IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CASE NO: 98-5375CA
511998DR005375xxxxWS

IN RE: THE MARRIAGE OF

MICHAEL J. KANTARAS,

Petitioner/Husband,

v.

LINDA KANTARAS,

Respondent/Wife.
_____/

OPINION

This case came on for final hearing on January 23, 2002, through February 8, 2002. Petitioner Michael J. Kantaras was present, represented by his attorneys, Colin D. Vause, Esquire, Clearwater, Florida; Karen M. Doering, Esquire, Equality Florida Legal Advocacy Project, Inc., Tampa, Florida; and Shannon Minter, Esquire, San Francisco, California. Respondent Linda Kantaras was present, represented by Claudia Jean Wheeler, Esquire, New Port Richey, Florida, after hearing three weeks of testimony by the parties, sundry neighbors and friends together with medical experts, Drs. Ted Huang, M.D., Walter T. Bockting, Ph.D., Collier Cole, Ph.D., Robert R. Dies, Ph.D., and the Court having reviewed the record and prior hearings held in this case, and being otherwise fully informed herein makes the following findings of fact and conclusions of law:

PLEADINGS IN THE CASE:

These parties entered into a barrage of pleadings in this case letting it be known that this was an incredibly complicated and unique dissolution proceeding, raising issues never seen before in the State of Florida.

1. Petitioner Michael J. Kantaras, age 42, filed on September 9, 1998 a Petition to Dissolve his marriage to Respondent Linda G. Kantaras, age 33. He alleges they were married in Holiday, Florida on July 18, 1989 but according to her pleadings they were married in Lake Mary, Florida. The Marriage Certificate says Sanford, Seminole County, Florida (Pet. Ex. #10). They co-habitated as husband and wife until they separated in July 1989. Both parties agree the marriage is irretrivably broken.

2. The minor children common to both parties during their marriage are

   a) Mathew T. Kantaras (male) age 12, born June 3, 1989, in Rockledge, Florida.

   b) Irina L. Kantaras (female) age 10, born January 23, 1992, in Fort Walton Beach, Florida

3. Petitioner filed a Declaration under Uniform Custody of Minors Act.

4. Petitioner's financial affidavit listed his occupation as Baker at Sam's Club, 8220 North Dale Mabry Street, Tampa, Florida with his net pay at $896.34 per month. He stated he was born on March 26, 1959, in Ohio. He attached a copy of a U.S. federal income tax return disclosing the parties filed as married, jointly and claimed the minors as dependents. He requested the Court to distribute the assets and liabilities of the parties.

5. Petitioner requested that the parties have "shared" parental responsibility but that it was in the "best interest" of the children that he be given "primary" physical custody and Respondent accorded visitation or time-sharing as determined by the Court. He further requested Child Support under the Florida guidelines, Section 61.30, Florida Statutes Annotated, plus attorneys' fees.

6. Respondent, Linda G. Kantaras, filed on September 23, 1998, an Answer and Counter-Petition for Dissolution and Partition of their marital home. She alleged the marriage took place at Lake Mary, Florida on July 18, 1989. The children are residing with her at 3525 Umber Road, Holiday, Florida, the marital home. Respondent also asserts there was a Domestic Violence Injunction, (case #98-5251CA/Q2) involving the parties. She requests the Court grant her the following:

a) Child Support under the Florida guidelines

b) Permanent and Rehabilitative Alimony

c) Attorney fees

d) Temporary and permanent possession of the marital home and eventual sale thereof with the net proceeds to be divided between the parties.

e) Temporary and permanent "shared" parental responsibility with the Respondent having primary physical residence of the children and Petitioner having reasonable visitation.

Respondent's financial affidavit states she is unemployed with zero income and total monthly expenses of $2,515.10.

Petitioner filed an Answer to Respondent's Counter-Petition on October 19, 1998. The Court ordered the case to Family Mediation on December 18, 1998. The parties with their attorneys attended mediation on January 22, 1999, but on March 16, 1999, the Mediator Program reported an "impasse." On March 19, 1999, Respondent filed an Amended Answer with Affirmative Defenses, raising the following new issues.

First Affirmative Defense

a) The Petitioner, Michael Kantaras was born a woman.

b) Approximately eleven (11) years ago "she" underwent a partial sex change operation in the State of Texas.

c) There have been legal proceedings in the District Court, Brazoria County, Texas, (Case # 86K0568) with a final order of a name change, to Michael John Kantaras.

d) There have been no legal proceedings changing the sex of the Petitioner.

Second Affirmative Defense

a) The parties obtained a Florida marriage license and participated in a marriage ceremony. Petitioner did not disclose to the State of Florida that he was a woman.

b) Florida does not recognize same sex marriages and the marriage between the parties is void *ab initio.*

Third Affirmative Defense

a) The parties filed for and obtained a Final Judgment of Adoption for the minor child, Mathew T. Kantaras, in Seminole County and said child was conceived and born prior to her relationship with Petitioner.

b) Petitioner is not the biological Father. The parties represented to the Seminole County Court that the Petitioner was the "husband" of Respondent implying he was a man and that they were legally married.

Fourth Affirmative Defense

a) The minor child Irina Kantaras was conceived during the marriage by artificial insemination by way of Petitioner's brother.

b) There have been no subsequent adoption or legal proceeding in reference to said child.

c) Petitioner is neither the biological Father nor the legal Father of their child.

7. Respondent also filed on March 19, 1999, an Amended Counter-Petition for Dissolution and/or Annulment and Partition of Real Property

8. If the parties are found to be legally married, she requests "sole" parental responsibility and "sole" primary physical residence of the minor children and guidelines Child Support.

9. If the parties are found to be not legally married she requests "sole" parental responsibility and exclusive use of the marital residence for the minor children; attorney fees and costs; division of the assets and liabilities and judicial sale of the marital home with division of the net proceeds.

10. Respondent next filed on March 29, 1999, a Motion to Limit Visitation by Michael J. Kantaras with the minor children based on the grounds set forth in the Amended pleadings that the marriage is void *ab initio*. He is not legally entitled as a biological father to visit with the children and has the burden to prove he is legally a man.

11. Respondent alleged she has only allowed visitation with the children since the Domestic Violence Injunction Order was entered, wanting to establish continuity, and not be "unduly disruptive" of the children's lives. She further alleged Petitioner has been engaging in harmful and disruptive conduct to the children because he has introduced his "girlfriend and her family" into the children's lives and is disruptive at the children's school. She requested that contact between Petitioner and the children be based on what she feels is "beneficial," otherwise, to withhold visitation when harmful or disruptive to the children. Until Petitioner can establish "his/her" legal rights to visit the children, Respondent should be "free to decide."

12. Petitioner on June 3, 1999, filed a Motion for Order Prohibiting the Respondent from Removing the Children from the jurisdiction of the Court. Respondent had told Petitioner and the children that she and the children would permanently move to Michigan. This would cut off any meaningful contact with the children. Circuit Judge William R. Webb set Petitioner's motion for hearing on July 6, 1999.

13. Respondent filed a Motion to Clarify on June 30, 1999, that there are no restriction on her moving "out of state." She alleged she could not economically survive in Florida, that the marital home suffers from leaks and storm damage. Petitioner, she alleged, has failed to provide adequate insurance and cannot afford to fix the roof. This motion was set for hearing on July 6, 1999. Judge Webb denied the motion to move out

of state. Petitioner on June 30, 1999 also filed a Notice of withdrawal of his Motion to prohibit Respondent from moving.

14. On September 16, 1999, Petitioner filed another motion requesting the court to order visitation and to require counseling for the children. This motion alleged Respondent had systematically denied Petitioner reasonable visitation and telephone contact with the children. Respondent had denied all visitation with Petitioner's son Mathew since July 14, 1999, or with daughter Irina since August 8, 1999. Respondent had also unilaterally terminated counseling for the children with the mutually agreed upon child psychologist, Ms. Glenda Davenport. Petitioner alleged Respondent was now telling the children Petitioner does not provide money for food, shelter or clothing, and Respondent told the school officials that she has "custody" of the children and Petitioner is not allowed to see the children at school.

On September 22, 1999, Circuit Judge William R. Webb granted a temporary order of visitation for Petitioner on a Fixed Schedule: Every other Friday, Petitioner is to pick up the children at school at 3:40 p.m. through Sunday, returning them at 4:00 p.m. at Respondent's home. Each Wednesday, school pick up at 3:40 p.m. to 7:00 p.m. with dropping off at Respondent's home Petitioner may attend school functions but not school lunches. Visitation was ordered effective starting September 24, 1999.

15. On September 16, 1999, the Court entered an order based on a stipulation of the parties that Linda Kantaras, Respondent, be allowed to file a Supplemental Amended Counter-Petitioner for Dissolution, Annulment and Partition of real property. It was filed on September 22, 1999. The allegations were essentially the same as set forth in the first counter-petition except for the following additional allegations:

a) Petitioner, Michael J. Kantaras, was born a woman. Prior to the Respondent's involvement, Petitioner had undergone hormonal treatment intended to change her appearance to that of a man.

b) Petitioner had a name change to reflect a masculine first name.

c) At the time of the alleged marriage on July 18, 1989, Respondent was told and was of the belief that Petitioner was legally a man, notwithstanding the sex change procedure of which the Respondent was aware.

d) In the application for marriage, Petitioner represented himself as a man, and in the adoption proceeding involving Mathew in the Seminole Court; Petitioner represented himself as a man and legally married to Linda Kantaras. In connection with Irina, Petitioner is neither the biological nor legal Father of this child.

e) Respondent requested Declaratory Relief under Section 741.212, Florida Statutes, which prohibits "same sex" marriage; and Section 63.042(3), Florida Statutes, which prohibits adoption of children by "homosexuals." Florida law does not recognize *de facto* or common law marriage. The marriage application and petition for adoption were fraudulent and material misrepresentations by Petitioner that induced granting of the marriage license and final judgment of adoption.

16. Petitioner answered Respondent's Supplemental Amended Counter-Petition and admitted Petitioner was biologically a woman at birth; that his name change was legally done by a court and Respondent was aware of Petitioner's sex change before their marriage. In addition, Petitioner filed "affirmative defenses" to Respondent's Supplemental Amended Counter-Petition, as follows:

a) Equitable Estoppel. Respondent is estopped from challenging the validity of the marriage, the validity of the Final Judgment of adoption of Mathew Kantaras, the legitimacy of Mathew and Irina Kantaras and status of Michael Kantaras as parent. This is based on the allegation Respondent herself signed the marriage application and entered into the marriage on July 18, 1989, knowing that Petitioner was biologically a female at birth and had a sex change operation in 1986. She also knew he had a legal name change from Margo to Michael Kantaras on March 10, 1986. Respondent encouraged and consented to the adoption of Mathew on September 6, 1989 (3 months old) and two years later agreed in writing to be artificially inseminated using Petitioner's brother as sperm donor and Irina was born on January 23, 1992. Since the date of each child's birth Petitioner has told the children he was their parent and has provided financial and emotional support to this date. They have lived in the same household as a family since 1989 until one month before the petition for dissolution was filed on September 9, 1998.

b) Respondent has held out Petitioner as her husband and Father of her children to: friends, acquaintances, schools, commercial entities, government and religious institutions. The position of the children has been altered to their detriment.

Respondent filed a Petition for Domestic Violence Injunction on September 2, 1998, (which is consolidated into this action) wherein she pled that Petitioner was her "husband" and "father" of her children. The Petition filed by Petitioner alleged the same.

c) Lack of Jurisdiction. Respondent has failed to move for relief from Final Judgment of Adoption (Mathew) within a reasonable time, after one year the alleged fraud must be extrinsic, rather than intrinsic, as alleged. After one year from

entry of Judgment on September 6, 1989, any defect or irregularity shall not be questioned after the time for taking an appeal has expired, under Florida Statute, section 63.182.

d) Failure to State a Cause of Action. Respondent's pleadings fail to establish a fraud, i.e. no cause of action.

e) Legal Marriage. Petitioner is legally a male and the marriage is valid, legal.

f) Statute of Limitations. Respondent's cause of action for fraud is barred because not commenced within four years from the date Respondent discovered or with the exercise of due diligence should have discovered the existence of the alleged fraud.

g) Constitutional Issues. Petitioner raised several constitutional issues as follows:

1. Right to parental privacy under 14th Amendment to U.S. Constitution and Article One, Section 23, Florida Constitution.

2. Section 712.212, Florida Statutes, is unconstitutional and its application illegal since parties were married before its enactment.

3. Section 712.212 seeks to change the status of the children from legitimate to illegitimate, ex post facto, contrary to the U.S. Constitution.

4. Section 712.212 is contrary to the Full Faith and Credit Clause of the U.S. Constitution, Article 4, Section 1, and the Full Faith

and Credit for Child Support Orders Act, 28 USC, section 1738 B (1994) which preempts any Florida law to the contrary.

5. Section 712.212 creates a "suspect" class without a compelling state interest and interferes with Petitioner's liberty interest regarding personal choice in family life.

6. Section 63.042 which prohibits homosexuals from adopting violates Petitioner's right to privacy, is unconstitutionally vague and does not define homosexual, creates a suspect class without a compelling state interest and creates an unconstitutional presumption that homosexuals are unsuitable as parents for adoption.

17. Attached to Petitioner's last pleading is the following: (1) a copy of the Decree of name change dated March 10, 1986 by Judge Tom Keneyon, District of Brazorla County, Texas, changing Margo Kantaras to Michael John Kantaras; (2) a copy of the non-anonymous donor recipient consent form signed by Michael J. Kantaras and Linda Kantaras, as husband and wife, dated March 15, 1991, for the Fertility Institute of Northwest Florida, Inc; (3) a copy of Certificate of Birth of Irina Leann Kantaras dated January 23, 1992, showing Mother Linda Gail Forsythe and Father Michael John Kantaras; (4) copy of a Final Judgment of adoption of Mathew Thomas Forsythe dated September 6, 1989; and (5) a Birth Certificate dated June 13, 1989 showing Mathew Thomas Kantaras, born June 3, 1989, with Linda Gail Kantaras as Mother and Michael John Kantaras as Father.

18. Respondent filed an Answer to Petitioner's Affirmative Defenses denying all of them on October 28, 1999.

19. An Order was entered on January 6, 2000, appointing Dr. Lonnie Shelef, to act as a therapist for the parties and the children of this case; Respondent moved to have Dr. Shelef removed because she didn't trust the therapist and the Court later entered an order appointing Dr. Robert R. Dies, Ph.D., Psychologist, by stipulation of the parties under Section 61.13, Florida Statutes. The Court by stipulated Order set a visitation schedule on September 22, 1999, and Petitioner thereafter filed eight (8) Motions for Contempt against Respondent for failure to comply with visitation. Respondent was found in contempt of court on December 20, 2000, for violation of the court scheduled visitation for petitioner.

20. Respondent filed her financial statement on October 26, 2000, showing her occupation to be "BCA" Teacher with a bi-weekly salary of $260; a monthly gross income of $564 and net of $526.78. Total monthly expenses were $1312.25.

## LEGAL ISSUES RAISED

A Pretrial memorandum filed by Petitioner on September 22, 1999, states the issues to be resolved are:

a) Whether Petitioner may be awarded primary residential custody or visitation.

b) Disposal of the marital home.

c) Whether Respondent is estopped from challenging the validity of the marriage.

d) Whether Respondent is estopped from challenging the validity of the adoption of Mathew Kantaras or may set aside the final judgment of adoption.

e) Whether Respondent is estopped from challenging the validity of the agreement of the parties that Petitioner is the father of Irina Kantaras.

f) Whether Florida prohibition of "same sex" marriages is unconstitutional. The other issues deal with the assets and liabilities of the parties.

The Pretrial memorandum filed by Respondent on September 22, 1999, states:

a) The parties were allegedly married on July 18, 1999 at Lake Mary, Florida, the marriage is a nullity; the parties separated in July 1998; that Respondent has physical custody of the two children and for proposed child support, "unknown." Petitioner is currently providing insurance coverage for the minor children.

b) For Alimony, none is requested

c) Is there a valid marriage?

d) Is Petitioner the legal parent of these children?

e) Is the adoption of Mathew valid?

f) There is also a request for distribution of the assets and liabilities and attorney fees.

## PRELIMINARY

The final hearing in this case consists of twenty-two (22) volumes of testimony and over 3700 pages. As the pleadings disclose, the petition to dissolve this marriage was filed by Michael J. Kantaras on September 9, 1998.

The trial of this case was recorded entirely on national TV by Court TV of NBC, and reported on by Beth Karas, 600 Third Avenue, New York, N.Y. 10016.

The final hearing started on January 21, lasting until final arguments on February 8, 2002. It took several weeks for the court reporter to type the trial transcript. After the attorneys received the transcript they prepared and filed closing briefs on the facts and law. The Petitioner filed his brief, after which Respondent filed her brief and Petitioner was allowed a final reply brief. The briefing period covered several months with extensions granted to facilitate filing. This helps to explain the considerable amount of time that has been consumed by this case. This Court has consumed months in the legal research, preparation and writing of this Opinion and Final Judgment.

The issues raised in this case are novel and unusually complex. In the interest of simplifying the transcript, this court extrapolates key testimony of the Petitioner and Respondent, as well as, the testimony of medical expert witnesses and twenty-four (24) lay witnesses called to testify on both sides. The testimony is alone exceptionally voluminous for a divorce case. The medical expert testimony was probably the first time in this nation the medical community has had the opportunity to address the issue of transsexualism in an in-depth fashion.

## FINDINGS OF FACT

## MICHAEL KANTARAS

## PART I

**A. History leading to marriage.**

Michael Kantaras will be referred to in this opinion by the pronoun "he" and "Michael" even though his sex has been put in issue. A change of gender will be referred to when appropriate.

Michael testified he was employed as a baker at Albertson's store in Melbourne, Florida, in 1988. He was residing in Cocoa Beach, Florida. Linda was employed at Albertson's. She resided in Palm Bay, Florida. At work they became friends, had lunch together, she would visit him in his home frequently, with a mutual friend, and they would go bowling. They both had other romantic relationships at the time. He had a girlfriend and she had a boyfriend (John Atkins) with whom she had been living for approximately four (4) years.

Linda became pregnant. Her boyfriend moved back to Michigan. Michael's girlfriend was in Texas. So, they became close friends and a romantic relationship developed between them. (Michael, X 1724-26) (The reference is to Volume X of the Transcript, page 1724-26)

Linda was now four (4) months pregnant.

Michael testified:

> "Linda and I became increasingly closer. I told her that I would support her as much as I could morally. I started to accompany her to her pre-natal visits. We just, you know, became increasingly closer, eventually talking about marriage."

(Id. At 1727)

**B. Birth of Mathew.**

His work moved him to a different store and he testified when returning to the store where Linda worked for some supplies he found her outside when he arrived. She was sitting on a bench, obviously in labor. He drove her to the hospital. He stayed with her in the birthing room until her baby (Mathew) was born on June 3, 1989. She was in labor for eleven (11) hours.

In attendance in the birthing room was Linda's sisters Cheryl and Debbie, her brother, Lee, her mother, and a mutual friend from work, Carol Ciembronowicz.

Michael testified that he and Linda were intimate before her pregnancy and that he had disclosed his "gender reassignment surgery" to Linda before her pregnancy.

Linda's response to the disclosure, he testified, was that "she did not believe it." She kept asking me "if I was joking around" he testified:

> But after I assured her of the fact that it was the truth, she told me that it didn't matter, that I was probably one of the strongest men she had ever met and would only view me as a male.

(Id. At 1731)

When asked, how did you show her that it was true, he replied, "Well, we --- it became pretty evident when we became intimate." (Id. At 1732)

At the birth of Mathew, everyone there noticed the baby had "fat cheeks" that just kind of "fluttered" and they all looked at Michael, who also had fat cheeks. He said "the birth was probably one of the two most exciting moments of my life."

A day or two after the birth, Albertson's transferred him to a store in Lake Mary, Florida, to "run" it, but he stayed in contact with Linda through daily phone calls.

Approximately three weeks later he and Linda began living together. What prompted it, he testified:

> "I received a phone call from Linda, she was very frantic, telling me that her sister had called Mathew's father."

He agreed to go to Palm Bay, pick her up and the baby, Mathew.

When he arrived in Palm Bay at Linda's residence he saw Cheryl, Linda's sister, and Mathew's biological father (James Atkins) in a vehicle pulling into Cheryl's drive way. Cheryl lived next door to Linda. After that, they drove to his home in Lake Mary. Linda was unemployed at the time and had no funds to contribute to her own support and her maternity leave had expired at Albertson's.

Michael testified he petitioned a court in Texas in 1985 to legally change his name to "Michael John Kantaras." (Id. At 1739)

When he and Linda started living together they talked about marriage and the adoption of Mathew, that he would raise him as "my own son." Linda wanted assurance even when they were speaking on the phone every evening, he said:

> She would ask me, you know, are you sure you are going to make the commitment? Are you sure we are going to get married? And I would constantly have to reassure her, yes."

(Id. At 1740)

Michael said he completed his sex reassignment surgery in 1987 and he met Linda in 1988. They picked out wedding rings and started making plans for a wedding. The marriage was on July 18, 1989, and Mathew was six (6) weeks old.

At the marriage ceremony in the courthouse, Michael's mother and sister were present. Linda had her mother and stepfather present; and baby Mathew. They all went

to the courthouse together to witness obtaining a marriage license. Linda and Michael signed the application. The license and application were one document. The marriage ceremony was performed by Ruth M. Parker, Clerk of the Circuit Court, Sanford, Seminole County. Linda's stepfather, Daniel Guillot, and Michael's mother, Irine Kantaras were the witnesses. (Pet. Ex. #10) (Id. At 1745)

For ten (10) years Linda has not questioned the marriage license or ceremony or claim anything was not legally valid. (Id. At 1746) There was a small reception after the wedding at their apartment.

**C. The Adoption of Mathew.**

They next consulted a lawyer on how to legally adopt Mathew by Michael. The lawyer handled the adoption proceedings in court and the judge questioned Linda if she agreed to Michael adopting her son. She replied, "that he will always only be Mathew's father and that she would not choose anyone else to be Mathew's father." The judge complimented Michael on being the adoptive father. (Id. At 1748-49) The judge was told that they were married.

They still lived in Lake Mary at this time but next moved to Fort Walton Beach, Florida.

They had discussed often having another child. Michael explained to Linda that years before he had spoken to his brother, Tom, to donate sperm so that whomever he may marry may be able to some day be artificially inseminated and "I would be able to be a father." (Id. At 1750) He anticipated this would be his desire when he completed his sex reassignment surgery. This conversation with his brother took place before he knew about the Rosenberg Clinic and while he was still called "Margo." He worked three

jobs when he first moved to Florida from Ohio in 1982 in hopes of saving enough money to go to Europe to have sex surgery and "be able to do what I needed to do."

After finding out about the Rosenberg Clinic in Texas, he told his sister, Helen, that he had found a program in Texas that allowed him to have the surgery that he "needed and to finally be who, in my mind's eye, I always had been." His sister, Helen, who was divorced with two children, decided she would accompany Michael to Texas "to make sure he got thru it okay."

In regard to the issue of artificial insemination, he and Linda talked about the option his brother had given them, and how "we wanted to, in fact, have another child." (Id. At 1756)

**D. Birth of Irina.**

While living in Fort Walton Beach they sought out a fertility insemination center. They saw a doctor at a fertility clinic for instruction on how to proceed and represented themselves to the clinic as married, husband and wife.

His brother tried twice with a sperm donation and the second time the doctor proceeded with insemination and it was successful. (Id. At 1757) This was the year 1991. Linda became pregnant with Irina, who was born in January 1992.

Linda did not work during any of this period. Michael provided all the support for Linda, Mathew and the new born child, Irina.

Irina was born by emergency cesarean operation, after Linda who was in strong labor, suddenly stopped. Michael was in the operating room when the c-section was performed. After the birth of Irina, he went with the baby for her check-up while Linda was being stitched up.

Michael testified while Linda was pregnant with Irina he would sing to Irina in her mother's stomach, calling the baby "kuklitsa," (Greek for baby doll) and while being checked Irina was screaming while he was filming her, and as soon as he said the word "kuklitsa" she stopped crying. (Id. At 1760)

A couple of weeks after Irina was born, they next moved to Holiday, Florida, near Tarpon Springs, to be with his parents. Mathew was two and one-half (2½) years old. The move was to live with his parents because his father had prostate cancer and wasn't doing well.

As the Bakery Manager at Fort Walton Beach, he had to reduce his position at Albertson's in Pasco County to baker until a higher position was available. They lived with his parents for three (3) years. Linda did not work those three (3) years. Michael changed jobs to Sam's Club and next moved to New Port Richey, on Jupiter Drive, to be close to Sam's Club. There they remained for one and one-half to two years. They next bought their first home with his savings and a few thousand dollars from his parents to help with the down payment. (Id. At 1764-65) They bought this house as tenants by the entirety, husband and wife.

Linda while living on Jupiter Drive worked during the Holidays part-time for a few months – but that was basically it.

A first and then a second mortgage were taken out on the marital house as "husband and wife." They have always represented themselves as husband and wife.

While on the east coast of Florida, in Maitland, just outside Lake Mary, they baptized Mathew in the Holy Trinity Greek Orthodox Church, and represented themselves during the baptism ceremony as husband and wife. Irina was baptized at St.

George Greek Orthodox Church in New Port Richey where Michael and Linda attended the religious ceremony as husband and wife.

Michael testified he always considered he and Linda as legally married. (Id. At 1766-76)

They both represented themselves as husband and wife to neighbors, friends, and the school teachers.

Linda is on his health plan at Sam's Club as his spouse and on his retirement plan as spouse.

As a father Michael has been very active in school activities, such as PTA activities that Linda was active in, he attended school functions, school plays, teacher's conferences, baking for school projects and acted as Santa Clause at Mathew's pre-K classroom. He worked on the school ESOL program for foreign language students and their parents, in preparing school fliers and letters in Greek, German and Spanish. At school, Linda always introduced Michael as her husband. (Id. At 1771)

The employment records at Sam's Club reflect that Michael is male. While working for Albertson's he was first employed as Margo, then transferred to, a store at Lake Jackson, Texas, and upon completion of his sex change operation and the change in his physical characteristics, he was transferred again by Albertson's to another store as "Michael."

Through Michael's employment at Sam's Club he has a life insurance policy as a male with the beneficiaries being Mathew and Irina, and disbursement in the event of death to the children evenly. (Id. at 1799)

Michael was asked about his feelings toward Linda at the beginning of their marriage. He stated he loved her very much, as his wife and mother of his two children. Then, their goal was concentrating on the raising of the children, and as his financial income declined due to his job change and the financial needs of the family increased, Linda breached their understanding that she would get part time work, although they agreed she at first would devote her time to the babies.

Linda, he admired, for not being materialistic, but once they bought their marital home she got demanding, wanting a swimming pool, like their friends', Monica Jordan and the Noodwangs. He could not afford the pool and she refused to seek work. When he mentioned it, she said:

> "You are the man. You are the one who wanted the responsibility of a family. You deal with it."

(Id. at 1804)

He told her he could not do it all by himself. He was cutting grass part time to cover expenses besides his job.

He started having "feelings" for their neighbor, Sherry Noodwang, a constant visitor in their house and the best friend of Linda. He did not disclose his feelings concerning Sherry until probably a few weeks before he and Linda separated in July, 1998.

Linda's reaction to his disclosure, it was "his problem" and she would remain friends with Sherry Noodwang, but that he needed some type of counseling. Linda said, "in the event Sherry came to their home, he was to go to her bedroom – remain out of sight. When she, Sherry and Monica Jordan would go to the movies or beach or visit in each other's homes, he was not invited to go."

By counseling, Linda meant for him to go back to Galveston, Texas, and see Dr. Cole at the Rosenberg Clinic, which he did in August, 1998.

Michael then decided to move in with his parents to give him and Linda time to think, which he did for a few days. Then, he moved back into the marital home with his family. He stayed about a week, then he received a phone call at work from Linda telling him to return home "because she wanted to speak to me." When he drove up the driveway he knew something was not right because usually the children "run out of the house" to greet him. The following happened.

> "Upon entering the home, I noticed several of my belongings were in the home and Linda came up to me and began to yell and tell me to get my shit and get the "f" out of the house."

(Id. at 1812)

Most of his belongings were in garbage bags. Michael then moved out. The reason Linda gave her demand was because she spoke to her sister, Crystal, and Monica Jordan, and they advised her to have him move out. He moved back to his parents' home at 5100 Flora Avenue, Holiday, Florida.

After Michael moved, Linda had her nephew Tony come live in the home. He was her sister Debbie's son, and he stayed at least for two to three months. He was eighteen years of age.

Even though Michael was out of the marital home he still took groceries to the home for his children. Michael continued paying both mortgages, utilities, and virtually all household bills. (Id. at 1848-54, 1878-79, 1883) His own father would accompany him on the trips and they encountered some "very rude" remarks about "my family", Michael said.

While delivering groceries to the garage where Linda and the children could hear them, Tony said of Michael's family he would bend them over and "f" each one of them.

During this period Michael started having difficulty visiting the children and Tony interrupted his phone calls to the children.

On his regular visitation he had taken the children to a McDonald's store party it was a school function and since his visitation ended at 6:00 p.m., he phoned Linda to explain the party was to end at 7:00 p.m. and the children wanted to remain, so she could pick the children up at McDonald's or he would drive them home. On the phone, Irina too asked to be able to stay. Linda said on the phone back to Michael "She would like to rip my f—g head off." In the parking lot he went to get the children's backpacks from his truck when he saw Linda's car pulling up. He went to get the children, including Sherry's daughters, and upon returning saw smeared lipstick all over his windshield. Linda was yelling at him and calling Sherry Noodwang's oldest daughter (age 14), a "whore."

This all took place ten months after their separation.

In June of 1999, Linda approached him about sending Mathew to Michigan alone for several weeks, not Irina too. The court had awarded Michael a regular visitation schedule and it was being disrupted. Michael was opposed because the two previous times Mathew went to Michigan, he returned very angry and hostile towards Michael.

Then July of 1999, Linda filed a petition for Domestic Violence Injunction against Michael. The court eventually dismissed the action. Also, in July, 1999, Mathew became very angry with Michael and blamed him for not being allowed to go to Michigan.

During the month of August, 1999, Michael testified he had no visitation with Mathew. Visitation with Irina stopped for about a month. Because he was not having visitation he resorted to filing Motions for Contempt in court against Linda.

However, during the court hearings on the Domestic Violence Injunction, the court set a visitation schedule. On September 22, 1999, a court order set visitation as follows: every other Friday with school pick up by Petitioner at 3:40 p.m. and return Sunday at 4:00 p.m. at Respondent's home; every Wednesday petitioner would pick-up at school at 3:40 p.m., with return to Respondent's home at 7:00 p.m. Phone contact on non-visitation days at 8:00 p.m. Petitioner may attend school functions but not lunch at school. (See Petitioner's Composite Exhibit #1, Tab D.) (Id. at 1826)

**E. Michael Denied Visitation.**

A motion for contempt was filed by Michael Kantaras alleging the visitation schedule set by the Court and reaffirmed by a Temporary Injunction Order of October 14, 1998, and reaffirmed again by the Court on December 11, 1998, was being violated by Linda Kantaras, as follows:

(1) On Wednesday, February 3, 1999, Linda picked the children up from school one hour before the scheduled release time for the children, with no notice to Michael, who did not see or talk to his children on that date.

(2) On Friday, February 5, 1999, Linda instructed the school authorities not to release the children to Michael by stating she is the "custodial" parent. Linda picked up the children from school and enlisted the aid of school officials to deny Michael seeing the children. He had to leave without seeing his children and was denied his weekend visitation.

(3) On Monday, February 8, 1999, and again Wednesday, February 10, 1999, Linda picked the children up from school one hour before the school's scheduled release time, with no notice to Respondent who did not see his children.

(4) On September 13, 1999, Michael motioned the court to schedule make-up visitation for the times lost due to the conduct of Linda. Michael alleged he had been completely denied visitation with his son, Mathew, since July 14, 1999, and his daughter, Irina, since August 8, 1999. Linda repeatedly failed to allow Michael phone contact with the children on non-visitation days. He was told by Linda that he would never see his children again. (Tab B, Pet. Ex. #1)

The children were attending counseling once per week since June 2, 1999. Linda unilaterally decided to terminate the counseling. Michael further alleged Linda was falsely telling the children that Michael does not provide money for the family, buy food or clothing even though he provides substantial support. Linda punishes the children if they show any affection toward Michael, telling Mathew his father loves Irina more than him. The nephew, Tony, screams obscenities into the phone when the children are present.

(5) On Wednesday, November 10, 1999, Linda picked the children up from school without notice to Petitioner preventing Wednesday visitation.

(6) On Friday, November 12, 1999, Linda again picked the children up at school without notice to Petitioner preventing his weekend visitation. (Pet. Composite Ex. #1, Tab E)

**F. Linda Kantaras Motions Court.**

On December 14, 1999, Linda Kantaras filed a motion to "Suspend Visitation" and Motion to "Relocate", wherein she alleged Michael was born a "female" had undergone limited sex change surgery and now presents himself as a "male."

She further alleged, she is the mother of the two children, one child was "allegedly adopted" by Petitioner and the other child was artificially inseminated during the "supposed marriage." And, notwithstanding that petitioner has not been established as the legal father, the court awarded temporary visitation to the Petitioner.

Respondent stated she has made the children "available" as ordered but the children have "refused to go with him."

The children have been and are being seen by a psychologist who has been working with the children on the issues of divorce and Petitioner's "transgender."

Respondent further alleged the children are suffering and would be at great risk of suffering significant harm if forced to see the Petitioner when they have strong feelings not to see him at this time.

