Who will make room for the intersexed. *Am. J. Law & Medicine*. 30: 41-68.

¹⁵¹ Koyama, E. Suggested guidelines for non-intersex individuals writing about intersexuality and intersex people. <http://www.isna.org/faq/>. See also Beh and Diamond (2000) who estimate that the number of sex reassignments of intersex children ranges between 100 and 200 per year in the United States alone.

¹⁵² Fausto-Sterling, A. (1987). Society writes biology/biology constructs gender. *Daedalus* (Winter): 61-77.

¹⁵³ Australian Sports Commission. (2001). Transgender in sport. www.ausport.gov.au/fulltext/2001/ascpub/women_transgender.asp (accessed 22 Mar 2005).

¹⁵⁴ Dickinson, B., Genel, M., Rabinowitz, C.B., Turner, P.L., and Woods, G.L. (2002). Gender verification of female Olympic athletes. *Medicine, Science, Sport & Exercise*, 34(10), 1539-1542.

¹⁵⁵ Hipkin, L.J. (1993). The XY female in sport: the controversy continues. *Br J Sports Med*, 27:150–6.

¹⁵⁶ International Olympic Committee. (2005). IOC approves consensus with regard to athletes who have changed sex. http://www.olympic.org/uk/news/olympic_news/full_story_uk.asp?id=841 (checked 12/27/2005).

¹⁵⁷ While the discussion, to this point, has centered around non-normative gender identities and their interplay with sex and sexuality, such discussion have impact when one includes individuals who for whatever reasons, cultural or medical, have had enforced genital modifications. For example, female genital excision and infibulation (see Vissandjée, B. Kantiébo, M. Levine, A., and N’Dejuru, R. (2003). The cultural context of gender identity: female genital excision and infibulation. *Health Care for Women International*. 24 (2): 115-124) alters the genitals of the woman. Similarly, medical testicular removal for cancer alters the male genitalia. While these individuals still consider themselves their birth sex and birth gender identity, alterations of the body for cultural and medical reasons can create potential problems should these individuals wish to serve in the military.

identities as being a violation of the habitus and, through cultural norms sees those bodies as medicalizable and therefore justifiable for disqualification.

What makes a man a man and a woman a woman? For example, can a transsexual be protected under the Equal Opportunity Employment Law? Does Affirmative Action apply to a male-to-female transsexual who claims she was not hired because she was a woman? Is it considered sexual harassment if fear of being raped by a male-to-female transsexual employee of a company causes a lock to be put on the women's room door at a corporate office? Can a female-to-male transsexual legally marry a genetic female?¹⁵⁸ If a male-to-female transsexual is allowed to marry a genetic female¹⁵⁹, does this mean that two genetic females should then be allowed to marry legally? Should intersex be added as a "sex" choice option on all survey forms? What about "transgendered" or "transsexual?"¹⁶⁰ If hormone replacement therapy is covered for genetic (XX) females, should it not be covered for those who choose to take on the lifestyle of genetic females? Is it acceptable to define the body, and sex in terms of a genetic definition only, based upon our knowledge of the existence of intersexuality? Is privacy of medical records guaranteed to all gender, sex, and sexuality identities or only those that are socially sanctioned? (Albright, 2002¹⁶¹; Beh, Glenn, and Diamond, 2000¹⁶²; Carlson, 1991¹⁶³; Dasti, 2002¹⁶⁴; Gentile, 1993¹⁶⁵; Greenberg, 1998¹⁶⁶; Kurtz, 2000¹⁶⁷; Littleton v. Prange, 2000¹⁶⁸). We have further noted that these definitions arise out of the application of rational Western scientific principles to the study of the human being. These principles are primarily reductionist in nature. They separate the mind from the body and, in making this separation, validate only that which is of the body. Such constructions lead to fundamental questions of universal human rights¹⁶⁹ when applied to culturally non-normative identities in the categories of sex and gender identity. As we shall momentarily observe, when we move into aspects of the mind, this validation becomes whimsical at best. More often, matters of the mind, when dealing with sexuality and gender, can become dangerous when they step outside of socially sanctioned norms. We now look into defining the concepts of gender and gender identity.

¹⁵⁸ Carlson, A. (1991). When is a woman not a woman? *Women Sport Fitness*, 13:24–9.

¹⁵⁹ Kurtz, M. (2000). Lesbian wedding allowed in Texas by gender loophole, *Seattle Post-Intelligencer*, 7 September 2000.

¹⁶⁰ Pesquera, A. (1999). Court to decide what's changed in sex operations. *San Antonio Express News*, September 3, 1999.

¹⁶¹ Albright, J. (2002). Gender assessment: A legal approach to transsexuality. *SMU Law Review*, 55, 593-619.

¹⁶² Beh, Hazel Glenn, and Milton Diamond. An emerging ethical and medical dilemma: should physicians perform sex assignment surgery on infants with ambiguous genitalia? *Michigan Journal of Gender and Law*, 7 (2000). Available from Westlaw as 7 MIJGL 1.

¹⁶³ Carlson, A. (1991). When is a woman not a woman? *Women Sport Fitness*, 13:24–9.

¹⁶⁴ Dasti, J. (2002). Advocating a broader understanding of the necessity of sex reassignment surgery under Medicaid. *New York University Law Review*, 77(6), 1738.

¹⁶⁵ Gentile, D.A. (1993). Just what are sex and gender, anyway – a call for a new terminological standard. *Psychological Science*, 4 (2): 120-122.

¹⁶⁶ Greenberg, Julie A., Defining male and female: Intersexuality and the collision between law and biology, *Arizona Law Review*, 41#2 (1998) 265-328.

¹⁶⁷ Kurtz, M. (2000). *Lesbian wedding allowed in Texas by gender loophole*¹⁶⁷, *Seattle Post-Intelligencer*, 7 September 2000.

¹⁶⁸ LITTLETON v. PRANGE, San Antonio Court of Appeals, San Antonio, TX 2000 (definition of sex for the purposes of marriage).

¹⁶⁹ Kidd, B. and Donnelly, P. (2000). Human rights in sports. *Int. Rev. for the Sociology of Sport*. 35(2): 131-148.

3.5 Defining Gender.

Gender is, perhaps, a far more elusive concept than sex. To understand gender and gender identity is to attempt to unravel the complex interaction of the body, the observer and the eco-socio-political landscape in which the body and the observer co-exist. To understand gender and gender identity is to grapple with the emergence, adaptation, and evolution of these interactions in a hierarchy of temporal and spatial scales. Like the famous Escher steps, it is impossible to find a place to stand in order to readily render the concepts of gender and gender identity amenable to dissection.

If we look up the definition of “gender,” we find that it states the following: “an individual's self-conception as being male or female, as distinguished from actual biological sex. Note that the meaning of biological sex is inferred/implicit to mean reproductive sex. For most persons, gender identity and biological characteristics are the same. There are, however, circumstances in which an individual experiences little or no connection between sex and gender...” (Encyclopedia Britannica Online¹⁷⁰). Observe that the EBO uses biology (rational thinking) and a chromosomal reduction (reductionist science) to define sex. Implicit in this definition is that there is only male and female (biology, the body) and there is only one correct (socially acceptable) pairing – masculine and feminine (the mind) – for that body pair. Further, hidden with such a definition is the implied understanding that any other pairing is “bad” or “socially unacceptable.” The concluding part of the above EBO definition, concerning the connection between sex and gender¹⁷¹⁻¹⁷²⁻¹⁷³⁻¹⁷⁴⁻¹⁷⁵⁻¹⁷⁶⁻¹⁷⁷, or the lack thereof, will be crucial when we address issues of sexuality, particularly as it applies to military law used against non-traditional gender identities.

Self-perception of gender is based, as we frequently consider it, upon the construct that there are “gender roles” that are assigned to each body (sex)-gender pair. These roles, in a sense, help to shape an individual’s gender identity; hence, the argument that gender is a social construct. Clearly, however, the intersex issue forces us to reconsider the relationship between the accepted definition of sex and the definition of gender role. Perhaps gender, like sexuality, is a more complex phenomenon and it should therefore be considered in terms of a “meta-gender” object. If we follow this analogy, we see that the phenomenon of gender arises from a complex interaction of the individual’s gender self-perception, the individual’s choice at displaying a gender to the outer world, and the outer world’s interpretation of that gender display as based in the context of the interpreter’s social constructs and life history. Then, in the same construction as the quantum objects we discussed earlier, gender identity becomes a complex function upon which we, as humans act and from which we extract information based upon the collection of observables we use to discern the wave function. Moreover, the complexity that emerges from studying each of the variables gender and sex is increased as a new emergent complexity arises from the interactions between these two variables.

¹⁷⁰ <http://search.britannica.com/search?query=gender+identity>

¹⁷¹ Gentile, D.A. (1993). Just what are sex and gender anyway – A call for a new terminological standard. *Psychological Science*, 4(2): 120-122.

¹⁷² Borna, S. and White, G. (2003). “Sex” and “Gender”: Two confused and confusing concepts in the “women in corporate management” literature. *J. Business Ethics*, 47(2): 88-99.

¹⁷³ Basu, A.M. (2000). Gender in population research: Confusing implications for health policy, *Population Studies*, 54: 19-38.

¹⁷⁴ Brown, M. (2005). *Chicago Sun-Times*. 2 June 2005. Should gender matter when you want to serve?

¹⁷⁵ Doyal, L. (2001). Sex, gender, and health: the need for a new approach. *British Medical Journal*, 323: 1061-1063.

¹⁷⁶ Valentine, D. (2000). “I know what I am”: The category “transgender” in the construction of contemporary United States American conceptions of gender and sexuality. Doctoral Dissertation, New York University

¹⁷⁷ Velkoff, V.A. & Kinsella, K. (1998). Gender stereotypes: Data needs for ageing research. *Aging International*. 24(4): 18-38.

3.5.1 Non-Western Gender Identities. Other definitions of gender, for example the Oxford English Dictionary Online provide constructions that are more complex. Perhaps the most common understanding of gender may be found in Perry (1999¹⁷⁸, pg. 8) who states that “gender is defined here as the cultural construction of femininity and masculinity as opposed to the biological sex (male or female) which we are born with.” Observe that both of these definitions are based upon the biblical norm of sex and, as a consequence of this implicit assumption, give rise to the associated construct that we shall call the “biblical norm of gender.” Contrast these definitions with the 1984 definition from Webster (1984)¹⁷⁹, which states that gender is “any of two or more categories, as masculine, feminine, and neuter, into which words are divided and that determine agreement with or selection of modifiers or grammatical forms.” This point is further supported in the Oxford English Dictionary Online¹⁸⁰. However, many indigenous peoples recognize genders other than male and female. For example, Tewa adults identify as women, men, and ‘kwido’, (note that this is consistent with the linguistic concept of gender as a grouping mechanism for language) although their New Mexico birth records recognize only females and males (Jacobs and Cromwell, 1992¹⁸¹). Kwido persons exhibit mid-gender or androgynous personalities with “gentle” qualities predominating. The Chukchi (early 20th century North American) recognized 7 genders in addition to men and women. The traditional cultures of Tonga and Samoa recognize the Fa’afāfine¹⁸² (natal males, female gender identity, heterosexual male partners) and the Fa’afātama¹⁸³ (natal females, male gender identity, heterosexual female partners). In India, the Hijra have been recently legally mandated as a 3rd gender. Japanese culture contains a number of “folk categories¹⁸⁴” that are considered to be transgender, “such as *okama*, *gei bli*, *bur˘bli* and *ny˘h#fu*.” In Malaysia, the Mak Nyahs are male transsexuals (Teh, 2001)¹⁸⁵. Of interest is the fact that fans of the Japanese Anime state that the most powerful characters in anime are the “cross-gender” characters. Similar non-traditional gender identities exist in indigenous New Zealand peoples. What we see, when we look at the current literature in sex, gender, and sexuality is a preponderance of discussion based upon the tacit assumption that the Western

¹⁷⁸ Perry, G. (ed.) *Gender and Art* (Yale University Press, New Haven, CT, 1999).

¹⁷⁹ Webster, D., *Webster’s New Dictionary and Roget’s Thesaurus* (Thomas Nelson, Inc., Cambridge, Ontario, Canada, 1984).

¹⁸⁰ This viewpoint is further supported in the following statement from the [Oxford English Dictionary Online](#) (2001) “b. By some recent philologists applied, in extended sense, to the ‘kinds’ into which sbs. are discriminated by the syntactical laws of certain languages the grammar of which takes no account of sex. Thus the North American Indian languages are said to have two ‘genders’, animate and inanimate. With still greater departure from the original sense, the name ‘genders’ has been applied to the many syntactically discriminated classes of sbs. in certain South African langs. Hence, gender does not necessarily have anything to do with the discriminated classes of male and female. Rather, it can be used as a descriptor for any syntactically discriminated set of classes within a language.