Respondent stated "if the Petitioner were found to have legal rights to the children, the court then could require counseling and therapy if visitation is appropriate. Respondent, set forth the alternative, if the Petitioner is not the legal father, then "to force the children to deal with these issues over their strong feelings or require therapy may not be appropriate and would do significant "harm to the children."

Respondent concluded her motion that she and their therapist feel it would be in the best interest of the children that they be allowed to move to Michigan. And, further,

that the children are being "forced" to deal on a daily basis with Petitioner's transgender issues both in this case and at "school." It is now common knowledge in the children's community that Petitioner is a transgender.

**H. <u>Stipulated Agreement</u>**.

Despite all these allegations in Respondent's motion the parties came to an understanding and entered into a joint stipulation on January 4, 2000, that visitation with the children with the Petitioner, Michael Kantaras, will occur only in the presence of an agreed upon therapist who will work on the children's relationship with the Petitioner and supervise visitation between them.

Petitioner was to assume the cost of the counseling sessions. The Court was to make an allocation at a later date. The parties agreed on the following therapist: Dr. Lonnie Shelef, 24761 U.S. Highway 19 N., Suite 690, Clearwater, Florida 33763. (Pet. Composite Ex. #1, Tabs F & G)

The Court entered the stipulated order on January 6, 2000, incorporating the terms of the stipulation but adding the scheduling of the sessions shall be determined by the therapist, and shall not conflict with the children's school and not be more frequent than once a week and scheduled at least one week in advance. (Pet. Composite Exh. #1, Tab H)

**I. <u>Contempt Motions</u>**.

(1) On February 1, 2000, Petitioner filed a Motion for Contempt for Failure to Comply with Stipulated Order regarding therapy, counseling and visitation, stating that appointments to bring the children to therapy were scheduled seven (7) days in advance

in writing but Linda failed to comply. Linda was scheduled to take the children to Dr. Lonnie Shelef for the following sessions:

| DATES | CONDUCT |
|---|---|
| January 14, 2000, at 4:00 p.m. | refused to bring children; |
| January 21, 2000, at 4:00 p.m. | brought children; |
| January 28, 2000, at 4:00 p.m. | refused to bring children; |
| February 4, 2000, at 4:00 p.m. | informed the therapist she will not bring children despite court order. |

(Pet. Composite Ex. #1, Tab I)

(2) On May 31, 2000, Petitioner filed another Motion for Contempt for Failure to Comply With Stipulated Order, alleging that Respondent Linda Kantaras agreed to take the children to Dr. Lonnie Shelef on dates scheduled seven (7) days in advance, for the following sessions:

| DATES | CONDUCT |
|---|---|
| February 8, 2000, at 6:00 p.m. | Linda Kantaras canceled appointment and refused to bring the children; |
| March 29, 2000, at 6:00 p.m. | canceled appointment, refused to bring children; |
| April 24, 2000, at 6:00 p.m. | canceled appointment, refused to bring children; |
| May 8, 2000, at 6:00 p.m. | canceled appointment, refused to bring children; |

| | |
|---|---|
| May 19, 2000, at 6:00 p.m. | canceled appointment, refused to bring children; |
| May 22, 2000, at 6:00 p.m. | canceled appointment, refused to bring children, refused to reschedule and said her attorney would be contacting therapist. |

(Pet. Composite Ex. #1, Tab J)

(3) On October 6, 2000, Petitioner Michael Kantaras filed his seventh Motion for Contempt for Failure to Comply with visitation Order, alleging, as follows:

| DATE | CONDUCT |
|---|---|
| July 12, 2000, at 7:20 p.m. | Respondent Linda Kantaras interrupted Petitioner visitation, scheduled to last until 9:00 p.m., and took children to Bartow, Florida; |
| July 25, 2000 | Irina sent to Jensen Beach with a relative, blocking Petitioner's visitation scheduled on July 26 and July 28, 2000; |
| July 25, 2000 | Linda Kantaras advises Petitioner his visitation will stop until his relationship with Sherry Noodwang ceases and Linda approves his new girlfriend; |
| July 26, 2000, at 8:00 p.m. | Respondent blocked Petitioner's visitation, |

| | |
|---|---|
| | scheduled to 9:00 p.m., by taking Mathew away early; |
| August 4, 2000 | Petitioner visiting with the children at his parents' home, Linda arrived and attempted to remove the children from the grandparents' garage and verbally abused the children; |
| August 5, 2000, at 5:00 p.m. | While attending a birthday party for the grandfather at his sister Helen's home, Linda "physically dragged the children out of Michael's car and did not return them until 8:00 p.m. after repeated phone calls by Michael; |
| August 16, 2000 | Petitioner while on vacation out of state attempted to phone the children but Linda refused to let the children speak on the phone and told Petitioner to call back on August 18, 2000; |
| September 6, 2000 | Linda notified Petitioner she would not allow visitation that afternoon with the children. From that date going forward to the date of the motion, on October 6, 2000, |

Respondent was
denied visitation with
the children.

(Pet. Composite Ex. #1, Tab K)

On December 20, 2000, the Court held Respondent Linda Kantaras in Contempt of Court for failure to comply with court ordered visitation, and Respondent was "warned" that the court reserved jurisdiction to impose a fine against her and "transferring custody" of the children from Linda to Petitioner/father "if the mother fails to see that visitation goes forward."

The Court ordered; (a) visitation to remain in effect; (b) Petitioner was awarded some extended time with the children as "make-up" visitation; (c) the parties were to agree on a Thanksgiving and Christmas visitation schedule, dividing the time with the children; (d) Petitioner was awarded a minimum of three (3) telephone calls to the children during non-visitation times; (e) counseling for both parents to foster a healthy relationship with the children; (f) Dr. Robert Dies was to provide the names of two nominees as treating counselors for the parties to select; (g) Sherry Noodwang, Petitioner's girlfriend and James Taylor, Respondent's boyfriend shall be absent during Petitioner's and Respondent's respective visitations with the children, until further order of the court.

About one month later, the court modified this order to allow Sherry Noodwang and James Taylor to be present during visitation. (Pet. Composite Ex. #1, Tab L)

**J. <u>Change of Custody</u>.**

During the course of these proceedings, Respondent Linda Kantaras has been the primary custodian of the children with Petitioner, Michael Kantaras, having visitation

rights as the father. This was true during the trial from January 22, 2002, until February 8, 2002.

On April 26, 2002, an emergency motion was filed by Petitioner to Change Temporary Primary Residential Custody; to Determine Temporary Shared Parental Responsibility, and Psychological Evaluation of Respondent.

The allegations were that after the close of trial Linda's behavior had become increasingly "bizarre" and in some instances violent toward the children with continuing unrelenting efforts to alienate the children from the father in contravention of the wife's shared parenting responsibilities.

On May 1, 2002, and at an extended hearing on May 14, the court heard testimony on the motions.

The court granted all motions, except having Respondent psychologically evaluated. Linda was found to be in violation of the court's Contempt Order of December 20, 2000, and in addition, the Court found Linda Kantaras had interfered with and disrupted Petitioner's visitation, had used her religion and Petitioner's transgender status to frighten and alienate the children against Petitioner, and had engaged in "erratic" and unhealthy conduct in the presence of the children.

(1) The court awarded "primary residential custody" of the children to Petitioner, Michael Kantaras beginning Friday, May 24, 2002. On that date, through Wednesday July 17, 2002, "summer visitation" exists for Michael Kantaras. Linda Kantaras will have no "regularly" scheduled visitation but will be permitted liberal visitation and frequent phone contact.

(2) Reciprocally, Linda Kantaras will have summer visitation starting Thursday, July 18, 2002, through Sunday August 11, 2002. Michael will pay Linda Kantaras $75 a week child support during that period. Michael Kantaras will have no regularly scheduled visitation, but liberal visitation and frequent phone contact.

(3) Linda Kantaras may continue residing in the marital home and be responsible for paying the first and second mortgages and related upkeep.

(4) On Monday, August 12, 2002, the children will be returned to Michael Kantaras as "primary custodian."

Linda Kantaras will be permitted regular visitation with the children, as follows: one evening per week from 4:00 p.m. to 7:00 p.m.; one regular visitation day to be selected by mutual agreement of the parties, and every other weekend at the close of school on Friday through 5:00 p.m. Sunday.

A copy of the Emergency Motion and the Court order is attached to this Opinion.

**K. Domestic Violence Injunction.**

In the early stages of this case, a Domestic Violence Injunction was issued by Circuit Judge William R. Webb, in Pasco County, in favor of Linda Kantaras and against Michael Kantaras. It was in this DVI case Petitioner first obtained visitation rights. Linda Kantaras in that action referred to Michael as "male" in her petition. That case ultimately was dismissed. (Case No. 989-5251/CA/Q2).

On September 19, 2002, Michael Kantaras obtained a Domestic Violence Injunction against Respondent Linda Kantaaras (Case #51998 DR005375xxxWS – Sec F). Attached to his petition was a police report, an affidavit from Dr. James Boone, an affidavit from Georgetti Lisi, a neighbor, and an affidavit of Susan Spears, a teacher.

The petition for the injunction described Linda Kantaras breaking into the marital home after assaulting Mathew in the front yard, forcing open a locked door to Irina's bedroom leaving the child in tears and assaulting Michael by hitting and choking him. Circuit Judge Daniel Diskey issued the temporary injunction order and set the return hearing on Friday, September 27, 2002. This judge substituted at that hearing for Circuit Judge Daniel Diskey who was out of town.

Petitioner sought a modification of the injunction order by filing an amended motion for modification and agreeing to dismissal of the injunction based on certain conditions.

The affidavit of Dr. James R. Boone stated he has been the court appointed treating psychologist for Mathew and Irina Kantaras since December 18, 2000, and based on clinical observations and treatment of the children when Mathew gets angry or upset he acts out and exhibits behavioral problems. He has underlying insecurity, anger and confusion. He has negative attention seeking behavior. His main dynamic is he does not feel he is loved. Irina, on the other hand, when she becomes angry or upset, tends to withdraw, repress her feelings – trying to exhibit perfect behavior. To split these children apart having each parent with a child would introduce significant change, turmoil and be detrimental to both children.

Georgetti Lisi's affidavit states Mathew often comes to her house and on August 14, 2002, he came over, locked her doors to keep his mother out until she left. Mathew has told her about his negative relationship with his mother, she punishes him all the time, hit him with a belt when doing nothing wrong.

Georgetti Lisi's affidavit stated she has observed when Mathew is around his mother he appears "very angry and agitated." On the other hand, he is "calm" around his dad.

Susan Spears affidavit, a schoolteacher at Seven Springs Middle School, stated she had to intervene where she found a female student who is friendly with Mathew's mother telling other students in her class about "messages" from Mathew's mother. The student struck Mathew for being "mean" to his mother and is trying to turn other students against Mathew based on what "Linda is telling her." Linda Kantaras "attempts to use other students" to send messages to Mathew. Mathew told her he and Irina "no longer feel safe" around their mother.

On September 27, 2002, this Court based on these allegations ordered that Linda Kantaras shall (1) attend and successfully complete a court approved Anger Management Program, and (2) overnight visitation with the children is "suspended" until she successfully completes the Anger Management Program, and (3) Linda Kantaras's visitation with the children is changed and shall be alternating weekends, Friday 5:30 p.m. to 8:00 p.m.; Saturday 9:00 a.m. to 8:00 p.m.; and Sunday 7:30 a.m. until 8:00 p.m.; (4) upon filing a Certificate of Completion of anger management, overnight visitation will be resumed; (5) Linda Kantaras is to participate in a counseling program with the children; (6) the parties will not enter the other parent's home without express permission; (7) delivery and pick up of the children will be curbside with parent remaining in vehicle, and advance notice of arrival; and (8) parents will refrain from making negative remarks about the other in the presence of the children, or in public areas, and sport events.

A copy of these motions and affidavits are attached to this opinion.

**L. Disclosure to the Children Re: Michael Being Born a Woman.**

A major crisis developed in the case when Respondent Linda Kantaras unilaterally decided to disclose on November 4, 1999, to the children that their father was born a "woman." The fall out to the children was shock and disbelief.

In order to prevent this very event from happening a joint written stipulation was proposed on February 16, 1999, because there exists "certain issues in this case relating to Petitioner's paternity." Both parties were to agree that these issues should not be discussed with the children except by mutual agreement or through counseling. The parties were to make a good faith effort to prevent others from discussing such issues in the presence of the children. Petitioner, Michael Kantaras, and his attorney, Collin D. Vause, Esquire, both signed the joint stipulation. The stipulation was drafted by Linda Kantaras's own attorney. Neither Respondent nor her attorney, Peter O. Brick, Esquire, would sign the joint stipulation. (See Pet. Composite Ex. #1, Tab A)

Michael Kantaras testified Linda had threatened to tell the children about his surgery. He received a phone call from Linda in October 1999, telling him that there were children at school who approached her, and told her about Michael's surgery. They were children of teachers. She felt it would be necessary to tell the children.

He went to see Linda and told her that the next day he was meeting with the children and their counselor, Ms. Glenda Davenport and if she felt it necessary to tell the children they should do it together with the counselor. Linda didn't respond to the suggestion but instead turned her back on him and walked into the home.

Linda's sister (Aunt Crystal) and her husband (Uncle Billy) arrived to take Linda and the children on a trip to Key West, Florida, from October 24 through October 31, 1999. Michael gave up his visitation to allow for the trip in exchange for doing some special things with the children. After they all returned from the Keys, Linda, Aunt Crystal and Uncle Billy disclosed on November 4, 1999, Michael's gender reassignment to the children. The way Michael discovered it, was on November 10, 1999, when he drove to the school to pick up the children for visitation. He described what happened:

> "I arrived at the circle and they had called out Mathew and Irina's name. When I got to the place where the children enter the vehicle, I noticed that just my daughter was standing in the walkway and Linda was behind her probably about three feet.
>
> I opened the door and said "Come on in honey" and at that time she closed the door to the truck and told me that "she would not go." I asked her why she would not get in the vehicle and she told me that "I don't have to go with you" because "I know you're not my dad." I – my heart sank. I didn't even know what to say or to do." He asked Irina to step back so he could park his truck. When he did park, Linda had taken Irina back into the school. He walked into school and approached the vice principal and the guidance counselor to let them know what had just taken place. He told them that "somehow" someone had told my children that I was not their biological father and I had to explain to them the situation of my surgery and the paternity of the children – the fact that Mathew and Irina were not biologically my children.

(Id. at 1833-34)

The Vice Principal was Mrs. Hoskins, and the guidance counselor, Mrs. Capabianco. He asked them if they had heard any rumor pertaining to his surgery and they said "no." This was the first time they became aware of his situation. He did not see Mathew for the rest of the day.

His next weekend visitation started on November 12, 1999, and he drove to the school circle for the children's pickup, and saw them walking with Linda to her vehicle. He asked her "why won't you let me see the children?" She turned around, looked at me and said: "Does it really look like they want to be with you?" She proceeded to tell the children to get into her vehicle and they drove off. He said he was totally "devastated." Unable to explain his feelings to them or theirs to him. No communication whatsoever.

Thereafter, at each scheduled pick up at the school for his visitation during the rest of November and December, the children would not be there. He had not seen them for visitation since October 24 when they went to the keys except once on November 3rd. After that, not again until mid-January of 2000. He did not see his children for Thanksgiving or Christmas, 1999.

When asked why he didn't just let Linda take the children and just walk away? He replied:

> "Because those are my children. I made a commitment to Mathew and Irina when they were born to provide love and caring and financial stability – emotional stability – to teach them how to be a good person.
>
> I love my children, I would never, ever want my children to feel that I did not love them or I would abandon them or give up on them - - - I could not live with that."

(Id. at 1843)

Michael Kantaras continued to support the family, pay on both mortgages, and meet the household expenses even though not getting visitation. (Id. at 1852-53) For the year 1998, he paid support of $9,326.63; for 1999, $20,976.58; for 2000, $19,980.34; for 2001, $16,257.22 and for a grand total of $66,811.27. (Pet. Ex. #8, 13, 15 and 16.)

After the stipulation in court to select Dr. Shelef as counselor for the children, at the first scheduled meeting Linda arrived with the children, saying they didn't want to be there. Linda would refer to him as a "her" and "she." Every meeting with Dr. Shelef would start that way. Linda would sit in the lobby. The children, after talking to him, would warm up.

When asked how Michael handled these consultations, Dr. Shelef testified:

> "I think in one of the earlier sessions, they were having a problem relating with a penis. I believe that is when Irina said that "you have to be – or you have to have a penis and balls to be a man." Irina was 7 to 8 years old at the time.
>
> At the next session, he made a poster with their pictures on it, brought it, and as they opened the heart they found their pictures, and since they knew everyone had a heart, he explained he didn't need a leg, an arm or a penis to love them – and they understood. The next session he brought puzzles made out of their pictures which they put together and he explained he wanted to put their lives back together like the puzzles. They enjoyed the concept.

(Id. at 1859)

At one session, he said Linda sat down on a couch with Irina and told her that fathers who end up getting custody of their children "often kill the children after they win custody." Dr. Shelef was not present, nor Mathew. He told Irina that was not true. He asked Linda not to make outbursts like that to the children.

They had started counseling with Ms. Davenport and in the midst of seeing Dr. Shelef for almost five months, Linda was doing these things to the children.

At this point in the trial, Michael identified his U.S. Passport, issued July 25, 2001, showing a designation of his sex as male. (Pet. Ex. #14) The U.S. government issued his passport in 1979 as a "female." The U.S. government requested a certified

copy of his birth certificate, decree of name change and a letter from the doctor at the Rosenberg Clinic stating the fact of his having the reassignment surgery. The U.S. government issued the new passport in the name of Michael John Kantaras, "male." No hassle.

Linda, six months into the sessions with Dr. Lonnie Shelef, petitioned the court for a new counselor saying Dr. Shelef lacked her confidence. Dr. Robert Boone was substituted about the middle of the year 2000.

Michael testified while proceeding with his visitation in 2000, Linda insisted he stop having Sherry Noodwang as his "girlfriend" and if he didn't change girlfriends to someone she approved, Linda would continue to disrupt his visitation. (Id. at 1869-70) From 1999 to 2000 Linda had a live-in boyfriend, named James Taylor.

When Linda heard about Sam's Club holding a company picnic at Adventure Island on August 4, 2000, and Michael intended to take the children with Sherry Noodwang, Linda refused to let the children go if Sherry was to be at the picnic. A confrontation took place at Michael's parent's home where he was now staying. Linda came over and argued with the children in the grandparents' garage trying to persuade the children not to go with Michael and Sherry to the picnic. Irina went to the picnic anyway with Sherry, Michael and Sherry's younger daughter. Mathew decided to stay with his grandparents. Linda called Sherry a "whore" in front of the children. (Id. at 1873-74)

On August 5, 2000, it was Michael's father's birthday and Michael's sister, Cathy, was having a party at her house, a visitation day for Michael. Linda drove up to the party, saw Sherry's vehicle parked outside and as Michael drove up with the children, Linda walked up to the passenger side of his car, opened the door and ordered the

children out. The children protested and wanted to stay at their Grandfather's party. She refused them and drove them away in her car. Linda returned the children about four hours later to Michael, long after the party ended. (Id. at 1877)

In September 2000, when Michael was driving the children over to Linda's house, so Mathew could get his football uniform for a game that weekend, when he arrived with Sherry's youngest daughter in the car, both Mathew and Irina got out and went into Linda's house. Linda came out in a few minutes alone, opened his passenger side door and said her children will not be "part of that family" – meaning Sherry's youngest daughter. She was about ten (10) years old. Linda next called the police, and two sets of police arrived. Linda told the police that Michael came to her home, "would not leave" and was "obstructing her from leaving."

Michael told the police he was there for visitation by court order. The police later corrected their police report to reflect the truth of what happened. (Id. at 1884)

Moving to the year 2001, Michael began to experience a change regarding his visitation, it had gotten a "little bit smoother." This was, he thought because Linda joined a Church, called Calvary Chapel Worship Center of New Port Richey. The children became involved with that church, too. He testified he doubted Linda's sincerity over the church because of the following:

> "She's made mention several times to me that I am not right. I do not walk with God. That I am a lesbian. That I had no right to do the surgery that I did."

Michael related that one day after visitation, he didn't recall the date, when Linda came out to hand him some bills at his truck, she once again made the statement about him not being right, being evil and she proceeded to say that:

> "Mathew was a punishment from God, that his behavior and his attitude was a punishment to her from God for having sex outside of marriage. She told me then that it was lucky that the insemination was successful the first time for Irina or she would never have attempted to inseminate again."

(Id. at 1890)

He further explained she meant, with reference to Mathew, that "the Lord punished her for having sex outside of marriage. . . . the Lord punished her by giving her Mathew." She was speaking to him at truck side but both children were at the back of the truck getting their things out, about three feet away, they heard her and he watched their facial expressions show "pain." (Id. at 1891-92)

Michael testified Linda had a sexual relationship with John Atkins, the biological father of Mathew, for four years. They both came together from Michigan to Florida. He was polite to John when they met and all three would go bowling together. When Mathew was born, John was aware he was the biological father, absolutely.

Michael testified that Linda and her sister, Cheryl, got in an altercation, physically over John. Linda told him. She was upset over John coming to Palm Bay and staying at Cheryl's home for several months. Linda's home was next door to Cheryl's home. John and Cheryl's husband, Andy, were very good friends. (Id. at 1895-96) When asked by the court, did Linda ever take the baby next door to see his biological father, Michael said "no." That is why Linda called him to come get her and drive her away. (Id. at 1897) Since that event, John has made no attempt to see or support Mathew, to Michael's knowledge. Michael had met John's mother and stepfather once, but didn't know any other members of John's family. (Id. at 1898)

In September or October of 2000, Michael testified he was bringing the children home to Linda after visitation and he was riding in Sherry Noodwang's vehicle with Sherry and her two oldest daughters and Linda proceeded to tell him:

> "I was a lesbian and that I was still a woman and that she had asked God to forgive her and I needed to as well." Linda said it "quite loud while standing in the driveway" and she said:
>
> ". . . that she had asked God to forgive her for being a lesbian and that I needed to do the same..
>
> THE COURT: She asked God to forgive her for being a lesbian?
>
> THE WITNESS: Correct.
>
> THE COURT: Her?
>
> THE WITNESS: Her.
>
> THE COURT: And to forgive you.
>
> THE WITNESS: And that I needed to do the same; that I needed to ask God to forgive me as well."

The children were already inside the home when Linda said this to Michael, Sherry and her two daughters.

## FINDINGS OF FACT

## MICHAEL KANTARAS

## PART II

In October, 2001, Linda told Michael that she expected him to continue to pay for all the household bills and support for the children until the courts deemed that "I was not legally male, taking away all his rights to the children then she would not have to deal with him anymore." (Id. at 1902)

**M. Parenting Skills**.

Michael related how Linda could not handle Mathew, who would be "out of control," and Michael would talk to Mathew and completely calm him down. That happened frequently. He thinks it's wrong just to label Mathew as a problem child and ignore him; that Mathew is a compassionate child and shows respect when he receives it. Michael has taken Mathew along when he cuts grass on the side for money, taken Mathew with him while he painted the inside of a fellow employee's house, they work on his truck together and go fishing. Michael can raise Mathew, he said, and Irina too, who is beautiful, respected by her friends and attempts to please, a caring young lady. Like Mathew, he can raise a little girl, "most definitely" he said. (Id. at 1909-12)

Returning to Linda's revelation to the children about Michael's gender reassignment, if given the opportunity he would have told the children in Dr. Shelef's office, he stated:

> "I would have explained my gender disorder in a way to let them understand that I may have been born in one body, but that my mind, and my world and my heart was that of a male.

> And, that you don't need certain body parts to be a good person or a good parent. That the most important thing was to teach them that you don't prejudge people . . . that its important to be a good person and just basically understand that I love them. Whether I was physically able to make Linda pregnant, the fact that I was there the day they were born, that I was there when the doctors handed me Mathew, that I was there when Irina was being examined, that I could love them no less because I didn't have a penis.
>
> That my love for them would never change, I was given a choice to become a parent both times. I chose, with Linda's permission, to adopt Mathew and Linda and I chose to have another child. And I don't regret those choices at all and I never will.

(Id. at 1913-14)

Linda, in front of the children, has said Michael loves Irina more than Mathew, because Irina is of Michael's bloodline. Mathew is hurt over this, said Michael, and feels being adopted makes him second-class – which Mathew has mentioned during Dr. Shelef's sessions. Michael at the next session brought a poster board with the names of adopted people and what they accomplished, like Amelia Earhart, Moses, Albert Einstein, Faith Hill, and he asked Mathew what these people had in common except being famous? Mathew thought it was fame and Michael said being "adopted." That being adopted did not mean that you cannot be special and you cannot accomplish whatever you choose out of life to accomplish. Mathew felt "pretty good about that." (Id. at 1915-16)

This concluded the direct examination of Michael Kantaras by Collin Vause. Karen Doering, Esquire, continued the examination into Michael's childhood and his "gender identity" problem.

**N. Michael's Gender Identity**.

Michael testified in childhood he always considered himself to be male; that he recalled fighting a boy next door who tried to give him a flower with a kiss; that he would play house with children only if he could be "dad." As he grew he played touch football, basketball, baseball, wrestling, and fished with his uncle.

He first learned about a gender treatment program in the United States, through watching a special on HBO called "What sex am I?" It mentioned the Rosenberg Clinic in Galveston, Texas. He was very excited about this. He phoned them and talked to Dr. Collier Cole in July 1985. He entered the Galveston Treatment Program around November of 1985. Dr. Cole was his primary psychologist in the program. Dr. Cole diagnosed him to have "gender identity disorder" or transsexualism.

Three months later he began hormone therapy in the Program.

He was working for Albertson's and they transferred him to a store in Texas to begin his "real life experience" living full time as a male – and ever since. He completed all the Galveston gender treatment requirements and underwent sex reassignment surgery in April 1987.

He discussed phalloplasty with Drs. Cole and Emory and with Dr. Huang about the surgery. At meetings of transsexuals who gather from all over the country at least twice a year at the Rosenberg Clinic, he talked to men who had gone through gender reassignment surgery and the few who had phalloplasty, about three at most. After talking to them, his impression was not to have it done. Because of the risks, extreme financial stress it creates and one man had such infections he lost several inches of his

penis that had to be removed. Not one of them recommended it. He spoke to one female partner who told him she wished that her partner had not had the phallus. That she had struggled with him for some time through his hospital stays. It was not a normal functioning penis and it made it difficult for them to have sexual relations.

She said, he could not work due to delays from infections. The phallus itself did not look like a standard penis. So, Michael decided against phalloplasty.

Once Michael married, his priority changed in favor of a home for his family and a college education for his children. (Id. at 1930-31)

Michael was asked "Do you feel that undergoing sex reassignment alleviated your gender dysphoria to the point where you have a real and lasting sense of personal comfort with yourself as a man? He replied, "Yes, I do." (Id. at 1932)

Over the last 15 years there has been no progress in phalloplasty, said Michael.

Michael was asked does not having a penis prevent you from being happy and comfortable with yourself as a man? He replied, "No, it does not."

A couple weeks after the surgery he moved back to Florida. His doctors prescribed testosterone for him while going through the program, one cc every two weeks, and upon completion of surgery, it was reduced to one cc once a month.

On occasion when there is no one else available to inject him, he has done it to himself in the thighs and if you don't hit the right muscle, it can be very painful. (Id. at 1933) In Florida he uses doctors to administer testosterone.

The primary masculinization from testosterone takes place during the real life test of a year and a half. Once surgery is completed the testosterone is kept at a maintenance level. At Rosenberg, Dr. Emory supervised his blood work and testosterone levels.

Michael testified when he started on testosterone during the real life experience the masculinization of him started, suddenly. His voice deepened, he started growing facial hair and started shaving in a month of two. He developed hair on his legs, under the arms, and his body started to shift, his chest started to broaden. He had muscle buildup in legs and arms. He lifts weights routinely. He developed male pattern baldness. He now is down to ½ a cc once a month.

The testosterone also reduces the possibility of cancer. Should he stop his injections, his skin would soften. He admitted during his marriage there were periods of time when he stopped the injections because he lacked money or having someone else to do the injections. His longest period was a month or two. There were no visible results that followed. (Id. at 1935-41)

**O. Penis Issue**

Michael was directly asked "do you consider yourself to have a penis?" He replied, "I do."

The court asked psychologically or physically?

> MS. DOERING: Well, the record is clear what Dr. Huang and Dr. Bockting and Dr. Cole have all testified about the enlarged clitoral issue resembling a penis. . . . I'm just going after whether Mr. Kantaras considers himself to have a penis.
>
> THE WITNESS: I do, Your Honor.

(Id. at 1943)

"And during your marriage to Linda Kantars did you and Linda Kantaras have sexual relations during your marriage? "We did." Michael was then asked "How often did you have sexual relations?" He replied: "In the beginning of the marriage quite

frequently. Throughout the marriage, yes, they steadily decreased, but that was, you know, when you've got two children and you're working several hours a day and financial problems and the other problems in the marriage, yes, our sex life did substantially decrease. But, yes, we did have sexual relations." (Id. at 1943)

Michael was further asked, "And did your sexual relations during the marriage include using your penis to penetrate Linda's vagina?" "At time, yes." Ms. Doering asked: "When I refer to your penis you're referring to the enlarged clitoral tissue that the doctors testified was erectile tissue that can grow to resemble a small penis, correct?" He answered "correct." "And do you understand when I ask you – that question about did your penis penetrate Linda's vagina you understood that's what I was referring to?" Answer was "yes."

And throughout the rest of my questions we can assume that if I refer to your penis that that is what we're talking about?" Answer, "Correct." (Id. at 1944-45)

> Q. Did you sometimes also use a prosthetic devise during your sexual relations with Linda Kantaras to penetrate the vagina?
> A. Yes.
> Q. When you had sexual relations with Linda Kantaras during the marriage was it mutually gratifying?
> A. Yes.
> Q. Did you ever ask Linda Kantaras to do something of a sexual nature or engage in a particular sexual activity that she refused to do?
> A. No.
>
> Q. Prior to your separation from Linda Kantaras in 1998, to your knowledge, was your sexual status ever a problem in your marriage?"
> A. It was not.

(Id. at 1945)

Michael testified he does not go nude about his house in front of the children and always closes the door if using the bathroom facilities.

He admitted being sensitive about the scars on his chest and it took sometime to take his shirt off in public. He explains the scars, if asked, they resulted from a motorcycle accident. He doesn't say more because he feels he has a right to his privacy. (Id. at 1948)

He doesn't feel he is "hiding" his transsexuality if he doesn't tell everyone he knows because it shouldn't matter.

He does believe it is important to reveal his transsexual status before he has an intimate relationship with a woman, and, he has always done that. Not just on dates, but when he has become serious in a relationship with a woman, he has. (Id. at 1949-50)

Michael admitted in public bathrooms he has to use a stall, rather than a urinal, but that doesn't make him uncomfortable with himself as a man. (Id. at 1952.

During the period of his marriage he has not sought any psychological counseling related to his transsexuality. (Id. at 1953)

Michael testified he rejected any further surgery to make it possible to stand up and urinate with his enlarged clitoris. The infection risks and financial costs make it undesirable. However, he testified, "I, in fact, use a stall but I can urinate while standing up. A little bit more of my bottom might show than the guy standing next to me, but I do, in fact, urinate, while standing and have for quite a few years. (Id. at 1955)

Michael testified his enlarged clitoris might not be a "standard sized penis as everyone wants to call it, but it does function. You have feeling there. You can urinate. And that's why I don't have the problem that everybody seems to be – hung up on that I

don't have a standard size penis. He sees no need for phalloplasty which is expensive beyond his means and it isn't covered by insurance. (Id. at 1956-57)

Moreoever, if there is medical progress down the years for improved phalloplasty he would be foreclosed from considering it if he opted for current phalloplasty.

His external genitalia which he claims is a penis during sexual arousal does become erect. (Id. at 1957)

If Linda Kantaras had any difficulty adjusting to his transsexual status he would have supported her in attempts to seek counseling. Linda did not indicae any difficulties with his transsexualism. (Id. at 1958)

With respect to the children, being a transsexual does not prevent him from being a good parent.

When he is referred to with a female pronoun, it is "extremely painful." It makes him feel that all he has gone through, the surgery and what he has accomplished, means nothing. Otherwise, he feels "I am very secure in who and what I am."

And I would be very happy if people would do what I was taught from a youngster and that's respect someone as you wish to be respected." (Id. at 1959)

Michael was asked what future role does he see for Linda Kantaras and the children? He replied, Linda is the mother of Mathew and Irina and he hopes all can start to behave in a fashion these children deserve, both parents love them and can be active in their lives. "Mathew and Irina love their mom and I would never stop them from experiencing that love. Ever. (Id. at 1960-61)

## CROSS-EXAMINATION OF MICHAEL KANTARAS

## BY MS. CLAUDIA JEAN WHEELER, ESQUIRE

On cross-examination, Michael said when Linda testified she couldn't sleep with him, it was absolutely false. (Id. at 1973)

On the anniversary of their wedding of July 18, 1989, Linda and Michael went out to dinner and Sherry Noodwang babysat with the children. Michael had already left the house a few days before that. Michael received a phone call from Linda asking him to come home, and when he did, and opened the door his belongings were on the floor and she got in "his face" and told him to get the "fuck out."

Before that event, Michael, Linda and Sherry had an intimate talk in the master bedroom where Michael admitted he had "feelings" for Sherry and Sherry said likewise, for Michael. Linda tried to get Sherry to say she had "no feelings" for Michael – but she refused. Linda left the bedroom crying, telling the children their father was leaving home because he loved her "best friend." The children began crying and they opened the bedroom door. They were very upset. (Id. at 1978)

Ms. Wheeler, referring to Petitioner's Composite Exhibit Number 1, Tabs A through L, the motions to hold Linda in contempt for interfering with visitation, Michael admitted the court only found her "technically" in contempt.

Michael admitted he had filed a Domestic Violence Injunction against Linda and that that was dismissed by the court on April 28, 2000. (Id. at 2003)

Michael was asked about the charge of "grand theft" brought against Linda for charging long distance calls to his parents' phone from some third party line but telling the operator to charge his parents' phone number. The amount was between $450 to

$500. The prosecutor decided not to prosecute, but it wasn't at the request of Michael. (Id. at 2010-11)

Michael admitted after filing seven motions for contempt and one domestic violence injunction that Linda has allowed visitation to proceed more smoothly; since April and May 2001. (Id. at 2035)

In regard to his physical sex, Michael was asked by Ms. Wheeler if Linda had a problem with his sex reassignment and no penis. He answered, "Quite the opposite," Linda told him that she viewed him "as nothing but a man" and that probably he was "one of the strongest men she had ever met." She meant his character, not muscles. (Id. at 2042)

**P. Linda's Letter**

Ms. Wheeler inquired about Linda's letter (Pet. Ex. #6) written to him about their sex life and he read a portion into the record, as follows: ". . . I told you not to tell Sherry, but your sexual need to be satisfied had to be done so at any cost you got what I could and would never do for you that was be a woman with a woman which was you." When asked what did Linda mean? He replied he gave the letter to Dr. Dies because that was completely "off the wall." That is the most "fabricated thing" I have ever seen. It was bizarre and completely untrue. (Id. at 2044-45) During their marriage Linda never had a problem with his transsexual status, until he got that letter form Linda saying as such. (Id. at 2056-57)

Michael was directly asked if he performed sex with Linda during the marriage without use of a prosthetic devise? He answered:

> "As any other couple would have sex. We had sex sometimes missionary style with me on top. We had sex

> sometimes with her on top. And, yes the size of my penis may have been small but there was penetration and we both achieved sexual satisfaction."

(Id. at 2058)

Michael clarified that while he could urinate standing up it was in a stall, not at a urinal as he stated before. He had no explanation just how he achieved that.

Michael did admit he had used his enlarged clitoris post-operation for intercourse with other women before he did with Linda. (Id. at 2067)

With Linda it was "either with a prosthetic or with my small penis." (Id. at 2068) In May of 1998, Linda wanted extensive sex for her birthday, "several hours with him in that way."

**Q. Mathew's Personality**

Ms. Wheeler quoted from Dr. Dies' Report about the son, Mathew's personality having "significant problems in self esteem, depression, conflict in social relationships, difficulties with impulse control, limited resources for coping with stress, poor information processing and major problems in both perceiving accurately and reasoning realistically" – yet Michael bought Mathew a BB rifle without discussing it with Linda. Why? Michael replied it was a spur of the moment gift and Michael keeps it at his home and Mathew can't use the gun unless Michael is present. (Id. at 2071-72)

When asked if he loved Irina more than Mathew he replied "absolutely not." He does not favor Irina. (Id. at 2073) He agreed Linda was a greater disciplinarian with the children than he was. But he gave greater attention to helping the children do their homework than Linda. She was indifferent about correcting their homework and would leave it to the teacher. Michael helped them be correct. (Id. at 2075)

In July of 1998 when Linda and Michael separated, the children were attending Anclote Elementary School. In October, Linda transferred them to Gulfside Elementary School. Irina was in first grade and Mathew in third grade. The children finished their school year and Linda again transferred them to Sunray Elementary School for approximately two or three weeks. Linda had no job at Sunray but she did at Gulfside. So, Linda again transferred the children back to Gulfside and enrolled them in the Place Program where she worked. Michael was never consulted about any of these school moves. Besides that, Linda told him she was taking the children "out of state." (Id. at 2079-82) Michael clarified that the move of the children to Sunray Elementary School was the result of redistricting, and not the choice of Linda. Mathew has now moved up to sixth grade and is attending Seven Springs Middle School.

Michael conceded that Linda had good parenting skills when it came to keeping the children clean, clothed and fed and she showed them affection, and included them in activities. (Id. at 2089-90)

Michael conceded Linda has changed her attitude regarding his visitation by following a court ordered summer visitation schedule where he got four (4) weeks, and Linda had the children for four (4) weeks, in May 2001. (Id. at 2125)

Michael was asked once again to narrate what Linda said abut Mathew and Irina when he brought them home from visitation. Linda was standing on the sidewalk between the passenger door and the bed of the truck. The children were gathering their things out of the rear bed of the truck. Linda turned to Mathew and then turned back to look at Michael and said Mathew, "he was a punishment from God; for having sex outside of marriage." Michael was at the rear of the truck helping the children, standing

beside them; when he heard that remark and saw Mathew's face look pained, saddened. (Id. at 2135-37)

The Court inquired, as follows:

> Let me just stop there. Was she in your opinion, talking about the way Mathew acts up, being a difficult child was her punishment or having the child alone was the punishment by God?
>
> THE WITNESS: From what I understood her to say, Your Honor, was Mathew's behavior, the fact that he is sometimes a problem, was the way that God had punished her.
>
> THE COURT: So God was making Mathew act up?
>
> THE WITNESS: Correct.
>
> THE COURT: To punish her?
>
> THE WITNESS: Correct.

About Irina, Linda said that "I was lucky the insemination had worked the first time because she would have never tried again."

Irina had an expression on her face like Mathew's – pain."

Michael said he told Linda not to say such things to the children and she turned and walked away.

He told the children not to feel bad. (Id. at 2133-41)

This concluded Michael Kantaras's testimony.

These litigants have polarized positions to the extreme. Each called a battery of witnesses and they testified after the respective litigants.

The Court recognizes that the medical expert testimony of Drs. Walter Bockting, Ted Huang, and Collier Cole, was presented at the beginning of the trial to facilitate their

busy medical practice and traveling across the nation to appear in this case. Their testimony will follow that of the litigants.

The Court believes a proper understanding of this case requires the testimony of Linda Kantaras to follow the testimony of Petitioner Michael Kantaras. Whereas, in fact, she was called to testify toward the end of the trial and after Michael Kantaras had presented his case and witnesses called on his behalf.

The Respondent Linda Kantaras testified over a period of several days and the Court has consolidated her testimony to eliminate surplusage or repetitious testimony. Even so, Linda's testimony was extensive. To attempt to just summarize her testimony would lose its continuity, since "credibility" is a major part of this trial.

The next series of witnesses were called by Michael Kantaras corroborate his testimony.

## PETITIONER'S WITNESSES

1. Pamela Thomas
2. John Kantaras
3. Irene Kantaras
4. Monica Jordan
5. Diana Lee Barber
6. Sherry Noodwang
7. Jane Blanton
8. Cathy Williams
9. Carol Ciembronowicz
10. Denise White
11. Gail Myers

## FINDINGS OF FACT

## PAMELA THOMAS

Called to the witness stand by Michael Kantaras was Pamela Thomas of West Palm Beach, Florida. She testified about the animosity that Linda displayed toward Sherry Noodwang. She is the sister of Sherry Noodwang (TR 528), the significant other in Michael's marriage.

She was called upon to describe a family gathering on the 4th of July weekend, 1999, held at Sherry's home. Pamela and her two daughters were present, her son, his wife and their two children, as well, her stepmother, stepbrother and his girlfriend.

Linda Kantaras, who was not a guest, arrived at Sherry's home, at the door, Sherry went outside. Pamela said she overheard Linda's voice getting very loud so she also went outside. She asked Linda to leave because she had no business being there upsetting Sherry and the family. Linda after being asked to leave said: "Well, she broke up my family – meaning Sherry. Linda was very upset, very agitated. So she took her sister Sherry by the arm to go back inside the house and said "Linda, please leave." Linda said , "Well, do you know your sister is a lesbian and Michael is a woman?" Pamela had no knowledge or idea that Michael Kantaras had undergone a sex change before this. (TR 529-30)

Pamela was asked if she had the opportunity to see Michael interact with children, and she staed she would spend several days visiting her sister, Sherry, and Michael would spend the afternoons, have lunch or dinner, rent movies to watch, and her and Sherry's children would be present. The children all liked him, he was very witty, funny, relaxed.

On cross-examinaiton by Ms. Wheeler, Esq., Pamela said she was close to her sister, Sherry, and knew her sister was Michael's "significant other" at that time, and knew that Michael was married to Lynda Kantaras.

Attorney Wheeler asked, "It doesn't seem too unusual that a woman would be upset by another woman who she may or may not think had something to do with the break up of a family, does it?" Pamela said, "True." "Actually, that's kind of normal, isn't it?" Correct, she replied.

Over the past three years, Pamela visited Sherry six to seven times. When she visits she would spend the night. The last visit she made Michael was at Sherry's. It was Thanksgiving of 2000. She visited Sherry for four days, and saw Michael six to eight hours over that span of time. Michael's children were not present. Before that visit, she came for Labor Day, 2000, for approximately 2 days with her two daughters, Megan and Audrey. She saw Michael during that visit for probably a couple of hours. Michael's children were not there. She has seen Michael with his children when Linda was present. (TR 539) There was nothing exceptional.

## FINDINGS OF FACT

## JOHN KANTARAS

Mr. Colin Vause, Esq., called John Kantaras to the stand who testified he was the father of Michael Kantaras, "his son." He stated that he was close to the Kantaras children – "those are my grandchildren." (TR 541) They had lived as small children, in his house, along with Linda and Michael. He described the faithfulness of his son, Michael, toward the children.

Following the separation of Michael and Linda in July 1998, he recalled taking groceries, consisting of fish, milk, steaks, hamburger and cereals to the marital home where Linda and the children were living. Michael was living in his parents' home at the time. He took the groceries over to Linda three or four times.

The first time Mr. Kantaras recalled taking the groceries, he saw Linda's car parked in the driveway. He knocked on the door and no one responded. He saw the children, Irina mainly, at the window curtains. He put the groceries in the garage and left.

The second time he delivered groceries, he knocked as before and Linda's car was parked in the driveway. No one responded so he put the groceries on the porch and put an envelope in the mailbox. He saw the children in the window, as before. The envelope contained Linda's weekly check. He said he felt terrible not being able to visit his grandchildren. (TR 544-45)

## FINDINGS OF FACT

## IRENE KANTARAS

Irene Kantaras, 5100 Flora Avenue, Holiday, Florida, the mother of Michael, took the stand. She described the early stage symptoms of transsexualism shown by Michael during his childhood.

She testified about Michael's childhood and how he reacted in a toy store, he went straight to the cowboy and Indians toys. She bought him a cap and guns. She once bought him a doll, named "Thumblelina" for Christmas. He played with it five (5) to ten (10) minutes then threw it to his sister, Cathy. He did not like dolls. Michael she said was a "tomboy," played with boys outside, at baseball. (TR 548)

Michael had two beautiful sisters, she said, "who liked to primp, play with jewelry and makeup." Michael was not interested. The older sister, who enjoyed fixing the girls' hair, got Michael very upset when she tried to practice with his hair. He didn't like all the curls, he wanted only to have a hair cut, real short. She tried to buy beautiful dresses for Michael, the same for his sisters, but Michael had "a habit of passing out on me every time I put dresses on him." (TR 550) He would "hold his breath and black out."

Michael was called "Margo" and his growing up was very hard – he wore slacks to church, not a dress. She has to refer to Michael by the male pronoun. For fifteen (15) years she has called him Michael. The whole family calls him Michael. His feelings are hurt if they call him Margo.

They have lived in Tarpon Springs for twenty (20) years and no one there calls him Margo.

They have lived in three houses over the years, and when they moved into their second house, she recalled, the mother of the boy next door calling Michael, screaming to come out, saying your child is beating up my son. She found out later the boy gave her a flower and a kiss on the cheek. "Michael objected very strongly." Thereafter, they played baseball together and became good friends. (TR 555)

Michael had a younger brother, Tommy, with whom he played with cars. When his older sister and their girlfriends would "play house," and tried to invite Michael, he was never interested. Michael excelled in basketball and track. His brother didn't participate in sports, he "stuck to books." (TR 557)

She assigned chores for the three girls, Helen did the cooking, Cathy the cleaning and Michael was the yard man. He did the planting and cutting the grass.

From the beginning Michael was a different child – "it bothered me that maybe I wasn't doing a good enough job." When Michael was thirteen (13) years old he painted the house, a tri-level home. His father was mostly out of town as a painter of bridges and towers.

At Prom time, at school, they urged him to go, even if it was with a cousin, but he refused. For the graduation pictures, his two sisters wore fur pieces but Michael wore a cowboy shirt and pants for the picture. His mother allowed him to do what he wanted, because that's what Michael was. She thought he would grow "out of it." Then he painted a school for advanced children, volunteering to do it and took a job with a lawn maintenance company. (TR 560)

When she first learned Michael wanted to undergo sex reassignment, it was difficult for her. She had read Kristine Jorgenson's autobiography years ago. She did not

know Michael had seen a documentary on "who am I?" When he told her, "it hurt very deeply." (TR 561) What pleased her was he worked for Albertson's and his two bosses helped him make the change. They transferred Michael to one store in Texas where he got to meet Dr. Cole.

She stated she "sat on the floor" and cried a lot, it took her three or four months "but when I started having sessions with Dr. Cole" he explained to me what was happening. My husband was out of town. I didn't dare tell him anything. I waited to see how things would turn out. And at some point, yes, you accepted it?" "Oh, yes, oh yes." As her son? Yes, I feel that I have been blessed." (TR 563)

"I was blessed with a child before who never gave me a day's problem except for being, you know, out of the ordinary. And, now I'm blessed with a young man who has compassion, honor, integrity. I don't think anything else counts. He has made me very happy. He's been - - I don't know how to explain it. He has made us content. "He's never given us a day to doubt who he is." (TR 564)

On cross-examination by Ms. Wheeler, she said Michael was born with the given name of "Margo" and was called by that name until he went to Texas. He was working in the Albertson's store in lake Charles, Florida, and was transferred to the Albertson's store in Beaumont, Texas, where he was participating in the two year hormone therapy program, living as a man and dressed as a man. His voice started changing and he was known as Michael J. Kantaras. Drs. Cole and Emory she met and they were in charge of the gender treatment program. She flew from Cocoa Beach, Florida, to Houston once a month. She and Michael would then drive to Galveston. (TR 566-69)

Michael did not seek any medical advice in Florida. After reading about the Texas program, he went to Galveston, and underwent a psychiatric test before he entered the program. She testified she did a lot of crying over his decision but eventually "she came to accept it because this is what my son wanted." (TR 574)

## FINDINGS OF FACT

## MONICA JORDAN

Monica Jordan was called to the stand and testified she was friendly with Michael and Linda Kantaras. She was part of a circle of friendship with Linda and Sherry Noodwang. She met Linda at the school PTA meetings where Linda was President of the PTA. Sherry Noodwang was a PTA member. The three of them did things together, bowling, swimming, at the beach or at Sherry's pool. Their families interacted. Sherry and Linda were the best of friends. At times Michael would join them and his children were treated well by Michael. The children respected him, in her opinion. Michael would go fishing with Mathew at the beach. This was during the summer of 1998. Michael and Linda appeared to have a "wonderful relationship" and were doting parents. They seemed to be a normal family unit. Linda told her Michael was a great husband and father. When asked if she knew about Michael's gender reassignment, she said "absolutely not." (TR 656-63)

Linda then confided to her that Michael as "not happy" in their marriage. That was toward the end of the summer of 1998, a few weeks prior to their separation. Linda never said anything to her that was negative about Michael. She recalled one Valentine's Day Michael filled the front yard of their marital home with balloons and ribbons to let Linda know he loved her.

After they separated, Linda told her Sherry and Michael were having an affair. "She was very distraught, very upset" that Sherry and Michael were in love. (TR 663) This was the summer of 1998. After she was confided in by Linda, Monica stated what she, Monica, did after that:

> "Well, I'm a very opinionated person so I guess I kind of proceeded to take over. And I was very upset and I called Sherry on behalf of Linda and my personal feelings on what happened. And I told Sherry that I never wanted to talk to her again. And that – that it was horrible. That it was – I just couldn't tolerate it and how could she do that to her best friend."

(TR 664)

In regard to Sherry and her husband Ron Noodwang, she stated she was in Sherry's home one night when Ron came home. Sherry attempted to introduce her to Ron but he locked himself in the bedroom. Monica stated, from the moment "I met Sherry" she was unhappily married to Ron. There was really no interaction between Sherry and Ron when she was around. (TR 665)

Within a week after Linda told Monica about Michael and Sherry, Linda came over to Monica's house and the following transpired:

> BY COLIN VAUSE, ESQ.
>
> Q. Within the week after Michael and Linda separated, what did Linda tell you about Michael's gender reassignment and please start from the beginning as to how it all came about?
>
> A. Within a week after Linda told me about Sherry and Michael.
>
> Q. Within a week of?
>
> A. Of her telling me that Michael and Sherry were in love and Michael was out of the home she came and told me – I remember I was sleeping on the couch. I was taking a nap. And Linda was at the door.
>
> And she came in and told me – I don't know the exact words that she used, but I definitely absorbed the information that Michael – she told me that Michael used to be Margo. And she explained to me that Michael, you know, used to be a girl and is now a man.

Q. Prior to that day in July of 1998 when Linda Kantaras told you about Michael, had you had any idea that Michael had had a gender reassignment?

A. Absolutely not.

Q. In your view was Michael a man?

A. Absolutely.

Q. On the day that Linda told you did she also show you anything?

A. Yes. Linda did – we went back to her home and in her closet she had some pictures of Michael when Michael – before his surgeries. And she showed me pictures of Michael as Margo, and she showed me after surgery pictures. Not genital pictures, but just of him in shorts and his upper body.

Q. Did Linda tell you why she was informing you of this?

A. If Linda did tell me why, I don't remember the reason why. I just think that Linda was so upset about the events happening that she –

THE COURT: Did the pictures show Michael in just shorts, you say?

THE WITNESS: Yes. Michael – one of pictures of Michael was in the sun sunbathing and he was in shorts with – it was an upper body shot.

THE COURT: What was he wearing on the upper portion of his body clothing?

THE WITNESS: No, sir. His chest was exposed because she wanted to show me the scars that he had when his breasts were removed.

THE COURT: This is after surgery?

THE WITNESS: This was after surgery, sir.

(TR 665-67)

Monica decided to withdraw from having any further contact with Linda because "there was just a series of things, but one of the things was that Linda was very, very upset all the time and her behavior was very irrational to me so I just kind of backed out of the picture." (TR 668)

When asked what she meant by "irrational" she replied: "She was very , very upset that Michael and Sherry were together. And she wasn't going to stop at anything to keep Sherry away from her kids --- the behavior seemed to be getting out of control to me --- I just backed away. It was just too complicated for me." (TR 669) Linda told her she did not want Sherry around her kids at all, period. (TR 669)

On cross-examination by Ms. Wheeler, Esq., Monica Jordan confirmed that in her eyes, Sherry and Linda were the best of friends. Sherry would bring her children over to Linda's house and spend weekends there. On a few occasions she, her children and husband would spend a weekend with their best of friends so she didn't think it unusual for Sherry to spend weekends at Linda's house, especially since Ron and Sherry were separated. (TR 673)

Monica testified she had no conversation with Sherry after she learned about Michael's sexual reassignment, and she cut off her relationship with Sherry after that. (TR 674)

On further questioning if Linda's conduct was so unusual in face of the revelation of Michael's and Sherry's affair, she replied:

> "Unusual to hate Sherry so much? Yes. But to be upset I would assume and I've been through similar things. So, yes, I would assume if you're spurned you would be upset.

> I didn't terminate the friendship because of that. I distanced myself from that because the effect it had on me emotionally and I had a family and children to think about."

(TR 678)

When she went over to Linda's house to see the pictures Linda wanted her to see after learning about Michael's sexual reassignment, about which she said she was "shocked," but she went with Linda not because she was "interested in a weird kind of way," but yes, she was interested, as follows:

> Not interested in a weird kind of way, but, yes, I guess I was interested. I don't think I wanted to believe it as much because Michael is and always will be Michael to me. A man.
>
> So, for her to say that Michael was not a man just put my brain – I just couldn't absorb that information because of who I knew Michael was and Michael was a man and you couldn't tell me different.
>
> I guess the woman that I am, you can't just tell me something, you need to prove it to me and I needed proof in my own mind.
>
> Q And how did you feel about Michael Kantaras after that? Were you still friends with him?
>
> A. In the way that I am still friends with Sherry and Linda, I am acquaintances with Michael. I care about Michael. He's a good person. So I did not have contact with Michael after that, but I didn't have a relationship with any of them.

(TR 682-83)

Monica stated on behalf of Linda, that she also called Ron Noodwang after learning about Sherry and Michael were having an affair, as follows:

Yes, I did call Ron Noodwang at the request of Linda and I spoke about it. And there was a series of events leading up to the fact that I did speak with Ron Noodwang.

Q. But didn't you think it was important for Ron to know that his wife was having an affair?

A. Um, the reason, um, Linda asked me to speak with Ron Noodwang was Linda was in fear for her life because I guess Ron had threatened her because he thought she was having a lesbian relationship with his wife.

Q. Right. Because they spent so much time together, correct?

A. Yes, ma'am.

Q. Did Sherry ever verify that for you?

A. Verify what, ma'am?

Q. That Linda and she had been spending so much time together that her husband actually thought that Linda and Sherry were having an affair?

A. I don't recall if Sherry had ever said anything about it.

Q. Have you ever spoken to Sherry about Michael's sexual reassignment?

A. No.

Q. And you're positive about that or?

A. I'm thinking back over the past and I don't believe – when I separated from everybody, I no longer spoke of it with anybody.

(TR 685-86)

Monica explained how she called Ron Noodwang, to set up a meeting with him to tell him Linda was not having an affair with his wife, Sherry, as follows:

Yes, I called him and we set up a meeting because Linda was very upset. And I remember meeting him because Linda thought he was going to hurt her and we thought that maybe he might hurt Linda.

Q. But you went over there to tell him that Sherry was having an affair with Michael, correct?

A. I don't know that I said that it was an affair. I just think I remembered that I wanted to clarify for Linda that it wasn't Linda and Sherry, it was Sherry and Michael.

Q. Right. So basically whether you were telling him or clarifying it, you were actually sharing that with him, that information?

A. I was sharing information that I knew, yes.

Q. Did Linda drive you there?

A. No.

THE COURT: What caused you to think that you should call Ron and try to assure him –

THE WITNESS: Sir, the reason –

THE COURT: -- that something was not going on between Linda and Sherry?

THE WITNESS: Yes, sir. Linda had called me and told me that Ron had threatened, I believe, her life. I'm not sure. She was very upset by the threats that Ron had made to her.

THE COURT: About what?

THE WITNESS: About he thought that Linda and Sherry were having an affair. That Linda was trying to take Sherry away from him.

THE COURT: That was his belief?

THE WITNESS: That was his belief. His interpretation of what was going on. And he had threatened Linda and

Linda was afraid to confront him because she didn't know what would happen and I said that I would, you know, tell him her side of the story.

THE COURT: So you did?

THE WITNESS: I did, sir, and I do not remember the context – the whole context of the story, but I remember telling him that, you know, Linda and Sherry were not having an affair. That –

THE COURT: That would be as lesbians.

THE WITNESS: Yes, sir. He thought they were.

THE COURT: He did?

THE WITNESS: I believe he did.

THE COURT: All right. Well, do you think he believed you?

THE WITNESS: He's a very intelligent man. He at the time was a homicide detective. I think he absorbed what I told him and he did his own investigation.

He wasn't upset at the time. He just kind of absorbed the facts of the information I was telling him, not that he believed them as facts, but that he was going to – he was going to on his own behalf check into it and he would be calm with Linda until he found out the whole story. That was pretty much what he told me.

THE COURT: All right. What happened in the marriage relationship between Ron and Sherry then?

THE WITNESS: The marriage relationship, as I understood it from the moment I met Sherry, was on the rocks. I don't know the timeframe of events after I separated from them, but eventually they ended up with – in divorce.

THE COURT: They got divorced?

THE WITNESS: Yes, sir.

(TR 688-91)

## FINDINGS OF FACT

## MONICA JORDAN

Monica Jordan was recalled to the stand by Mr. Vause, Esq., to give her testimony about meeting Linda Kantaras at her home in July 1998. This was with reference to sexual relations between Linda and Michael Kantaras. She testified as follows:

> Q. Ms. Jordan, you've testified previously about a meeting that you had with Linda Kantaras at her home in July of 1998?
>
> A. Yes.
>
> Q. I'm going to ask you to describe a conversation you had with Linda Kantaras regarding sexual relations between her and Michael Kantaras.
>
> Would you please describe, with as much detail as you can, how the conversation came up and what was said by Linda Kantaras?
>
> A. Um, I believe that I asked Linda how she would have sexual relations with Michael, given the information that she had given me about his genitalia.
>
> And she told me that Michael did have an extended clitoris and –
>
> THE COURT: He did?
>
> THE WITNESS: Yeah.
>
> THE COURT: He did or did not?
>
> THE WITNESS: That he did.
>
> THE COURT: He did.
>
> THE WITNESS: That he did have one. And I asked if he, you know, he had a penis and she said, no, but that she referred to that as his penis and they did have sexual contact between them.

Q. Try to state it in the exact terms that Linda used, as best that you can remember.

A. The best that I can remember that they had oral sex and they used a prosthesis to have intercourse with. That Michael would strap it on and they would have intercourse with that.

Q. Were those the exact words that she used?

A. Your want the exact words?

Q. I would like the exact words, if you can remember, that Linda Kantaras used when describing her sex with Michael Kantaras.

A. That they had a vibrator that strapped on and that Michael used it on her and that –

THE COURT: A what? Did you say a vibrator?

THE WITNESS: Yes. It was a strap on dildo.

BY MR. VAUSE:

Q. Did she say how it was used?

A. Just that he strapped it on and used it on her.

Q. Do you recall anything else that she said in regard to the same subject?

A. That she performed blowjobs on him. Those are the words she used, so I'm repeating the words that she used even though they make me uncomfortable.

And I asked how could she say that that's what it was? She said that's because she saw Michael as a male and that was his penis and that's what she did. And that was just the extent of it. It was just that one conversation at the time she was telling me everything that was happening.

## FINDINGS OF FACT

## DIANA LEE BARBER

Mr. Vause, Esq., called Diana Lee Barber to the stand. She was requested to direct her attention to the period of November to December 1998, and she testified she received a phone call from Linda Kantaras. She recognized Linda's voice and Linda also identified herself on the phone. She was asked, "What did Linda tell you?" She answered:

> She told me that Sherry was a lesbian and Michael was a female and that I shouldn't have neither one of them around my children. (TR 757)

> Q. Before that phone call did you have any idea about Michael Kantaras' gender reassignment?
>
> A. No.
>
> Q. Did you respond to Linda Kantaras?
>
> A. I told her that she shouldn't be so bitter and that she should go on with her life and my husband took the phone from me and told her the same thinG and hung up…. and not to call again.

She testified she was aware that Linda and Michael had been separated several months by that time.

> Q. Did she say anything about Michael and your kids?
>
> A. She said that she was taking Mathew to a psychiatrist or a doctor because she thinks that Michael might have done something to the child. And, that my kids would not be safe around him - - - or Sherry." (TR 758)
>
> THE COURT: I want to clarify something. Did she definitely say to you that Michael had done something sexual to Mathew?

A. Yes.

THE COURT: In that fashion?

A. Yes.

On cross-examination Ms. Wheeler, Esq., asked the witness, was it November or December 1998 she received the phone call? She replied:

A. I can't be exact.

Q. And after you got off the phone with Linda Kantaras, who did you report this to?

A. I called Sherry and told her.

Q. So are you and Sherry best of friends --- do you have a relationship with Sherry, a friendship"

A. We are friends, yes.

Q. Would you say she's one of your best friends?

A. At that time, yes.

Q. Were you subpoenaed here today?

A. Yes, I was.

Q. Are you one of Sherry's best friends now?

A. No.

Q. Prior to that phone call how long had it been since you talked to Linda Kantaras?

A. A few months. (TR 760-61)

Q. Where did you talk to her?

A. At church.

The witness was asked, if she goes to the church that Linda attends. She said, "No it was a different church." Linda invited her to a Bible study. She attended twice.

She recalled the first time she met Linda, was with Sherry, at a mall, in 1997. She got her hair cut at the mall and the three of them ate at the food court. They didn't bring their children. Later, Sherry told her about Linda's separation from Michael. When asked if she had any doubt about it being Linda on the phone, and she replied: "no doubt." (TR 769)

> THE COURT: I'm curious to know why your husband took the phone out of your hand while you were talking to Linda?
>
> A. Because she was being irrational.
>
> THE COURT: How did he know?
>
> A. Because he was listening to me speaking to her and she kept repeating things.
>
> * * *
>
> THE COURT: He was listening while you were listening?
>
> A. No. He was standing next to me as I was talking to her and he was overhearing the conversation. And then he took the phone and was talking to her and then asked her not to call back.
>
> THE COURT: He did talk to Linda at the same time?
>
> A. Yes.
>
> THE COURT: Then he hung the phone up?
>
> A. Yes.

(TR 771-72)

## FINDINGS OF FACT

## SHERRY NOODWANG

Petitioner called Sherry Noodwang to the stand. The testimony of Sherry presented the history of her relationship with Linda Kantaras and the ultimate "break" between them over Michael. This was a critical phase in the trial. She testified she met Linda Kantaras some time in the Spring of 1997, their children went to the same elementary school and they became friends. They were both elected to the PTA and they went to a PTA convention the summer of 1997. They planned projects together for the following school year. Linda was President and she was Vice President. They planned board meetings and parent meetings and other projects for the school. They joined Weight Watchers in January 1998 and attended Bible study classes on Tuesday afternoons in the summer of 1998. As such, they became good friends. Linda, in her opinion, was outspoken and took charge of whatever project that they had going. She admired Linda for these reasons. (TR 1497) Linda was secure in herself and was a leader of the pack. When asked if Linda was "not really very smart, unsophisticated and naïve," she replied, "No, not at all."

In May 1997, Sherry met Michael at a school field day trip where she, her husband Ron, Linda and Michael, all volunteered.

Sherry and Ron have three daughters, ages eleven, sixteen and fourteen. During this period Sherry testified her marriage with Ron Noodwang was very unhappy, leading eventually to a divorce. She told Linda in July 1998 when she started talking to a divorce lawyer, about filing for a divorce after fifteen (15) years of marriage. She tried counseling to save her marriage, knowing the impact on her daughters of having a broken

home. She struggled over the years with that worry. But there was tension and strife in her home, and she was a failure in Ron's eyes.

In the beginning of '98, she and Linda started spending more time together, working on school projects at each of their homes or other PTA members' homes. Their children started having time out together, they shared pizza meals, and got along "good." Michael got off work in time to help Linda pick up the children after school and be at home with them all. Her husband Ron would be at work as a police detective in St. Petersburg, and got home late. He did not socialize with the Kantaras family. Ron said he cold not understand how Sherry could be friends with Linda. He generally didn't like any of Sherry's friends, or her being on the PTA, or her being around her own family. (TR 1513) He always found reasons to criticize her friends, and punished her if she kept her friends. (TR 1515) Linda became her "best" friend during the summer of '98.

She would spend the night at the Kantaras house, with her own daughters, and they all slept on the family room floor.

Sherry's older daughters at times spent time in Tennessee at her sister's house during the summer.

So when Sherry would "sleep over" with whichever of her daughters were at home, they slept on the floor at Linda's house while Linda and Michael slept together in their bedroom. Linda once, she could remember, stayed overnight at her house, with Linda's children, too.

When Sherry started her divorce proceedings in July of '98, Michael asked her if it was "true" since he heard it from Linda.

Sherry was asked: "Did Linda Kantaras ever talk to you about her relationship with Michael? She replied, "not very personal at first but I remember one time she commented to me that Michael was not very affectionate with her." I questioned her, they would hold hands, she would play with his hair in the car. Linda said:

> "No, I mean, he doesn't want to have sex with me as often as I would prefer."

(TR 1521)

Sherry said, I find that hard to believe because he seems like just a compassionate person about everything, his religion, his being Greek, his family – just everything." Linda replied:

> "Well, he was very passionate in the beginning, but now I feel like I have to beg him - - - and its really hard, but when they are finally together that she feels its as if they truly are one and that they're really soul mates." - - - When Michael makes love to me I feel as if we're truly one and I know we're soul mates."

(TR 1522)

Sherry clarified, Linda said in the beginning of their marriage "we were all over each other. I understood that to mean, you know, sex."

Sherry testified about a planned boat trip on Monica's boat with Monica's family, Sherry's family and Linda's family. This was in July '98. Getting ready at her house, Sherry said she and Ron got into an argument, she left her house and went to Linda's house. When she arrived she found Linda on the phone talking to her ex-husband Ron. So she took the phone from Linda, who was very upset, and told Ron to leave Linda alone. Sherry explained that Ron was unhappy with the planned family boat trip with Monica and her husband. Ron said on the phone, to Sherry: "I'm sick of that woman.