¹⁸¹ Jacobs, S.E. & Cromwell, J. (1992) Visions and revisions of reality: Reflections on sex, sexuality, gender, and gender variance, *J. Homosex.*, 23, pp. 43-69.

¹⁸² Poasa, K.H. and Blanchard, R. (2004). Birth order in transgendered males from Polynesia: A quantitative study of Samoan Fa’afāfine. *J. Sex & Marital Therapy*. 30: 13-23. See also Zucker, K.J. and Blanchard, R. (2003). Birth order in the Fakafefine. *J. Sex & Marital Therapy*. 29(4): 251-253.

¹⁸³ Witten, T.M., Benestad, E.E.P., Ekins, R.J.M., Ettner, R., Harima, K., King, D., Landén, T.M., Nodin, N., P’yatokha, V., & Sharpe, A.N. (2003). Transgender and Transsexuality. (in) Ember, C.R. & Ember, M. (eds.) *The Encyclopedia of Sex and Gender: Men and Women in the World's Cultures*. New York, N.Y.: Kluwer/Plenum.

¹⁸⁴ McLelland, M.J. (2004). From the stage to the clinic: changing transgender identities in post-war Japan. *Japan Forum*. 16 (1): 1-20.

¹⁸⁵ Teh, Y. K. (2001) *Mak Nyahs* (Male Transsexuals) in Malaysia: The Influence of Culture and Religion on their Identity. *IJT* 5,3, http://www.symposion.com/ijt/ijtvo05no03_04.htm

biomedical model applies implicitly and universally, particularly in the U.S. and other Western nations.

3.5.2. Epistemology of Gender. We close our initial discussion of gender with a few final remarks. Self-perception of gender is based upon the conceptual construct that there are “gender roles” that are assigned to each body (sex)-gender pair. The importance of the body-gender link in trans-identified individuals was first documented by von Krafft-Ebing (1893)¹⁸⁶. In this paper we find the first written documentation of the phrase, “I feel like a woman in a man’s body” (see also Prosser, 1998¹⁸⁷ and Stoeltje, 2005¹⁸⁸). Many trans-identified individuals will tell a story that is now anecdotal in the trans-community. In this story a trans-person, dressed in contra-gender clothing, will be asked if he/she is doing drag. The observer sees the inconsistency between the body form and the contra-gender (socially inconsistent) clothing. Thus, the observer sees the trans-person as cross-dressing. However, the trans-person will respond with a statement that indicates that wearing the gender-consistent clothing is cross-dressing while wearing the contra-gender clothing is normal. The perceived social deviance, with respect to body/gender and clothing is one of the essential means by which the armed forces remove gay and transgender-identified individuals from service¹⁸⁹⁻¹⁹⁰. These body-defined and socially constructed roles help to shape an individual’s gender identity; hence, the argument that gender is a social construct. A stellar example of how the military serves as a cultural definition of masculinity is discussed in Klein (1999)¹⁹¹ when she points out that “military service can be described as a rite of passage to male adulthood.” Similar discussion can be found in Hong (2002)¹⁹² and Moon (2002)¹⁹³ for the Korean military, while Sasson-Levy (2002¹⁹⁴, 2003ab¹⁹⁵⁻¹⁹⁶), Robbins

¹⁸⁶ Krafft-Ebing, R von. (1893). *Psychopathia Sexualis with Special reference to Contrary Sexual Instinct* translation of the seventh edition (1893) Philadelphia and London: The F.A.Davies Co., Publishers in Case 99: 209

¹⁸⁷ Prosser, J. (1998). Transsexuals and the transsexologists: Inversion and the emergence of transsexual subjectivity. In L. Bland & L. Doan (Eds.) *Sexology in culture: Labelling bodies and desires* (pp. 116-131). University of Chicago Press.

¹⁸⁸ Stoeltje, M.F. (2005). 20 March 2005. San Antonio Express-News (Texas). Born in the wrong body? Transgendered fight for rights, understanding.

¹⁸⁹ Article 134 of the Uniform Code of Military Justice proscribes, *inter alia*, “all disorders and neglects to the prejudice of good order and discipline in the armed forces, [and] all conduct of a nature to bring discredit upon the armed forces ...” In its 1988 opinion in the *United States v. Davis*, the Court of Military appeals addressed whether or not cross-dressing (meaning wearing clothing of the opposite sex) was an offense under the first two clauses of UCMJ 134. It concluded that the accused’s cross-dressing occurred “on a military installation which virtually always would be prejudicial to good order and discipline and discrediting to the Armed Forces.” Moreover, the court observed that “[t]he essence of [the accused’s] crime is that his unusual conduct, *when it occurred on a military installation*, had an adverse effect on military order and discipline and created a negative impression of the armed services.” The case of the *United States v. Davis* does not address cross-dressing off a military installation, nor does it address the appropriate punishment for such cross-dressing. This will be discussed further in an upcoming section of this monograph.

¹⁹⁰ Practice Notes. (1991). Cross-dressing as an offense. The Army Lawyer, March DA PAM 27-50-219: 42 – 44.

¹⁹¹ Klein, U. (1999). “Our best boys”: The gendered nature of civil-military relations in Israel. *Men and Masculinities*. 2: 47-65. Klein, U. (2002). The gender perspective of civil-military relations in Israeli society. *Current Sociology*, 50: 669-686.

¹⁹² Hong, D.-S. (2002). Women in the South Korean Military. *Current Sociology*. 50:729-743.

¹⁹³ *Op. cit.*

¹⁹⁴ Constructing identities at the margins: Masculinities and citizenship in the Israeli army. *Sociological Quarterly*, 43 (3): 357-383.

¹⁹⁵ Sasson-Levy, O. (2003). Military, masculinity and citizenship: Tensions and contradictions in the experience of blue-collar soldiers. *Identities-Global Studies in Culture and Power*, 10 (3): 319-345

and Ben-Eliezer (2000)¹⁹⁷, Herzog (2004)¹⁹⁸ discuss masculinity and femininity and gender inequality as applied to the Israeli military. Clearly, however, the intersex issue forces us to reconsider the relationship between the accepted definition of sex and the definition of gender role. Thus gender, like sexuality, is a more complex phenomenon and it should therefore be considered in terms of a “meta-gender” object. If we follow this analogy to its logical conclusion, we see that the phenomenon of gender arises from a complex interaction of the a given individual’s gender self-perception, that individual’s choice of displaying a gender to the outer world, and the outer world’s interpretation of that gender display as based in the context of the interpreter’s social constructs and life history. Moreover, that three-way interaction is mediated by the dynamics of the interaction itself and varies in time, space, and place. In this sense, gender identity is no longer a one-dimensional binary but a complex, multi-dimensional construct in which the axes are interdependent. Clearly, such a definition moves the dichotomous world view to a world view of ambiguity and fluidity¹⁹⁹. This latter world view flies in the face of the military need to be able to discriminate bodies, arguing that such discrimination provides them with the means to decide the potential effectiveness of a recruit.

As a brief historical note, according to Money (1994)²⁰⁰, the term “gender role” first appeared in print in 1955. The term “gender identity” was used in a press release, November 21, 1966 to announce the new clinic for *transsexuals* at The Johns Hopkins Hospital. In the upcoming discussion, we examine the transgender/transsexual community in greater detail.

3.5.3. Introduction to the Transperson Community. The “gender community” typically consists of transsexuals, transgenders, cross-dressers, and others with gender self-perceptions other than the traditional (Western) dichotomous gender world-view (*i.e.*, including only male and female), such as persons with “non-Western” gender identities²⁰¹ (Langevin, 1983²⁰²; Satterfield, 1988²⁰³; Godlewski, 1988²⁰⁴; Hoenig and Kenna, 1974²⁰⁵; Kröhn *et al.*, 1981²⁰⁶; Kockett and Hahrner, 1988²⁰⁷; Sigusch, 1991²⁰⁸; Tsoi, 1988²⁰⁹; van Kesteren *et al.*, 1996²¹⁰; Walinder, 1971²¹¹, 1972; Weitze and Osburg,

¹⁹⁶ Sasson-Levy, O. (2003). Feminism and military gender practices: Israeli women soldiers in “masculine” roles. *Sociological Inquiry*, 73 (3): 440-465.

¹⁹⁷ Robbins, J. and Ben-Eliezer, U. (2000). New roles or “new times”? Gender inequality and militarism in Israel’s nation-at arms. *Social Politics*, 7 (3): 309-342.

¹⁹⁸ Herzog, H. (2004). Family-military relations in Israel as a genderizing social mechanism. *Armed Forces & Society*, 31 (1): 5.

¹⁹⁹ Witten, T.M. (2001). *The Tao of Gender*. Atlanta, GA: Humanics Press.

²⁰⁰ Money, J. (1994).

²⁰¹ Such identities may be seen in First Nations (Kwido, Chuchuki, Berdasche) or other cultures. Due to the politics behind such identities, some individuals within these groups do not claim the label of transgender and feel that it is a pejorative, while others find empowerment in claiming such a label.

²⁰² Langevin, R., *Sexual Strands: Understanding and Treating Sexual Anomalies in Men* (Lawrence Erlbaum Associates, Hillsdale, N.J., 1983).

²⁰³ Satterfeld, S.B., *Transsexualism. Special Issue: The sexually unusual: Guide to understanding and help*, J. Soc Work and Hum Sexuality, 7#1 (1988) 77-87.

²⁰⁴ Godlewski, J., *Transsexualism and anatomic sex ratio reversal in Poland*, Arch. Sex. Behav., 17#6 (1988) 547-548.

²⁰⁵ Hoenig, J. and Kenna, C., *The prevalence of transsexualism in England and Wales*, Brit. J. Psychiat., 124 (1974) 181-190.

²⁰⁶ Kröhn, K., Bertermann, H., Wand, H. and Wille, R., *Nachtuntersuchung bei operierten Transsexuellen*, Nervenarzt, 52 (1981) 26-31.

²⁰⁷ Kockott, G. and Fahrner, E.-M., *Male-to-Female and Female-to-Male transsexuals: A comparison*, Arch. Sex. Behav., 17#6 (1988) 539-546.

²⁰⁸ Sigusch, V. *Die Transsexuellen und unser nosomorpher Blick*, Z. Sexualforsch, 4 (1991) 225-256.

²⁰⁹ Tsoi, W.F., *The prevalence of transsexualism in Singapore*, Acta Psy. Scand., 78 (1988) 501-504.

1996²¹²) with estimates of incidence and prevalence widely ranging based upon inclusion/exclusion arguments (Witten, 2003a²¹³; Winter, 2006²¹⁴; Atamer, 2005²¹⁵; Horton, 2005²¹⁶). In addition, with regard to population estimates of transsexuality, Tsoi (1988) has noted that, “A...problem confounding an epidemiological survey is that transsexuals tend to congregate in cities and in certain parts of cities, and most of them do not want to be identified.”²¹⁷ Much of Witten’s own research work²¹⁸ has further substantiated this phenomenon. Nonetheless, Tsoi has also noted that, in Singapore, (where SRS is well established and transsexuals are not “suppressed,”) diagnosed transsexualism is more than eight times more prevalent than in any other country for which estimates exist. Witten has pointed out that estimates of the number of individuals claiming to have “alternative gender identities²¹⁹” in the U.S., as well as in other countries, are confounded by the lack of a control group by which to test prevalence and incidence estimates. Even so, in an international random survey performed by the author and her collaborator, approximately 8% of the 300 respondents identified their gender self-perceptions as something other than 100% male or 100% female (unpublished results from the TLAR Study). We acknowledge, up front, that many of the terms in the trans-population are politically loaded and carry multiple layers of meaning and interpretation. However, we shall use the following terminology in order to facilitate discussion.

Transsexual persons experience variance between natal sex and psychological gender, and often seek medical sex reassignment services, including hormonal therapy and genital surgery. Transsexuals are often referred to as post-op (have had the operation and are on hormones), pre-op (plan to have the operation and are on hormones), non-op (do not plan to have the operation and are on hormones). In all cases, the individuals live the lifestyle of the self-perceived gender. Transgender persons usually identify strongly with the “other” sex and often adopt a life-style and appearance that is consistent with their psychological gender self-perception. This may or may not be supported by the use of hormonal medications, but genital sex reassignment surgery is usually not desired. However, transgender identified individuals may move towards hormones or surgery over time. Cross-dressing identified persons “cultivate the appearance” of the other sex, particularly with regard to clothing. Cross-dressing may be undertaken on a part-time or recreational basis, such as at clubs and social

²¹⁰van Kesteren, P.J., Gooren, L.J., and Megens, J.A., An epidemiological and demographic study of transsexuals in the Netherlands, *Arch. Sexual Behavior*, 25#6 (1996) 589-600.

²¹¹ Walinder, J., Incidence and sex ratio of transsexualism in Sweden, *Brit. J. Psychiat.*, 118 (1971) 195-196.

²¹² Weitze, C. and Osburg, S. Transsexualism in Germany: Empirical data on epidemiology and application of the German transsexual's act during the first ten years, *Arch. Sex. Behav.*, 25#4 (1996) 409-425.

²¹³ Witten, T.M. (2003a). Transgender aging: An emerging population and an emerging need. *Review Sexologies*, XII (4): 15-20.

²¹⁴ Winter, S. (2006). Thai transgenders in focus: demographics, transitions and identities. *Int. J. Transgender*. 9(1): 15-27. Winter, S. (2005). Heterogeneity in transgender: A cluster analysis of a Thai sample. *Int. J. Transgender*. 8(1): 23-30.

²¹⁵ Atamer, Y.M. (2005). The legal status of transsexuals in Turkey. *Int. J. Transgender*. 8(1): 65-71.

²¹⁶ Horton, M.A. (2005). The cost of transgender health benefits. *Int. J. Transgender*. 8(1).

²¹⁷ Tsoi, W.F., The prevalence of transsexualism in Singapore, *Acta Psy. Scand.*, 78 (1988) 501-504.

⁸⁹Witten, T.M. (2003). Transgender aging: An emerging population and an emerging need. *Review Sexologies*, XII (4): 15-20. Witten, T.M. (2004). Life course analysis: The courage to search for something more: Middle adulthood issues in the transgender and intersex community. (in) Sullivan, M.L. (ed.) *Sexual Minorities: Discrimination, Challenges, and Development in America*. New York, N.Y.: The Haworth Social Work Practice Press. Witten, T.M. and Whittle, S.P. (2004). TransPanthers: The graying of transgender and the law. *The Deakin Law Review*, 9 (2): 503-522. Also available at <http://www.deakinlawreview.org/currentIssue.php>. Witten, T.M. (2004). Aging and Gender Diversity. *Social Work Today*, 4 (4): 28-31.

²¹⁹ Witten, T.M. (2004). Life course analysis: The courage to search for something more: Middle adulthood issues in the transgender and intersex community. *J. Human Behavior in a Social Environment*. 8 (3-4), 189-224.

events, and may or may not have erotic significance. Transvestite persons (APA, 2000²²⁰) use the cross-dressing as a fetishistic (sexual arousal) but do not see themselves as the “contra-gender” or “contra-sex.” However, in Argentina, the transsexuals refer to themselves as transvestites. Therefore, it is important to understand the cultural aspects of the terminology. It is critically important to understand that we cannot possibly elaborate on all of the different terminology used in the gender community, the embodied politics of those labels and identities, and the multi-cultural aspects of that embodiment. We have chosen these terms as they are the most frequently used terms.

Women who prefer men's clothing because of its comfortable or practical nature, but who self-identify as female, are not considered to be cross-dressers. For brevity, the term “transgender community or T-community” is also frequently used to signify the entire gender community, unless otherwise specified. Furthermore, as we have already pointed out, many indigenous peoples recognize genders other than male and female. A person with such “non-Western” gender identities is also being considered as belonging to the gender community.

3.5.4. Clothing and Gender. It is crucial to understand the singular importance of gender and its perceived relationship to clothing (which covers the body but simultaneously identifies the body and provides an inference engine by which people impute information about the individual wearing the clothing). A chromosomal male, who transitions to female, will often state that she is more comfortable in the clothing of her “target” identity and that dressing in the original clothing (male) was “doing drag” for her. However, particularly if the body of the transitioned person still discriminates as a male body, the “target” identity is read or translated into that of a male who is cross-dressing. This view may be further translated as a gay (homosexual) male who is “doing drag.” This viewpoint retains the discriminable dichotomy of the body, of sex, and of gender roles inferred from the clothing. Moreover, through that alternative interpretation, it allows for the positioning of the transgender-identified individual into the dichotomous world view of sexuality. We will see the military importance of this viewpoint in a moment.

Nobody is sure how the “trans” condition occurs²²¹. There are a large number of potential theories purporting to explain the phenomenon. However, at best, it is now thought to be multi-factorial in origin. Further, there is no way to identify it rationally/scientifically. Roughgarden (2004)²²² provides a particularly comprehensive discussion of transgender organisms across the animal kingdom. Of importance is the fact that the “transgender/transsexual status” is based upon the say so of the individual claiming to be “trans.” Thus, the “trans” phenomenon is seen as being “of the mind” and, as such, not a medical condition that is worthy of treatment or even of recognition by the medical community (not of the body) as a medical condition. Currently, the Harry Benjamin International Gender Dysphoria Association (HBIDGA) is the only professional association of researchers and health care practitioners working to address transgender and transsexual healthcare²²³ although the

²²⁰ See the DSM IV-TR for a discussion of fetishistic behavior and transvestic fetishism. American Psychiatric Association. (2000). Diagnostic and Statistical Manual of Mental Disorders 4th Edition - DSM IV-TR .Washington, D.C.: American Psychiatric Association Press.

²²¹ Currently, it is thought that the condition is most likely multi-factorial involving a genetic propensity that is activated, *in utero*, by some sort of hormonal effect. This leads to possible psycho-physiological alterations in the developmental growth of the embryo. Once the child is born, psycho-social impact creates the final environmental stress that pushes the child into actually attempting to do something about the condition in one way or another. Roughgarden (2004) has demonstrated the ubiquity of trans-identification within the animal kingdom.

²²² Roughgarden, J. (2004). *Evolution's Rainbow: Diversity, Gender and Sexuality in Nature and People*. Berkeley, CA: University of California Press.

²²³ <http://www.hbigda.org>

Gay and Lesbian Medical Association²²⁴ (GLMA) is now more actively interested in the area as well. In addition, there are a growing number of web-sites that address the needs of the trans-community from various perspectives such as health, aging, violence and abuse, *etc.*

As Western biomedical medicine holds to a body-oriented philosophy, it is easy to see how “intersex,” which is body oriented, easily visually identified with the senses (body oriented detectability), and remediable (fixable) with “surgery” (body oriented intervention consistent with the biomedical way of thinking) is far more acceptable than “transgender.” Transgender is seen to be in the mind (mind oriented), not readily verifiable via any sort of Western biomedical rational means, and is remediable with a set of counter-intuitive surgical interventions that violate the visceral sanctity of the body public and private. Intersexuality is concretized within the “medicalization of illness” as is understood through the Western cultural norm of somaticizing medicine. It is not listed in the DSM IV-TR (2000)²²⁵. In fact, the intersex condition is an explicitly stated contraindication for diagnosis of GID (Gender Identity Disorder). On the other-hand, transgenderism is too elusive; it is culture bound, and it is seen as a deviation at a visceral level of gender role “embodiment” (Cassell, 1997)²²⁶, inaccessible, confounding and non-discriminable. This dichotomization of the intersex and trans-conditions is, in fact, false as it is possible for an intersex-identified individual to also have gender identity issues and thus be diagnosable as having GID despite the fact that the DSM IV-TR specifically states otherwise.

3.6 Defining Sexuality.

The Western biomedical model of sex and gender, coupled with the Judeo-Christian model of reproduction provides for only one socially acceptable model of sexuality namely, heterosexuality. The concept of heterosexuality is based upon a dichotomous sexing of a body that is either male or female (based upon the observed genitalia) and either masculine or feminine (based upon the individual’s gender self-perception). The tacit assumption is that a male (genetically XY), with masculine self-perception and social role acceptance – in the best of all reproductive worlds – when having sexual intercourse with a female (genetically XX), with feminine self-perception and social role acceptance, will produce a child having either of these two states. Such a construction is consistent with Cassell’s (1997)²²⁷ “right mind/right body” concept and with Gatens’s (1996)²²⁸ imagined body/habitus construction.

The military machine sits strongly on top of the right mind/right body philosophy as it is a lynchpin of the discrimination algorithm for determining who will be able to become a soldier. With this construct as the socially accepted U.S. norm of reality (habitus), it is clear that any deviance would be dealt with as just that, a deviance and handled within the resources of the social system’s mechanism for dealing with deviation from the norm. In the case of intersexuality (right mind/wrong body [confused body]), the system medicalizes the problem and deals with it as a body issue. In the case of transsexuality (confused mind [wrong mind]/right body), the system medicalizes the problem and declares it as a “mind/psychiatric” issue (see previous discussion on intersex and the military). All of the armed forces treat transsexualism as a mental disorder and therefore as a medical disqualification from service. Given the imposition of an institutionalized heterosexual only sexuality, it is no surprise that non-normative relations add the problem of “right relationship” to Cassell’s construct of right

²²⁴ <http://www.glma.org>

²²⁵ American Psychiatric Association. (2000). Diagnostic and Statistical Manual of Mental Disorders 4th Edition - DSM IV-TR . Washington, D.C.: American Psychiatric Association Press.

²²⁶ Cassell, J. (1998). *The Surgeon in the Woman’s Body*. Cambridge, MA: Harvard University Press.

²²⁷ *Ibid.*

²²⁸ Gatens, M. (1996). *Imaginary Bodies: Ethics, power, and corporeality*. London, England: Routledge Press.

mind/right body; further inculcating the dominant dichotomous norms and their consequences. And further exacerbating the deviance of non-dichotomous behavior.

Unfortunately, this construct does not provide for numerous psychogenetic alternatives that exist today. Moreover, as a direct result of this inflexibility and lack of available categories, the system lacks the capacity for understanding and for dealing/coping with those alternatives. Thus, non-normative combinations of sex/gender pairings for sexual reasons become problematic, confusing, and viscerally negative. Two simple true stories will illustrate this confusion. A 45 year old male-to-female TLAR survey respondent tells the following story:

“The concept of a male-to-female transsexual was not something with which my children were quite familiar. When their Dad became a woman, while the change was exceedingly difficult for them to cope with initially, they felt that they could ask questions freely. My youngest daughter Allison then about 10 years old, came to me and asked me the following question. “Dad,” she asked. They still call me Dad. “Dad, now that you are a woman, do you like men?” When I told her no I did not like men, her response was truly wonderful. “Whew! I’m glad. I thought I would have to handle you’re being gay as well!” I could not help but laugh and explain to her the subtle confusion of her viewpoint²²⁹.”

The respondent continued with the following story

“More recently, a friend of mine told her husband that I was a male-to-female transsexual. He had some trouble understanding this. When she also told him that I still liked women, he was stunned. He subsequently asked a lesbian friend of his about this confusing situation. My friend’s husband asked, “Does this make sense to you? A man becomes a woman but still wants to have a female as a sexual partner!” The lesbian replied that it was total nonsense and made no sense to her. Again, it is possible to see the confusion here. In the case of my daughter, she did not see that I was gay within the homophobic, patriarchal, Western biomedical construct. In the case of the lesbian, she assumed the biblical social norm for me, even though she felt that it did not apply to her.”

Observe how the “trans-identified” individual is being forced into the dichotomous definitions of Western sexuality much like the forcing of the rightly dressed male-to-female transsexual into the gay male drag queen/cross-dresser role as seen in Section 3.5.4 above. However, the linkage between sex, gender, gender identity and sexuality is far more flexible than is usually assumed. This conflation of gender identity and sexuality can lead to problems of misunderstanding of sexuality, mischaracterization of sexuality, and even violence²³⁰

²²⁹ All names and identities have been changed to protect the story-teller. All case stories have been obtained under IRB approval from either the University of Michigan or the University of Texas Health Science Center at San Antonio.

²³⁰ Herek, G.M. (2004). Beyond “homophobia”: Thinking about sexual prejudice and stigma in the twenty-first century. *Sexuality Research & Social Policy*. 1(2): 6-24. “Gender nonconformity is itself a target of prejudice, as demonstrated, for example, in violence against transgender individuals and boys who are perceived as “sissies” by their peers. Disentangling sexual prejudice from hostility based on gender nonconformity is a difficult task, made even more challenging by the fact that society’s valuation of heterosexuality over homosexuality is intertwined with its preference for masculinity over femininity.” See also Kitzinger, C. and Wilkinson, S. (2004). Social advocacy for equal marriage: The politics of “rights” and the psychology of “mental health.” *Analyses of Social Issues and Public Policy*. 4 (1): 173-194.

3.7 Transgender/Intersex – Intersections of Sex, Gender, Gender Identity and Sexuality

We have illustrated how the classical Western dichotomy of sex leads to a dichotomy of dress and subsequently to a dichotomy of sexuality (homo *vs.* heterosexual) in which only heterosexuality is a socially acceptable form of sexual relationship. It is important to understand that sexuality within the transgender community is far more diverse than that which arises from the dichotomous world view. We begin with the following example from the TLAR study.