She's trying to break up our marriage. She does not want you to be married to me. I hate her." (TR 1526) Michael arrived home and he got on the phone with Ron because Linda asked him to. Michael, Linda and Sherry decided not to go on Monica's boat trip because of something Ron said, they were afraid. So they went to Michael's sister's house rather than stay at Linda's or go to Sherry's for fear Ron would cause a scene in front of the children. He threatened Linda. (TR 1531)

In July of 1998, Sherry went over to Linda's house to retrieve her migraine medicine she left there. Linda asked if she would follow Michael's truck to his parent's house to drop off a lawn mower and then follow him to a mechanic's shop. Then to take Michael back to his parent's house. On that portion of the trip to his parent's house, Michael asked her if he could talk to her for a few minutes --- "I need to talk to you about something serious." He said:

> "You know, I don't want to upset you, but I need to talk to you about something serious. I said, Well, what's wrong? And he said, I want to talk to you about something that I think you might feel the same way.
>
> And he said that he was starting to have feelings for me and he felt that I might be having feelings for him. And –
>
> Q. How did you respond to that?
>
> A. I started crying immediately. I started crying. And he said, you know, I'm sorry, Sherry. I'm sorry, Sherry. I didn't mean to upset you. And I said, you know, what do you expect me to do now that you've told me that?
>
> And he said, Nothing, I just had to tell you. I just felt like I had to tell you. And I said, You know, Michael, I can't deal with this and what it could

mean. I cold not be responsible for breaking up a marriage.

And he said, I'm not asking you to break up my marriage. That's not what I'm saying. I just wanted to share with you. And I said, Michael, I am going to concentrate on my divorce and you deal with your marriage. And I don't want to deal with this at all. And he agreed. And I let him – he got out of the van and I drove home crying.

Q. So what did you and Michael ultimately decided to do about these feelings? Well, let me ask you this: Did you also have feelings for Michael?

A. Yes.

Q. And what did you and Michael decide to do about these mutual feelings you had for each other?

A. Nothing. I was going to go through with my divorce and he was going to continue the relationship he had with Linda.

Q. Prior to this conversation that you had with Michael, had you ever told anyone about these feelings that you had for Michael?

A. Never.

Q. Prior to this conversation, had you ever acted on your feelings towards Michael?

A. Never.

Q. Had you ever tried to kiss him?

A. Never.

Q. Tried to, you know, make a pass at him?

A. Never.

Q. Prior to this conversation, had you ever made any negative comments about Linda Kantaras to Michael Kantaras?

A. Never.

Q. Prior to this conversation, did you ever say or do anything that was intended to cause Michael to leave or divorce Linda Kantaras?

A. Never.

Q. Prior to this conversation, did you ever do or say anything that was intended to cause Linda to leave Michael?

A. Never.

Q. If Michael had not initiated this conversation with you, did you have any intention of ever revealing or acting on your feelings towards Michael?

A. No.

(TR 1534-37)

Sherry testified after this event, she did not initiate any conversation with Linda "about the fact that you and Michael had these feelings for each other?" She said, Linda asked her. It was July 16, 1998, the first day of the PTA convention. Sherry's mother dropped her off at Linda's house while driving out of town to Tennessee. She and Linda would go to the convention together, and when she arrived, the following took place:

> "[W]hen I came into the house Linda asked me if she could speak to me for a minute before we left and I said, of course. And she said, I want to ask you something. I want you to be perfectly honest with me. And I want you to know that I will not be mad at you. I won't hate you. I just want to know the truth. I won't blame you.
>
> And I said, Okay. And she said, Do you have feelings for Michael? And I sat down in the rocker in their garage and started crying. And she said, Sherry, Michael told me this morning that he has feelings for you and that you told him that you have feelings for him.

> And I said, Yes, I did tell him that. And I started apologizing profusely, you know, telling her I'll leave. I'll call my mom to come back and get me. I won't – I will stay away from you. I don't blame you if you hate me.
>
> She said, No, I don't hate you. I don't hate you at all. You are my friend. This is Michael's problem. I told him it's his fault, you're vulnerable right now. I don't hate you.
>
> THE COURT: Did Linda say she was going to hate you now?
>
> A. No, she said she would not hate me.
>
> THE COURT: She said she would not hate you?
>
> A. Would not blame me, would not hate me, that it was Michael's fault. He took advantage of me. I'm so vulnerable.

(TR 1538-39)

Linda and Sherry went to the convention together, picking up Monica Jordan on the way. During the convention, Linda asked her "If I would please when we got home tell Michael that I had no feelings for him." That I would not choose to be with him. I was going to choose "my friendship with her." And, I told her I would." And, when we got home, she said, she asked Michael and I "to follow her into the bedroom." And Linda said:

> "Michael, Sherry wants to tell you something. And I told Michael that "Michael, I've told Linda that as long as she wants to work on her marriage with you that I will choose my friendship with her over pursuing a relationship with you."

Linda, she said, "got mad at me" because:

> "She wanted me to tell him that I had no feelings for him. She said, Why didn't you tell him you have no feelings for him. I just sat there. He looked at me and he said, Is that true? Did you lie to me? Do you not have any feelings? I got up and walked out of the room, never answered his question and went home."

(TR 1540-41)

The next day, July 17th, Linda, Monica and she went together to the convention. After the convention and on the drive home, Linda asked Sherry if she would baby-sit her children because she and Michael were going to go out and discuss their marriage. Sherry agreed and Michael and Linda were gone a couple of hours. When they came back Linda was "crying and very happy" because she said, "Sherry, you know, Michael said all the right things and he has agreed to go to counseling." Sherry said, "That's great," and offered to go home then. Linda said, "No, you do not have to go home. You're still my friend." Linda then added:

> "Michael knows that if you're over he's to go to the bedroom, not to be out when we're here. He's not going to the beach with us. He's not going to the movies with us. When you're around he's going to stay away. I said okay."

(TR 1543) They ordered pizza, then Sherry went home.

The next day, July 18th, was the last day of the convention. All three, Linda, Sherry and Monica went together. After the convention ended, Monica and Sherry dropped Linda off at her house, it was Linda and Michael's anniversary. Linda asked Sherry to return later to baby-sit while Linda and Michael would go out for dinner and to the movies. Linda and Michael, after dinner, rented a move and came back home. Sherry then offered to leave and got up to go. Linda said for her to stay. She did, they watched movies together. Sherry stayed overnight, sleeping in the family room with

Mathew and her youngest daughter. However, earlier that evening, she and Linda, went to the store to buy some personal things and Sherry began apologizing over and over. Linda said "Sherry, it's over, I don't want to talk about it. I do not want you to bring this up again. It's over." (TR 1545-47)

The next morning when she woke up she heard Linda talking to Michael on the phone for a long time. When it ended, Linda was crying. She said, "Sherry I need to ask you something. Please be honest with me. I said I will." Linda then asked, "Are you planning on being with Michael?" Sherry said "no," I'm getting a divorce. You and Michael are working on your relationship." Linda said:

> "Do you love Michael. And I said, Linda, I don't know if I love him. I love a lot about him, but right now all I know for sure is that I'm divorcing my husband. And she said, if I decide or if for some reason Michael and I cannot make our marriage work, will you be with Michael? And I said, Linda, I'm not going to lie to you. I cannot promise you that if one day in the future you and Michael are not together that I will not be with him. And she said, Then you realize I will not be able to be your friend anymore, and, I said, of course. I wouldn't expect you to be my friend anymore."

(TR 1550-51)

That day, they remained friends, they took their children to the beach to go swimming.

Later, Linda, Sherry and Monica were to bring their children over to Sherry's house to go swimming in her club house pool. About 10:00 a.m. that day, Monica called and told me "Linda just informed her that she had caught Michael and Sherry in bed together." Monica said, "she felt I was 'despicable' – how could I do that to my best friend." Sherry told Monica it wasn't true, that never happened. Monica replied, "I don't

even want to hear your side of the story. Linda wants me to tell you that she will never have anything to do with you again --- I don't ever want to see you again or talk to you and neither does Linda." She hung up.

Sherry was asked, "was there any situation where you and Michael were in bed together?" Sherry said "never." After Monica called, she felt "pain --- I couldn't understand why she would lie about catching us in bed." She was scared --- never had been in a situation like that before. She called Michael to inform him what happened. He was "shocked."

Denise White then arrived at Sherry's home and she told Denise what happened. Sherry said she herself spent the day in shock.

Michael called late that afternoon to tell Sherry when he got home all his belongings were packed in the living room and Linda "told him to leave." (TR 1556) She said to Michael, "I thought you guys were going to counseling and work on your marriage." He said, well apparently "she changed her mind." Sherry's husband, Ron, came home early, telling her Monica Jordan came to meet him and told him the same story that Linda told Monica. Ron asked if it was true, and she said, "no" that's not true, but, yes, I do have feelings for Michael." He said, "Is that why you're leaving me, filing for divorce?" Sherry said no, then the following transpired:

> "I said, No, Ron, you know why I'm filing for divorce. He said, No, we had a perfectly happy marriage. And I said, I don't know who you've been married to, but it's not been perfectly happy.
>
> And he became extremely irate. Began throwing my belongings on the front yard. Told me I needed to call my mother to come get me. And I did because I did not want my children, my middle

daughter was back home from Tennessee by that time, I did not want them to see that.

Q. Were you afraid?

A. Well, I don't – I was just afraid and shocked. I just did not want them to see that kind of behavior, their father throwing my stuff on the front yard.

(TR 1557)

Sherry testified from the time Michael first told her he had feelings for her until Linda threw him out of the house, they never met privately outside the presence of Linda. (TR 1559) They did not start dating that July '98 – it was too chaotic. In September or October they went to lunch a couple of times, and in December went to a Christmas Party of his employer. After this time they started dating. She was separated from Ron and the divorce was taking place. She and Michael only talked by phone. Her daughters were living at home with her, and Michael was living with his parents. Linda had the children in the marital home.

At the time of this trial, and since December '98, they are in a romantic relationship. She testified "she loved Michael" and believes he loves her.

In this interval of time Sherry never met with Linda but Linda phoned her several times, saying "how could she hurt her children this way --- and if I really cared about her children I would make Michael go back to her." Sherry said, "she told Linda how sorry she was hurting her but she couldn't force Michael – if he wanted to go back to her that's his choice." There were usually some obscenities expressed by Linda. Linda said, "You better make sure Michael tells you his dirty little secret." -- she had no idea what that meant. She had no idea of Michael's sex reassignment. Then Michael called and wanted

to talk about something "very personal" before Linda told her. The following event took place talking to Michael sitting in his truck in a grocery parking lot.

> [W]e agreed to meet at – I believe it was like a grocery store parking lot, somewhere between my house and his job. And he – actually, I believe I got into his truck and he said, Sherry, I need to tell you something very important about my past.
>
> And I said, Michael, I don't care about your past, you know, there is nothing you could tell me that would change how I feel about you. He said, Well, I need to tell you this.
>
> And I said, Michael, did you kill somebody? He said, No. And I said, Did you rape somebody? And he said, No. I said, Then I don't care, you know, I don't need to know anything about your past.
>
> He said, Well, this I need to share with you. And I said, Okay. And he informed me – he said that when he was born, he was born with a disorder called gender identity disorder, asked me if I knew what that was and I said no.
>
> He explained it that you're born one sex in the body of a different sex. And I said, Okay. And I said, Is that what happened to you? And he said, Yes. And I'm like, Okay, Michael, you know, now you can tell me the truth, because I don't believe you.
>
> He said, No, I'm telling you, I spent the first 23 years of my life having to live in a female body. And I said, Are you serious? There is no way. There is no way. And he said, No, I am telling you the truth.
>
> And I said, you know, Well, what do you mean you spent the first 23 years? He said, Well, when I was able to have the surgery done, then I – he told me he had seen a program on TV about a clinic in Texas and he – as soon as he could raise enough money, he had the surgeries needed to have gender surgery. And I asked him if –

THE COURT: To have gender what?

A. Surgery.

THE COURT: Gender surgery. All right.

A. I – you know, I asked him what that meant, what it entailed. And he explained to me, you know, that he had chest surgery and a hysterectomy.

And I asked him, I said, you know, Then where did Matthew and Irina come from? And he told me that Linda had been pregnant prior to the marriage with Matthew and that his brother had donated sperm so that Irina could be here.

And I asked him, you know – well, I said, Does Linda know? Well, of course she knows, you know. And he said, Yeah. And I said, Did she know before she married you? And he said, Yes.

And I said, you know, Did you have this surgery before you met her, or after? And he said, I had it before I met her, then we became friends.

And I looked at him and I said, So she knew about it? And he said, Yes. And I said, Then why is she referring to it as your dirty little secret, if she knew about it? He said, I don't know.

I asked him again if he was telling me the truth and he said he was. And I told him it did not change how I felt abut him and I left and went home.

(TR 1568-71)

Sherry was asked if this conversation changed the way she thought about him and she replied, "Oh, not at all. I was shocked, because if anybody spends any time with Michael, you would know that it is the furthest thing possible you would ever dream, but it did not change how I felt about him." (TR 1571) She told her daughters that Michael had sex reassignment, in the Spring of '99. The daughters were ages 9, 11, and 13. She

told them because Ron kept referring to Michael as an "it," a "woman" he would ask what is that "woman doing" and greet us when together as "hello ladies." He asked the daughters "how do you feel about your mother being a 'lesbian.'" (TR 1573) Her divorce was stared in July of 1998 and concluded March 18, 2000. There was no attempt at reconciliation. Ron found out about Michael's sex change, but not through her.

Sherry testified her daughters knowing about the sex change of Michael doesn't change their feelings, they love Michael, and to them Michael is a man. And, they know about Sherry and Michael's romantic relationship. (1580-81) They are positive in their view of it. Michael is living with his parents at this time. Sherry said he would spend three to five days per week as an average at her house. When he has visitation he brings his children too and they all spend the night. She and Michael do not sleep together. The children all sleep about the house, and she might sleep with the children, but never with Michael. The children have known each other for years, starting back to 1997.

Michael's four weeks of visitation during the school summer vacation, was spent entirely at her house. The children all understand Sherry and Michael plan to marry. The children figured out they may end up being step-brothers and step-sisters.

Ron, has liberal visitation with his daughters and he comes when Michael is present, as he did during the four weeks visitation. His attitude toward Michael has not changed and Sherry tells her daughters to ignore any remarks Ron makes about Michael's gender because it make the children very angry. (TR 1596-1601) Sherry and Michael have no set plans about marrying. It could be delayed years. (TR 1603) Sherry was asked if Michael is a positive role model for her children? She replied "any child." Sherry has had no previous contact with a transsexual.

This concluded Sherry Noodwang's direct testimony.

## FINDINGS OF FACT

## JANE BLANTON

Mr. Vause, Esq., called Jane Blanton to the stand who testified she works at Sam's Club in the bakery department as a cake decorator. She has known Michael Kantaras for four (4) years. He is the bakery manager and she works under this supervision. Michael also manages the pizza café and all together he supervises seventeen (17) employees, six (6) of whom are men. At work, Michael is a man and always acts like a man.

She knows Linda Kantaras and has spoken to her four to seven times on the phone. She recalled a call from Linda for Michael. She gave the call to Michael who put it on the speaker earphone, it was about four (4) years ago. Linda she overheard, was "really mad" and accused him of having relations with the bakery female employees. Linda said:

> "I know you're having f-----g relationships with the female employees in the bakery department."

(TR 1659)

Jane Blanton testified she saw Michael at times bring his children to work, that Irina would put on a bakery apron pretending to work and Mathew would put on Michael's baker hat.

This concluded her testimony.

## FINDINGS OF FACT

## CATHY WILLIAMS

Mr. Vause, Esq., called Cathy Williams to the stand who works at Sam's Club and has known Michael Kantaras for seven and one-half (7 ½) years and worked for four and one-half (4 ½) years under his supervision. Michael is of the male gender. At work, everyone knows him as a male. As a manager, he is very fair, a people person, very conscientious, a very big heart. Michael was in charge of doing the annual inventory of five (5) to six (6) million dollars worth of merchandise. At times Michael was assigned as Manager of Sam's Club, when the General Manager was out of town at company meetings.

She saw Linda, Michael and their children at various fundraiser cookouts. She observed Michael with his children and he was very considerate, the kid's best friend. Michael is very polite to his female employees, a gentleman, no flirting. (TR 1666-67)

On cross-examination by Ms. Wheeler, Esq., Cathy Williams testified she observed Michael with the children mostly at Sam's Club or functions where many employees and people were present. She walked about the Club with Michael and the children for fifteen (15) to thirty (30) minutes during her lunch break. Those were the times she observed the children. (TR 1668)

This concluded the testimony of Cathy Williams.

## FINDINGS OF FACT

## CAROL CIEMBRONOWICZ

Mr. Vause, Esq., called Carol Ciembronowicz to the stand and directed her attention to the period of time in 1994 to 1995 when she spent time visiting the Kantaras household. Carol was one of the persons present in the hospital birthing room when Mathew was born. She was living in Melbourne, Florida, at that time. She would drive across the state for visits with Michael and Linda in Holiday, Pasco County, Florida, spending the weekend. She did this ever six weeks, or so, or every couple of months. She would arrive on a Friday and leave on Sunday. While visiting, she and Linda would go to the beach, shopping or visit the sponge docks, taking the children along. Michael, if off work, would go along. They would play games, go roller skating or ride bicycles with Michael.

When Michael would come home from work she saw the children run up to Michael and give him a hug. They had a good relationship and Irina was "Daddy's little girl," she was always sitting in his lap and wanted to be with him. Mathew was more difficult, sometimes, but his relationship with Michael was "good." (TR 3148-49)

Mathew was always affectionate, he would hug both Linda and Michael. This was true from '94 through '98. (TR 3150) When watching TV as a family Mathew would sit next to his father.

When Mathew would "mouth off" to his mother and Michael was at work, Linda would slap Mathew in the face, not hard, but he would cry. She would send him to his room with a warning "wait until your father gets home" and that would usually calm

Mathew down. When Michael got home and Linda would tell him Mathew was "acting up." Michael would take Mathew into the bedroom and "talk to him."

She testified over the three years of observation of Michael with the children, he did not show that he loved Irina more than Mathew.

She was asked if Michael was a controlling husband and she replied, "no."

When she stayed overnight she slept on the couch and Michael and Linda slept in their bedroom.

Linda drove her own car during this period, had a license to drive and actually did the driving when they went out together, because Linda knew the area. (TR 3156)

When Carol was asked, did "they give a lot of affection to one another?" She replied:

"Sometimes she would go up to him and pinch his cheek and say you're so cute." (TR 3156) They would hug and kiss," and they would say to each other they loved the other. (TR 3157) Michael bought Linda different necklaces, jewelry and clothes. She had a lot of jewelry.

Carol saw Linda bathe Irina while Michael would bathe Mathew, and they would each put the children's pajamas on. She saw that a lot of times. (TR 3158)

> Q. Have you ever talked to Linda about her sexual relations with Michael Kantaras?
>
> A. I don't know specifically, but I know she told me they had a good sex life.

On cross-examination, Ms. Wheeler, Esq., asked Carol if she visited in the home on Jupiter Street and Carol replied there and the new home too.

Michael was her boss at work. They were good friends.

Michael and Linda never shared with her that Michael "had sexual reassignment surgery." If she had known that, she was asked "would you have then inquired further into Linda's sex life?" She replied, "no."

Q. Well, did you know whether or not Mr. Kantaras had a penis when she said they had a great six life?

A. No, I did not. (TR 3162)

She testified when Michael and Linda moved out of the Jupiter Street house to their marital home she helped them move and visited in the new home, three or four times.

They seemed to be a "loving couple," they had "little spats" but not serious.

Q. Did you ever have any indication that Michael was not a man that had been born a man?

A. No.

Q. Okay, when did you find out?

A. Michael called me about two years ago --- because he said this was all coming out in the open.

Q. But while you worked with Michael it didn't come out, did it?

A. No.

Q. Do you believe that anybody that you worked with knew?

A. No.

## FINDINGS OF FACT

## DENISE WHITE

Denise White testified she knew Linda for six or seven years, that they were friends but had a "falling out." She testified that Linda, Sherry and herself were having lunch at a Subway Shop about '96 or '97 and the subject of sex was discussed. Linda said about having sex with Michael Kantaras "that she used to like to give Michael blowjobs and that he said she gave the best blowjobs." She was not at that time aware of Michael's transsexualism. (TR 3345-46)

Subsequent to this event, in September of '98, Linda came to her house. This was after Linda and Michael had separated on July 18, 1998. Denise White described the visit by Linda as follows:

> Q. Did Linda Kantaras come to your home on that day?
>
> A. Yes, she did.
>
> Q. Would you please describe what happened?
>
> A. She told me that she had something to tell me and that I should sit down, so I did. And at that time she told me that Michael was a woman.
>
> Q. What was your response?
>
> A. I was kind of shocked. And I thought she was making it up at first.
>
> Q. What was her demeanor?
>
> A. She was very cold, very – she seemed angry. She sat with her arms crossed. She was not the same Linda that I knew.
>
> Q. What was your response when she said Michael was a woman?

A. I asked her how did they have children and, you know, how did they have children since if he was a woman how did they have two children. Then she proceeded to tell me that she was pregnant with Matthew before they were married and that Michael adopted Matthew and that Irina was artificially inseminated by Michael's brother and then he later adopted her.

THE COURT: He adopted her too or just Matthew?

THE WITNESS: Matthew and Rina.

BY MR. VAUSE:

Q. Did the discussion about lesbians come up?

A. Yes, it did.

Q. And what was said and by whom?

A. She was saying that Sherry was a lesbian because she was with Michael and Michael was really a woman. So I asked her did that make her a lesbian and she said, no, she is not a lesbian, but only Sherry was a lesbian.

Q. What was your response?

A. I basically was trying to figure out the whole thing, still wondering if what she was saying was true because I only met Michael as Michael a man. And she said that when she was with Michael he was a man, but now Sherry is with him and she's a lesbian. I still don't understand that part.

Q. What was discussed about Linda's children at that time?

A. She was telling me that she was going to go to all the news and have it publicized on all the news. She was going to the school to tell everybody. She was going to call Jerry Springer and we were all going to be on Jerry Springer.

And then at that time I asked her, Well, do you want your children to find out this way? She said, They already know.

THE COURT: She was going to tell all the news? Did she say anything about telling anybody at the school?

THE WITNESS: Yes, she did.

BY MR. VAUSE:

Q. What school were Linda Kantaras' children going to at that time?

A. Anclote Elementary.

Q. Did you again discuss any issues about sex with her during that conversation?

A. Yes.

Q. How did that come up?

A. She was – because I still did not believe what she was saying so she told me that Michael did not have a penis and that she had pictures, if I wanted to see. And I said, I did not want to see the pictures. And I asked her I said, Well, then how do you guys do stuff. And she said, He wears a strap-on.

Q. Did you go –

THE COURT: Prosthetic, is that what you're talking about, prosthetic device?

THE WITNESS: Yes.

MR. VAUSE: No further questions, Your Honor.

ON CROSS-EXAMINATION BY MS. WHEELER:

Q. Mrs. White, are you still friends with Mrs. Kantaras?

A. No, I am not.

Q. When was the last time you saw Mr. Kantaras?

A. Probably about a year ago.

Q. Do you still see Sherry?

A. No, I do not.

Q. Okay. When did you – you were friends with Sherry, weren't you?

A. I'm still friends with Sherry.

Q. Are you good friends with Sherry.

A. No, we're just friends.

Q. Okay. And you know Sherry is interested in this case, isn't she?

A. Well, yeah.

Q. She's interested in the outcome of this case, isn't she?

A. Probably.

Q. Probably or yes?

A. Yes.

Q. Okay. Do you know she plans to marry Michael?

A. Yes.

Q. Okay. Let me ask you something, Denise, would you say you are one of her best friends?

A. No.

Q. Okay. Who would you say her best friend is?

A. I don't know.

Q. Okay. Did you used to go to Bible study with Sherry, too?

A. No.

Q. Have you ever gone to church with her?

A. Once.

Q. Church or Bible study during the week?

A. Church.

Q. Okay. When Linda was telling you that she gave Michael blowjobs and it was the best blowjob Michael ever had, at that time did you think that was abnormal for somebody that had a penis to get a blowjob?

A. No.

Q. Were you also speaking about sex?

A. No, I did not.

Q. Okay. Was Sherry speaking about sex?

A. Yes.

Q. Okay. I mean, it wouldn't be your testimony under oath here today that you two were eating at Subway and all of a sudden Linda blurted out that she gave good blowjobs, would it, Mrs. White?

A. What was that?

Q. That you were all just sitting around eating, I assume you were eating – were you eating Subway sandwiches?

A. Yes, we were.

Q. Were you just hanging out at Subway?

A. We were eating.

Q. Eating. So she didn't just blurt out that she was good at giving blowjobs, did she?

A. No.

Q. Okay. What was Sherry saying about sex?

A. I don't remember exactly, but it was to the same topic.

Q. Okay. Well, let me ask you something. Did you take notes?

A. No, I did not.

Q. Okay. Well, how come since you're such good friends with Sherry and you know Sherry is interested in this case you can't remember what Sherry said, but you can quote my client?

A. Because Linda would never talk about anything like that and it kind of shocked me that she would just come out and say stuff.

Q. It was out of character for her, wasn't it?

A. Yes, it was.

## FINDINGS OF FACT

## GAIL MYERS

Mr. Vause, Esq., called Gail Myers to the stand, Mathew's teacher since August 2001. She met Michael Kantaras at a school "open house" about the second week of school. In October 2001, she had a conference with Linda Kantaras, alone, about Michael Kantaras. There was a divorce going on and Michael was "not supposed to pick the children up without permission." We were "not allowed to release the children to Mr. Kantaras"; that Michael was a controlling type and he might "take the children to Greece." (TR 3599) Later, she attended a conference with the assistant principal and a math teacher. Linda Kantaras told them that Mr. Kantaras could pick the children up at 3:00 p.m. on Fridays and that if we released them sooner, because school is out at 3:10 p.m., that the "school would be held liable" or "we would be held liable" if the children were released early. (TR 3600)

Gail Myers has been a teacher since 1966. She had another meeting with Linda on October 12, 200l. Linda discussed placing Mathew in a boy's home because he was "out of control" and this might be the best thing for him.

Gail Myers testified there was a conference on November 29, 2001, with the Assistant Principal, Mr. Kristof; Administrative Assistant Mr. Frato; and a teacher, Mrs. Henzel-Speer, herself, Linda Kantaras and Mathew. This was after a newspaper article reported on the pending divorce of the Kantarases and Michael Kantaras's gender problem. The meeting was about discipline. She said Linda Kantaras wanted Mathew to pay attention, "so she moved his cheeks so that the would look right in her face and listen to what she was saying, that he would behave and follow directions and be respectful."

When asked what's inappropriate about that? She replied, "I wouldn't do that to my child." (TR 3605)

On cross-examinaiton by Ms. Wheeler, Esq., Gail Myers testified the November 29, 2001, conference was called because Linda Kantaras said the school had not addressed "Mathew's discipline problems." When she was asked to describe Mathew's behavior problems, she said – he does "sometimes" have them. He's not "on task" (attention deficit), not focused, falls asleep, disrespectful sometimes, "talks back" but not disrespectfully. Mr. Kantaras was not at the conference. She has met with Linda Kantaras twice in conference but not Michael Kantaras. The conferences are scheduled one day or two days in advance.

She said Mathew is in a special program at school because he has "an academic problem, not a behavior problem." (TR 3618) The program is to get the children interested in school and to get their grades up.

Michael Kantaras requested a conference with her but the appointment was canceled due to the September 11th attack. Michael Kantaras called to reschedule the conference but she was too busy with other parents to set one.

Linda Kantaras told her that Michael Kantaras was "not to attend a parent/teacher conference where Mathew was present." (TR 3624)

This concluded her testimony.

## INTERVIEW OF THE CHILDREN

The court was requested to interview the children, Matthew and Irina separately but Petitioner, Michael Kantaras, requested that Dr. Boone be present while the children are interviewed in the privacy of the judge's chambers. The Respondent, Linda Kantaras, voiced an objection to having Dr. Boone sit in because he is counseling the children at present and the children might feel compromised by Dr. Boone's presence. The court made the following ruling:

> THE COURT: All right. I have indicated I've gone through this many times. I've handled hundreds of divorce cases, not all of them, of course, with custody issues. And I have had multiple times experience of interviewing a child or children separately and alone.
>
> To my knowledge, I'm not aware that any judge has ever had a psychiatrist or psychologist sit in on an interview by the judge due to privacy of the judge's chambers.
>
> I have never had that experience. I do not think it appropriate for Dr. Boone, whom I respect, to sit in on the confidences of this Court and with the children.
>
> I want these children to feel comfortable with me and with me alone. I do not want them and their remarks to me to get beyond the confidential aspects of my chambers.
>
> Whatever the children say to me I will explain to them is in strict confidence, that I am not allowed to disclose what they say to me to any person outside that room.
>
> So, I'm going to acquiesce in the request of the children, but it will be private. And those children will know when they've finished talking to me that my lips will be sealed as well as theirs.
>
> So that's my ruling.

(TR 3528-31)

## FINDINGS OF FACT

## LINDA KANTARAS

Linda Gail Kantaras, Respondent, was called to testify. She was living in the marital home, located at 3525 Umber Road, Holiday, Florida. She has been living in the house for five years. She testified her marriage was irretrievably broken. She and Michael Kantaras, Petitioner, were married on July 18, 1989. They have two children, Mathew Thomas Kantaras, twelve (12) years of age and Irina Leianne Kantaras, ten (10) years of age. (TR 2797-98)

She moved into the marital home at the end of 1996 or the beginning of 1997, after Michael and his father painted the house.

She testified she is seeking "primary physical custody" of the children and if the court grants visitation rights to Michael Kantaras she will obey the court order in that regard. (TR 2799)

She and Michael met in 1988 at the Albertson's store, Holiday, Florida, where they worked together. She had an apartment in Palm Bay, Florida. She was living with John Atkinson at the time. He was the biological father of Mathew. She lived with him for three and one-half years, both in Michigan and Florida. She became interested in Michael at the end of 1988. She said "she would not do anything with Michael, would not date or do anything with Michael, because I lived with John. So I left John to date Michael." She moved into another apartment with a friend and co-worker in Palm Bay. Michael lived in Cocoa Beach, Florida, at that time. (TR 2798)

She lived in her new apartment for about four weeks during which time she pursued a relationship with Michael. They had lunch together and would go over to his

house. She said, Michael knew she had left John in order to pursue a relationship with him. She thought it was a "mutual feeling."

Michael knew John because John would come by Albertson's to visit with her and have lunch together. Michael would see John on those occasions and John's step-mother also worked in the bakery department at Albertson's with her and Michael. She was a cake decorator. John attended an electrician school, his age was twenty-two to twenty-three years and she was eighteen to nineteen years.

Michael was living in a house with his brother in Rockledge, near Cocoa Beach, Florida, forty-five (45) minutes away.

The relationship between Linda and Michael developed, as follows:

> THE COURT: He asked you to date, have lunch with him or what?
>
> A. Yes. It was a mutual feeling that we were attracted to each other.
>
> THE COURT: In other words, are you saying that you had hoped that severing your relations with John would bring you about into some sort of a relationship with Michael?
>
> A. It wasn't my hope, Your Honor, it was my understanding that Michael wanted to date me. So I wouldn't date him while I was living with John. So I moved –
>
> THE COURT: You would not date him while living with John?
>
> A. No, sir, I would not.
>
> THE COURT: He said that to you? In other words, when he wanted to date you, did you tell him back, not while you're living with John?
>
> A. Yes.

THE COURT: So once he became aware that you and John were severing your relationship, that is when he became more involved with you?

A. Only for about two weeks, Your Honor and then he – this was before I – at this time I did not know about Michael's sex change, and he said that I was too young. He said, Linda, I'm sorry, you're too young for me. And me being the type of person –

THE COURT: Meaning to date you?

A. Yes, that's the way I took it. So I just said okay. We still worked together. We still were friends. I mean, I wasn't mad or hate – hatred towards him. I just said okay. Michael would always call me his little girl because I'm nine years younger than him.

THE COURT: When he told you that, how many times had you been dating?

A. Michael? Only about two weeks.

THE COURT: And these dates you said were preliminary to just having lunch?

A. Yes. We had a – we worked together, a lot. And that's really where our friendship began, because we would sometimes be the only ones in bakery at 12 o'clock, midnight, you know, and we would have a chance to talk and become friends. Sometimes during holidays we would stay there for 12, 13 hours together. So really we were both too tired to really do anything else at that time.

BY MS. WHEELER:

Q. So you dated Michael for approximately two weeks or you saw each other for approximately two weeks?
A. Yes.

**A. <u>Michael's Sex</u>**

Q. During this time did Michael tell you about his sexual reassignment surgery?

A. Not during that time, he did not.

Q. During this time had anyone else told you about Michael's sex reassignment surgery?

A. No, they did not.

Q. So after you quit seeing Michael sort of romantically or sort of to try to develop a relationship, what did you do, Mrs. Kantaras?

A. When he told me that I was too young for him, you know, I said okay. I stayed with Judy for about two more weeks –

Q. Who is that, your roommate?

A. Yes. That was the girl that I rented the room with, and the apartment that John had lived in, everything was still in my name, so I just went back to John.

Q. Did John know you were coming back?

A. Yes, he did.

Q. Did John know why you left him?

A. Yes, he did.

Q. So you went back with John and were you pregnant at this time?

A. No, ma'am, I was not.

Q. Could you tell us, when did you get pregnant?

A. Probably 10 or 11 months later I got pregnant. I can't be sure of the exact date, but I didn't live in my apartment. We had moved from my apartment to a house.