“I was a genetic male and have transitioned to female. I was married before and was sexually attracted only to women. I am still attracted only to women. Where before I was perceived as a heterosexual male, now I am perceived as a Lesbian. However, I don’t see myself as a Lesbian. The world sees me that way. I liked women before. I like them now. My sexuality hasn’t changed, just my body and the world’s view of it (52 year-old male-to-female transsexual).”

However, there are others who have different perceptions of their sexuality:

“Before, I was seen as a gay male. I had sex only with men. Now in the middle of transitioning, I still have sex only with men. They know I am transgender. I hope to have the operation soon and eventually to be a heterosexual housewife (26 year-old male-to-female transsexual, TLAR study).”

Another TLAR study respondent stated that:

“I don’t know what my sexuality is. I’ve slept with one woman and a number of men. But I am not committed to one or the other. It’s more important for the person I am going to be with to love me for what I am (19 year-old male-to-female transsexual).”

Thus sexuality, as seen in the dichotomous world view, from the origination identity of the transgender person to the target identity may or may not change. However, sexuality within the gender community is not limited to the canonical Western world view. Trans-persons are sexually attracted to other transgender identified persons as well as to intersex identified persons, thereby expanding the repertoire of sexual identities available. Consider the following unpublished data from the TLAR study. For a sample of $n = 43$ self-identified female-to-male respondents the choice of sexual partners was quite varied. Eleven stated that they had slept with men, 1 with a woman, 21 with both, 1 with neither, 8 with transgender and 1 with intersex. Thus, we are left to conclude that, within the transgender community, there is no strong correlation between birth sex, gender identity/gender perception and sexuality.

We close our discussion of sexuality with the following story drawn from one of the TLAR survey respondent’s open comments.

Mary and Jane are male-to-female transgender sex-industry workers in their 30’s. They live in a committed relationship. Both of them are on hormones, are extremely feminized and have had top surgery (breast implants) but no bottom surgery (they retain their penises). When one sees them walking down the street, dressed as women and holding hands, they appear to be two beautiful women in a Lesbian relationship. Consider the following scenario. Jane and Mary return home. You are fortunate enough to be with them for dinner. They change clothing

and come out wearing only their shirts. You observe they both have penises. Are they in a homosexual relationship? Jane goes back in the bedroom, takes off her top, puts on her pants and comes back out. Are they in a heterosexual relationship?

Canadian male-to-female transsexual Sylvia Durand and male-to-female transsexual Cynthia Cousens live together in Ottawa, Canada. “Ms. Cousens warned against assuming that she and Sergeant Durand have formed a traditional lesbian relationship. We are not gay either, she said. We’re just two transsexuals in transition and we’re very much in love with each other.”²³¹ In closing, we can clearly see that the dichotomous definitions of sexuality find limited use when applied to the gender community, as seen through the illustrated case studies and the TLAR study data. Sexuality, in the transgender and intersex communities is far more diverse than that available under the restrictive two-sex world view. We now examine the intersection of the military and transgender/intersex constructs.

4.0 INTERSEX, TRANSGENDER AND THE MILITARY

We have now laid out the essential groundwork for understanding the normative, embodied, and habitus constructs of the body, sex, gender, and sexuality. We have demonstrated how these constructs are seen as essential to the effective functioning of the U.S. and Western militaries. We have demonstrated how intersex persons and transgender persons create a “scrambling” of the military’s ability to discriminate and dichotomize along the traditional lines of body, sex, gender and sexuality and how that inability to discriminate is perceived as problematic at best and viscerally negative at the worst. Let us now investigate the U.S. military perspectives of intersex and transgender identified individuals.

4.1 Intersex and the Military

The U.S. armed forces will not allow intersex individuals to be members. Telephone conversations, by this investigator, with military recruiters resulted in the following information being provided. Intersex individuals are not allowed to be members of the U.S. Army²³². The Marines state that intersex-identified individuals are not allowed in the Marines²³³. Both the Navy and the Air Force recruiters stated that they believed that “being a hermaphrodite was a medical disqualification” and that the Navy and the Air Force would not accept them as candidates for their Armed Services branch. Note that they use the pejorative “hermaphrodite” terminology that further stigmatizes the “intersex” state of being. Neither branch was able to provide a precedent or citation to that effect. Clearly, this lack of willingness to accept an intersex-identified individual further illustrates the overarching importance of the dichotomous or discriminable body. The Navy recruiter indicated that she believed that, “this condition would require much medical treatment and that the Navy would not wish to be taking such an individual into its programs.” Thus, “medical issues” are used to cover the discomfort associated with having to deal with a non-dichotomous identity and its potential consequences in much the same way that intersex babies are “sexed” in order to cover the discomfort of the parents²³⁴. It should also be pointed out that these rules apply to both the National Guard and the Reserves²³⁵.

²³¹ Campbell, M. (2000). 25 February. Transsexual praises army for financing operation. South China Morning Post.

²³² Army recruiting regulation 601-210 (2004).

²³³ Marine Corps Military Personnel Procurement Manual (2004). Order P-1100.72c, p.3-84.

²³⁴ Intersex Society of North America Website

²³⁵ Greer, S.E. - Human Rights Commission. (2005). <http://www.hrc.org>

4.2 Transgender and the Military

While the intersex identified person is medicalized by the military system as being disqualifiable, the transgender identified person is psycho-pathologized and marginalized by the U.S. military. In the only refereed study of transsexuals in the U.S. military, Brown (1988)²³⁶ discusses the military as a choice for the hypermasculine (note the “genderfied” binary assumption) phase of transsexual development. In this study, 11 male “gender-dysphoric” patients meeting DSM III (current version is DSM IV-TR²³⁷) standards were studied. Brown states that, “Eight of the patients had extensive military experience, 3 were on active duty, 1 was a Department of Defense employee, and 4 were veterans.” Of relevance is the fact that the outcome of military service was premature discharge in over 60% of the cases. Frye (2005)²³⁸ points out that the military is a place where you would expect to see a large number of transgender-identified persons²³⁹, “When you think of it, what more masculine occupation would an emerging FTM want to try than the military? Indeed, there are documented stories of FTM folks serving and fighting in the American Revolution and the Civil War²⁴⁰. And for an AMATF who is doing everything possible to deny or trying to kill-off the

²³⁶ Brown, G.R. (1988). Transsexuals in the military: flight into hypermasculinity. *Arch. Sex. Behav.* 17(6): 527-537.

²³⁷ American Psychiatric Association (2000). *Diagnostic and Statistical Manual of Mental Disorders 4th Edition - DSM IV-TR*. Washington, D.C.: American Psychiatric Association Press.

²³⁸ P.R. Frye. (2005). Transgendered vet. <http://www.cammermeyer.com/board.htm?step=thread&threadid=244>. Sacramento Valley Veterans. (2005). 24 August 2004. Sacramento Valley Veterans will honor Gay, Lesbian, Bisexual and Transgender veterans at wreath-laying ceremony on August 28th. <http://www.sacvalleyveterans.com/Documents/PressRelease082404.html>. Walters, S. (2005). 19 March 2004. Unprecedented week of transgender activism in nation's capitol. <http://p074.ezboard.com/fbutchdykeboy5326frm7.showMessage?topicID=902.topic> Queeria.org. (2004). 1 May 2004. Transgender veterans march to the wall a huge success. <http://www.queeria.org.yu/english/news/006.htm>. Human Rights Campaign. (2005). Veteran's Stories. <http://www.hrc.org/Template.cfm?Section=Military2&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=53&ContentID=13200>. Holt, K.W. (2005). Transgender warriors: Personnae non grata: An overview. <http://www.holtesq.com/military.htm>. Holt, K.W. (2005). Transgender warriors: Personnae non grata: An overview. <http://www.holtesq.com/military.htm>. Heck, S. (2005). Perceptions of a transgender veteran. <http://www.youth-guard.org/pflag-tnet/articles/Perceptions%20of%20a%20Transgender%20Veteran.pdf>. Human Rights Campaign. (2004). 28 May 2004. HRC, SLDN, AVER release ‘Documenting courage: Gay, Lesbian, Bisexual and Transgender veterans speak out.’ <http://www.hrc.org/Template.cfm?Section=Home&CONTENTID=19400&TEMPLATE=/ContentManagement/ContentDisplay.cfm>

²³⁹ Holt, K.W. (2005). Transgender warriors, personae non grata: An overview. <http://www.holtesq.com/military.htm> “Gwen informed me that her transsexual support group in Rhode Island included a number of retired military personnel, including a three-star general. Popular trans-myth has it that one of the reasons the military began placing women in more combat positions during the Gulf War was because one particular hot-shot fighter pilot on reserve status had undergone transition and become a woman; her talents were so desired that top brass were willing to change the rules regarding women's duties in order to have her return.”

²⁴⁰ Hoffman, L. (2005). 4 May. Transgendered vets to ‘march’ on Washington. “One is a retired Navy commander who served as a nuclear submarine engineer. Another refueled B-52 bombers. Others fought in Korea and Vietnam and one infantry sergeant is now in combat in Iraq. All these people, and perhaps hundreds more, are members of what is likely the least-known U.S. military minority – transgendered troops. ... on May 20, a contingent of the Transgender American Veterans Association will come to Washington to openly pay their respects at memorials ... As they did last year, about 50 transgendered vets took part in their first but little noticed ...”

feminine impulse, what better way to try. That is why so many of us MTFs are Eagle Scouts and veterans as well as police officers, fire fighters and paramedics. Yes, lots of us.” Similar comments were made by Lisa Griffin, an Air Force retiree and crack marksman for the Australian military. “Like many transsexuals and homosexuals, I became an over-achiever she remembers. I became a crack marksman. I could hit something at 3000m and I did nursing, topping the class.²⁴¹” The marginalization of transgender in the U.S. military is nowhere is this more clearly seen than in the quote from the Army Medical Services Standards of Medical Fitness (2002)²⁴² in Section 2-30 on Psychosexual Conditions that,

“The causes for rejection for appointment, enlistment, and induction are transsexualism, exhibitionism, transvestitism, voyeurism, and other paraphilias, p. 13, Section 2-30.²⁴³”

clearly lumping transsexualism (a non-paraphilia, DSM IV-TR, APA (2000)²⁴⁴, Dx 302.6/302.85) with the sexual paraphilias (transvestic fetishism, *etc.*), not only misidentifies transsexualism as a paraphilia (which it is not, DSM IV-TR, 2000²⁴⁵), but further stigmatizes those individuals who do so identify, further perpetuating the internalized trans/intersex-phobia of the military machine. This is quite evident in the 2004 news article reporting that a U.S. Marine was shot by local police after killing a transsexual prostitute (Agence France Presse, 2004)²⁴⁶.

As the Servicemembers Legal Defense Network Survival Guide (2003)²⁴⁷ points out, “Two different situations exist where transgender individuals may run afoul of military regulations. The first is when attempting to join the military. The second relates to service members already in the military.” The SLDN Survival Guide does not address issues associated with separated service members transitioning or having transitioned post-military. .

Individuals who are entering the military are subject to both a physical and a mental examination. If such an individual states that he/she is trans-identified, then they will be discharged as unfit under the Army Medical Standards of Fitness code (as above). An individual who has undergone any sort of gender modification that can be detected upon physical examination (hormones, gender-confirming surgery) will be discharged both from the perspective of being psychologically unfit as well as having

²⁴¹ Olsson, K. (2003). 8 November. Kindest cut of all. Nationwide News Pty Limited. Courier Mail. Queensland, Australia.

²⁴² US Army (2002). Standards of medical fitness. AR 40-501

²⁴³ *Ibid.*

²⁴⁴ American Psychiatric Association (2000). Diagnostic and Statistical Manual of Mental Disorders 4th Edition - DSM IV-TR. Washington, D.C.: American Psychiatric Association Press. Gender identity disorder is coded for being in either children or adults. The diagnostics are complex and multi-conditional. An individual must demonstrate (A) a strong and persistent cross-gender identification (not merely a desire for any perceived cultural advantages of being the other sex), (B) persistent discomfort with his or her sex or sense of inappropriateness in the gender role of that sex, (C) disturbance is not concurrent with a physical intersex condition, (D) disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning. Underneath each of these items are many sub-conditions that must be evaluated. However, GID (Gender Identity Disorder) is not included in the sexual paraphilias.

²⁴⁵ *Ibid.*

²⁴⁶ Agence France Presse. (2004). 27 December 2004. US Marine shot by police after killing transsexual prostitute.

²⁴⁷ Cleghorn, J.M. (2003). Serviceman’s Legal Defense Network. Survival Guide. 4th edition. <http://www.sldn.org/templates/index.html> . TG Crossroads Staff. (2005). 20 August 2005. Transgender military issues added to SLDN’s “Survival Guide.” <http://www.tgcrossroads.org/news/archive.asp?aid=447>

had surgery that is considered a “major genital abnormality or defect, (SLDN, 2003)²⁴⁸.” Background checks can be used to further substantiate the “correct” gender/sex of a potential military candidate. Moreover, falsification of the entries on the form is construed to be a fraudulent enlistment and subjects the enlistee “to UCMJ penalties and discharge.”²⁴⁹

Individuals who decide to transition during their enlistment may be discharged under enlistment violations (conversation with military recruiters) or through rules relating to homosexuality, cross-dressing, or through being classified as psychologically unfit (personality disorder²⁵⁰). The military does not recognize the HBGDA Standards of Care²⁵¹ when it comes to hormone therapy, living in the appropriate gender identity, and gender confirming surgery. Consequently, the military will not provide the medical support necessary to assist an enlistee in transitioning from the identity of origin to the target identity²⁵²⁻²⁵³. Making use of the military medical/psychological services to address trans-related issues can also be problematic for an enlistee as “conversations with military health-care providers are not confidential and any statement concerning being transgender can, and most likely will, be reported to their commands and separation proceedings begun.”²⁵⁴ The lack of privacy of medical/psychological records in the military is not different from that in the general population when trans-identified individuals are dealing with healthcare providers. One TLARS respondent stated,

“Add to this the difficulty of FTMs who have taken only hormones but could not afford or do not want surgeries. Billy Tipton comes to mind as one who never accessed healthcare in his lifetime, and probably died prematurely because of it. There are scads of FTMs who suffer in isolation because they refuse to subject themselves to medical scrutiny, possible mistreatment, and ridicule. Also, there is Robert Eads who recently died of medical neglect, after seeking help from at least 20 doctors who refused to treat him for ovarian cancer.”

Another member of the cohort wrote, ‘I spent about 10 years lying to doctors and getting inappropriate treatment...I was convinced I would be institutionalized if I told the truth. I believe this fear was reasonable and based in real experience.’ In fact, it is believed that Tyra Hunter, a Washington, DC pre-op transsexual was allowed to die on the street (bled to death) because EMT workers would not treat her thinking that she was gay and had AIDS²⁵⁵⁻²⁵⁶. Another TLARS respondent reported that

²⁴⁸ Cleghorn, J.M. (2003). Serviceman’s Legal Defense Network. Survival Guide. 4th edition. p. 50.

²⁴⁹ Cleghorn, J.M. (2003). Serviceman’s Legal Defense Network. Survival Guide. 4th edition. p. 51.

²⁵⁰ American Psychiatric Association (2000). Diagnostic and Statistical Manual of Mental Disorders 4th Edition - DSM IV-TR. Washington, D.C.: American Psychiatric Association Press.

²⁵¹ <http://www.hbgda.org/>

²⁵² Associated Press. (2005). The Fayetteville Observer. 4 June 2005. Former N.C. soldier sues to ease transition from man to woman.

²⁵³ It should be noted that even if federal documents such as social security and/or passport have been altered to present the correct gender identity, this will not alter the military view that such surgery is related to psychopathology and therefore makes the enlistee disqualifiable or dischargeable. Moreover, if a member of the reserves is called up for duty and is in the process of gender transformation as, “recall places them directly under the regulatory rules of the requirements [of the armed forces], these military members may need to consider ceasing, or interrupting their transition while they complete their active service requirement. Alternatively, transitioning or post-transitioning reservists may be medically disqualified for continued service once they are called back to active duty and medically examined.” <http://www.nctequality.org/news.asp> (8/20/2005).

²⁵⁴ SLDN. (2003). p. 51. also at <http://www.tgcrossroads.org/news/archive.asp?aid=447>

²⁵⁵ Fernandez, M.E. (1998). Death suite costs city \$2.9 million; Mother of transgendered man wins case. Washington Post, (12 December 1998), Metro Section, page C01.

“Notations re: gender are always disclosed in medical records. Whenever insurance applications are filled out, an authorization for release of all medical records is included. Once the info is disseminated to the insurance carrier, all hope of confidentiality is lost...providers are not TG friendly.”

Additionally, there is the inability to access Medicare/Medicaid coverage (Cahill, South & Spade, 2000) and the legal system’s failure (see Civil Rights and Hate Crimes maps²⁵⁷) to respond to violence and abuse against the trans/intersex communities²⁵⁸⁻²⁵⁹. Intersex-identified individuals have similar problems surrounding healthcare interactions. One survey respondent related the following story²⁶⁰

“A college student visited the university clinic for back pain problems. When the doctor discovered that she had been treated for the intersex condition he wrote, in capital letters on her chart, ‘Ambiguous Genitalia.’ The student stopped attending the clinic because of the reasonable expectation that she would be treated as a freak.”

Due to the clear stigma and the associated potential for violence and persecution²⁶¹⁻²⁶²⁻²⁶³, trans-identified individuals in the military may choose to use non-military services in order to address their needs. It is important to recognize that each branch of the armed forces has specific regulations around reporting external healthcare back to the military. Failure to abide by those regulations could place an enlistee seeking gender-related healthcare at risk for criminal action under the UCMJ. Such action could lead to court-martial actions.

While in the military, trans-identified individuals may choose to dress in their gender-confirming (target identity) clothing. The importance of this action and its consequences in the military has been addressed in a previous section of this report. However, as the military sees only the identity of origin and not the target identity as valid, enlistees who cross-dress could be prosecuted under the case-law associated with homosexual conduct in the military. Furthermore, because of the conflation of birth sex, gender identity, and sexuality, individuals who do choose to cross-dress should not make any

²⁵⁶ Witten, T. M. & Eyler, A.E. (1999). Hate crimes against the transgendered: An invisible problem, *Peace Review*. 11(3): 461-468. Lombardi, E.L., Wilchins, R.A., Priestling, D., Malouf, D. (2001). Gender violence: transgender experiences with violence and discrimination. *J. Homosexuality*, 42(1): 89-101.

²⁵⁷ <http://www.nglftf.org/library/index.cfm>

²⁵⁸ <http://www.gender.org/remember/about/core.html>.

²⁵⁹ Paylor, N. (2005). Shot transsexual’s call for BB gun ban. *Gazette Media Company, Ltd. Evening Gazette*. P. 10.

²⁶⁰ Witten, T.M. (2004). Life course analysis: The courage to search for something more: Middle adulthood issues in the transgender and intersex community. *J. Human Behavior in a Social Environment*. 8 (3-4), 189-224.

²⁶¹ Witten, T.M. and A.E. Eyler, (1999). Hate crimes and violence against the transgendered. *Peace Review*, 11#3 (1999) 461-468.

²⁶² Witten, T.M. (2004). Life course analysis: The courage to search for something more: Middle adulthood issues in the transgender and intersex community. *J. Human Behavior in a Social Environment*. 8 (3-4), 189-224.

²⁶³ Lombardi, E.L., Wilchins, R.A., Priestling, D., Malouf, D. (2001). Gender violence: transgender experiences with violence and discrimination. *J. Homosexuality*, 42(1): 89-101.

statements about sexual identity to any individual in the military. As the SLDN (2003)²⁶⁴ manual points out, "... the military would view a pre-operative male-to-female transsexual, self-described as a heterosexual female, having sexual relations with males to be committing homosexual acts ... [and would be therefore] ... subject to administrative and disciplinary proceedings."

A number of scenarios exist where a former enlistee, discharged from the military, who decides to transition, may be recalled during transition.

"[Gwen] volunteered for military service as a male in the late '60's, had served in Vietnam and in numerous other campaigns throughout the ensuing decades, and had taken a twenty-year retirement in or about 1989, going on six-year reserve status upon discharge. As soon as her formal discharge was completed, she began her transition from male to female, an event she had been planning virtually her whole life. Saddam Hussein had different plans for her, though, and when his troops began marching in the Persian Gulf, Gwen was called out of reserve status. Although she had by that time been living as a woman for over a year, she sheared her locks, put away the prescriptions, and trundled off to the Gulf for a year. When pressed as to why she hadn't challenged her call-up, she replied that she didn't wish to have her discharge status changed, endangering her benefits."²⁶⁵

As has been demonstrated by the previous example, post-military transitions can still be impacted by military needs. Similar scenarios can be envisioned for military reservists and National Guard members.

Post-military life course issues can still be an important aspect of an individual's journey. Witten (2004)²⁶⁶ has discussed how various life stage issues intertwine with the gender journey. Numerous unanswered questions arise: Do military benefits cover gender-related medical and psychological costs? Will the military supply the necessary medical support for post-enlistees to transition²⁶⁷? How will the medical costs be charged? How will medical problems arising in the course of the gender journey be seen and handled? Will problems of stroke²⁶⁸ or other clotting problems be seen as a consequence of taking estrogens and therefore not covered under military benefits? Will smoking cessation programs be offered for military members who wish to transition and who need to stop smoking before hormones can be initiated. How will dental care be handled once hormones have been started? How will military records be handled? Can names be changed, sexes be changed?

²⁶⁴ Cleghorn, J.M. (2003). Serviceman's Legal Defense Network. Survival Guide. 4th edition. <http://www.sldn.org/templates/index.html> . TG Crossroads Staff. (2005). 20 August 2005. Transgender military issues added to SLDN's "Survival Guide." <http://www.tgcrossroads.org/news/archive.asp?aid=447>

²⁶⁵ Holt, K.W. (2005). Transgender warriors, personae non grata: An overview. <http://www.holtesq.com/military.htm>

²⁶⁶ Witten, T.M. (2004). Life course analysis: The courage to search for something more: Middle adulthood issues in the transgender and intersex community. *J. Human Behavior in a Social Environment*. 8 (3-4), 189-224.

²⁶⁷ Docter, R.F. (1985). Transsexual surgery at 74: A case report. *Arch. Sexual Behavior*, 14(3): 271-277.

²⁶⁸ Asscherman, H., Gooren, L.J.G., & Eklund, P.L.E. (1989). Mortality and morbidity in transsexual patients with cross-gender hormone treatment, *Metabolism*. 38(9): 869-873.

Aging has been shown to be a growing concern in the transgender community (Witten, 2003)²⁶⁹. As former military members who have transitioned from one gender to another age, how will the age-related normative changes as they are conflated with contra-gender hormones and behaviors, be dealt with (Witten, Eyler and Weigel, 2000²⁷⁰)? When military members need nursing home treatment, what access will they have to military facilities? Witten (2002)²⁷¹ has already demonstrated the importance of the interplay of geriatric care management and gender identity issues. Legal rights of aging transgender-identified individuals has been little discussed (Witten and Whittle, 2004²⁷²). How these issues will be addressed by military rules and perspectives remains to be seen. Less obvious questions arise concerning social support? How will former military connections be handled? What about friends²⁷³ and significant others²⁷⁴ still in the military? There is a large literature on the importance of social support networks²⁷⁵ to quality of life, longevity, and health²⁷⁶. The importance of religion/spirituality in successful aging is also well-established in the literature (Tornstam, 2005²⁷⁷). How will issues of spirituality and religiosity be addressed? Will transgender-identified ex-military members be allowed to attend religious ceremonies at their former places of worship (churches, temples, *etc.*)? As end-of-life issues appear, how will hospice care, palliative care, and future military burials be handled for persons who are transgender/transsexual identified and ex-military? Will transgender-identified, former military be able to make use of VA facilities? Will they be respected in their new gender-identities? Will their medical records be altered to reflect those identities when those individuals are in need of end-of-life care and when it is central that an individual have the utmost respect? How will spouses of trans-identified military members be handled? How will new marriages, deemed legal in one state but not in another be addressed when it comes to military benefits for the surviving spouse? Equally important is the question of whether or not the military will train its healthcare providers in the life course healthcare needs of transgender-identified personnel. None of these questions are addressed in the military literature.

²⁶⁹ Witten, T.M. (2003). Transgender aging: An emerging population and an emerging need. *Review Sexologies*, XII (4): 15-20.

²⁷⁰ Witten, T.M., Eyler, A.E. & Weigel, C. (2000, Winter). Transsexuals, Transgenders, Cross-Dressers: Issues for Professionals in Aging, *OutWord*. Available at <http://www.asaging.org/LGAIN/outword-063.htm>

²⁷¹ Witten, T.M. (2002c). Geriatric care and management issues for the transgender and intersex populations. *Geriatric Care and Management Journal*, 12(3): 20 – 24.

¹⁹⁸ Witten, T.M. and Whittle, S.P. (2004). TransPanthers: The graying of transgender and the law. *The Deakin Law Review*, 9 (2): 503-522. Available at <http://www.deakinlawreview.org/currentIssue.php>

²⁷³ Lang, F.R. & Baltes, M.M. Being with people and being alone in late life: Costs and benefits for every day functioning.