Q. Linda, you need to slow down.

A. Okay.

Q. You moved from your apartment to a house with John?

A. Yes, ma'am.

Q. And could you tell us when was Mathew born?

A. June 3rd, 1989.

Q. So could you tell us you got pregnant sometime in 1988?

A. Yeah. I believe it was around October, if you do the nine months.

Q. And were you living with John at that time?

A. Yes.

Q. While you were pregnant with Mathew, did John leave you?

A. Yes, he did.

Q. Could you tell us, where did he go?

A. He went back to Michigan to his mother's house.

Q. Had you met him in Michigan, Linda?

A. Yes.

Q. And was that where he was originally from?

A. Yes, ma'am.

Q. Did you know where his mother's house was?

A. In Michigan?

Q. Yes.

A. Yes, ma'am.

Q. Had you visited in that home before you had moved to Florida?

A. Numerous times.

Q. How long did you and John live together in Michigan, if at all, prior to coming down to Florida?

A. Probably two years.

Q. Okay.

A. In the house where I grew up.

Q. You all lived together in that house?

A. Yes.

Q. He lived with you, too?

A. Yes.

Q. Who else lived in that house?

A. My sister Cheryl and her husband. My mother had moved. Me and my sister lived in that house and took care of it. And Cheryl's husband and then John moved in with us.

THE COURT: Where was your mother?

A. She had moved to Florida the year before I graduated.

THE COURT: And you and your sister, then, occupied the house?

A. Yes, sir.

THE COURT: Except that John then moved in, too?

A. Yes. And my sister's husband lived with us, also. She had a child. My sister that lived with me, I was only 15 at the time, she was 16. Her husband was four years older than her and she had a child.

So we all occupied the house. We all worked and paid for the home. The home was paid for when my father died. I mean, the basic bills.

THE COURT: How old were you then, approximately?

A. I was approximately 15 when John moved in, but I did not have a relationship with him. He moved in just as another person in the house because we had an extra room.

THE COURT: Did he pay rent?

A. Yes, he did.

THE COURT: But you didn't have any romantic relationship?

A. Not at the time that he moved in.

THE COURT: All right.

BY MS. WHEELER:

Q. When did you develop a romantic relationship with John, Linda?

A. Very shortly after, probably eight months after he moved in. I had known him. He was Andy's best friend, so I knew him before he moved in.

Q. He was your brother-in-law's best friend?

A. Yes, ma'am.

Q. So you had known him prior?

A. Yes.

Q. So moving right along, when you were pregnant with Mathew, when you were four months pregnant with Mathew, is that when John left you?

A. Approximately four or five months, yes, ma'am.

Q. Tell this Court where were you living.

A. I was living in my house in Palm Bay, which is by Cocoa Beach in Florida.

Q. Where were you working?

A. Albertson's.

Q. Is that the same Albertson's where Michael was working?

A. Yes.

Q. Did you all continue to be friends?

A. Yes.

Q. Did you take up a relationship again?

A. After John left, yes, we did.

Q. Did you tell him that John had left?

A. Yes.

Q. And what type of relationship did you and Michael develop at that time, Mrs. Kantaras?

A. A stronger friendship than what we had prior together?

Q. Did you start spending more time together?

A. Yes. He would come over for dinner with his niece sometimes, sometimes they would stay the night so that I wasn't alone by myself. Michael was very concerned.

(TR 2807-15)

Linda's pre-natal doctor, Dr. Elmer, had offices forty-five (45) minutes away from Palm Bay and her sister, Cheryl, and her three children (who also lived in Palm Bay) would accompany her on her pre-natal visits to the doctor. Albertson's Insurance

Plan paid for all her pre-natal care, birthing classes and actual delivery of the baby. There were no leftover medical bills for her to pay. She entered the hospital at 3:00 p.m. and delivered at 11:55 p.m. She went home at 7:30 a.m. the next morning, and her two sisters Cheryl and Jamie were at the hospital. Michael drove her home from the hospital, and her two sisters joined them at her house. (TR 2820)

At the birth of Mathew on June 3, 1989, the following were present. "Her mother, Shirley Heel; step-father, Daniel Heel; sister, Jammie Car; her husband, Robert Car; Cheryl Pesha, her husband Andy Pesha; Carol Ciembronowicz; sister Debby Johns-Forsythe, her husband Lee Edward Forsythe, and Michael Kantaras. Lee Edward Forsythe was her brother. (TR 2821-22) She had an eight week maternity leave from Albertson's store in Palm Bay.

**B. <u>Biological Father – John Atkinson</u>**

Linda testified that three weeks after Mathew's birth, John Atkinson, returned to Palm Bay, and the following happened:

A. Three weeks after Mathew's birth.

Q. You've heard some testimony about a physical altercation you had with your sister Cheryl?

A. Yes. That would be Cheryl Pesha.

Q. Could you tell us when did that occur?

A. Three weeks after Mathew was born.

Q. Were you residing with Cheryl at that time or were you residing in your own home?

A. My own home. She lived next door.

Q. So Cheryl was your next-door neighbor?

A. Yes.

Q. What was that physical altercation about?

A. She had – Cheryl had been pretty persistent about John staying active in Mathew's life. I told her it wasn't her choice, it was John's to leave and I did not want my sister Cheryl to force John to be the father of this baby. If he didn't want nothing to do with this baby, that was his choice.

So she – one night she had saw that Michael and I were being interested in each other and we had talked, maybe, about me moving to Lake Mary with him and stuff.

She said, Well, you have got to tell John. You cannot get married to Michael or live with him or anything unless you tell John. And I said, Yes, I could.

So she took it upon herself – I don't know for sure, but she come to my house and said that she had called John and he was coming down to get his child.

Q. And at that time Mathew was three weeks old?

A. Yes, ma'am.

Q. Okay. What had you told her at that time about your intentions with Michael Kantaras, if any?

A. My intention was Michael and I had talked about moving to Lake Mary and possibly getting married. I can't remember if we talked about adoption or not. I didn't want to force John to be Mathew's dad, but John's name is on the original birth certificate because that is Mathew's father. And –

THE COURT: John is on the birth certificate?

A. The original birth certificate, the birth certificate that they mailed to me when I left the hospital. I filled out an application at the hospital the day I was discharged, then they mailed it to me or I picked it

up. And on the original birthing certificate it says John Atkinson is the father of Mathew Thomas Forsyth.

THE COURT: And you told him that as well?

A. John Atkinson?

THE COURT: Yeah. They got the information from you?

A. Yes, I told the nurse, the lady.

THE COURT: And John was now, you were told through your sister, coming to Palm Bay to what? To have his child, see his child?

A. Well, she said get his child. Then, you know, it became later because that startled me. And then it became later just to see him, and maybe get back together with me. And I had told Cheryl that she had overstepped her boundaries and I did not appreciate her calling John and making the whole – like after, you know, now that the baby is born, like I would be with John now just because he's Mathew's father. That is not the case.

THE COURT: Well, you did consider or did you, that John as the natural father had some rights where the baby was concerned?

A. Yes, I knew that. Common knowledge, I knew that he had rights. That's why I put his name on the birth certificate because it's his child.

THE COURT: Well, when he came to see the baby, did you let him see his baby?

**C. <u>Marriage Discussion</u>**

A. No, sir, I did not. I had called Michael Kantaras at work in Lake Mary, and I was crying and I was upset. And he said, what's the matter and I said Cheryl – I can't remember what I said but it probably wasn't very nice because I was mad at my sister. And I said she called John and he is coming here and he wants to see the baby. What do you

want me to do? And Michael said Linda, I need you to make a choice. He said if I'm going to be that baby's father – I mean if I'm going to be the baby – the father of that child, then you need to make that choice, because I do not want John Atkinson involved with Mathew's life if I'm going to be Mathew's dad.

If Mathew is going to call me daddy, then I don't want John to be in the picture too. So you need to make that choice. And you obviously need to make it now.

I don't know if those were his exact words, but Michael was very stern, Your Honor, that if he was going to marry me and raise Mathew as his son, we would not tell anybody that Mathew was adopted. Mathew would not know. He had no intentions of telling Mathew that he was adopted. Michael made it very clear.

THE COURT: That's later on in life?

A. At that point, Your Honor, he made it very clear to me.

THE COURT: All right. Let's just stop right there. And you say that you called Michael to let him know that John was coming?

A. Yes, Your Honor.

THE COURT: Had he proposed to marry you at this time?

A. He did not officially look at me and say Linda, I love you, will you marry me? No. At that time he did not do that. We talked about marriage and we talked about raising Mathew together as husband and wife, with Michael being the dad.

THE COURT: Well, without proposing to you, you're saying you discussed with him the adoption of – of him becoming the adoptive father?

A. No. About marrying Michael, about moving to Lake Mary and being with him. I said I can't

remember if we discussed adoption at that time or not.

THE COURT: But you called him to come and get you?

A. I called him to ask him what he wanted me to do, because John was coming to see Mathew.

THE COURT: Well, it sounds like you already testified that he said at that time –

A. Yeah.

THE COURT: -- if he was going to adopt your child, that he wanted John out of the picture.

A. To be the father. I don't think the word adoption was used, Your Honor. He said the father, if I'm going to be Mathew's father, I can't be a hundred percent sure, but I'm pretty sure –

THE COURT: All right. In the sense of being a married person?

A. Yeah, being married.

THE COURT: Husband and

A. Wife, yeah.

(TR 2824-31)

There was an overnight recess during Linda's testimony, which resumed on the issue of John Atkinson coming to Palm Bay to see his child, as follows:

A. Okay. The conversation consisted of me calling Michael to tell him that John was coming in town, because Michael and I had discussed earlier about me moving in with Michael and marrying Michael and Michael raising Mathew as his own.

So I called Michael to let him know that John was coming, because I knew that Michael did not want John to see the baby or be Mathew's dad. Michael wanted to be Mathew's dad.

Q. Had Michael made that clear to you prior to this phone call?

A. He did not force me. We discussed it and he asked who I thought would be the better father, Michael or John. And I said Michael. Michael was –

THE COURT: You said that to Michael?

A. Yes, sir.

BY MS. WHEELER:

Q. Did you have this conversation on more than one occasion, Mrs. Kantaras?

A. I would say so, during my pregnancy we talked about John as a father and stuff like that. And I'm not saying he's a bad person, he just wasn't responsible.

Q. Okay. It's our understanding from testimony, I believe, by both Mr. Kantaras and possibly even Dr. Dies, that John left you or you left him when you were four months pregnant; is that correct?

A. Yes, that is correct.

Q. Could you please tell this Court, prior to John leaving you, what was your relationship with John? Did you have one or . . .

A. I mean, we lived together. I wasn't in love with him and he knew I wasn't in love with him, but I did live with him.

Q. Well, could you tell this Court why did he leave you?

A. Because he asked me to marry him when he found out I was pregnant and I said no, that I wouldn't marry him because I didn't love him. I loved Michael.

Q. Did the biological father know that you loved Michael Kantaras?

A. Yes, he did.

Q. Okay. Did he get you an engagement ring anyway?

A. Yes. He bought me an engagement ring and a wedding set and everything.

Q. And you still said no?

A. I said no.

Q. Okay. Well, is that why he left you when you were four months pregnant?

A. Yes, because he knew that my heart was with Michael and I wasn't going to live with him no more. I didn't want to have a relationship with John.

Q. Okay. During this time, this time that you were pregnant and up until the time that you were four months pregnant, did you continue to work with Mr. Kantaras at Albertson's?

A. Yes, I worked every day.

Q. Just during that time, could you describe your relationship first and then your feelings for Mr. Kantaras, just during that period while you were pregnant and up until you were four months pregnant? What was your relationship like with Mr. Kantaras?

A. Well, when I went to the doctor and found out I was pregnant, I went to Albertson's to pick up my check and my sister Cheryl was with me. And, um, we walked in the bakery and Cheryl had announced that I was pregnant, my sister Cheryl announced it.

And Michael looked at me and then everyone looked at Michael, because they could tell how we acted that we had feelings for each other. And Michael said, Don't look at me. It's not my kid. So

I felt bad. I felt like I had disappointed Michael, like, I felt very ashamed.

I thought Michael was disappointed in me because he knew I loved him, but then I slept with John and got pregnant by him.

So, I felt ashamed and so then – I don't think I expressed that to Michael, you know, but then, you know, as we talked and stuff and I said, I don't love John. I told Michael that I didn't think John would be a good dad.

(TR 2870-73)

* * *

BY MS. WHEELER:

Q. Why did that hurt your feelings, Mrs. Kantaras.

A. Because it made me feel like I let Michael down. I felt ashamed that he knew that I loved him and that everybody in that bakery saw how strongly I felt about Michael, but I was with John.

Q. Okay. Was your relationship with Michael, was it just a one-way relationship or would you say that it was a two-way relationship at that time?

A. At that time I think that it was a two-way relationship. And I say I think because I – I think that Michael loved me, but I think he was very scared because of who I am. I think he was just – I think he was just scared. I mean, that's what he had said.

THE COURT: What is that word. He was what?

A. Scared. I think he was scared. I think Michael was scared because I had loved him for who he was. I didn't ask him to perform. I didn't ask him to be anybody.

**D. <u>Sex Change</u>**

When he told me he had a sex change, I didn't say, what about this, what about this, what about – I said, I don't care. I said, I don't care.

THE COURT: I would like her to explain what she meant when she said Michael was scared. Now, obviously, he couldn't be scared as a potential father in this matter because she knew – at that time did you know about his –

A. When I was pregnant, yes, Your Honor, I did.

THE COURT: Sex change? He had already told you?

A. I don't mean scared like he was worried about being a dad. I mean scared inside. I can't say what Michael felt, but I'm just saying I think he was scared because I loved him so much.

BY MS. WHEELER:

Q. Could you explain that to the Court, Mrs. Kantaras?

A. Michael's demeanor when I told him I was pregnant was, you know, don't look at me, it is not mine. You know, then it was, you know, shortly after that he didn't talk to me a lot and stuff. So that is where I get that, that he was scared, because he – I think he saw my shame. Like I said, I can't say what he felt or anything like that.

THE COURT: How long did this last where he did not talk to you?

A. Well, I mean, he talked to me in the bakery, but we didn't – we were not friends friends, probably, until John left.

Probably until John left, until I was four months pregnant. I mean, we would talk in the bakery and say, Linda we need to do this. I need donuts or something. But we didn't have a conversation or wouldn't go out to lunch or nothing like that from the time I found out I was pregnant until four months after I was pregnant.

THE COURT: You determined that from the way he acted?

A. Yes, sir.

THE COURT: This went on for four months?

A. Yes, sir, approximately until John left.

THE COURT: Where did John go when he left?

A. Back to his mother's house in Michigan. Actually, his stepdad drove down here to drive him back.

THE COURT: Did John have any brothers or sisters?

A. Yes, he does. He has a brother that I never met. I couldn't even tell you what he looked like, and then he has a sister that I met and knew.

THE COURT: He has one brother and one sister?

A. Yes, sir.

THE COURT: Do you know what the other brother's name is?

A. Michael testified that his name was Chuck. I don't know.

THE COURT: And the sister?

A. Her name is Lori. Lori with an L.

THE COURT: Lori, okay. All right, proceed.

(TR 2874-80)

**E. <u>Michael as Father</u>**

While Linda was pregnant two or three months she went bowling with John Atkinson and Michael Kantaras. Afterwards John returned to Michigan and Michael and Linda became "closer." She and Michael started talking more about the baby. He

wanted to know: "what kind of a role John was going to play. I said, I would not force him to be the father, I would not force John to take responsibility and try to raise Mathew." Michael asked who she thought would be the better father? She replied to him, "Michael."

With respect to John Atkinson, she told Michael that John would be a wonderful playmate for a child, he's not responsible, he can't make decisions or be responsible about paying bills or anything. (TR 2883)

The reason Linda chose Michael as a better father, she explained as follows:

> A. I said Michael would be the better father. I said Michael would be responsible. I would never have to worry about anyone taking care of us or, you know, Mathew not having anything because Michael's a very hard worker.
>
> And at that time he was very compassionate. I hadn't seen him around a lot of children, so I didn't know if he was really good with kids, but he was very compassionate, so I thought he would be.
>
> Q. And this conversation took place before you had the child?
>
> A. Yes, it did.
>
> Q. When did you know you were going to name this child Mathew?
>
> A. The day he was born.

(TR 2884)

Referring back to the time John Atkinson was traveling to Palm Bay to see his son Michael came to drive her to Lake Mary. They stopped at Michael's brother's house in Cocoa Beach. That was Tom Kantaras. Linda said at Tom's apartment that day John phoned her. She didn't speak to John. This is what she heard Michael say on the phone:

Q. Well, you need to tell this Court how it is you know that Michael was talking to John.

A. Because he was talking about the baby and that he wasn't going to let him see the baby and that I had made my choice. He had made his choice when he left when I was four months pregnant.

Q. So there's no doubt in your mind that Michael did talk to John?

A. Oh, yeah. No, there's no doubt.

(TR 2890-91)

Linda had to return to Palm Bay to finally move out of her leased house. Michael drove her there. Cheryl did not come over from her house next door because Linda said she was "upset with her" due to their previous conflict (over John). Baby Mathew was about six (6) weeks old at this time and about two weeks before she and Michael married.

The testimony of Linda Kantaras with respect to her choice to marry Michael Kantaras rather than the biological father of Mathew, namely John Atkinson, was Michael's age maturity of seven years her senior holding down a responsible job as Bakery Manager for Albertson's, which offered her and Mathew a financially secure relationship. The known fact that Michael was a transsexual male was irrelevant.

**F. <u>Adoption</u>**

Linda and Michael consulted an attorney about the adoption before they married. They discussed the adoption between themselves. She told Michael her family was going to insist that John be in Mathew's life – "they are not going to stop." John will come and will want to see his baby. Michael said: "I want to adopt him and I said okay."

She was asked "Did you think that was a good idea?" and she replied, "Yes, I did. At that time I did." There was no wedding date set because "He had not asked me to

marry him yet." (TR 2898) She testified: "We didn't feel it was urgent to get married until the lawyer said it would be better." "That was his legal advice." "We went to the lawyer unmarried to adopt Mathew." She did not tell the lawyer that Michael was a "transsexual." (TR 2899) They were married July 18, 1989, before a Justice of the Peace at City Hall, in Sanford, Florida. The witnesses were Michael's mother, Irine, and his niece, also named Irine, and his sister, Helen. Linda's mother, Shirly Guilo and her step-father, Daniel Guilo, were present.

In regard to the adoption, Linda said they did not get the father, John's consent, they made no effort. She explained, "We didn't want to. I didn't think John would give up Mathew, so I didn't want to pursue that."

The petition for adoption was handled as follows:

"I don't remember exactly what was said, word for word, but I remember saying that I knew where John lived and I knew where he was, but that he also abandoned me when I was pregnant. I made it seem like he just took off and left." (TR 2903)

At the hearing, she said "Michael is Mathew's father in my eyes today and always." That is the way she felt at the hearing.

It was after John called their apartment at Lake Mary, and Michael only spoke to John and it was after that she told Michael her family would not stop pursuing John and his getting involved with the baby.

**G. <u>Sex in Marriage</u>**

On the issue of sex before marriage, Linda was asked the following:

BY MS. WHEELER, ESQ.

Q. Could you tell this Court, Mrs. Kantaras, when you – before you married Mr. Kantaras did you all have sex?

A. No.

Q. During your marriage to Mr. Kantaras, did you have sex?

A. No, ma'am.

Q. Did you attempt to have sex?

A. No, ma'am.

Q. Could you please tell this Court, did you all sleep together in the same bed or on the same couch every night?

A. Not every night, no.

Q. Was there a time in your marriage where you all stopped sleeping together?

A. No, we never started.

Q. Pardon?

A. No. It wasn't started from the beginning.

Q. Well, you need to tell us what that means, Mrs. Kantaras.

A. That means that Michael and I did not share the same bed from day one, and then we had a fight or something and then he didn't no more. It was just – he wanted to watch TV or he had to get up early or late, so he would sleep on the couch. That's how it started.

Q. But it would be your testimony under oath that you've never had sex with Mr. Kantaras?

A. Yes, it would be.

Q. What was your – was it because of you that you didn't –

THE COURT: Let me interrupt a second. I want to make sure we all understand what we are talking about. We recently had an affair in Washington where there was a great dispute about what was meant by sex. So when we are asking her, did she have sex, I'm not so sure when she says no, what we're talking about. No consummation?

MS. WHEELER: Do you want to inquire, Judge, or do you want me to?

THE COURT: I want you to inquire on this subject matter. That's right. Let's not just breeze over it.

BY MS. WHEELER:

Q. Did you ever have any type of sexual relations with Mr. Kantaras?

A. No. I did not have sexual relations. I kissed him, yes, he was my husband for ten years.

Q. Did he ever try to put anything inside of you that was attached to his body and not made by some manufacturer somewhere?

A. No.

Q. So you heard Mr. Kantaras on the stand say that you had sex in the missionary position and you on top, him on top. Is that true, Mrs. Kantaras?

A. No, ma'am, it is not.

Q. Did you ever attempt to have sex with any organ that Mr. Kantaras may or may not have?

A. No.

Q. Please tell me, did you have any conversations about having sex with Mr. Kantaras?

A. Yes, I did.

Q. I want you to very specifically and in detail, tell this Court what you and Mr. Kantaras talked about?

A. About his transgender change, about what it was doing to our marriage.

Q. What was it doing to your marriage?

A. It was falling apart. We weren't communicating and every time I tried to communicate with Michael that I wanted love and affection. Sex was not important to me. Michael knew it.

But love and affection is important and people need that and I was not even getting that. He wouldn't hold me and hug me and kiss me because he said I cannot hold you and hug you and kiss you and then stop. He said, I'm not a machine.

He said, I want to do it all or I want to do nothing. And he chose to do nothing.

(TR 2906-10)

Then Linda was asked why she didn't attempt sexual contact with Michael and she gave the following reason:

A. Because when Michael Kantaras takes his clothes off, he is a woman in my eyes.

Q. And you need to tell the Court what that means. Does Michael Kantaras have anything that resembles a penis, Mrs. Kantaras?

A. Not to my knowledge.

Q. When he stands up, do you see anything that looks like a penis? When he stands up without clothes on?

A. No, ma'am.

Q. When he lays down without clothes on, does he have anything that resembles a penis?

A. No, ma'am.

Q. Did you ever think that Mr. Kantaras had a penis?

A. No, ma'am.

Q. Did you ever have any conversations about him getting one?

A. Yes, ma'am.

Q. Please tell this Court about that.

A. Before I married Michael he had talked about something that was quoted as the third surgery.

THE COURT: He talked about?

A. Something that was quoted as the third surgery.

THE COURT: Something referred to as the third surgery?

A. Yeah.

BY MS. WHEELER:

Q. What did that mean, Mrs. Kantaras, the third surgery?

A. To me it meant getting a penis.

Q. Well, what made you think it meant getting a penis?

A. Michael told me that's what the third surgery was about.

Q. Well, you need to – did Michael ever say that he was thinking about getting that?

A. Yes, he did.

Q. Did you ever have any conversations in that regard?

A. Yes. The thing that Michael said was that it was very expensive and that if he got that, he would lose

> all sensation and would not be able to climax ever again. So that wasn't something that he thought he might get now, but he – before he had gotten married he was pretty certain that he was going to get it. He was trying to save his money. At that time I think he said it was $10,000. I'm not sure. But before I married him, that was my understanding that he was going to pursue that.

(TR 2910-12)

On the subject of Michael having phalloplasty before their marriage she said the following:

> Q. Before you married him it was your understanding that Michael was going to attempt to get a penis or what we now know as a phallus?
>
> A. Yes, ma'am.
>
> Q. Had you seen Michael naked before you got married?
>
> A. Yes, ma'am.
>
> Q. How had you seen him naked?
>
> A. When I was at his house in Lake Mary.
>
> Q. Had you all attempted to make love or have any type of sexual intercourse prior to your marriage?
>
> A. No, ma'am.
>
> Q. Had that become an issue? Did you tell Michael that you were not going to have sex unless he got a penis somehow?
>
> A. I don't think I ever said it like that to him. I think I told him that it was hard for me to look at him naked and see a man. But I don't think I ever said, well, you know, if you don't get a penis I'm not going to sleep with you. I think that was just how I put it. To me, you look like a woman and I'm not gay. I never have been. And I just couldn't do it.

Q. So it would be your testimony under oath that you had no sexual relations, other than if the Court wants to consider kissing?

A. Uh-huh.

Q. When you say kissing, would that be on your lips on your face to Michael's lips on his face?

A. Yes.

Q. Did you kiss anything else, Mrs. Kantaras?

A. No, ma'am.

(TR 2912-13)

[This testimony by Linda Kantaras is implausible because Michael Kantaras had completed his sex reassignment surgery at the Galveston Gender Clinic before he met Linda and had specifically discussed having phalloplasty with Drs. Bockting, Huang and Cole and decided to turn down any consideration of phalloplasty because of its excessive cost, high medical risk of infection, and complete failure of the phallus to perform sexually. Why then would Michael discuss the "third surgery" as a precondition to his marriage to Linda? In fact, Linda claims for ten (10) years of marriage they only "kissed," is diametrically opposed to the testimony of Michael, as well as, other witnesses.

It will be seen, later in this opinion, that hormonal treatments to the transsexual during the process of sex reassignment surgery invariably increases libido and the sexual activation of the urge to have sex is significant. If Michael fell outside the norm of such heightened sexual activity he would be rare in medical parlance.

The very statement that Linda admits having seen Michael naked in his apartment, during their courtship, it seems unlikely they would have married if she told him "To me you look like a woman and I'm not gay. I never have been. And I just couldn't do it." If that be the case, how, then, did she come about accepting marriage to Michael? Or, Michael thinking of himself as a male, could sanction her attitude? That is a total contradiction.]

In regard to the testimony of Sherry Noodwang that Linda told her that she and Michael were one soul, she explained that as follows:

> Q. Did you have a conversation with Mrs. Noodwang regarding your sexual relationship with Mr. Kantaras?
>
> A. Yes, ma'am.
>
> Q. Could you please tell this Court what – how that conversation came up and who was present besides Mrs. Noodwang?
>
> A. Denise White was present, I was present and Mrs. Noodwang was present. I believe we were at Subway. I'm not sure. And they were – it came up because they were talking about having sex with their husbands.
>
> THE COURT: You all were discussing having sex with your husbands?
>
> A. They were, yes, sir.
>
> BY MS. WHEELER:
>
> Q. In the context of that conversation, could you please tell us again and try to slow down, Linda, and tell us what you said when you were describing your sex life with Mr. Kantaras?
>
> A. I described it as when we come together in our intimate relationship – I can't be word for word but

> I said when we come together it is like we unite as one. Our bodies come together and our souls come together and we never part.

(TR 2921-23)

When she was thereafter asked if that statement she made to the other wives was a true statement about her sex life with Michael, she said "no," not true.

Michael and Linda had no understanding between them that there would be no disclosure of Michael's sex reassignment to their friends. She just "wasn't going to tell anybody" Michael never told it at his work place, at Sam's Club or Albertson's.

Michael did experience frustration at work over using the men's restroom, as follows:

> A. He was very frustrated about using the bathroom because the guys would tease him, you know. They would say stuff like, is your's too big you can't stand at the stall or is your's too little? You know, he would just get aggravated.
> At one point he had came home and he was very upset and I said what happened, you know, and he said that he's sick of going to the bathroom and sitting down. He's tired of it. He went to the bathroom and the sock that he wears had fallen down. No one had saw it, but he was very upset about it and he was sick of it, he said.
>
> Q. Sick of going to the bathroom and sitting down?
>
> A. Yes, ma'am.
>
> Q. During the course of your marriage, did you ever see Mr. Kantaras urinating standing up?
>
> A. No, ma'am.
>
> Q. Did you ever see Mr. Kantaras urinating sitting down?
>
> A. Yes, ma'am.

Q. Did Mr. Kantaras ever share with you that he can stand at the urinal and urinate?

A. No.

Q. Did you ever see any evidence that Mr. Kantaras could stand up and urinate?

A. No.

Q. Do you know, Mrs. Kantaras, whether or not your children ever saw Mr. Kantaras sitting down and going to the bathroom?

A. Yes.

Q. Could you tell us how that happened?

A. Because sometimes he would leave the bathroom door open or sometimes they would just walk in or sometimes I would come in to get something and they would be there by accident, I would say it happened.

Q. Okay. Did Michael ever walk around the house with no clothes on?

A. He would walk from the bathroom to the bedroom. I mean, he didn't prance around the house, but I mean, he would walk.

(TR 2927-28)

Linda testified that Michael would wear in his clothing a sock to make it appear he had a penis. (TR 2930) The children observed this sock routine and he would remove the sock at home and place it about the house, on the TV or the couch. She asked him to stop it, but he ignored her. (TR 2939-40) Mathew at age three or five years attempted to put a sock in his pants to wear to school, emulating his father. (TR 2941) When Michael

was told about what Mathew was doing, it upset Michael, who became more discreet about it. (TR 2943)

Linda had a job in the bakery department of Albertson's if she chose to work after she had her children but she and Michael agreed she should stay with the children at home and not work, except for part time if Michael needed help. (TR 2948)

**H. <u>Artificial Insemination</u>**

In regard to the birth of Irina through artificial insemination, Linda testified as follows:

> Q. Did you all plan the insemination for Irina?
>
> A. Yes, we did.
>
> Q. There was some talk that if the insemination had gone wrong you weren't going to do it again or – could you tell us, was there a conversation about the insemination?
>
> A. Yeah, there was.
>
> Q. Could you please tell us what your recollection of the conversation was?
>
> A. My recollection was before Rina – before I even got inseminated I told Michael I would try it one time, one time only, and if it worked it was God's will and if it didn't, I wasn't doing it again.
>
> Q. So did it work?
>
> A. Yes, it did.
>
> Q. Were you happy about it?
>
> A. Absolutely.
>
> Q. While we are on that subject, did you ever tell Michael that had he not been interested in you, you would have aborted Mathew?

A. No, ma'am.

Q. You heard Mr. Kantaras make that statement on the stand, didn't you?

A. Yes, ma'am.

Q. Are you absolutely sure that you never told Mr. Kantaras that you were going to or wanted to abort Mathew?

A. Yes, ma'am, I'm sure.

Q. So you never made that statement?

A. No, ma'am.

(TR 2948-49)

Linda testified after leaving Palm Bay they lived in Lake Mary for approximately one year, then moved to Fort Walton Beach where they lived one and a half years. Irina was born in Fort Walton Beach and they moved again when Irina was three weeks old to 5100 Flora Avenue, Holiday, Florida, the home of Michael's parents, Irene and John Kantaras. They lived there for another three years. She obtained a substitute teacher's job at Anclote Elementary school in Holiday, in 1994. She held that job from 1994 to 2000, and substituted at another school, Gulfside Elementary, where her children attended.

Michael received a transfer of his job from Albertson's in Fort Walton Beach to the Albertson's store located in Palm Harbor, Pinellas County. He worked a year and a half at that store when he quit rather than "cheat" on the inventory, as requested by the manager, at that store. (TR 2955) He next obtained a job at Sam's Club on Trouble Creek Road in Pasco and later in Tampa, Florida, a 55 minute drive from their Pasco home.

Linda testified that Michael restricted her ability to work as a substitute teacher because only Michael's mother Irine was approved by him to babysit the children while she worked. The grandmother made trips with her husband frequently and was unavailable. Linda became employed in the Place Program for part of the school day and part as substitute teacher, from 1994 through 2001. (TR 2960-63)

In 1999 she assumed duties as a teacher for the fourth grade class at the Gulfside Elementary when the regular teacher became ill with heart trouble. This lasted a couple of months instead of two days a week. Irina, was attending first grade at Gulfside Elementary while Mathew, attended fourth grade.

Her hours of work consisted of arriving at school at 7:30 a.m. for the Place Program until 9:20 a.m., then be a teacher in her class until 4:00 p.m. Next, at 4:00 p.m. she went back to the Place Program and would stay there until 5:00 p.m. – 5:30 p.m. or 6:00 p.m. as needed. (TR 2966) She became the Senior Child Care Assistant (CCA) or the third person in charge in the absence of either of two other personnel. That duty started in March 2001, at the Place Program. She has performed all her duties satisfactorily and without any admonitions or complaints. (TR 2969)

Linda's pay in the Place Program was $7.40 per hour. As a substitute teacher she was paid $43 to $47 per day. (TR 2970) Linda filed her financial affidavit dated January 14, 2002, as Respondent's Exhibit No. 2. (TR 2973) Her monthly gross income from all sources was $1,001.00.

She anticipates after this trial holding another job as an assistant at Calvary Chapel Worship Center for New Port Richey, Pasco County. Her hours would be from 10:00 a.m. to 2:00 p.m., four days per week. It would approximate twenty hours a week,

at $6.00 per hour. She anticipates that would come to $480 a month. (TR 2970-75) She testified that under the guidelines for child support she would anticipate an additional sum of $600 per month. That includes the income of Michael being considered together with hers. (TR 2975-76) She said, if she has primary child custody this amount comes within her budget including the house mortgage payments (TR 2978-82, 2985) providing Michael continues to pay the first and second mortgage on the marital home, (TR 2982-83) which he has always done. Her expenses total $1,173.30. (TR 2981)

The contributions that Michael has paid in support of this family are reflected in Petitioner's Exhibits Nos. 8, 13, 15 and 16. (TR 2983)

Linda does not dispute the sums of money Michael has paid as reflected in those exhibits. (TR 2985)

Linda requests possession of the marital home. If she is awarded primary custody of the children, she will assume the obligation to pay the first and second mortgages, and assume upkeep and repairs. (TR 2986)

Linda represented that in the past she had a friend living in the house, named James Taylor who would spend several nights a week there but actually lived in Bartow, Florida, where he was employed. She met James in November, 1999, and they were friends until June of 2001. She was asked if during that time period did James Taylor spend the night with her and she said "yes, he did" and actually shared her bedroom, while the children were in the house. (TR 2989-90)

At a hearing this fact was brought out by Attorney Vause and she said: "Judge O'Brien frowned on that, I felt very ashamed." So I left that hearing and told James "that me sleeping with him was not right in the presence of my children." She stopped seeing

James in June 2001, and she doesn't expect his return after this trial. She is not seeing anyone else at present. (TR 2991)

Turning to the issue of child care Linda testified she was the primary care giver for Mathew as a baby in Lake Mary while Michael worked at Albertson's starting at 4:00 a.m. He would go to sleep at 4:00 p.m. or 6:00 p.m. to get up by 3:00 a.m. That is his work schedule presently at Sam's Club. In her opinion, Michael's work schedule conflicts with the sleeping and school schedule of both children. (TR 2998) She has to be at school at 6:30 a.m. and this makes it possible for her to get the children to their schools on time. Mathew presently takes a bus to school whereas she takes Irina to school.