²⁷⁴ Boenke, M. (1999). (Ed.). *Trans Forming families: Real stories about transgendered loved ones*. Imperial Beach, CA: Walter Trook Publishing, Co.

²⁷⁵ Litwin, H. (2001). Social network type and morale in old age. *The Gerontologist*, 41(4): 516-524. Litwin, H. & Landow, R. (2000). Social network type and social support among the old-old. *Journal of Aging Studies*, 14: 213-228. Pinquart, M. & Sorenson, S. (2000). Influences of socio-economic status, social network, and competence on subjective well-being in later life: A meta-analysis, *Psychology and Aging*, 14(2): 187-224. Rautio, N., Heikkinen, E., & Heikkinen, R-L. (2001). The association of socio-economic factors with physical and mental capacity in elderly men and women. *Arch. Gerontol. And Geriatrics*, 33: 163-178. Stallings, M.C., Dunham, C.C., Gatz, M., Baker, L.A., & Bengston, V.L. (1997). Relationships among life events and psychological well-being: More evidence for a two-factor theory of well-being, *J. Appl. Gerontol.*, 16(1): 104-119. Strawbridge, W.J., Cohen, R.D., Shema, S.J., & Kaplan, G.A. (1996). Successful aging: Predictors and associated activities, *Amer. J. Epidem.*, 144(2): 135-141.

²⁷⁶ Krause, N. & Shaw, B.A. (2000). Role-specific feelings of control and mortality, *Psychology and Aging*, 15(4): 617-626. Kubzansky, L.D., Berkman, L.F., & Seeman, T.E. (2000). Social conditions and distress in elderly persons: Findings from the MacArthur studies of successful aging, *J. Gerontol.*, 55B(4): P238-P246.

²⁷⁷ Tornstam, L. (2005). *Gerotranscendence: A Developmental Theory of Positive Aging*. New York, NY: Springer Publishing Co.

4.2.2. Transgender Law and the Military

There is sparse case law dealing specifically with transgender/transsexual identities and the military. The first case appears to be *Doe v. Alexander* (1981)²⁷⁸ in which the Army defended its policy of denying enlistment to transsexual persons, arguing that transsexual persons presented a medical problem in that their requirements for hormone supplementation might not be available at some location where they could be assigned. The court declined to reach the merits of the case (class action suit) as the military policy was not reviewable. In *Leyland v. Orr* (1987)²⁷⁹ the merits of the case revolved around an Air Force reservist Leyland who, while honorably discharged after completing a sex reassignment surgery, argued that the discharge was grounded in psychological and physical unfitness and that this was not the case. The court ruled that the discharge was well-founded in the case of physical unfitness and therefore found no reason to rule on the grounds of psychological unfitness. The court's finding was that "some medical conditions always require discharge because the particular condition invariably impairs the evaluatee's ability to perform ... without dispute [that] transsexualism in which sex reassignment surgery has occurred is such a condition, because all evaluatees in this category have potential health problems which may require medical care and maintenance not available at all potential places of assignment." It is of interest to note that the court, in rendering its judgment, likened the genital surgery to loss or amputation of a limb thereby rendering the enlisted person unable to perform the full demands of soldiering.

Case law addressing transgender/transsexual-identified individuals who had not yet undergone gender surgery starts with the *U.S. v. Davis* (1988). Davis was charged under Article 134 of the UCMJ. Davis had received a diagnosis of gender identity disorder by several Navy psychiatrists and had been not only recommended for continuing treatment of the condition but had been attending transsexual support groups in and around the Washington area. This case and subsequent case law revolves around the issue of cross-dressing which is discussed in the next section.

4.2.3. Cross-dressing vs. Transvestitism

It is important to distinguish between cross-dressing²⁸⁰ and transvestitism or transvestic fetishism. It is unfortunate that the SLDN (2003)²⁸¹ document does not do this and falls into the same trap that the military uses, further perpetuating the equivalence of cross-dressing to psychopathology. While the general act of cross-dressing falls under the rubric of transgender identities, it is psychologically essential that we separate it from the paraphilias and, in particular, from transvestic fetishism. Unfortunately, the military does not make such a distinction²⁸². Transvestic fetishism is defined, by APA DSM-IV-TR²⁸³ to be a condition meeting the following criteria: (A) Over a period of at least 6 months, in a heterosexual male, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving cross-dressing and (B) The fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

²⁷⁸ *Doe v. Alexander*. (1981). 510 F. Supp. 900 (D. Minn.)

²⁷⁹ *Leland v. Orr* (1987). 828 F2d 584 (9th Circ.)

²⁸⁰ Dzelme, K. and Jones, R.A. (2001). Male cross-dressers in therapy: A solution-focused perspective for marriage and family therapists. *Am. J. Family Therapy*, 29: 293-305. Even in this article, the pejorative terminology of "transvestite" is used to describe individuals who cross-dress.

²⁸¹ SLDN (2003). p. 51.

²⁸² See, for example, the Army Medical Services Standards of Medical Fitness.

²⁸³ American Psychiatric Association (2000). *Diagnostic and Statistical Manual of Mental Disorders 4th Edition* - DSM IV-TR. Washington, D.C.: American Psychiatric Association Press.

Cross-dressers, on the other hand, do not have fetishistic dynamics associated with their cross-dressing. Most cross-dressing individuals state that they cross-dress in order to express another facet of themselves. Some individuals may choose to use small amounts of hormones to alter their physical characteristics slightly. Moreover, some individuals who cross-dress may, at some point, decide to move further along the transgender continuum. What is important to understand is that cross-dressing is equated to transvestitism and is considered a psychopathology thereby allowing an individual to be discharged. Additionally, should the cross-dressing be seen and reported, enlistees can be prosecuted under regulations associated with homosexual cross-dressing. The SLDN (2003) also states that cross-dressing is not a per se violation of either UCMJ Article 133 (conduct unbecoming) or UCMJ Article 134 (general article pertaining to good order and discipline). However, this is also not the case as is discussed in *Army Lawyer* (1991)²⁸⁴. As discussed earlier, the 1988 opinion in the *United States v. Davis*²⁸⁵ stated that because the cross-dressing took place on a military installation this would “virtually always be prejudicial to good order and discipline and discrediting to the Armed Forces.” Moreover, they also pointed out that “... [his] unusual conduct, when it occurred on a military installation, had an adverse effect on military order and discipline and created a negative perception of the armed services.”

The question of punishment for cross-dressing and whether or not cross-dressing in public was considered by the Navy-Marine Corps Court of Military Review in the *United States v. Guerrero* (1991)²⁸⁶. The court concluded that the accused’s conduct did violate the first two clauses of Article 134, notwithstanding its having taken place off base. The court did not construe the *United States v. Davis* as requiring that the cross-dressing occur on base to violate Article 134. Rather, *Davis* was interpreted to mean that, “cross-dressing can violate Article 134 – regardless of the situs of the conduct – provided that it has ‘and adverse effect on military order and discipline and created a negative perception of the armed services.’”²⁸⁷ The court argued that the maximum punishment for “novel” Article 134 offenses is “determined by referring to the maximum punishment permitted for the most closely related, enumerated Article 134 offense.”²⁸⁸ The court concluded that cross-dressing in public most closely resembles disorderly conduct under Article 134; therefore, the maximum punishment would apply as it does for disorderly conduct. The court defined disorderly conduct as

Conduct of such a nature as to affect the peace and quiet of persons who may witness it and who may be disturbed or provoked to resentment thereby. It includes conduct that endangers public morals or outrages public decency and any disturbance of contentious or turbulent character.

Thus, considering that transgender-identified individuals could be construed to outrage public decency and/or endanger public morals when in their target clothing (see discussion on gender and clothing in a previous section of this report), they may be considered in violation of Article 134 of the UCMJ and thereby subject to punishment and possible discharge from the military. This decision was

²⁸⁴ Practice Notes. (1991). Cross-dressing as an offense. *The Army Lawyer*, March DA PAM 27-50-219: 42 – 44.

²⁸⁵ *United States v. Davis*. 26 M.J. 445 (C.M.A.) 1988

²⁸⁶ *U.S. v. Guerrero*, 33 M.J. 295 297-298 (C.M.A.) 1991 (cross-dressing in home with drapes drawn and no reasonable belief of observation by others is not offense – the context of the action, rather than the action itself, renders cross-dressing punishable, even in the absence of specific notice. Thus, cross-dressing in private would be treated differently from cross-dressing in public. Cross-dressing in front of another soldier (even in private) violates good order and discipline.).

²⁸⁷ Practice Notes. (1991). Cross-dressing as an offense. *The Army Lawyer*, March DA PAM 27-50-219: 42 – 44.

²⁸⁸ *U.S. v. Guerrero*, 33 M.J. 295 297-298 (C.M.A.) 1991

further elaborated in a string of cases²⁸⁹ in which military personnel were discharged for behavior related to cross-dressing and other offenses. The interplay of gender, sexuality, and clothing is discussed, in some detail, in Taylor and Rupp (2005)²⁹⁰. In this paper, the authors present a discussion surrounding the question of “doing drag” and “negotiating gender and sexual dynamics” in a drag cabaret. This paper is important in that it points to the complex problem of teasing out the interplay of sex, sexuality, and gender identity. Many male-to-female transsexuals will work in “drag” environments in order to find employment. From the perspective of the identity of origin, these individuals would be perceived as homosexual in that they are “natal males.” However, from the perspective of the target identity, they should be perceived as female. Hence, they should be seen as heterosexual. It is this gray domain that the military uses to prosecute and discharge trans-identified individuals who come out while in military service.

Other aspects of gender-identity can emerge as problematic for the military. For example, suppose a male soldier wishes to marry a non-military male-to-female transsexual. It is possible, under the case law *Von Hoffburg v. Alexander* (5th cir. 1980)²⁹¹ that the soldier can be discharged once he has married the transsexual. It becomes clear, then, that legal protection from discrimination based on sexual orientation can be confounded by conflating identity of origin (birth) with target identity thereby leading to the potential for litigation²⁹².

It is also important to understand the multicultural aspects of transgender identification. For example, in Thailand, the word “transvestite” is not considered a descriptor of a psychopathology²⁹³. Similarly, in Argentina, the word transvestite is used to describe what is called a transsexual in North America. In India, the Hijra define them selves as a 3rd gender. Hijra individuals are physical males or intersexed persons identifying as the “third sex” of India, Bangladesh, and Pakistan. They describe themselves as neither man nor woman, though the “refer to themselves with female pronouns” and wish to be referred to as female. In Hindu contexts, they belong to a special cast devoted to “the mother goddess Bahuchara Mata.” The Indian government has recently protected the Hijra by announcing that they now have legal status as a 3rd gender. In Pakistan, they are described as “eunuch-transvestites who scrape out a hard existence as beggars, dancers and prostitutes. Hijra means “hermaphrodite in Urdu” but most of them are described as “homosexual transvestites.”²⁹⁴ Again, in such a description, we see the conflation of target vs. origin identity, sexuality, and psychopathology. In addition, we see the lack of clarity between the psychopathology of

²⁸⁹ *U.S. v. Modesto*, 39 M.J. 1055 (A.C.M.R.) 1994 (off-post, off-duty, cross-dressing at gay club was conduct unbecoming). *U.S. v. Gunkle*, J.D. Army 9701960 18 October 1999 (behavior related to cross-dressing + other offenses). *U.S. v. Saunders*, J.D. Army 9900899 10 June 2002 (behavior related to cross-dressing + other offenses)

²⁹⁰ Taylor, V. and Rupp, L.J. (2005). When the girls are men: Negotiating gender and sexual dynamics in the study of drag queens. *Signs*, 30(4): 2115. Lang (1996) discusses gender variance among North American Indians. Lang, S. (1990). *Traveling Women: Conducting a fieldwork project on gender variance and homosexuality among North American Indians*, (in) Lewin, E. and Leap, W.L. (eds.). *Out in the Field: Reflections of Lesbian and Gay Anthropologists*. Urbana: University of Illinois Press.

²⁹¹ *Von Hoffburg v. Alexander* (5th Cir. 1980) (female enlistee discharged after marrying a transsexual)

²⁹² Katz, L. LaVan, H. (2004). Legal protection from discrimination based on sexual orientation: Findings from litigation. *Employee Responsibilities and Rights Journal*. 16 (4): 195-204.

²⁹³ Agence France Press (2005). August 11, 2005. Thai military mulls scrapping mental disorder tag for gays.

²⁹⁴ <http://www.ars-rhetorica.net/Queen/Volume11/Articles/IntroDennis.html>, <http://a9.com/hijra?factid=3693496>, and <http://androgyny0catch.com/hijrax.htm> , Qadir, A. (2005). Asia Africa Intelligence Wire. 2 Feb. 2005. Ex-PM's poser: Reject men, elect eunuch. Bakshi, S. (2004). A comparative analysis of hijras and drag queens: the subversive possibilities and limits of parading effeminacy and negotiating masculinity. *J. Homosexuality*, 46(3-4): 211-213. Agrawal, A. (1997). Gendered bodies: The case of the ‘third gender’ in India. *Contributions to Indian Sociology*, 31 (2): 273-297.

transvestitism and the non-pathology of cross-dressing. Similar issues arise in the South East and East Asian countries such as Indonesia and Thailand where sexual and gender diversity are not only more widespread but more readily accepted²⁹⁵.

For the U.S. military, such cultural practices can have an effect both in the military at home as well as abroad. For example, indigenous men in the Pacific “engage in gender practices that historically have had widely different consequences for their positions of power ...”²⁹⁶ This is particularly important for Hawai’ian males who might follow such practices and be drafted or wish to enlist in U.S. military service as the U.S. military could potentially view these non-normative gender positions as sufficient to require the enlistee to “cease and desist” or to be discharged.

4.2.2. Transsexuality and Military Functioning. The question of how being trans-identified may or may not affect an enlistee’s ability to function as a soldier has been addressed in one internal military document. Clements and Wick (1987)²⁹⁷ looks into the problem of whether or not a “transsexual pilot with questionable judgment affecting flight safety” can be seen as a risk due to the transsexuality. The report argues that transsexuals must undergo many changes, part of which requires therapy, and that this “could be significant.” The implication of this statement being that the gender changing protocol could “significantly” impact an individual’s ability to function as a soldier. They further argue that “transsexuals tend to have more episodes of anxiety and depression than the norm.” While the fact that transsexuals may (and there is no evidence to support this statement) have more episodes of anxiety and depression than the norm (not clear what the normative group is when such a statement is made), these bouts of anxiety and depression are usually related to the gender issues and frequently resolve as the gender journey progresses. Clements and Wick conclude that “through practitioner awareness and rapport with the patient, the transsexual need not be considered unsafe to fly.”

The complex dynamics of the military’s dichotomous view (metaphor of reality/habitus) of the body, sex, gender and the subsequent impact that those constructs have on sexuality and expectations arising from the confluence of these constructs provides the U.S. military with few degrees of flexibility when it comes to viewpoints that do not coincide with or cannot be mapped onto the U.S. armed forces view of how its military should operate. This rigidity has a significant subsequent impact on the ability of the U.S. armed forces to interact with the militaries of other countries that do adapt to non-normative identities.

5.0 NATIONAL AND MULTINATIONAL MILITARY UNITS AND TRANSSEXUALITY

In their paper on multinational military units and homosexuality, Bateman and Dalvi (2004)²⁹⁸ point out that “postmodern militaries are also characterized by the “erosion of marital values,” especially those associated with traditional understandings of sexuality, sexual orientation, and masculinity. Generally speaking, these changes have resulted in a growing willingness to allow gays and lesbians

²⁹⁵ Johnson, M. Jackson, P. and Herdt, G. (2000). Critical regionalities and the study of gender and sexual diversity in South East and East Asia. *Culture, Health and Sexuality*. 2(4): 361-375.

²⁹⁶ Tengan, T. (2002). (En)gendering colonialism: Masculinities in Hawai’I and Aotearoa. *Cultural Values*. 6 (3): 239-256.

²⁹⁷ Clements, T.I. and Wick, R.E. (1987). Transsexuality and flight safety. School of Aerospace Medicine, Brooks AFB, TX. Report Number USAFSAM-TP-87-9. Project Number ED93 Task Number 56. AD Number ADA229995.

²⁹⁸ Bateman, G. and Dalvi, S. (2004). Multinational military units and homosexual personnel. Center for the Study of Sexual Minorities in the Military. http://www.gaymilitary.ucsb.edu/Publications/2004_02_BatemanSameera.htm

to serve in many Western militaries. Britain²⁹⁹, Germany, Canada, Australia, and Israel, for example, are among twenty-four foreign armed forces that have lifted their gay bans since the Dutch became the first military to do so in 1974.³⁰⁰ The authors continue to point out that

“While NATO and NORAD have created no policies that address the issue of gay and lesbian personnel, the United Nations does have a few institutional mechanisms in place that deal with issues relating to sexual orientation. The official position of the UN regarding discrimination of any kind is reflected in its upholding of the principle of universal human rights, which ostensibly includes sexual orientation.”

To cite this, they quote Juan Carlos Brandt, Associate Spokesman for the Secretary General mentioned at a daily press briefing in 1997 that the “United Nations does not discriminate on the basis of nationality, gender, religion, or sexual orientation.”³⁰¹ However, as we have now established, the conflation of sex (birth/natal) and gender means that the word gender is perceived to represent the politically correct form of “sex” rather than that of gender or gender identity. Hence, the U.N. does not support non-normative gender identities in its non-discrimination policy statement.

Bateman and Dalvi (2004)³⁰² also point out the problem of discrepant policies when it comes to how different national forces are managed within the NATO/NORAD environment. “They are “responsible for disciplinary action within their own contingents in accordance with their national codes of military law.”³⁰³ The authority for these national contingent commanders to carry out this role typically is included in the status of forces agreements (SOFA) that establish the legality of the

²⁹⁹ Britain appears to take a dual stance on the issue of transgender service. Joanne Wingate, a transsexual soldier claimed sexual discrimination against the Ministry of Defense after complaining about her promotion prospects (http://www.queerday.com/2003/nov/13/wingate_loses_transgender_military_case.html). However, while appearing to allow service (after her surgery she was moved to a desk job, retaining her rank of Warrant Officer), the British also made fun of her transition by sending an entire platoon out dressed as women. See Pilditch, D. (2003). 18 September. 22 Squaddies marched out as women ... and guess who's suing; sex swap sergeant humiliated by his privates on parade. “Wingate was eventually discharged in March this year, with Long Service and Good Conduct medals.” See also Hillsely, C. (2003). 25 September. Army discriminated against transsexual, tribunal told. The Press Associated Limited and Morgan, H. (2003). 17 September. Platoon ‘Dressed as women to mock sex-change officer.’ The Press Association Limited. Press Association. Kyle, S. (2005). 6 March. Blonde bombshell reveals astonishing sex change of touch rifleman Dave. The People. (London). “Denise – the rugged rifleman Dave – had a successful career in a crack regiment and was well-regarded by senior officers. I made a very good soldier. I was an excellent shot on the rifle range.” Leonard, T. (2003). 19 September. I was a very cross-dresser indeed. “Sergeant Major Joe Rushton ... sneaked out of Army barracks dressed as a woman to visit drag nightclubs ... preparing for the sex change surgery that turned him into Warrant Officer Joanne Wingate.”

³⁰⁰ For a discussion of these militaries in relation to the concept of postmodernism, see selections from Moskos, Williams and Segal, including Christopher Dandeker, “The United Kingdom: The Overstretched Military,” 32-50. For discussions that emphasize military diversity see selections from Joseph Soeters and Jan van der Meulen, eds., *Managing Diversity in the Armed Forces: Experiences from Nine Countries* (Tilburg: Tilburg University Press, 1999), including Donna Winslow, “Diversity in the Canadian Forces,” 33-54; and Christopher Dandeker and David Mason, “Diversity in the UK Armed Forces: The Debate about the Representation of Women and Minority Ethnic Groups,” 55-72.

³⁰¹ Juan Carlos Brant, Daily Press Briefing of Office of Spokesman for the Secretary-General, 31 January 1997, included in UNGLOBE Information Kit, United Nations Gay Lesbian or Bisexual Employees, 2000.

³⁰² Bateman, G. and Dalvi, S. (2004). Multinational military units and homosexual personnel. Center for the Study of Sexual Minorities in the Military. http://www.gaymilitary.ucsb.edu/Publications/2004_02_BatemanSameera.htm

³⁰³ Ibid., III-3.

peacekeeping operation.³⁰⁴ Such a policy has been shown to be difficult enough when dealing with women's roles in the military (see Moon, 2002³⁰⁵ for a discussion as applied to the Korean military), disparate policies with respect to transsexual participation, for example Israel's inclusiveness of transsexuals or the Hijra of India could be perceived as highly problematic within such a multinational force.

6.0 SUMMARY AND CONCLUSIONS

Unilaterally, the preponderance of evidence points to the fact that the US military views individuals who identify as intersex, transgender, transsexual, cross-dressing, or other non-normative Western biomedical gender/sex as medically problematic and/or psychologically (psychopathologically) disturbed and not worthy of military service inclusion. Individuals who identify, during enlistment phase, as trans-persons are summarily disqualified under psychiatric exclusion rules. Individuals who decide to so identify during their military sojourn are either discharged under the same rules or, if caught "cross-dressing" (though it is not cross-dressing if one considers the target gender identity as the true self-identity) they are discharged under legal precedent that arose from homosexual case law. Similarly, intersex identified individuals are excluded from the U.S. military under the pathologizing terminology of "hermaphrodite." While we were unable to obtain any direct policy supporting the following statement, all of the US military officers we talked with indicated that "intersex identified individuals were presumed to require greater medical attention than the branch of the armed forces could give and that it was for that reason that they were to be excluded."

Finally, from the operational constructs of the U.S. military, the U.S. military is likely to have problems when dealing with other non-U.S. militaries that are more liberal when it comes to transgender/transsexual/non-Western normative inclusion.

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Library of the U.S. Court of Appeals for the Armed Services³¹⁰

³⁰⁴ See the sample SOFA listed in Appendix C of the Joint Chiefs of Staff publication, especially pp. C-2-9.

³⁰⁵ Moon, S. (2002). Beyond equality versus difference: Professional women soldiers in the Korean army. *Social Politics*. Summer: 213

³⁰⁶ <http://www.transgenderlaw.org/>

³⁰⁷ <http://www.sldn.org/>

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Appendix I

Web Search Engines and Protocol Used For Literature Searching on Gender Identity and Military Project

■ **Search Engines:** Online literature search methods were implemented as follows. Every one of the following websites/search engines was used to search the web for information as per the protocol detailed below.

1) General Search Engines

- a) Lycos³¹¹, Ask Jeeves³¹², Google³¹³, Momma³¹⁴, A9³¹⁵, WiseNut³¹⁶, alltheweb³¹⁷

2) Meta-Search Engines

- a) Exalead³¹⁸, Kartoo³¹⁹, Clusty³²⁰, Dogpile³²¹, Mamma³²², Surfswax³²³, Teoma³²⁴, Infogrid³²⁵, Fazzle³²⁶, izito³²⁷

3) Literature (Professional and Public) Search Engines

- a) Highwire³²⁸, Pubmed, Ovid³²⁹, Infotrac³³⁰, Lexis-Nexis³³¹, ERL Spirs³³², Web Of Science³³³, JSTOR³³⁴, Google Scholar³³⁵, Crossref Search Pilot³³⁶, First Search WorldCat Advanced Search³³⁷, First Search AltPressIndex Advanced Search³³⁸, SSCI³³⁹, Factiva³⁴⁰, Lawcrawler (Findlaw)³⁴¹, Lexisone³⁴², Westlaw³⁴³

³¹¹ <http://www.lycos.com/>

³¹² <http://www.askjeeves.com/>

³¹³ <http://www.google.com/>

³¹⁴ <http://www.momma.com/>

³¹⁵ <http://a9.com/>

³¹⁶ <http://www.wisenut.com/>

³¹⁷ <http://www.alltheweb.com/>

³¹⁸ <http://www.exalead.com/>

³¹⁹ <http://www.kartoo.com/>

³²⁰ <http://www.clusty.com/>

³²¹ <http://www.dogpile.com/>

³²² <http://www.mamma.com/>

³²³ <http://www.surfswax.com/>

³²⁴ <http://www.teoma.com/>

³²⁵ <http://www.infogrid.com/>

³²⁶ <http://www.fazzle.com/>

³²⁷ <http://www.izito.com/>

³²⁸ <http://highwire.stanford.edu/>

³²⁹ All Ovid searches performed through VCU's academic gateway to Ovid

³³⁰ All Ovid searches performed through VCU's academic gateway to Infotrac

³³¹ All Ovid searches performed through VCU's academic gateway to Lexis-Nexis

³³² All Ovid searches performed through VCU's academic gateway to ERL Spirs

³³³ All Ovid searches performed through VCU's academic gateway to Web Of Science

³³⁴ All Ovid searches performed through VCU's academic gateway to JSTOR

³³⁵ <http://scholar.google.com/>

³³⁶ <http://portal.acm.org/xrs.cfm>

³³⁷ All Ovid searches performed through VCU's academic gateway to WorldCat

³³⁸ All Ovid searches performed through VCU's academic gateway to First Search

³³⁹ All Ovid searches performed through VCU's academic gateway to SSCI

³⁴⁰ All Ovid searches performed through VCU's academic gateway to Factiva

³⁴¹ <http://lawcrawler.findlaw.com/>

³⁴² <http://www.lexisone.com/>

- i) Ovid searches included the literature databases – Journals@Ovid Full Text, Biosis Previews, CINHALL, Health and Psychosocial Instruments, and PsychINFO

4) Literature Web Sites (Professional)³⁴⁴

- | | |
|---|--|
| a) J. Gender Studies | j) GenderWatch |
| b) Psychological Science | k) Psychological Abstracts |
| c) Michigan Law Review | l) Social Work Abstracts |
| d) European Law Journal | m) Sociological Abstracts |
| e) Sexuality Research and Social Policy Journal | n) Studies on Women and Gender Abstracts |
| f) SpringerLink | o) Gay and Lesbian Studies |
| g) Taylor and Francis Link | p) Social Sciences Databases |
| h) SageLink | q) Wiley Interscience |
| i) Blackwell Synergy | |

³⁴³ <http://www.westlaw.com/>

³⁴⁴ All journal literature searches were performed through VCU library portals to the journals, abstracts, and databases.