Linda admitted she had moved the children four times to four different schools. The first school was Anclote, then Gulfside. The reason was the children were "uncomfortable" with Sherry and "everybody knew about the situation between Michael and Sherry having an affair." (TR 3000) That was at Anclote, where Sherry had one of her children attending, and she would be bringing or picking up that child. So, Linda moved her children to Gulfside Elementary on October 15, 1998, where they stayed for the rest of that year. The next year, she moved the children to Sunray Elementary School, a new school within their school zone. The children remained at Sunray for approximately three to four weeks, and then she moved them back to Gulfside Elementary School. This would be the year 2000. She explained the reason for the move back to Gulfside was her working the Place Program where her children were also enrolled. (TR 3005) In her opinion the children's grades did not suffer from being

moved about. (All this was without consulting with Michael.) Mathew has graduated and is now attending Seven Springs Middle School in the sixth grade. (TR 3010)

Linda testified about an incident at her home when Mathew threw "a fit" for three and one-half hours because he had gotten in trouble at school so she grounded him at home and said "no skating." Mathew started throwing things, slamming glass doors and yelling he "hated" her, that she was "mean." So, she called Michael and she took Mathew to him where he resided for two or three days. Michael was staying at his father's house at the time. (TR 3019) Linda said in her opinion Michael could not perform the task of being the children's primary care giver. (TR 3018-19)

Linda stated in her opinion that Michael tried to control her because he was "jealous, possessive, untrusting and insecure." (TR 3029) And this was due to his being brought up in a strict Greek culture in his own home. (TR 3041)

**I. <u>Linda's Private Letter</u>**

BY MS.WHEELER:

Q. Linda, on January 30, 1999, it appears from Petitioner's Exhibit #6 that you wrote Michael a very, I guess you could say heated, letter, maybe or just a letter full of emotions?

A. Yes.

Q. Could you tell us, did you ever think that your letter would be on national TV?

A. No, ma'am.

Q. Did you ever think Michael would give that letter to anybody?

A. No, ma'am.

Q. Did you ever think it would end up in the hands of Dr. Dies?

A. No, ma'am.

Q. Could you tell us what time of the day or night, if you could remember, did you write that letter?

A. I couldn't tell you.

Q. Okay. Could you remember what made you write that letter?

A. I had found out that people at Anclote Elementary knew about Michael's sex change and stuff and I was furious.

Linda's letter was the subject of testimony by Dr. Dies and the total text of that letter was as follows:

LINDA KANTARAS' LETTER TO MICHAEL

"I just this week found out how this all came out. It was you! You told Sherry she told Denise. Than [sic] it was killing Denise because Sherry was telling her all kinds shit about you too. So Denise told Dallas and it went from their. How dare you let me keep my kids here when you knew all along it was going to come out. Now you think that people are going to say bad about me? I don't care and you mess up. How could you let Mathew and Irina go through what you put them through? I feel sorry that you had a fucked up life. But how dare you bring me and my 2 kids in this. There is know [sic] one who thinks you are thinking of them kids now! I will get my kids out of her safely by myself.

I know what Sherry is. More than 1 person has come to me to say Sherry was in love Linda. Michael how many times did Sherry say she will always [sic] pick me? So that's why you told her you have no dick so she could have her little dream sex without any one knowing. I never told anyone, I am not going to the public. I am going to court! When Denise asked all I said was yes! Michael I know you messed up about who you are because if you weren't you

would have let me go from the start. But without me and my kids your just another gross [sic] messed up person. I hope in time Mathew and Irina will forgive you. Michael you put them in Hell with you. Why? Why? Why?

My God if you loved them you would not want what is [sic] happen now to have them in the middle. Yes, they do love you as their dad. But they are beginning to hate you as a person. Michael only you and I know what kinda [sic] marriage we had. But the world knows what kinda [sic] person I am. Now that you brought this out people feel sorry for me because I gave you my life for 10 years. You did nothing but show every one how much you loved me in public, but behind closed doors I was a part that made you feel uncomfortable because I am a woman who looked at you and saw a man. I don't know if that right but why would you leave me for a woman who wants to have you as a woman? But not in the public's eyes. Michael you have no one to blame but yourself and now Sherry for telling Denise. I told you not to tell Sherry. But your sexual need to be satisfy [sic] had to be done. So at any cost you got what I could and would never do for you. That was be a woman with a woman which was you. I can't believe you made me and my kids give up out lives for you and still today that is what your asking us to do for you. We are leaving but you and Sherry have your mess to clean up! I am going to protect and take care of my kids by myself. Leave us alone! I can't believe you gave up your mom for Sherry Noodwang! When your Mom dies it will be your fault!

Your the only one she could count on and look how you repay her for giving you what ever you wanted. This life with Sherry will end soon. How do I know because Sherry has already stopped showing herself in Anclote because of what she is now with you. I would like to talk to her family to see who they believe Sherry is. And your family will know that Sherry is not with you like a man and woman, but as a woman and woman that's what you gave up your life for! I really hope you read this letter over and over again! I loved you for what you showed me in the beginning but then I saw how much hate you had inside yourself. I only can say I am glad to be out of your life forever. I will not talk about this to try to find out what you really married me for why I had Irina or what I have given up for you. I am very aware of what's best for my kids! It

> is not a unsupervised relationship with a person who don't have any parenting skills at all. When you Michael stopped [sic] taking your shots and not talking to a doctor about your sex change is when you became selfish then it became you mad at me and my kids because of how you felt. That is wrong! Now I know so that's why I need to get them away! This is not to hurt you because I know Sherry will ripe [sic] your heart out. Sherry loved me and settled for you because I told you both I will not be that kinda [sic] person for no one! So Sherry couldn't let you go because she wanted something of mine to keep me involved with her. But it didn't work I cut all ties when she told me!
>
> Michael I hope you really get good help. Your family can hate me because its easier. But I think they know deep in their hearts that I am the better person. You could have let me go in Aug of 98 but you wanted all this to come out because your sick of carring that on yourself. So I would say a lot more. But I am just so hurt that my kids meaning nothing to you but the fact that they make you a Dad. That's wrong because I made you a dad. You made yourself a person who don't care about them any more. Please leave us alone and get lots of help.

Linda admitted she wrote the letter, and was asked, "anywhere in this letter does it indicate whether or not you were able to have sex with Michael?" She replied, "yes" and read a portion of the letter by explanation, as follows:

> A. Yes. You did nothing but show everyone how much you loved me in the public. But behind closed doors I was a part that made you feel uncomfortable because I am a woman who looked at you and saw a man. I don't know if that's right but why would you leave me for a woman who wants to have you as a woman. But not in the public's eye.
>
> Michael, you have no one to blame but yourself and now Sherry, the next page, for telling Denise. I told you not to tell Sherry but your sexual need – your sexual needs needed to be satisfied, had to be done, so at any cost you got what I could and would never do for you. That was be a woman with a woman which was you.

Q. What does that mean, Linda?

A. That means that when I look at Michael Kantaras – when I was out with Michael Kantaras he was a man, but behind closed doors I still saw him as a woman and I would not engage in a woman – in a woman on woman relationship and I foresaw that is what Sherry wanted.

Q. So were you just very upset because you thought that Sherry would be with Michael as a woman? In other words, that Sherry wouldn't object to having sex with Michael?

A. Yes.

(TR 3055-56)

Linda admitted she always refers to Petitioner as "Michael," except when she might have said "she" but otherwise, as the children's father, and her husband.

When she got married before the Justice of the Peace, she did not tell the judge about Michael's sexual reassignment surgery or tell the judge in the adoption proceedings. So neither judge was asked to decide if Michael was legally a man. (TR 3056-58)

Linda was then asked about Michael sitting in court, "do you see Michael as a male or a female who thinks he's a male?" She responded: "A woman who thinks he's a man." (TR 3058) She was next asked, "why do you feel that way?" And she replied as follows:

BY MS. WHEELER:

A. Because of his actions, because of – because of the way he is, because of what he looks like physically without no clothes on.

Q. What do you mean because of the way he is? You need to be very specific, if you could, for this court.

A. Because some days Michael is all mighty man and, you know, gets up and goes to work like a man and stuff, but then sometimes when he would come home and he would be disgusted. He would be mad and he would be resentful towards me and the kids because he wasn't a man. And he would be mad at gay men and if a gay –

Q. Calm down. Slow down. Why would he be mad at gay men?

A. How dare they have a penis to be with another man.

Q. Okay. Did that seem to bother him?

A. Yes.

Q. From your observations and I want you to specifically describe this for us, is Mr. Kantaras sometimes bothered because he doesn't have a penis?

A. Absolutely.

Q. Okay. I want you to address that now, Mrs. Kantaras, if you would, please.

A. One of his things would be, if I ever got stopped by the cops, I wouldn't want them to search me. Another one would be, going to the bathroom in public. Another one would be going to the bathroom in our own home when we had company, because it sounds different when a man stands up to pee than it does when a woman sits down to pee. That bothered Michael a lot.

(TR 3058-61)

The Court asked about the letter once again and whether it could be read to imply she had sex with Michael, as follows:

THE COURT: You don't think that is implied in what you wrote?

A. No, it is not, Your Honor. Because I said what I could and would never do for you.

THE COURT: Is that your denial?

A. Yes, Your Honor.

THE COURT: Of ever having sex?

A. Yes, Your Honor.

THE COURT: All Right. You may proceed.

BY MS. WHEELER:

Q. Okay. Is there anywhere in this letter, other than the part the Judge – is there anywhere in this letter that implies or insinuates that you at any time had sex with Michael Kantaras?

A. No.

Q. Other than saying that you couldn't, the thing you would never do or would never do and that's be a woman with a woman, is that what you consider your denial, Mrs. Kantaras?

A. Yes.

Q. Is that because, as you stated, when Michael took his clothes off you considered him to be a woman?

A. Yes.

Q. Was that one of the problems in your marriage?

A. Yes.

Q. Tell us about that. Why was that a problem in your marriage?

A. Because it stopped Michael from being able to be compassionate toward me, love me like a man

should love a woman, caress my hair, hug me, say I was beautiful, say he liked my body. I think it stopped Michael because he wanted me to be with him as a woman and I would not. So I felt that was Michael's punishment for me.

Q. When you say punishment, what was the punishment, Mrs. Kantaras?

A. Meanness.

Q. What kind of meanness? You need to see if you could specifically describe that for the Judge. When you say meanness, was Michael mean to you?

A. Yes.

Q. Did he say mean things?

A. Verbally mean, yes, he was.

Q. Would you say this in front of people or behind closed doors, as you say in the letter?

A. Behind closed doors.

Q. Why don't you tell this Court what happened behind – what would Michael say to you behind closed doors?

A. He would say that I was fat. He would say that I had a big bottom. He would say that my chest would sag. When I would walk by or something, he would say boing, boing, boing.

Q. What did that mean, boing, boing, boing?

A. Because my body shaked as I walked.

Q. So would you take that as making fun of you or?

A. Yes, ma'am.

Q. Was he doing it in an endearing way, like a sweet way or. . .

A. No, ma'am.

Q. Okay. Well, you need to tell us a little bit more about it, if you could?

A. Michael never gave me a compliment. The ten years we were married, I think he said the only thing he liked about me was my eyes. Everything else he tried to change the best that he could.

Q. What do you mean he tried to change?

A. The way I wore my hair. Me wearing makeup because I never wore makeup until I got married to Michael. Me wearing skirts or dresses or different kind of clothes, because I was a strictly Levi and T-shirt kind of person.

Q. How did you change your hair?

A. He would take me to get my hair cut and say I want it this way or that way or. . .

Q. Did you object to any of that?

A. No, I did not.

Q. And did you wear your hair the way Michael wanted you to?

A. I tried the best that I could.

Q. Did you begin wearing makeup because he thought it would be a better idea?

A. Yes, I did.

Q. Did you change the way you dressed?

A. Yes, I did.

Q. You said you were a jeans and T-shirt type of girl?

A. Yes.

Q. What did you start wearing once you started living with Michael?

A. Different kind of clothes. Dressier clothes, skirts, long skirts, outfits, stuff that matched, just the whole different – I was not allowed to wear jeans at all. I had no more jeans, so it was no denim.

Q. What happened to your jeans?

A. Michael threw them away.

Q. Michael threw them away or you threw them away?

A. Michael threw them away.

Q. Did you object to this?

A. No, I did not.

Q. Could you tell this Court why you didn't object to this?

A. Because I wanted him to love me. I wanted him – I wanted him to want to look at me and I knew he didn't like me the way I looked in jeans.

Q. And so you didn't mind changing for him?

A. No, I did not.

Q. Was it enough to make Michael nice to you behind closed doors?

A. No, it was not.

Q. Did Michael treat you differently in the public or when your friends were over than he did behind closed doors?

A. Absolutely.

Q. You've heard testimony from your friends and Sherry Noodwang and also from Mr. Kantaras about balloons and flowers and I love Lucy and –

are these things Michael did so other people could see?

A. All the time.

Q. Can you think of anything he did for you, with you, when there was nobody around?

A. No, I cannot.

Q. Did he buy you something special when it was only you and he? Did he give you a present at dinner? Did he take you out to dinner and give you a special present?

A. He might have did that once or twice, but he always had to make sure somebody knew about it.

(TR 3061-66)

**J. <u>Sherry – Best Friend</u>**

Linda said Sherry was her best friend. They were together daily, as well as, their children. She recalled they had a birthday party for Sherry. Michael baked a cake. He presented Sherry with two white bears with ribbons that said, "Best of Friends Michael and Sherry and a 'trip tick' to Utah where they're allowed in the past to have more than one wife. Michael, she thought "jokingly," proposed at the party they all move their families to Utah to live together and Sherry would be his second wife." (TR 3069) This incident about moving to Utah came up again, as follows:

A. He came to my house and Sherry came to my house and he said Linda, he said I love you as my best friend. He said you were the only one that ever accepted me. You were my only best friend that I've ever had, but I'm in love with Sherry. I love her as I love a wife. And he said – that's when he said why can't we all just be married and happy as a big family, and I said because that's not who I am. I will not have that.

Q. By being married to Sherry and you?

A. Yes.

Q. Have both of you?

A. Yes.

Q. Did he mean for you all to live together?

A. I'm assuming, yes.

Q. Was that attractive to you, that suggestion.

A. No, ma'am.

(TR 3071-72)

The above statement by Michael to Linda took place in the garage of the marital house, out of the hearing of the children, as follows:

THE COURT: Where were you standing when he said this to you?

A. We were in my garage at the marital home which I live in now.

THE COURT: Why were you standing in the garage when this announcement came?

A. Because he asked to speak to me in private, not around the children.

THE COURT: Were they totally removed so they couldn't hear him say this?

A. They were in the house, Your Honor. I do not – I've never had any evidence to this date that they heard that.

THE COURT: And your reaction?

A. I fell to my knees and started crying.

THE COURT: Do you recall what you may have said?

A. I asked him not to divorce me.

THE COURT: Anything else?

A. Michael said, Linda, get up. I don't want to hurt you. I don't want you to cry. It's over.

THE COURT: That's it?

A. I stood up and I quit crying immediately. I wiped my face. I said, there's the door.

THE COURT: And you said?

A. There's the door.

THE COURT: To him?

A. Yep.

THE COURT: He did what then?

A. He went in the house and got some clothes and took them to his mother's house.

(TR 3075-76)

Linda admitted she had been in court seven or eight times on Contempt Motions involving visitation. She admitted she was held in contempt by the court. (TR 3079) She testified she learned her lesson as a consequence, as follows:

A. I learned that as the mother you cannot protect your children from every little thing, they have to learn things on their own. I learned that Sherry and Michael are going to have to find out a lot of things on their own. And I learned that the law is the law no matter whether I like it or not, it is the law and I must uphold that law.

Q. Did you see yourself for quite some time, Mrs. Kantaras, as a victim of Michael and Sherry?

A. Absolutely.

(TR 3079)

Linda was asked about potential rulings by the court giving Michael visitation, would she comply regardless of what she has done in the past, she said:

> Q. If this Court rules that Michael is a "male," and Michael is the father of these children and award you primary physical custody, could you tell this Court what type of visitation schedule you believe Michael should have with his children?
>
> A. I believe that Mathew and Irina are old enough to say when they want to see Michael. So if it was the guidelines of every Wednesday and every other weekend, that would be fine. If Rina comes home on a Tuesday and said, I want to go to my Dad's, that would be fine.

(TR 3085-86)

**K. <u>Revelation to Children About Michael's Sex</u>**

Linda described the incident where the children were informed about Michael's sex reassignment. It took place on November 5, 1999, at the marital home. It was in the presence of Billy Shoemaker, Crystal Shoemaker, and Linda. Linda discussed Michael's transsexualism with the Shoemakers. Linda used the term "she" when referring to Michael. Linda said, "She used to be a woman, or she, you know, is a woman and thinks she's a man." Asked if the children were present, and overheard that remark? She said, "Yes, they did." (TR 3091)

Linda testified that the same week of November 5th, she called Dr. Dies, leaving a message "that it was urgent." She needed to talk to him about the children. The reason for the urgency was it came to her knowledge that people at Gulfside Elementary knew about Michael's sex change, "parents, children and teachers." In addition, her son,

Mathew, was getting teased on the playground about being "gay." Mathew was nine or ten years old. (TR 3093) Linda said Dr. Dies advised, "to tell the children in a loving, warm and family environment." And, to take notes on the reactions of the children. This being a Friday, she was to bring the children with the "notes" the following Tuesday, November 9, to his office.

Earlier the same week of November 5th, Linda testified she was called into the office of the principal at Gulfside, by Mr. John Shafchuk. She was working in the Place Program. She was to come to his office when she left work at 9:45 a.m. (TR 3106-07) Mr. Shafchuk told her there were "rumors" going around about Michael's sex change, that "teachers knew, parents knew and he wanted to know how to handle it." She said, "my children do not know – I do not want them to find out. I said I have not talked to anybody about this." "I was not aware that anybody at the school knew about it."

She said, "I was scared, very scared my children were going to be playing on the playground and have someone say something to one of them about Michael Kantaras." (TR 3110)

The scene that took place while the children were being informed, was as follows:

> A. Yes. They came home from school – I picked them up from school and we came home. And we sat down and I asked them to sit down. And they said, What's up mom? What's going on?
>
> They could see that I had been upset. And I said, Mommy has to tell you something. And I said, But before I tell you, I want you to know that we love you. I said, And I want you to know that your daddy and his family love you.
>
> And I don't remember what happened at that point. I think I started crying. And that's where Mr. Shoemaker, Bill Shoemaker started to talk about the

different types of people in the world and it takes all different kinds of people to make the world go round and stuff like that.

And he was giving various examples, I think. I can't remember for sure. One of the examples were men that dress up like women, I think. And then men that think they're men, but they're really women.

And then he said, Do You – have you guys ever seen anybody like that or do you know anybody like that? Do you know what Uncle Bill is talking about? And Mathew said, yes, my dad.

Q. How did you feel when Mathew said that?

A. I believe I just continued to cry. And then asked why. I looked at Mathew and I asked why and he didn't have an explanation.

(TR 3110-11)

Q. What happened after that?

A. Bill started to explain that Michael had had an operation long before he met me. And Michael used to be a woman, and he had an operation to be a man. I can't remember exactly the sequence of events or anything like that, but the kids were asking questions like, why did you marry him?

Q. What did you say? Let's just stop right there, Mrs. Kantaras. What did you say when they said, Why did you marry him?

A. Because I loved him. Because I thought he loved me. Mathew asked who his father was and I told him John Atkinson. And Mathew said, where? And I said, I don't know. I believe he lived in Michigan, but I don't know. And Rina asked –

No, I assumed he lived there. I've not talked to John since I was 21 years old or before I was 21, since I was 20.

THE COURT: Did Mathew in any way indicate by his questions that he wanted to meet his biological father?

A. I saw it as an interest to know who he was because he felt a different love that Michael showed Mathew than Irina.

Mathew was – his demeanor was very at peace. And it's like even though he was so young with such heavy, heavy information, when I looked at him I just saw that he was so at peace, like he then knew why he was treated different by Michael.

THE COURT: That's a huge step.

A. Yes, it is, Your Honor, and it broke my heart.

THE COURT: So Mathew just stood there silently or was he sitting –

A. He sat. He was sitting.

THE COURT: Okay. Would that reinforce his fears and resentments towards Irina who is presumably the princess?

A. Yes. He – I would say during Mathew's childhood as Michael and I being married, he was jealous of Rina. Is that what you're asking me? Yeah.

THE COURT: You're saying this reinforced that? You felt that somehow it was explained to him why Michael preferred Irina.

A. Yeah. They were so confused on where Irina came from when Mathew had said that to me it was, you know, when he asked who his dad was and where John lived. Rina had not asked yet.

BY MS. WHEELER:

Q. Okay. Could you tell us what else happened, if anything? What else? Was there some other things that happened during that time where you were telling the children, Mrs. Kantaras?

A. They asked me time and time again why I married Michael.

Q. Would you always answer them the same way, Mrs. Kantaras?

A. Yes, I did.

Q. What would you say?

A. Because I loved him.

(TR 3112-15)

The court made the inquiry if the children understood what Uncle Billy was trying to say about Michael was born a "woman?" Linda gave the following reply:

A. Your Honor, they're little children. I don't think it's going to sink into their heads until they become adults. I think they're handling this on a child's level. I think they've overcome stuff that adults will never have to overcome.

I think that they don't understand any of it, but have a comprehension of having lived in it. They periodically, to this day, ask questions.

They periodically get mad at me for the situation that we're in because it's now in a courtroom, because it's this long, because it was my choice. They have a lot of anger towards me and I give them that anger.

I allow them and tell them they have a right, I chose their future. I chose the future I thought was good for them. I'm trying to make right choices, trying to make a better future for them. I'm trying to help them understand why I did what I did.

(TR 3116-17)

The impact of this information on Mathew and Irina, prompted them to ask questions? Linda replied, as follows:

THE COURT: So she wanted to know who her father was?

A. Yes, she did.

THE COURT: Because now it was apparent that Michael was not her biological father?

A. But she did inquire, Your Honor, if Michael actually had her because she knew I was a woman and I gave birth from my belly to these children.

THE COURT: Right.

A. And I said that John Atkinson was Mathew's dad. She, in turn, wanted to know if Michael Kantaras as a woman actually had her as his daughter. Because she –

A. Because she felt part of that family.

THE COURT: She was inquiring then as to whether Michael, while not being her father, biological father, may have been her mother?

A. She never used the term mother, Your Honor. She said, When my dad was a woman did he have me? And that didn't even click in my mind.

THE COURT: Well, that's what she was saying.

A. Yeah.

THE COURT: Then what did you say?

A. I said, No, I never met your dad while he was a woman. I said, I never knew him while he was a woman before. I've only known him as Michael Kantaras, who he is now with a man's name and a man on the outside, but a woman still on the inside. And that's when I told her she was inseminated.

THE COURT: You told her then you were her mother and that you were – do you think she understood what you were trying to say?

A. I had to make it very clear, Your Honor, that I physically had these children. At that point in time they were kind of baffled.

And here they felt like I've lied to them their whole life about who their father was and they made that very known that day.

And I tried to explain that it wasn't something I wanted to tell them. It's not something that I wanted them to find out right now.

THE COURT: You didn't tell Irina that her real biological father was Tom?

A. Yes, I did.

THE COURT: You did?

A. When I told her I was inseminated, yes. I did say Uncle Tommy –

A. Yeah. Uncle Tommy is your dad.

THE COURT: Was Michael – excuse me, was Mathew hearing you explain all of this at the same time?

A. Yeah. We were all in the same room still, Your Honor. Then they inquired about Michael's brother Tommy, his child. Rina and Mathew inquired if they were related to John. If Mathew was John's brother or if Irina and John were brother and sister.

THE COURT: Related to Tom's children?

A. Child. Tom has one child. To my knowledge right now he only has one.

THE COURT: They asked that question?

A. Yes, they did.

THE COURT: If they were just related?

A. Mathew said related. Rina said, Is that my brother? Is Mathew my brother?

THE COURT: Not speaking of another Mathew, the Mathew?

A. Yeah.

THE COURT: They wanted to know if –

A. That was her brother because Tommy was her dad now does that still make Mathew her brother. And if Tommy was her dad, did that make his son John her brother.

THE COURT: How did you answer that riddle?

A. I wasn't expecting any of these kind of questions, Your Honor. And I had to answer the truth, Yes, John is your half-brother. Yes, Mathew is your half-brother, but we don't look at it as half-brothers and half-sisters and stuff.

She was very concerned about John because the kids don't see him very often and she asked if he knew. Does he know that I'm his sister, mom? I said to this – at that time I said, Mommy doesn't know if Uncle Tommy has ever told him or not.

And she was very concerned, Your Honor. She wanted to tell him. She wanted her brother to know that that was her sister – that she was his sister.

THE COURT: Did she like John?

A. Oh, yeah. They had – I mean, when we were married they had a really good relationship. And from what I hear now him and Mathew are close.

(TR 3119-24)

When Linda was asked by Ms. Wheeler what questions about Michael did the children ask and why Michael was excluded from this disclosure, she replied:

A. There was a lot of questions about Michael, why he did it and how it became about and I said, Those are questions you're going to have to ask your dad.

And they were very, like I said, angry at both of us, but they were more angry at Michael. I can't explain why they were, but they didn't want to see Michael after that.

For a while they said, Mom, we want time to get over this and stuff because I gave them the option to call Michael and ask Michael these questions and they didn't want to do that. They just said, We want time to think about it.

And I said, You're not going to get your questions answered unless you ask Michael, you know, your dad. I said, You have to ask your dad.

Q. Could you tell this Court why you didn't invite Michael over?

A. I had mixed feelings about inviting Michael over because I had talked to him previous, previous times before about not telling anybody. I made it very clear that I was not going to tell anybody. That that was not my desire to tell anybody. It would not solve anything. It would not make me a better person or Michael a better person. It would devastate my children and I knew that.

There was no reason why anybody on this earth had to know any of that the way it came out. So I felt – I didn't trust Michael. I didn't trust that he would be loving and kind and truthful.

I didn't know if he would even be truthful. At that point I really didn't know – because my heart was dying looking at these two wonderful little children. I didn't know if Michael could look at those two children and say the truth.

So that was my personal feeling and that was the only reasons I did not invite Michael Kantaras.

(TR 3125-26)

When Linda testified she told Michael not to tell anybody about his sex change operation "I made it very clear that I was not going to tell anybody." [Despite this "tight-lipped" approach of Linda, witnesses were called in this trial, namely her female friends, that Linda contacted them and disclosed this very confidential matter.]

Linda admitted she discussed having Michael present with her sister Crystal and Uncle Billy but she decided against it. She said Dr. Dies did not tell her to have Michael present.

Michael's visitation with the children abruptly stopped. This lead to repeated motions of contempt in court by Michael to get Linda to comply with the court ordered visitation schedule. (TR 3128-29)

The children continued to discuss Michael's situation and whether he was a "lesbian":

> BY MS. WHEELER:
>
> Q. Could you please tell this Court some of the things that you did or some of the conversations you had with the children in order to get them past this issue?
>
> A. I allowed the children all the feelings that they had, happy, sad, anger, disgust. At one point during this very day that we were talking Mathew looked at me and said, Mom, then dad's a lesbian because he's with Sherry.
>
> And I said, How do you know that your dad is a lesbian? How do you know what a lesbian is? He said – I think he said something like I heard it at school or something, but he explained that it's a woman with a woman. And he said then that's what they are because they're two women together.
>
> THE COURT: That's what he told you?

A. Yes. I asked Mathew and Rina if they saw me as a lesbian and they said no. And I asked, Why not? They said because they didn't ever see me with Michael.

And I said, You saw me with your dad every single day. And they said, But you didn't kiss him. You didn't sleep in the same bed, and they would just give me examples like that.

THE COURT: Why then would they assume there was a lesbian relationship with Sherry?

A. Because she's a woman and they kiss and that's what I said. I said, How come you say that's a lesbian relationship and not me with your dad? And they said, Because Sherry and daddy kiss. And I didn't even know at that time that they had saw them kiss before.

(TR 3129-30)

Linda testified that when she met with Dr. Dies at the appointed time on November 9,th she gave him the "notes" she and Billy had written about what took place with the children on November 5th Dr. Dies was not critical of her. She saw Dr. Dies in court in December when he appeared as "her expert" in court at a hearing on her motion to take the children to Michigan and Dr. Dies said nothing critical to her about how she disclosed the information about Michael to the children. (TR 3136)

The testimony of Linda Kantaras was interrupted in order to take the testimony of another witness, who would otherwise be unavailable, and that was Carol Ciembronowiez.

## FINDINGS OF FACT

## LINDA KANTARAS Cont'd

Trial resumed on February 6, 2002, and Linda's testimony interrupted on February 5, 2002, was continued this date, on direct examination. Much of her testimony during this date of the trial was in response to Michael's testimony.

### L. Michael's and Linda's Confrontation

Linda took the children for three weeks to Michigan in August 1998 after she and Michael separated. This was Billy and Crystal's home, ten (10) acres on a lake, where they went fishing, canoeing, and hiking. She testified she did not attempt to interfere with Michael's phone calls to the children even though Michael testified that happened.

On her return home, Michael showed up at 9:00 a.m. at the marital home. He took Mathew who was outside by the arm and brought him inside the house. He then locked the garage door. He bent down to the children and said "your mommy's crazy" --- "She called Sherry last night and now Sherry won't talk to me." He said to Linda "you're not allowed to say who I can date and who I can't date." She replied she wanted to take the children to school. "I don't care who you date." Linda said she was frazzled and scared because this was out of character for Michael. It was about 9:15 a.m. and school, Anclote Elementary, started at 9:20 a.m.

Michael insisted he wanted to talk. She said she would call the police and he grabbed the phone from her, (TR 3176) and told the children "mommy is going to take me to jail." The children started crying and protesting to her not to send Daddy to jail. Mathew started pulling her hair saying he didn't want Daddy to go to jail. She took a cordless phone in the bathroom and they all followed her. She told them she wasn't trying

to get Daddy in jail, but she wanted to take them to school. She said, Michael proceeded to put his head on her shoulder and to cry. (TR 3177) Instead of calling the police she called her sister Crystal in Michigan.

Both Billy and Crystal talked to Michael on the phone. Linda filed that day for a Domestic Violence Injunction over this event even though Billy got Michael's cooperation to calm down.

Linda denied she had packed Michael's clothes and placed them in garbage bags in the garage (TR 3181), or that she had pleaded with Michael to return home after their separation.

She admitted she cashed an insurance refund check for $125 and signed her and Michael's name after he told her to do it. (TR 3183)

**M. <u>The Separation</u>**

Linda also explained why she told Michael to stay away from coming in contact with Monica, Sherry and Denise when they were with her because they didn't know that she and Michael were separated and she didn't want them to know. She said, "I didn't want a bunch of catty women on my back telling me about Michael." (TR 3205)

When Michael left, he said "he hasn't loved me for the last five years, he doesn't love me now and he never will love me." He said that to her in the garage, and before she was aware of Michael and Sherry's feelings for each other. He said to her "it's over" and she asked him not to divorce her. She was crying, on her knees, then she stopped and told him "there's the door." The date was July 11, 1998. (TR 3207)

About a week and a half later, Linda visited Sherry and told her Michael left her. Sherry was not shocked. She told Sherry first of her friends because Sherry was her "best

friend." On another visit to Sherry's house, her daughter greeted Linda and said "my mom has been locked in the bedroom for an hour and she's talking to Michael." Linda knocked on the door. Sherry refused to open it. Then the following transpired:

> A. She wouldn't open it. She was afraid. And I told her it was okay to open the door. And I heard her say, Michael Linda's here. She wants me to open the door.
>
> * * *
>
> A. So I walked – she had finally opened the door and she threw the phone on the bed. And I just looked at her and said, what are you doing?
>
> * * *
>
> A. And she just said, Linda, he's scared or something like that. She reassured me that he was just scared and didn't have anybody. His parents were out of town, you know.
>
> So to me she was like reassuring me that they were just talking. So then that was that. I left it at that and didn't question her no more.
>
> THE COURT: All right. Why did you go over there to talk to her in any event?
>
> A. Just to visit as friends.

(TR 3212-13)

The next event that caused Linda to be suspicious of what was happening between Michael and Sherry took place at the beach, as follows:

> A. Another event is we were at the beach, Sherry and I and Monica and I believe all of the kids each of all, you know, all of us had kids.
>
> We were at the beach and Michael had come right from work. He had his work clothes on. And he's allergic to fire ants, Your Honor, and we hardly

ever went to the beach because he's allergic to fire ants.

That was one of his reasons for not doing a lot of outdoor activity. So when I saw him in his work clothes from head to toe with a white uniform on and big boots at the beach that floored me.

So I was mad. And I got up and I said, What are you doing here? And he said, you know, he wanted to come and see his kids. So he went and changed. He had brought a change of clothes. Went and changed into his swimsuit.

So he came and he sat right down on the blanket next to Sherry. And they stayed there, Your Honor, for about two-and-a-half hours talking and giggling and laughing. And I was just appalled.

He did not go in the water and spend time with his kids. I mean, he said hello to them, but that's not what he was there for. It was very obvious to me, Your Honor.

THE COURT: Very obvious what?

A. That he came there to see Sherry Noodwang. I mean, he didn't talk to Monica like that. He sure –

THE COURT: How did he know that you were at the beach?

A. I don't know, Your Honor. I don't know. Because you know what? I quit telling Michael where I was going and what I was doing July 11th, 1998. So I don't know how he knew.

He obviously planned it because he showed up in his work clothes, but then changed to his swim trunks.

THE COURT: What hour of the day was this?

A. Well, we were at the beach, so I'm assuming it was like one or two, maybe twelve in the afternoon. I mean, it was afternoon time. I can't be certain of

the time. But we stayed at the beach until six o'clock and he continued to stay that whole entire time.

THE COURT: Did he talk to you?

A. I did not talk to him, Your Honor. I was in the water with the kids. I was talking to Monica. They stayed on the blanket, like I said, for about two-and-a-half hours before they even got up and swam themselves.

THE COURT: You didn't talk to either one of them?

A. No.

(TR 3214-16)

Linda said that although Michael had left her he returned to the marital home to visit the children without calling to say he was coming. He still had his clothes in the house, but he didn't return to live there. The next incident was when Michael showed up without calling and merely walked in. The phone rang shortly after he arrived, he answered and talked for an hour. Then she realized when he stopped talking it was Sherry on the phone. Then she took Michael into her bedroom away from the children and said to him "you're in love with my best friend Sherry Noodwang." The following transpired:

A. He looked at me stunned and he said, I don't know what to tell you. I said, Well, I know what to tell you. I opened my closet door and I said, Get your S-H-I-T and get out of my house and now you are not allowed to come back anytime you feel like it.

I mean, I don't know if them were my quote/quote exact words, but that's basically what I told him.

Yeah. I opened my closet for him to get his clothes out.

I told him he couldn't come back freely like he had been. He had to call me now.

THE COURT: Did he say anything?

A. You know, I don't remember him saying too much. At that point when my children saw Michael getting his clothes and putting them in the back of the truck and stuff they were a little bit confused and stuff, but at that point they still had no idea that daddy – there was anything going on with daddy and mommy.

And I just said that, you know, daddy is going to stay at Yaya's house and stuff. I don't remember what I said to them, but they weren't upset or startled, you know. They were just like, Okay, not a big deal and stuff.

Just staying at Yaya's house. Yaya is grandma in Greek. That's what they call Michael's mother, Yaya.

I believe when he went outside and was getting ready to leave Mathew and Rina wanted to go with him. I can't remember. I think Mathew went in the back of the truck, I'm not sure, but they wanted to go and spend the night and stuff.

And I said, No, come back in the house, you've got to go to school and stuff like that. So then, you know, they're like, well, we will see you tomorrow and stuff. And I believe Michael hugged them and said, Yes, we'll see you tomorrow and stuff like that and then Michael left.

(TR 3218-20)

Toward the end of July and the first of August 1999, Linda received a phone call from Sherry asking if she could come over and the following event took place:

**N. <u>Linda, Sherry and Michael Confrontation</u>**

BY MS. WHEELER:

A. Sherry had called me and asked me if she could come over. Like I said, I already confronted her about that – about Michael having feelings for her. And I said she could come over and talk to me.

And Michael had called from work and said he had wanted to talk to me. And I said no, that I didn't want to talk to him. So Sherry had came over and then – I don't even know how long later Michael showed up. It wasn't that long later that Michael showed up.

And they both had said they wanted to talk to me together, you know. So I said, No, now is not the time, the kids are here. And they said, Let's go in the room, my bedroom. So we did. We all went in my bedroom.

Q. Did the children follow you?

A. No. I mean, I shut the door. So whether they were, you know – not to my knowledge. I assumed they were still watching TV.

Q. So what happened then?

A. When we arrived in the room I – this was the first time that I confronted both of them together in the same room, about having feelings for each other. And that's when Michael proceeded to tell me that he loved me as his best friend.

THE COURT: What did you say specifically to both of them? You said you confronted them, but what did you say? How did you confront them?

A. I said, I know you guys are in love with each other. And, Your Honor, I took Michael's hand and I took Sherry Noodwang's hand and I interlocked them together and I said, You guys love each other. I don't care. Have a fine life. I hope you're happy for many, many years. Leave me and my children alone.

That's when Michael proceeded to let go of Sherry's hand, looked at me and said, Linda, I love you. I love you as my best friend.

And he started getting choked up like he was going to cry and he was telling me how much I meant to him as a best friend and, you know, how much fun we had when we were together like friends.

And that's when he looked at Sherry and he said, But I'm in love with Sherry as a wife.

That's when he proceeded to talk about staying married to me as his best friend and having Sherry as his wife. That's when he proposed that Utah thing, but he never said moving to Utah or nothing like that. He just said, we can all just stay happy together as a family.

I said, No way. I said, No. It's not who I am. That's not who you can make me.

THE COURT: And he said what?

A. I left the room and went into the bathroom at that point, Your Honor.

And I heard my son scream, "No, I hate you."

THE COURT: Mathew screaming?

A. Yes, sir.

THE COURT: He said, No, I hate you?

A. Yes, sir.

THE COURT: While you were in the bathroom you heard that?

A. Yes, sir.

THE COURT: What happened next?

A. I ran out of the bathroom, Your Honor, and when I got out we have a family room which is like a

Florida room, so I came out of the bathroom and I came around and the first vision I saw was Mathew throwing things and slamming the glass doors back and forth and Sherry standing there and my daughter was like under the breakfast table and Michael was like over her and she was crying, No, daddy. No, daddy. And I'm like, What happened?

THE COURT: She was under a table? A breakfast table?

A. Yeah.

THE COURT: And what was she saying?

A. No, daddy, no. And both my children were crying.

THE COURT: And what happened?

A. And I said, What happened? And Mathew proceeded to tell me that daddy loves Sherry and he's not marrying you no more. And I –

THE COURT: How do you think he came about to say that?

A. I looked right at Michael and Michael was bent down like this (indicating) with Rina and I looked at Michael and he looked back at me and I said, What did you tell my children?

And he looked at me, Your Honor, and he said, The truth. I couldn't believe it. I mean – and I only remember this, Your Honor, because it was so traumatizing and it was so unnecessary to have to be done this way. I don't know what happened when I was in the bathroom.

But whatever happened did not have to happen that way, Your Honor. So then Mathew was mad at Sherry. And I can't remember if he hit her or if he was trying to hit her, but Sherry ran out of my house.

THE COURT: What did Michael do?

A. He looked up at me and he was trying to console Rina at that time, but he looked up at me and I told him, I said, You better to get your crazy girlfriend because she's probably going to run out on U.S. 19 and try to kill herself.

THE COURT: What did he say?

A. He ran out the door.

THE COURT: And after that what happened?

A. The kids were very upset, very confused. And I just calmed them down and reassured them that it's adult problems and, you know, daddy still loves them. And, you know, that it would be okay.

THE COURT: Did the children calm down?

A. Eventually, Your Honor.

THE COURT: What did you do next?

A. I just stayed there with my kids. And Michael and Sherry had came back because they had both driven different cars and they had left.

You know, and I just stayed in the house and just tried to console the kids and stuff like that and, you know, reassure them.

(TR 3222-30)

Michael Kantaras testified that Linda took the children to Michigan in December 1998 for a winter vacation and that his telephone calls to the children were disrupted. Linda denied that happened. She took care to see that the children were available at 8:00 p.m. to receive his calls.

Another instance Michael testified about was that he heard Linda say in front of the children that "Mathew was a punishment from God," saying it loudly outside the house while standing on the driveway. Michael said he saw pain in the children's faces.

Linda emphatically denies saying that. She testified she looks on Mathew as a "blessing." (TR 3236-37)

She testified that Mathew, Irina and she took discipleship classes at Calvary Chapel Worship Center. She stated, "the Bible says that you are not to have sex out of wedlock and if you do you are committing sin." She stated, "So after class my son looked at me driving home from church and said, Mom, you committed a sin when you had me." (TR 3237)

Mathew knew "I was not married to John (Atkinson)," Mathew was 11 years old at this time. The court inquired: "He said you committed sin when you gave birth to him?" She replied, "Yes he did – Mathew went further to say that he was the sin." (TR 3238)

Linda said: "And I said no, the Lord doesn't work that way. The Lord doesn't punish us for things that we do wrong. He tries to show us the right way and its our free will choice to do what we chose to do." (TR 3238) Linda then made the following observation:

> I think Mathew really wants to know where he belongs. He really wants to know who his family is. He knows who I am. He knows I'm his mother and that I love him. He recognizes Michael as another person that was in the same house with him that loves him in Michael's way.

(TR 3239)

**O. <u>Transsexual Impact on Children</u>**

Linda said there was a difference between the way she and Michael raised Mathew and she was asked to explain what she meant. She stated the following:

> Q. Well, you need to explain that to us, if you could, please.

A. Okay. Michael Kantaras is a woman who thinks that he's a man. He had a transgender change. He's a woman. He thinks he's a man. You cannot think you're a man and have man characteristics and be a natural man.

Through this whole trial, through all the psychologists, through every conversation I've ever had with my son, my heart bleeds for him, Your Honor, because he was deprived of his natural ability to be a boy.

His natural markings of a man. His natural instinct to do things as a little boy does. He sat down to pee, Your Honor, for the longest time when he learned how to go to the bathroom. I never thought about it then when Mathew was –

THE COURT: He what?

A. He sat down to pee when he learned how to go to the bathroom.

THE COURT: Mathew did?

A. Yes, he did, Your Honor, for the longest time. Why?

THE COURT: Why do you think he sat down?

A. Because he saw his daddy do it. I and my two children had so much love and respect for Michael that Mathew wanted to be like Michael.

And I didn't know it then, Your Honor, and I'm just finding it out through counseling and through Mathew's behavior and through Mathew's interaction with men who are men I see a difference.

When I was married to Michael, Your Honor, I wasn't around men. I have seven sisters. I was not around their husbands. Michael has a brother and a dad and a grown nephew. I wasn't around them a

lot to really see that on an everyday, 24-hour-a-day basis Michael does not act like a man does.

THE COURT: How do you say he acts?

A. I mean, I'm not saying by any means that he runs around in a dress or has pumps on. I'm not talking about like that, Your Honor. It's really hard to explain.

He doesn't – he doesn't have the demeanor behind closed doors as a man does, Your Honor. I don't know how to explain that in words. I see it only through now, through counseling with me, through counseling my children, through my children's testimony in counseling.

I didn't know. I mean, yes, there is a woman and a man there is difference. There is. But when my children went to Michigan the first time in August of '98, Your Honor, it was the first time that my children have really freely been exposed to men, and it was my brother-in-law Billy and my nephew Billy and there was such a difference on how Mathew reacted to them and the questions Mathew answered – I mean, asked them.

(TR 3242-45)

Michael says he has the heart and the brain and the soul of a man, but I'm sitting here in this courtroom under oath telling you he doesn't. There's a difference. There's a difference, Your Honor.

I can't explain it. When I was married to Michael for 10 years I saw the difference, but you know what, Your Honor? I never thought about my two little kids. I never thought that it would have an impact on Rina marrying a man.

I never thought it would have an impact on Mathew growing up to be a man. And how was he going to function? You know, how was he going to know if that's a normal man characteristics or if he's trying to be like his daddy?

> How is Rina going to fall in love with some man and say, Well, you're not like my daddy, you know? I mean, I'm not saying that Michael is this God awful person. I'm just saying that Michael and I as parents did not – I know I didn't and I know I didn't do it with Michael – think for one minute how his transgender change would affect my children.
>
> I didn't think about it when I married him. I didn't think about it when I signed that adoption paper. I didn't think about it when I said I would get inseminated, Your Honor, and that is something I'm going to probably have to explain to my children, as I do now, when they ask me, Why, mommy, why did you marry him?

(TR 3246-48)

Linda stated Michael only had two men friends he saw once in a while and never bonded with any of the husbands of their female friends, such as Manuela's husband, or Maria's husband.

When Linda was asked about Michael being through the Rosenberg Institute and the triatic treatments which the experts say transitioned Michael from a woman to man. She replied: "Michael Kantaras has not made that 100 percent transgender transition.". . . "I'm saying he's very resentful that he doesn't have a penis." She further stated "he would say things to me about woman's stuff and I didn't like that." She explained that as follows:

> When I had my monthly time, Your Honor, you know, each – when a woman has her monthly menstrual cycle he would say, Well, I know what you're going through. I've been there.
>
> "I had terrible ones and I used to have to put a bottle of hot water on my stomach." I don't want to know things like that, Your Honor. My husband should not be telling me things like that. Should not feel comfortable telling me things like that.

I never asked him what he did when he was a girl. I never asked him if he ever slept with a man. I never asked him if he wore a dress. I didn't want to ever remember Michael Kantaras being a woman. I tried daily not to remember that.

And then when he just so, you know, nonchalantly, you know, here, put the hot water bottle on it. It helped me when I had mine. I'm like, I don't want to know that.

And to me if someone is going to go through that much trouble to do that change their lips are sealed. They're not ever going to speak to the woman that they love and their wife about being a woman.

(TR 3252-53)

Linda described her parenting skills, as follows,

BY MS. WHEELER:

Q. I would like you to tell this Judge what you observed between the way you parented Mathew and the way Michael parented Mathew?

Could you please explain that to us?

A. Yes. Um, I'll just say very simply that I put boundaries around my kids.

THE COURT: Put what?

A. Boundaries. They're not allowed to do this or that. They can do this or that. I give them discipline.

THE COURT: You put boundaries, that was your word?

A. Yes, it was. I put boundaries so they know what they're allowed to do and what they're not supposed to do. So they have a concept of right and wrong.

I discipline them when they do something wrong. Not every little thing, but when they do something wrong.

> I make sure they get eight hours of sleep. I make sure they eat breakfast, and I'm not talking about waffles with syrup. I am a person who is very healthy foodwise. I do not eat out. I do not take my kids to Burger King or McDonalds or nothing like that.
>
> That kind of stuff is fine once in a while, not every day, not every weekend, not three and four times a day, for sure. It's – so I'm a very healthy parent. I make sure they eat their protein, their vegetables, their fruit. My kids eat that way. That's their habit because that's my habit.
>
> I always have fruit and vegetables at the house. We very rarely eat – chips is our biggest junk food, so to speak. I do not buy Ho-Hos. I do not buy cinnamon rolls. If there are sweets in the house we make them. Like cookies or cake or something, I don't buy stuff like that.
>
> I monitor very closely what my children watch on TV and what kind of music they listen to. Who their friends are. What their education is. What their motor skills are. What their interests are.
>
> And what their likes and dislikes are. I respect my children. I teach them respect. Respect is something I think that you are taught. And I've taught my children respect from the time they were born. I've respected them.

(TR 3254-56)

Linda said Michael's parenting style is to not give the child a spanking but his discipline is "come on, we're going to have a talk." And I'm telling you from my own experience when you sit down and lecture a child, its going in one ear and out the other. I don't care if you're their dad. "I don't care if the Lord himself came down and lectured a child." (TR 3262)

CROSS-EXAMINATION ON DISCLOSURE TO CHILDREN

BY MR. VAUSE:

Linda stated the week prior to the children being told about Michael's sex reassignment, she traveled to Key West with Uncle Billy and her sister Crystal for five days. She said, Crystal, Billy and she all went to Woodhaven High School, at Flat Rock, Michigan.

After their meeting with the children in November 5, they flew back to Michigan on the following Monday, November 8th. The children went on the trip to the keys and they missed that time in school. Billy and Crystal were not told about Michael's sex reassignment before they came to Florida. But Linda could not recall just when she told them but felt they should know since her friends now knew. She agreed the children had been receiving counseling from Ms. Glenda Davenport, a clinical social worker with a certification in Family Therapy, since 1998. And, that Ms. Glenda Davenport and she, had discussed the possibility of disclosing Michael's situation to the children, as follows:

Q. Do you recall having a conversation with Glenda Davenport regarding possible disclosure to the children?

A. I recall talking to her about my children finding out, yes.

Q. Before or after the disclosure?

A. Before my children found out.

Q. Do you recall Ms. Davenport advising you that the children should not be told?

A. Yes, sir.

Q. Did she tell you why the children should not be told?

A. We both discussed that the children should not ever find out. So it was just because they're little people.

Q. Did she also tell you that if the disclosure was ever to occur Michael most certainly should be present?

A. You're saying she told me that?

Q. Yes.

A. I don't recall her telling me that.

Q. When you heard the news from the principal that some people at school knew about Michael's gender resignment [sic] did you call Glenda Davenport?

A. No, I did not.

Q. It never occurred to you to make the disclosure in front of Ms. Davenport?

A. No.

Q. Do you recall talking to Michael one or two weeks prior to making the disclosure to the children about the possibility of disclosure?

A. There was a lot of occasions, Collin, where I talked to Michael about my children finding out.

Q. I'm interested in one or two weeks prior to the disclosure.

A. I don't know. I don't recall a specific –

Q. You decided instead of bringing the children to their family therapist, Ms. Davenport, that you ought to sit the children down with Crystal and Billy to tell them; is that correct?

A. No, that's not what I decided.

Q. Ultimately you did, in fact, sit down with Billy and Crystal and yourself and the children to make the disclosure; is that correct?

A. Yes.

Q. You are the mother of the children; is that correct?

A. Absolutely.

Q. So the decision was yours; wouldn't you agree?

A. Yes, but I did not make it independently on my own knowledge and my own being.

Q. Presumably you are saying that Crystal and Billy joined you in the decision?

A. No. I'm saying Dr. Dies joined with me in the decision.

Q. Did he tell you to tell the children about Michael's gender resignment?

A. He said if it was going to be done it would be better done in the loving, family atmosphere than on a school playground.

Q. So Dr. Dies' advice was to tell the children in a loving, family atmosphere?

MS. WHEELER: Judge, I'm going to object. That's not what my client said. I think she said if it was going to be done.

MR. VAUSE: I'll agree with counsel's characterization.

BY MR. VAUSE:

Q. Dr. Dies said if it's going to be done it needs to be done in a loving family atmosphere; is that correct?

A. Yes.

Q. Mrs. Kantaras, who is the family of those children?

A. There's a lot of family of these children, Collin.

Q. Who is the closest family of these children?

A. There's a lot of close family of these children.

Q. When you hear that the children should be told, if they're going to be told, that it should be done with – or in a family, loving atmosphere didn't it occur to you that Michael Kantaras ought to be included?

A. It occurred to me, yes.

Q. So you got on the phone and called him?

A. Absolutely not.

Q. You will agree that this disclosure to the children was quite momentous in their short lives, wouldn't you?

A. What?

Q. The disclosure to the children was a momentous thing for these children, wasn't it?

A. Yes.

Q. It was quite a huge piece of information for a seven and nine-year-old to swallow, wasn't it?

A. Yes.

Q. You chose not to invite Michael Kantaras; is that correct?

A. Yes.

Q. Mrs. Kantaras, wasn't it your intent at this period of time to completely deprive Michael Kantaras of those children?

A. Absolutely not.

Q. Wasn't it your intent to deprive those children of their father?

A. Absolutely not.

Q. Mrs. Kantaras, you made this disclosure without even asking their father to be present, didn't you?

A. Yes, I did.

Q. And when those children started asking questions you said your dad is a woman, didn't you?

A. When they started asking questions during the disclosure?

Q. That's correct.

A. No, I did not. I said, The questions you have to ask your dad.

Q. Mrs. Kantaras, you told them to ask their dad, but their dad wasn't there, was he?

A. That's right, he wasn't.

Q. When you first sat the children down you told them – the first thing you told them, I believe, that your testimony was, I do not want to tell you this. I never wanted you to find out.

Is that accurate? And if it's not, please let me know. I don't always remember things exactly.

A. Well, neither do I. I can't remember if I said those exact words.

Q. Do you think you said something to that effect?

A. I might have. But I don't remember if that was the very first thing that I said to them. I can't recall.

Q. You can't recall the first thing you said to them when you decided to sit them down and make the disclosure.

A. The recollection that I have that I said to them was that I had something to tell them, but I wanted them to know that I love them, Michael loves them and the family loves them, but that's my recollection of what I said first.

Q. That would appear to be at least a somewhat caring way to present it to the children. Do you recall testifying previously in front of this Court on July 5th, 2000 on a Motion for Contempt?

A. No. I mean, I recall on a lot of contempts. That particular one? No, I do not.

Q. You do recall attending a hearing in July of 2000 on Mr. Kantaras' motion, don't you?

A. There was a lot, so I guess in 2000 we went to court for contempt.

Q. You were under oath when you testified; is that correct?

A. Yes, I was.

Q. You were asked a question while testifying at that hearing:

> "How did you tell them?
> Answer: I told them there was something mommy had to tell them about their daddy and before I told them anything I told them why I had to tell them."

Q. Mrs. Kantaras, by presenting it to the children in that matter would you agree that you were providing them with a negative message about what you were about to tell them?

A. I don't think so, Collin. I think it can be looked at both ways. Because it was something that they knew that their mommy had to tell them that she didn't want them to find out. To me that's not a negative way.

Q. During the disclosure to the children your brother-in-law Bill gave them various examples including that men – that there are men that think they're men, but they're really women.

That was your testimony on direct?

A. Yeah. Yes, sir.

Q. That is what Billy told the children about their father.

Do you think that may have given them a negative message about their father?

A. That's what Bill told the children about their father?

Q. I'm quoting from your testimony on direct, There are men that think they're men, but are really women.

A. Do I think that was a negative; is that what you're asking me?

Q. Yes.

A. No, I do not.

Q. Mrs. Kantaras, after they learned not that their father was a man, but that he was a man – or that he was a woman who thinks he's a man, didn't they start asking questions such as, Is dad a lesbian?

A. They asked a lot of various different questions. I cannot remember all exact sequence. Um, I cannot remember what my testimony was at that trial.

I cannot remember, you know, every little detail, but I remember that, yes, at one point in the conversation they did ask because Michael is with Sherry, is he a lesbian.

Q. Perhaps I didn't make myself clear. On your direct examination yesterday or today you stated that Billy told the children there are men that think they're men but are women.

Would you agree with the message to the children is that their father is a woman?

A. Yes.

Q. You also recall testifying at this trial that lesbians were discussed?

A. Yes.

Q. Do you think that the idea that either Michael or yourself may have been a lesbian would ever have come into the children's mind had they not been told that their dad was a woman?

A. If my children were not told that Michael was a woman would they ever suspect Michael of being a lesbian; is that your question?

Q. The question is: If your children are told during this disclosure session that Michael is a woman, wouldn't that explain why your children started asking questions about lesbians?

A. Because he was with Sherry, yes. I don't really understand your question, Collin.

Q. Mrs. Kantaras, when you made the disclosure to the children you did not tell your children that Michael Kantaras is a man, did you?

A. No, I did not.

Q. So the outcome of the disclosure to the children was not to present Michael to them as a man, but it was to present to them Michael as a woman; isn't that correct?

A. I don't look at it like that. I was telling the children facts that I knew the facts that other people knew also. So it's not like I went in there saying, ha ha your daddy is a girl, no.

Q. Why didn't you tell them that he completed gender reassignment and he's a man?

A. Because, to my knowledge, to this day, Michael has not completed the whole entire surgery from what my understanding was of the three steps.

Q. To this day?

A. To my knowledge I don't know that he had completed all three surgeries.

Q. Well, Mrs. Kantaras, didn't you sit here through the testimony of the three expert witnesses who explained what was required to complete the Harry Benjamin Institute's Standards of Care for gender dysphoria?

Q. I did and I was here during that trial, but the time I told my children I had no knowledge of anything that was being said in this courtroom.

A. You yourself told your children, according to your testimony at this trial, that Michael is a man on the outside and a woman on the inside; isn't that correct?

THE COURT: At this time?

MR. VAUSE: At this trial.

A. I think I said –

THE COURT: Wait a minute. Excuse me. Are we talking about this disclosure period on November the 5th or are we just talking about in the course of this trial?

MR. VAUSE: I'm talking about her testimony as to what transpired during the disclosure.

THE COURT: The disclosure, right.

BY MR. VAUSE:

Q. And her testimony was that during the disclosure she told the children that Michael is a man on the outside and a woman on the inside.

Do you recall that testimony, Mrs. Kantaras?

A. I thought I said he was a man on the outside, but had a woman's body, but I can't remember. I might have said it your way. I don't remember.

Q. I need to know, Mrs. Kantaras, you stated that the reason you didn't invite Michael Kantaras to participate in this disclosure to the children was because you didn't trust him to be honest?

A. Yes.

Q. You thought he was going to make up a story?

A. I don't know what I thought at that time, but I didn't think he would sit there and confess that indeed he's a woman.

Linda took the position that Michael was evading telling the children about his sex reassignment. However, she admitted that for six months since early 2000, Michael has been meeting with Dr. Shelef and the children, as a result of this disclosure, trying to help them understand Michael's transsexuality. They started counseling with Dr. Boone, in 2000 to the present. (TR 3323) She believes Michael is still avoiding the issue based on questions the children are asking her. (TR 3327)

Linda admitted on cross-examination that she told her three friends, Monica Jordan, Denise White and Manuela Griffin, about Michael's sex reassignment and that she initiated the conversations with them. In her letter to Michael of 1999, (Pet. Ex. #6) alleging Sherry was the one who disclosed the sex reassignment, she now admitted, she was the one who actually made the first disclosures in 1998. (TR 3328)

After the disclosure on November 5, 1999, the children refused to go with their father on November 10th. Irina told Michael he was "not her father" and refused to get in Michael's car. The situation repeated itself on November 12th for a weekend visitation, Friday through Sunday.

On December 14, 1999, Linda admitted she filed a Motion to Suspend Visitation and a Motion to Relocate to Michigan (Composite Exhibit #1, Tab F). At the hearing in

court on December 14th, Michael's visitation was reinstituted but under supervision of a therapist. Linda said her non-compliance with visitation at the hearing was because the children were "confused and angry," so she didn't force them into visitation. (TR 3331-32) Linda was asked if she cancelled scheduled appointments of the children and Michael during the months of May and June, 2000 with the court appointed therapist, Dr. Shelef? She said, "yes" but could give no reasons for her doing it. (TR 3360)

**P. <u>Sex During Marriage</u>**

Linda was reminded she testified, that throughout her entire marriage she and Michael Kantaras never had sexual relations, because to her Michael was a "woman" when he took his clothes off. That was her main reason for 9 years. She was asked how did she reconcile that statement with what she said in May 2001 in court, "I've never seen Michael as a woman." (TR 3364) In her letter to Michael (Petitioner's Exhibit No. 6), she said she looked at Michael and "saw a man." She was interrogated about their marital sex life,

> BY MR. VAUSE:
>
> Q. Mrs. Kantaras, you and Michael did share the same marital bed, didn't you?
>
> A. No, I would not say we did like a married couple.
>
> Q. You may have stated during direct examination that the two of you never shared the marital bed?
>
> A. When company was over he would sleep in the room, but, I mean, when we were home by ourselves, no he would not share the room with me.

(TR 3365)

Linda admitted after she returned from Michigan in August 1998 with the children, she had a confrontation with Michael. She got a Domestic Violence Injunction issued against him. At a final hearing on the matter the court dismissed the injunction. She admitted she was given a check for child support by Michael the same date as the hearing. (TR 3373-74)

Linda was asked, if the court decided to award Michael "primary custody" and "visitation" to her, would she be able to cooperate? She replied:

> A. I don't see myself agreeing with the parenting skills. I don't know what that means cooperate because I don't agree with it now, but I don't do nothing. So he's going to raise the kids how he chooses to, but when they come to my house that doesn't mean that I'm going to change my parenting skills to Michael's. I don't understand what you're saying cooperate.
>
> THE COURT: I think the question is can she, if he was given the primary custody of the children and she was given visiting rights, would they remain in antagonistic position somehow or will she be willing to cooperate and work reasonably with him and, in addition, discuss any problems the children might have between them?
>
> A. I try to do that now, Your Honor. I'm not opposed to discussing anything with Michael Kantaras. I try to do that now.
>
> I don't know what he's saying, "cooperate." I'm not going to lower my parenting skills. No way. I'm not going to say Mathew could get written up on a Friday and go skating on Saturday. I'm not going to do that.

(TR 3384-85)

**Q. <u>Mathew's Mental Problems</u>**

The court asked questions regarding various mental classifications made by Dr. Boone and Dr. Dies regarding Mathew and Linda, as follows:

> THE COURT: I would like to ask a question while you are here on the stand. The custody evaluation of Dr. Dies. I was trying to find out where in here he quotes Dr. Boone saying that Mathew has, and I'm trying to find the exact wording on oppositional –
>
> MS. WHEELER: Your Honor, it was oppositional defiance disorder.
>
> THE COURT: Defiance disorder. Now, did Dr. Boone ever talk to you about what that disorder meant?
>
> A. I have never heard anything about that disorder, Your Honor, until this trial. I had no idea that Mathew – or until the report, I should say.
>
> THE COURT: Do you think it's important for you to find out what the doctor is talking about?
>
> A. Absolute, Your Honor.
>
> THE COURT: Obviously the boy has gotten himself a classification because of his attitude. Everybody in this courtroom, every teacher, every person that's had any observations about Mathew has agreed he has a discipline problem. He has an attitude.
>
> And all of them sort of described it as "defiant." Dr. Boone elevates it up to an "oppositional defiance."
>
> Dr. Dies may have tried to explain that when he was testifying because he quoted that.
>
> Have you talked to Dr. Dies about what that may mean?
>
> A. No, I have not, Your Honor.
>
> THE COURT: Do you think Michael Kantaras has pursued that question?

A. I don't know, Your Honor. To my knowledge I don't know if he has or has not.

THE COURT: Would you feel that you and Michael should consult with each other about what that means with regard to Mathew?

A. Yes, Your Honor. I think we should be able to sit down and talk about that. Yes, I do.

THE COURT: Do you think that's a serious point?

A. Your Honor, I think that Mathew has a lot of issues and a lot of defiant problems. But I, by all means, do not think it is irreversible.

If we could get our lives in order and move forward, yes, I think if that's what the doctor diagnosed Mathew as having that I should know, I'm his mother, I'm the primary care giver right now, I should have been notified about this. Yes, I do feel that.

THE COURT: It means red flags are flying?

A. Absolutely I should have been, yes.

**R. <u>Linda – Borderline Personality Disorder</u>**

THE COURT: And there's another disorder mentioned by Dr. Dies in this Report. This is the updated Report.

A. Okay.

THE COURT: Again, from Dr. Boone.

A. Yes, Your Honor.

THE COURT: I would like to – I don't want to take up your time on cross-examination here, but there's some very interesting observations of Dr. Dies, about what Mathew reports, what he does not like about Sherry. How you are referring to Michael in their presence.

Then Dr. Boone's negative observations about both parents, including the father. He says, Available data raises concerns like "borderline disorder" with Mrs. Kantaras.

Dr. Boone has passed an observation on you. He not only has given a mental classification to Mathew, but after reviewing, seeing you around the children, he likewise has given you a classification, "borderline personality disorder."

A. Your Honor, I only went to see Dr. Boone a few times. And honestly, I can't ever remember the last time I've been to see him. It's been a long time. I would be really interested to know why he said that.

THE COURT: You haven't talked to him?

A. No. And do you want me to tell you why I haven't talked about him? Because of "that statement." It seems like everybody I talk to, Your Honor, Glenda, Dr. Shelef, Dr. Boone, Dr. Dies, somehow I trust them, I give them my life and my two kids' life. Then when we're in some type of hearing I'm quote and unquote a "raving lunatic, or she was upset or she was screaming."

And I'm looking at these people saying, I don't believe it. So I have a hard time with trusting a lot of people in this trial, Your Honor. I have a hard time.

That's why I haven't went to Dr. Boone and asked him. That's why I haven't went to Dr. Boone. I'm seeking out help for Mathew right now and Rina and myself. Someone that has nothing to do with this trial, someone that's not going to get up here and say anything about Michael or me.

So I have a hard time believing how he got that observation. Now, after this trial, I do plan on going to his office and asking him exactly how he got that.

THE COURT: Right. You don't even know what it means, do you?

A. No. No, sir, I do not.

THE COURT: All right. But you've taken note of this?

A. Yes, sir, I have.

THE COURT: Dr. Boone also mentioned the anger that both parents have for each other and there is no strong differentiation between them. Anger toward each other. In other words, it's spilling over into the lives of the children.

A. It's hard for me to understand where he got that observation from. Me and Michael do not agree, Your Honor, I will tell you that right now. But to say that we're both so angry at each other, I don't know that that's true. I would almost say it's not.

I mean, the only thing I can think of is that we were in there in one of those sessions sometimes or something and we weren't agreeing on something.

Me and Michael didn't argue when we were married a lot. I don't even remember us arguing when we were married. After we separated, I really wouldn't even say we argued. Because to me an argument is something you're standing there agreeing, disagreeing, agreeing.