5) Military Web Sites and Search Engines

- a) Public STINET – DTIC³⁴⁵
- b) MERLN – Military Education Research Library Network³⁴⁶
- c) STINET Multisearch³⁴⁷
- d) SCAMPI through DTIC³⁴⁸
- e) Naval Postgraduate School Dudley Knox Library Gateway³⁴⁹
- f) U.S. Military Court of Appeals³⁵⁰
- g) JagNet³⁵¹

■ **Search Protocol:** All web engines were searched using the same set of keywords and key phrases. As new phrases or words were detected through reading web contents, the keywords/key phrases list was augmented with the new additions and the search engines were re-searched using the additional keywords/key phrases. Eventually, the list closed and a final list of phrases and words became apparent. Some search engines do not allow search merges such as “transgender AND military,” for example. In the case where merges were not allowed, the advanced search mode of every engine was used and the choice “exact phrase” was chosen. Hence, to locate all information related to “transgender AND military,” we would have entered, “transgender military” and depressed the exact phrase search mode. Ovid allows search “joins.” In the case of Ovid, we used “transgender” followed by “military” followed by the join command for the two searches. This would yield the join results of “transgender AND military.” An asterisk after the word means all words containing at least the letters up to the asterisk and with any sequence of letters following the asterisk. Some search engines, such as WorldCat use alternative notation to delineate their search tools. In every case where alternatives were described, the alternative symbology was used to facilitate effective searching. Typically, the plus sign indicates a join of the preceding phrase with the subsequent phrase or phrases. In addition, various perturbations of searches were performed. For example, “(armed AND forces) AND (gender AND dysphoria)” would have been used to further test whether or not the join search “(armed forces) AND (gender dysphoria)” was effective in detecting all possibilities in the literature. In all search cases, search inclusion criteria required a return of all abstracts, articles, available relevant URL’s, books, internet resources, and serial publications.

³⁴⁵ <http://stinet.dtic.mil/>

³⁴⁶ <http://merln.ndu.edu/>

³⁴⁷ <http://multisearch.dtic.mil/>

³⁴⁸ <http://www.dtic.mil/dtic/scampi/>

³⁴⁹ <http://www.nps.edu/Library/>

³⁵⁰ <http://www.armfor.uscourts.gov/>

³⁵¹ <http://www.jagcnet.army.mil/>

Search Keywords and Key Phrases

- 1) Transgender* +
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 2) Transexual*+
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 3) Transsexua* +
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 4) Cross-dresser +
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 5) Transvestite+
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 6) GLBT +
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 7) Trans*sex*+
 - a) Military
 - b) Armed Forces
 - c) Vet
- d) Veteran*
- 8) Intersex*+
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 9) GID+
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 10) Gender Identity Disorder+
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 11) Gender Dysphoria*+
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 12) Intersex*+
 - a) Military
 - b) Armed Forces
 - c) Vet
 - d) Veteran*
- 13) Don't Ask, Don't Tell+
 - a) Transgender
 - b) Transsexual
 - c) Transexual*
 - d) Cross-dress*
 - e) Gender identity*
 - f) Gender dysphoria
 - g) Intersex

Appendix II Relevant Websites

The following websites provided primary reference materials for the military component of the research effort. There were numerous others that contained coverage of similar items. I chose to leave those out, as the material was effectively the same in all cases.

- 1) Alexander Hamilton Post 448 – American Legion – <http://www.post448.org/>
- 2) American Veterans for Equal Rights – <http://www.aver.us/>
- 3) American Civil Liberties Union 2 June 2005. ACLU files lawsuit on behalf of Army veteran against Library of Congress for transgender discrimination - <http://www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=18380&c=105>
- 4) American Civil Liberties Union. Schroer – legal complaint - <http://www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=18383&c=105>
- 5) American Civil Liberties Union. Transgender rights.
- 6) The Army Lawyer – <http://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/ARMYLAWYER.NSF/Main?OpenFrameset>
- 7) AVER – American Veterans for Equal Rights USA – <http://www.aver.us>
- 8) AVER – American Veterans for Equal Rights New York - <http://www.averny.tripod.com/programs.html>
- 9) Breaking the Silence - <http://www.cammermeyer.com/board.htm?step=thread&threadid=244>
- 10) ButchDykeBoy.com - <http://www.butchdykeboy.com/>
- 11) Camp Rehoboth – We’re fighting for freedom, too. - http://www.camprehoboth.com/issue06_04_04/freedom.htm
- 12) Chicago Pride – Gay veterans to lobby congress - <http://www.chicagopride.com/news/article.cfm/ArticleID/1798249>
- 13) Don’t Ask, Don’t Tell, Don’t Pursue – Stanford Law School – <http://www.dont.stanford.edu/>
- 14) Dvorak, P. (2005). Washington Post. 2 June 2005, B09. The right person for the job. Library of Congress accused of withdrawing job offer after applicant reveals gender change. <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/01/AR2005060101777.html>
- 15) e-J.A.W.S. - <https://www.jagcnet.army.mil/laawsxxi/cds.nsf>
- 16) FTM Informational Network – <http://www.ftminfo.net/tgvets.html>
- 17) Gay and Lesbian Service Members for Equality – <http://www.glsme.org/>
- 18) Gender Talk – Monica Helms – TAVA - <http://www.gendertalk.com/real/500/gt508.shtml>
- 19) Gay, Lesbian, Bisexual & Transgendered Disabled Veterans - <http://www.geocities.com/Pentagon/1151/enter.html>
- 20) Gay, Lesbian, Bisexual and Transgender Information – Military - <http://www.glbtcntral.com/military.html>
- 21) GLBTQ Social Sciences – Transgender Activism - http://www.glbtcntral.com/social-sciences/transgender_activism.2.html
- 22) Green, Jamison. Visible Man: Selective service. <http://www.planetout.com/people/columns/green/archive/20040115.html>
- 23) Human Rights Campaign. (2004). 28 May 2004. HRC, SLDN, AVER release ‘Documenting courage: Gay, Lesbian, Bisexual and Transgender veterans speak out.’

- <http://www.hrc.org/Template.cfm?Section=Home&CONTENTID=19400&TEMPLATE=/ContentManagement/ContentDisplay.cfm>
- 24) Human Rights Campaign. (2005). Veteran's Stories. <http://www.hrc.org/Template.cfm?Section=Military2&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=53&ContentID=13200>
 - 25) Human Rights Campaign. (2005). Transgender, Gender Expression and Identity Issues. http://www.hrc.org/Template.cfm?Section=Transgender_Issues1&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=52&ContentID=27914
 - 26) Heck, S. (2005). Perceptions of a transgender veteran. <http://www.youth-guard.org/pflag-net/articles/Perceptions%20of%20a%20Transgender%20Veteran.pdf>
 - 27) Hoffman, L. (2005). Transgendered vets to "march" on Washington. <http://www.hrc.org/Template.cfm?Section=Military2&CONTENTID=26743&TEMPLATE=/ContentManagement/ContentDisplay.cfm>
 - 28) Jade Esteban Estrada - <http://www.getjaded.com/media-rev5.htm>
 - 29) Kalamazoo Gay/Lesbian Resource Center - Transgender March to the Wall - <http://www.kglrc.org/trans.htm>
 - 30) Lambda Legal - <http://www.lambdalegal.org>
 - 31) Military Community Services Network - <http://www.mcsnfamilies.org>
 - 32) Military Education Initiative - <http://www.military-education.org/>
 - 33) Military World.com - http://www.militaryworld.com/dir/Armed_Forces/Veterans/
 - 34) National Center for Transgender Equality - <http://www.averyn.tripod.com/programs.html>
 - 35) Military Legal Resources - Military Law Review - http://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/
 - 36) New England Gay, Lesbian, Bisexual and Transgender Veterans, Inc. - <http://www.rainbowuniverse.com/newenglandGLBTVets/>
 - 37) Queeria.org - Transgender veterans march to the wall a huge success - <http://www.queeria.org.yu/english/news/006.htm>
 - 38) Sacramento Valley Veterans - <http://www.sacvalleyveterans.com/index.html>
 - 39) Seattle Gay News - Chicago City Council calls for repeal of "Don't ask, Don't tell." - <http://216.197.101.64/sgnnews30/page11.cfm>
 - 40) Serviceman's Legal Defense Network - <http://www.sldn.org/templates/index.html>
 - 41) Texas Triangle - <http://www.texastriangle.com>
 - 42) Tom McClintock.com - Luncheon speech to the California Republican assembly - <http://www.tommclintock.com/speeches/CRA.htm>
 - 43) Transgender Law and Policy Institute - <http://www.transgenderlaw.org/index.htm>
 - 44) Transgender Law Center - <http://www.transgenderlawcenter.org/>
 - 45) Transgender Legal - <http://www.transgenderlegal.com/>
 - 46) Transgender Military Issues - <http://www.sldn.org/templates/get/record.html?section=19&record=726>
 - 47) Transgender American Veterans Association - <http://www.tavausa.org/>
 - 48) Transgender Issues in the Workplace - <http://nmmstream.net/hrc/downloads/publications/tgtool.pdf>
 - 49) Veteran's History Project - <http://www.loc.gov/vets/vets-home.html>
 - 50) US Armed Forces Court Of Appeals - <http://www.armfor.uscourts.gov/>
 - 51) Rand Corporation - <http://www.rand.org/publications/MR/MR323/mr323.ch11.pdf>
 - 52) JAG CNet - <http://www.jagcnet.army.mil/>
 - 53) Nechman, Simoneaux, and Fryle, PLLC - <http://www.nsflaw.us/>
 - 54) Department of Defense Washington Headquarters Services - <http://www.whs.pentagon.mil/>
 - 55) Defense Technical Information Services - <http://www.dtic.mil/>

56) STINET - <http://stinet.dtic.mil/>

APPENDIX III

Case Law and Internal Military Documents

The following case documents and military documents represent the sum and substance case law and internal army documents specifically related to gender-identity issues and the Armed Forces of the United States.

- 1) *Von Hoffburg v. Alexander* (5th Cir. 1980) (female enlistee discharged after marrying a transsexual)
- 2) *Doe v. Alexander* US District Court Minnesota 510 F supp. 900 (1981) (seeking to enjoin enforcement of Army regulation that disqualified transsexuals from service)
- 3) *Leland v. Orr* 828 F 2nd 584 (9th Cir., 1984) (transperson challenges discharge for being transsexual)
- 4) *U.S. v. Davis*, 26 M.J. 445 (C.M.A.) 1988 (person claims to be transsexual, court decided not transsexual, prosecuted as a cross-dresser, cross-dressing as an offense)
- 5) *U.S. v. Guerrero*, 33 M.J. 295 297-298 (C.M.A.) 1991 (cross-dressing in home with drapes drawn and no reasonable belief of observation by others is not offense – the context of the action, rather than the action itself, renders cross-dressing punishable, even in the absence of specific notice. Thus, cross-dressing in private would be treated differently from cross-dressing in public. Cross-dressing in front of another soldier (even in private) violates good order and discipline.).
- 6) *U.S. v. Modesto*, 39 M.J. 1055 (A.C.M.R.) 1994 (off-post, off-duty, cross-dressing at gay club was conduct unbecoming).
- 7) *U.S. v. Gunkle*, J.D. Army 9701960 18 October 1999 (behavior related to cross-dressing + other offenses)
- 8) *U.S. v. Saunders*, J.D. Army 9900899 10 June 2002 (behavior related to cross-dressing + other offenses)
- 9) *Army Medical Services Standards of Medical Fitness* (2002). Page 13. Section 2-30. Psychosexual Conditions. “The causes for rejection for appointment, enlistment, and induction are transsexualism, exhibitionism, transvestitism, voyeurism, and other paraphilias.” (302).

END OF DOCUMENT
Part 1