(TR 3402-08)

CONTINUED CROSS-EXAMINATION

Linda Kantaras was called back to the witness stand the next day, February 7, 2002, for more cross-examination. She testified she plans resuming counseling for the children after this trial is concluded through the Calvary Chapel Worship Center with a clinical psychologist named Rita, last name not recalled, as recommended by Pastor Rebecca. In the mean time, she has continued with Dr. Boone. (TR 3424-25)

Linda admitted throughout her marriage she has held herself out to the public as the "wife" of Michael Kantaras; they attended church as "husband" and "wife"; their son and daughter were baptized in church; they attend parent teacher conferences together; they presented themselves as husband and wife to their mutual friends and filed a Federal Income Return jointly, as husband and wife. (TR 3428)

The court directed questions to Linda Kantaras regarding observations by Dr. Dies in his Report, as follows:

> THE COURT: I would like to ask you some questions regarding conclusions arrived at by Dr. Dies in his report. He states that "he has a significant dilemma which concerns a recommendation that appears to be inconsistent with the children's preference in this case.
>
> Mathew and Irina have routinely stated that they would favor custody on behalf of their mother. However, it appears quite clear that the youngsters have been poisoned against their father and prevented from having a meaningful and constructive relationship with him due, in large part, to their mother's insidious and alienating tactics."
>
> Do you have any comment to make on the charge that Dr. Dies has leveled against you in his summary of his conclusions?
>
> A. Yes, Your Honor, I do.
>
> THE COURT: What is that?
>
> A. Dr. Dies is saying that the children want to live with me, but they want to live because I've poisoned them against Michael.
>
> THE COURT: Correct.
>
> A. That is not true, Your Honor.
>
> THE COURT: Why?

A. I came back to Florida in August of '98 for one reason and one reason only – I didn't have no family that I was going to live with down here. I could have had a job in Michigan. I could have stayed up there away from the gossip. I wouldn't be on national TV today.

I came back for one reason and that was Michael Kantaras at that time was the father of my children and they only knew Michael Kantaras as the father. They loved Michael Kantaras as their daddy.

They did not know he had a sex change. They did not know how deep he was in love with Sherry Noodwang. They just thought that he left me for her. But they didn't have as much anger against Michael Kantaras as they do today.

So, if I wanted to poison the children, I could have very well just stayed in Michigan three-and-a-half, four years ago, but I didn't. I could have left and ran away. At any point in time in these three-and-a-half years I could have took off and I didn't.

(TR 3438-40)

In her testimony, she stated Dr. Dies statement that she poisoned the children's minds against Michael was because she still owes him $2,000 for testifying in court on her behalf. (TR 3442)

Linda further stated the choice to marry Michael Kantaras was hers not her children's who have had to live with her choice, as follows:

Mathew didn't choose to do it, Rina didn't choose to do it, I did. I chose to sit before a judge and say that the father of my son just took off and abandoned us.

THE COURT: Just what?

A. I chose to say that. That he abandoned us. That John just took off. I chose to sit there and say that I wanted Michael Kantaras to be Mathew's daddy.

> I'm not a materialistic person. I didn't do it for money. I did it because I thought Michael loved me. I thought Michael loved my son. I thought he would raise him with pride and passion.
>
> And I didn't know Michael Kantaras, Your Honor. I didn't ask him questions about his sex change. I never even asked him if he slept with a man. I never even asked him if he dated a man. I never asked him any questions about anything.
>
> And now sitting here today, buddy, I should have. I should have asked him a whole bunch of questions before I said "I do, here is my kid" and I didn't.

(TR 3443)

Dr. Dies' Report states that Linda gives harsh and destructive messages to the children regarding Sherry. She replied "I don't think that her having an affair on her husband or with Michael was right. She said that to Sherry and if the children ask if she likes Sherry she will reply "I don't like what she's done." "If my kids ask me what Sherry Noodwang did is right I'm going to say 'no.'" - - - "She's not a nice person for what she's done, but she is and can be a nice person for who she is." (TR 3447-48) She also stated: "Your Honor, I hugged her. I hugged her when I picked my kids up from vacation, the four weeks with Michael. . . ." I looked at Sherry and I hugged her and I said, Sherry, thank you for helping Michael with my kids this summer. When she brought my children to church I hugged her and thanked her because Michael wasn't with her. I guess he was at work. . . ." (TR 3459-50)

Linda went on to explain the basis of her feelings toward Sherry and Michael's ways with women, as follows:

> When I found out about her and Michael I hugged her because she said, I know the Lord is going to punish me. I

know it's a sin. I know it's Satan and I said, Don't worry about it. I forgive you. I don't blame you.

THE COURT: What did Sherry say to you?

A. When I found out about him and Sherry, she was scared of the Lord. And she said, Linda, I know the Lord knows this is not right. You do not have an affair.

And she said, I've hurt you. I mean, I don't know if these are her exact words, Your Honor, but it was something to this effect. She was worried that she hurt me. She felt bad for hurting me. She felt bad for having an affair on Ron.

I've not looked at Sherry Noodwang and said it's her fault. I don't believe it is. Michael is very good at what he does, very good at knowing what a woman wants, knowing how to get her.

When Michael is on this stand, Your Honor, ask him how many married woman he's dated and see what his answer is because the whole time I was married to him that's all I heard how many stories of how many women he got to have away from a man with a penis. To my knowledge –

THE COURT: He was having sex with them?

A. That's what he told me before he even had a sex change, Your Honor. Whether that's true. Whether he will admit it I don't know, but that's what he told me. And his mother even said the same thing.

MR VAUSE: Objection.

THE COURT: We won't go there.

A. Okay. But I'm just saying, Your Honor, I don't blame Sherry. I never did. I think Michael manipulated her to do it. He got Sherry away from a big bad cop, a man with a penis. That's how Michael looks at it.

(TR 3451-51)

The court explored with Linda the recommendation of Dr. Dies that Michael be given primary custody of the children with liberal visitation to Linda and that this transition be monitored and counseled by Dr. Boone. Did she think that would work? She replied, as follows:

> A. No, Your Honor, I do not. I do not think that my kids – I know by what kind of relationship I have with them, how they talk to me, how they can be mad, how they can be sad, how they can be sick, how they can feel anything, how if I said let's go for a bike ride and they say, no, I don't want to, okay, then we don't. I don't make them feel bad.
>
> I do not believe that if this Court decided that my kids live with Michael Kantaras that that transition will be feasible. I really don't see it, Your Honor.
>
> Rina will probably go into a shell. She goes into a shell periodically, Your Honor, and I have to work at bringing her out of it, let her know that you can feel comfortable. You don't have to wear your hair that way. You don't have to wear these clothes. Be who you want to be. Do you want to wear jeans every day? Wear jeans. You don't have to wear dresses just because you're a little girl.
>
> Mathew has made on countless threats, if he gets custody I'm running away. If he gets custody I'll kill myself. If he gets custody I'll never talk to him. If he gets custody, you know, and I try to tell Mathew that he will do what this Court says he has to do.
>
> But, Your Honor, I do not believe that. I do not believe that because of the relationship they have, I'm not saying it's all my fault, I'm not saying none of it is my fault, it's our fault. We brought them into it.
>
> But because of the relationship that they have between Michael, Mathew and Irina I do not even see this.

> THE COURT: In other words, you don't think a counselor could bridge the gap with the children?
>
> A. Your Honor, I don't think 10 counselors can. One person can, Your Honor, and that would be Michael Kantaras. If Michael chose to. Michael has got to show these kids that they are number one.
>
> Michael has got to show these kids that he is an authority. He is their authority. They have to listen to him. He can't be their friend.

(TR 3454-56)

**S. <u>Dr. Dies' Report</u>**

Dr. Dies' Report cites criteria that favor Michael Kantaras having primary custody and Linda was asked for her opinion. The <u>first factor</u>, was that Michael is the parent "more likely to allow frequent and continuing contact with the visiting parent." She said, "that's wrong." She will be generous and she has already done that for the past year and a half." Michael calls the kids whenever he feels like it; if he is delayed at work "he picks the kids up" on different days, but what she will not do is "force" her kids to talk on the phone; "force" her kids to go with Michael . . . "I think it should be liberal visitation with the children, not with my schedule, but with Michael's schedule --- with the children's approval. I mean, they're getting older." (TR 3461)

The court asked if she was having a change in attitude about being open for liberal visitation and she replied, "Absolutely." (TR 3462) The court reminded Linda that she was held in contempt of court for frustrating visitation by Michael as follows:

> THE COURT: You recall now that I held you in contempt of Court for interfering and not carrying out the visitation schedule?

A. Yes, I do, Your Honor. You told me that I was the parent and I was to tell the children to do it because it was a court order. I remember that, Your Honor.

THE COURT: You recognize that it's your obligation?

A. Yes, I do, Your Honor.

THE COURT: Whether it's Michael who ends up being the custodial parent or you end up being the custodial parent, it is your obligation with your children as well as Michael's obligation to see to it that the visitation is carried out successfully.

A. Yes, Your Honor. I totally understand that.

THE COURT: That visitation is for the children –

A. Yes, Your Honor.

THE COURT: -- primarily, not just for the parent alone?

A. Absolutely.

THE COURT: A joint approach.

A. Yes, Your Honor.

THE COURT: And that it's important in the development of the children to have frequent and continuing contact with both parents.

(TR 3463-64)

The second reason given by Dr. Dies was that Michael could provide better for the material needs of the children. She replied her teaching position and her supplemental job, she may have at her church, will be sufficient to meet the material needs of the children.

The third factor is that Michael is more likely to foster a close and continuing relationship between the children and the other parent, and when asked to comment, she said:

> A. I believe that Michael would want to keep the children close to me. I believe that with all my heart because they love me.
>
> And if they got torn out of my life I don't think it would be anybody that can handle them, Your Honor. So, yeah, I believe that Michael would.
>
> Would I initiate a close relationship to Michael with Mathew and Irina?
>
> THE COURT: That's the question.
>
> A. I have already been trying to do that, Your Honor, for three-and-a-half years.

(TR 3465-66)

This concluded the testimony of Linda Kantaras. Her attorney, Claudia Jean Wheeler, Esq., rested the Respondent's case in chief. (TR 3467)

## CONCLUSIONS

The Court finds, as a fact, at the conclusion of Linda Kantaras' testimony, which was deeply insightful into her belief system, that there are certain basic concepts that Linda will not alter, and they are as follows:

(1) Linda remains unconvinced after ten (10) years of marriage that Michael is anything else but a woman. Linda asserts this position is based on her private marital life, not the public one seen by others, and that when Michael removes his clothes and stands naked before her she only sees a woman.

(2) The triatic sex reassignment that Michael successfully completed at the Rosenberg Clinic in Galveston, Texas, the Life Experience of one year, hormonal treatment and sex reassignment surgery (SRS) accomplished nothing by way of converting Michael from the woman he was born.

(3) She believes she mistakenly failed to assess the future of her children, being raised in a transsexual environment. That Irina cannot model her future boyfriends or marital partner after her father since he is a woman. Mathew, likewise, is being robbed of his maleness and lack of male bonding that he achieves when in contact with other men (Uncle Billy, cousin Billy) of her family. Being raised herself in a female environment, the loss of her father at an early age, gave her no understanding of male characteristics.

(4) Linda remains unflinchingly steadfast that during her ten (10) years of married life, she had no sexual relations, coital sex or sexual intercourse with Michael as a man. This attitude that she must defend against any such marital sex seems to stem from an absolute insistence her relationship in this marriage was not "lesbian."

(5) Linda unilaterally and against sound psychological advice from the children's mental counselor, Ms. Glenda Davenport, proceeded to disclose Michael's sex reassignment surgery to the children. Drs. Boone, Shelef and Reis deplored this tactic of Linda of intentionally conveying a damaging concept of Michael not being a man except on the outside and a woman on the inside to the children.

(6) The children immediately deduced from this revelation if their father was born a woman meant his relationship with Linda, and recently with Sherry Noodwang, was "lesbian." Her only defense against that, was the children didn't see her and Michael

"kissing" or sleeping together. Yet, the children were left with the definite impression Michael and Sherry were in a lesbian relationship because they are seen by the children to "kiss."

(7) Linda admits Sherry Noodwang and she were the "best of friends." Linda has openly accused Sherry of being a lesbian, told Sherry's sister that she was and in the private letter (Pet. Ex #6) accused Sherry of pursuing a lesbian relationship with Michael who is a woman in Linda's eyes.

(8) Linda confessed in that same letter, what appears to be her own heterosexual relationship with Michael, as man and woman, (i.e.) "you did nothing but show everyone how much you loved me in public, but behind closed doors I was a part that made you feel uncomfortable because I am a woman who looked at you and saw a man. I don't know if that [is] right but why would you leave me for a woman who wants to have you as a woman?"

To add to the dilemma, Linda said in that letter:

> "Sherry loved me and settled for you --- so Sherry couldn't let you go because she wanted something of mine to keep me involved with her. But it didn't work, I cut all ties when she told me!"

(9) Linda appears to suggest she too was the object of a lesbian relationship. There is no doubt Linda was totally traumatized when she found out her best friend, Sherry, was the object of Michael's affection. Linda insisted they both deny their mutual feelings toward each other in Linda's presence, and she was deeply shocked when Sherry refused.

(10) The complete devastating fall out of this marriage seems to have "impacted" almost everyone, (friends, relatives, children, schoolteachers – administrators and mental

health counselors). Despite all, Linda claims to be a dedicated mother. She is seeking consolation and resolution of her own transitory mental state by turning to her church, the Calvary Chapel Worship Center, but here again she feels her views are being reinforced, by casting Michael as "living in sin," in his denial of being a woman.

The trial turned to the witnesses called by Respondent, Linda Kantaras, to corroborate much of her testimony. These witnesses followed her testimony of which there were fourteen.

**RESPONDENT'S WITNESSES – 13**

1. Crystal Shoemaker
2. William G. Shoemaker
3. Denise M. McLaren
4. Manuela Griffin
5. Andy Jenkins
6. Cathy White
7. Cindy Daily
8. Sylvie Harrrison
9. Ronald Noodwang
10. Pastor Rebecca Baker
11. Maria Cuatt
12. Dana Brussow
13. Allison Hoskins
14. John Shafchuk
15. Sherry Noodwang Rebuttal
16. Michael Kantaras Rebuttal

## FINDINGS OF FACT

## CRYSTAL SHOEMAKER

BY MS WHEELER, ESQ.

Respondent called to the stand, Crystal Shoemaker, her sister who lives in Traverse City, Michigan. She testified she first met Michael Kantars in Richmond, Michigan, about twelve (12) years ago and Mathew was one (1) year old. She testified she needed a ride to the store and she asked Linda to drive her. Linda said Michael would not permit her to drive but that he would, so all three drove together to the store. On the way, Michael said he loved Linda so much he feared her driving. Michael didn't want Linda to leave her house after 4:00 p.m. Crystal said Michael was so controlling of Linda the family didn't like Michael for that. (TR 2150)

Crystal testified seeing Linda over the years about five (5) times, and that was twice in Michigan. Linda came to Michigan in 1998 and once at Christmas during the school break. Linda stayed at her home on these visits. Linda's children played in the snow, sledding and skiing.

She did not interfere with Michael's phone calls to the children on those visits. She recalled a lengthy phone call on August 21, 1998, when she and her husband, Billy, spoke to Michael. Linda called "hysterically" saying Michael wouldn't let her leave her house. (TR 2158) She told Linda call the police. Linda said Michael just let her call Crystal, not the police. So Crystal thought she could use a second phone line to call the police in Florida. She could hear the children in the background pleading to go to school. Michael got on the phone. She said "a bunch of very nasty things to him." Her husband,

Billy, got on the phone, talked to Michael and things calmed down so she didn't call the Florida police.

In November 1999, Crystal and Billy were in Florida. They were present when the children were told about Michael's sex surgery. It took place in the afternoon. Linda came home from school saying the principal had talked to her, that parents and children knew at the school the truth about Michael's condition. Linda asked, what do I do? Crystal and Billy said, call Dr. Dies, which Linda did. Dr. Dies spoke about taking notes, so they got out paper and pencils. She could not take any notes when the children were present "because I was caught up in all of the emotion of telling the children." Crystal said:

> "Linda told us when she hung up (talking to Dr. Dies) as long as it was done in a loving, warm, family environment and we all took notes that he was sure it would have been okay."

(TR 2166)

Linda started with the children saying, "there's something that we need to tell you, but I want you both to know that mommy loves you, daddy loves you, and that Crystal and Uncle Bill love you." The children said, "Okay."

Bill proceeded to tell the kids "that there's a lot of different people in this world and they're born a lot of different ways. Some people are born with a woman's body and they feel like a man and vice versa."

Crystal said:

> "So Bill looked at both of the children and said, do you know anybody like that? And, Mathew said, Yeah, my dad. And Rina was stunned when Mathew said that. And, Bill said, yes, you're right."

(TR 2167)

Crystal said the emotions were "flying high" and there's not a lot that I remember about that. The kids had a lot of questions for everybody.

Crystal described what happened as follows:

> "And for the most part I told them that I couldn't answer the questions, that they would have to talk to their father. They had a lot of questions for Linda, like who is my real real father? And, then that means Mathew is not my brother, and I'm not Mathew's sister. There was tears."

(TR 2168)

She said, "I was crying. I know Rina was upset at the time. – It was something that I didn't want to do --- I just wanted to make sure that the kids knew that everybody loved them." The children were sitting on the couch in the family room. Crystal said, "I didn't want to tell the children this. I can't imagine telling the child -- the children that (he) wasn't their biological father. It's not something we wanted to do. We weren't happy about it and we did our best we knew."

She was asked, how many times did you hear any of the adults say "your daddy loves you?" and she replied: "I heard Linda say it often."

Both children asked: "Who is our real father?" Linda told Mathew he was "adopted" by Michael. (TR 2171-72) Crystal said, other than having Michael there, she would not have done it differently.

Over the years, Crystal has seen Linda five (5) times but she has observed that Linda does everything with her children; she plays volleyball at the park, basketball, frisbee, swimming, playing cards, board games, paints Rina's nails, read to Mathew, and helps with their homework. (TR 2176)

Crystal said she learned the name "Margo" from hearing Linda answer Irina's question "what was his name (Michael) when he was a woman?" Linda answered, "Margo."

While driving in their car with the children, Rina again asked what was Michael's name when he was a woman, and Linda answered, "Margo," then Rina said, that means we could call him "Markel." Irina was eight and one-half (81/2) years of age at that time. (TR 2180)

Cross-Examination

Colin Vause, Esquire, conducted the cross-examination of Crystal who said the first visit where Michael drove her to the store she only saw Linda and Michael for less than a whole day. Linda seemed happy. (TR 2185) What Linda told her about not being permitted to drive only pertained to that visit, not since. She also said, she accepted Michael as a "man" throughout Linda and Michael's marriage, and as the father of his children.

She believes, if Linda was granted primary residential care, she could raise the children in a decent manner and could financially afford to do so. Other than talking on the phone three (3) times per year, it's been eight (8) years since she has seen Linda. Crystal said she found out about Michael's gender reassignment surgery about one week before the children. She was told before the vacation trip to the Florida Keys by Linda in Linda's house. Linda told them Michael was born a woman and had a sex change. Crystal "cried" and Bill was pretty "numb." "I was incredibly sad for Linda" Crystal said, "We were more concerned about the children. Why would you allow two children

to come into a relationship like this?" Linda said, "She didn't know." (TR 2193) While they were all in the Keys after Linda had told them about Michael they never discussed it further.

About a year later, February of 2001, when Dr. Dies called them, she and Bill talked privately in the bedroom with Dr. Dies and neither overheard what the other said. Dr. Dies asked her how she refers to Michael and she replied as a "woman." She also told Dr. Dies that Sherry Noodwang has no morals, is not a nice person, and is a sick person – but she never met her – only what Linda has told her, which is "all kinds of weird, twisted stories about Sherry."

Crystal was asked if she discussed with Linda her sexual relationship with Michael after she was told about his sex change and she replied, "yes," on the phone and Linda's response was "No they did not" – during the marriage? And Linda's answer was "never." The Court asked Crystal, did she ask Linda why? She replied:

> "Your Honor, when Linda first told us about Michael being a woman one of the reasons that I was so incredibly sad for Linda was a lot of things that started going through my head. I knew there was never no warmth there. I knew there was never no love there, and I knew that they didn't sleep together in the same bed.
>
> So the reason for my sadness was, My God, how could you stay with somebody for that long and not have any affection and that's why I was so incredibly sad. One of the reasons."

(TR 2212)

Crystal said her understanding of Linda's marital sex life was based on what Linda told her over the phone after the divorce proceedings were started. She doesn't in

her opinion, think that Michael is a man. She told Dr. Dies she refers to Michael as a "woman." She has not heard Bill call Michael an "it" or "he/she."

Crystal confirmed Linda came home upset about being called into the principal's office and being told that people at the school knew about Michael's gender reassignment, there were parents, teachers and children that knew. Linda did not call Michael. She, Linda, asked what she should do? Bill and Crystal said, call Dr. Dies. Linda called Dr. Dies and it was Crystal's understanding that it was Dr. Dies' idea to tell the children.

This concluded Crystal Shoemaker's testimony.

## FINDINGS OF FACT

## WILLIAM GARY SHOEMAKER

Ms. Wheeler, Esq., called William Gary Shoemaker to the stand following the testimony of his wife, Crystal. He lives with his wife at 7439 North Long Lake Road, Traverse City, Michigan, and their three children live there too, ages 19, 21, and 22 years. The grandchildren live with them too. He is Linda's brother-in-law. He met Michael many years ago at a family graduation party, "a huge gathering of Crystal's family." Linda and Michael were there for one day. They have never visited in Linda and Michael's home.

For ten years, 1989 to 1999, Crystal and Linda talk on the phone but they were not close. After Michael left the home, and they separated, things changed, Crystal and Linda spoke on the phone very often.

Linda and the children came for a visit to his home, after July 18, 1998 (date of separation of Michael and Linda). She came with the children in the winter for about a week and stayed at their home. They did a lot of skiing and sledding with the children. He did not interfere with Michael's phone calls to the children while they were visiting. His attention was directed to November 1999, in Florida, when they visited Linda. Linda came home in the afternoon saying something about everybody knows. It was kind of a buzz at the school and Linda was very worried. Linda called Dr. Dies and he said to record how they reacted, what we saw of the children's expressions, what they said "be warm" about it. So they each got paper and pencil. They all gathered in the family room with the children on the couch.

Linda said "we need to talk, we need to tell you something that's very important, you guys should know." So she stared it with that, and "I think she was stumped at that point." Then "they looked at me." I felt like I (should) "step up to the plate" – tell these kids "my version of how this should be broken to them."

Bill then described what happened:

> "My thoughts were just looking at them, Where do I start? It was something that I really wasn't ready to do. But I just explained it's a huge world out there. I tried to be as general as I possibly could.
>
> There's lots of different kinds of people, different colors of people, different everything. Some people even think that they were born maybe a boy and when they grow up they really know inside they're a woman or the other way around, they're born a girl and they really know inside that they're not, they're really a boy. And I gave a lot of general, general stuff like that.
>
> And then when it came down to it, What should I do now? I didn't know what to say. And I asked, Do you guys know anybody like that? And Matthew stopped and he said, Michael – or he said, My dad.

(TR 2238-39)

When Mathew mentioned his dad, "one of us said, Yes, you're right. It is Michael." And after that there was a "lot of stunned faces. Irina was puzzled. She just was trying to figure this out." The question came, "Well, who is my dad?" That was the first question. He turned his notes over to Dr. Dies, he wrote everything down "I think I was pretty good on the note. But Crystal didn't take notes because she was overwhelmed emotionally. (TR 2240) Bill said his goal was not to slam or degrade Michael. I would not feel that was my job at that time. My job was to gently lay this on them as good as I could."

He did recall the name "Markel" and it arose by Irina asking what was Michael's name before he was a boy? They were all driving in his car. Linda answered, it was Margo. Irina said minutes later "maybe we could call him "Markel." No one made fun of Michael at that point, or demeaning comments.

Bill recalled driving to the Gulf View Mall after Michael came to pick the children up on his visitation and he and Michael ended up driving to the same mall. He denied tailgating Michael's car or doing anything on the road to frighten Michael and the children in their car. Bill got to the mall first, parked his car and Michael parked nearby. Michael got out and walked over to Bill and said to stop "chasing" them, your scaring the kids. Bill denied calling Michael at that moment "a freak."

Cross-Examination

Collin Vause, Esq., conducted cross-examination. Bill stated their purpose in going to the mall was not to follow Michael but to buy some jewelry gifts for their own children.

Bill recalled talking to Dr. Dies on the phone and referring to Michael as an "it" during the conversation. He also called Michael, "Margo." He did not say "he/she."

Bill testified about the Keys trip. Before that trip Linda disclosed to him and Crystal, Michael's gender reassignment. He did not recall Linda referring to Michael as a "woman" when they told the children about Michael's gender reassignment, but afterwards he did hear Linda say that. He admitted that he has called Michael by the name "Margo" and probably has done it five (5) times in front of the children.

Bill said, Linda stopped Michael's visitation after the disclosure to the children. (TR 2261)

This concluded Bill Shoemaker's testimony.

## FINDINGS OF FACT

## DENISE M. McCLAREN

BY MS. WHEELER, ESQ.

The Respondent called Denise M. McLaren to the stand who testified she has known Linda Kantaras for twenty (20) years, they went to high school together. She only saw Linda Kantaras three or four times prior to July 1998, but about fifteen times since that date. They took their children to the beach, visited at each other's house, birthday parties. They went shopping together without their children.

She observed Mathew get angry, cry, want his way, and Linda will just make him go into his own room. Mathew is a good boy in her opinion. She has seen him kiss and hug his mother, and Linda likewise kiss and hug him. Irina is a nice girl, who doesn't talk a lot, polite.

Linda has a good relationship with her children. If the Court were to award primary physical custody of the children to Linda Kantaras would that cause her any concern? She replied, "No." (TR 2368)

Cross-Examination

BY COLLIN VAUSE, ESQ.

Denise McLaren on cross stated she would be concerned about Linda having primary custody if she repeatedly denied Michael visitation with the children; or referring to Michael as a "lesbian" in front of the children; or referring to him as an "it" or "she." (TR 2370-71)

This concluded Denise McLaren's testimony.

## FINDINGS OF FACT

## MANUELA GRIFFIN

BY MS. WHEELER, ESQ.

Respondent called to the stand Manuela Griffin who testified she met Linda in 1996 at the school where her child attends, who is now 11 years old. Her daughter was friendly with the Kantaras children and she visited Linda's home on a daily basis from 1996 to 1997. She became close friends with Linda. She explained she was from Germany and didn't speak English very well. Linda did homework with her own children and her daughter as well, since she didn't speak English well. Linda would baby-sit her daughter when she had to go to work and took her to the "Y" to play basketball. She didn't have to pay Linda for looking after her daughter. She, herself, worked at the sponge docks in Tarpon Springs. Manuela estimated she had been in Linda's house 300 times on a daily basis. (TR 2373-77) Linda helped the children with their homework and corrected it for them. Linda had Manuela sit at the table with the children while doing homework to help Manuela to improve on her English. Linda did arts and crafts with the children teaching them to make photo albums with lace and fabric around the pictures.

She said she saw Michael when he came home from work and she would join him while watching the Jerry Springer show on TV. She never saw Michael doing homework with the children. Michael would wash the dishes and baked while Linda did the cooking. Michael could do both.

Manuela said she never saw Michael and Linda "kiss or hug." She remembered on Valentine's Day when Michael put out a bunch of signs saying "I love Lucy" and

Linda saw them and was very happy – she gave him a hug. (TR 2383) And, when swimming she noticed that Michael and Linda would hug each other.

In Manuela's opinion Linda was subject to Michael's control. She would report to him at his work when she left the house or arrived at Manuela's house.

She said Linda got a part time job during one Christmas working at a Mailbox store helping a single parent man who owned the business. Michael asked Manuela to stay with Linda in the store because he didn't want her in the store alone with the man. So, she would stay in the store at times, not always. (TR 2389, 2394) She felt Michael preferred Irina over Mathew and her instinct told her Michael was not the biological father of Mathew, not knowing about the adoption or Michael's sex reassignment, because of the way he loved Irina and less for Mathew. (TR 2398-99) She thinks Mathew senses it and resents it – "I think that's why Mathew has so many problems." (TR 2400) Michael loves both his children but he does favor Irina.

Cross-Examination

BY COLLIN VAUSE, ESQ.

Manuela testified she had not seen Micahel for the past 3-½ years or see him interact with the children. (TR 2407) Since it has been revealed that Michael had a sex reassignment operation, she no longer is friendly with Linda or Michael. She thinks this case is "disgusting." She thinks they both betrayed her by not letting her know. (TR 2417)

This concludes the testimony of Manuela Griffin.

## FINDINGS OF FACT

## CINDY JENKINS

BY MS. WHEELER, ESQ.

Ms. Wheeler called Cynthia Ann Jenkins to the stand who testified she was a neighbor of Linda Kantaras, lived across the street from Linda whom she has known since 1997. She is employed at Kash 'n Karry, has three children, ages 11, 12 and 14. Her two sons are involved in football with Mathew, and through the boys she and Linda developed a friendship. She would baby-sit Mathew and drove him to school for Linda. She has been able to observe Linda's relationship with Mathew and Irina.

Her opinion of Mathew is that he is a good boy, very loving, thoughtful of his own family and others too. When watching Mathew for Linda she noticed his mood would fluctuate, which she believed the divorce matter would cause. She didn't know Irina as well, but Irina "smiled a lot."

In her observation of Linda, she thought she had a healthy relationship with her children. She would have no concerns if Linda was awarded custody of the children by the Court. (TR 2436)

## FINDINGS OF FACT

## CATHY WHITE

BY MS. WHEELER, ESQ.

Respondent called Cathy White to the stand who testified she has just seen Michael Kantaras but has known Linda Kantaras for seven months through their church. She sees Linda at weekends when they do things together like biking or at church Thursday and Sunday night or maybe once during the week. This started in June 2001. She has observed Linda at the rec-center with her children playing racquetball and basketball together. She could be throwing a football with Mathew. They play cards and games together, ride bikes, and take walks.

When asked about Mathew she said he is a loving child but can be difficult. He is loving toward his mother, his sister Irina, and her, Cathy. If Mathew doesn't get his way he throws a fit, throws himself on the bed. Jumps up and down on it but after a while calms down and apologizes.

One time she saw him with a bad cold wanting to stay outside at night and Linda telling him to come inside, shower and go to bed. He refused, ranted and raved, he didn't want to – "You want to take my fun away." At other times he wanted to call Michael late at night to bring him a pair of pants or a school supply and Linda would tell him his dad has to get up early to work and Mathew said, "I don't care. He will bring it, I want to do it." Linda tries to handle these type situations – she tries to be patient, sit and talk to Mathew appropriately. (TR 2448) Mathew at the same time displays affection for his mother, will kiss and hug her, at twelve years of age, that surprises her.

Irina is very mellow, laid back, doesn't want attention on herself. Cathy would have no concerns if Linda was awarded primary residential custody of the children.

This concluded the testimony of Cathy White.

## FINDINGS OF FACT

## CYNDY DAILY

BY MS. WHEELER, ESQ.

Respondent called to the stand Cindy Daily who testified she knew Linda for 2-1/2 years working with her in the school Place Program. Linda's children are enrolled in Place. The hours are 6:30 a.m. until school starts and then when school gets out until 6:00 p.m.

She has observed Linda's relationship with Irina and Mathew. Irina is a warm loving relationship. Irina is a good child.

Mathew over the years, has become rebellious, very little regard toward females in positions of authority. If told to behave he would say he didn't have to. That behavior started 1-1/2 years ago before he was out of Place, he was suspended – told not to come back to Place. He showed no respect for his mother.

Mathew can be polite, respectful and do what is told of him if he is happy. Cindy has not seen Mathew for about a year.

Linda works well in the Place Program.

This concluded the testimony of Cindy Daily.

## FINDINGS OF FACT

## SYLVIE HARRISON

BY MS. WHEELER, ESQ.

The Respondent called to the stand Sylvie Harrison who testified she has known Linda 2-1/2 years working with her in the Gulfside School Place Program. She is the site manager who supervises Linda, and Linda has no problems in relationships with co-workers. Linda has worked in the summer of 2000 and 2001 at the Program. The hours are from 6:30 a.m. to 6:00 p.m. Irina is in the program and Mathew stopped in March 2001. The only place she observed Linda with her children was at Place.

Mathew, she said, at first was acting like a normal twelve-year-old boy, he could be a real gentleman, always wanting to help the teachers. Then he would come in mad, agitated, disruptive. He was suspended for being disrespectful, treating the toys carelessly, throwing them in the air.

She had two conferences with Michael Kantaras and one with Linda over Mathew's behavior. There was no change in Mathew after the parent conferences so he was terminated from the program.

She testified when Mathew was acting properly she could observe Linda's conduct with him and it was a good relationship. Mathew was comfortable with his mother. Irina is very quiet, a very good child with no behavior problems, and relates well to her mother.

Cross-Examination

BY COLLIN VAUSE, ESQ.

Sylvie Harrison on cross-examination stated the registration form for the Place Program was completed by Linda in 1001 and 2002 where it showed those authorized for pick up from Place. Linda had "crossed out" that the father was authorized for the last two years. (TR 2501) This does not apply to the car rider pick up area at the school, only pick up at Place. (TR 2506)

This concluded the testimony of Sylvie Harrison.

## FINDINGS OF FACT

## RONALD R. NOODWANG

BY MS WHEELER, ESQ.

The Respondent called to the stand Ronald R. Noodwang who testified he met Michael and Linda Kantaras about 1997 through his wife at school. They were friends and visited each other's house and would have dinner. Today his relationship is "absolutely none." He is not married any longer to Sherry Noodwang. He is divorced, in his opinion, because of Michael and Linda Kantaras. He had fifteen (15) years of married life when in June or July 1998, Sherry approached him saying she wanted a divorce. He was unaware of any problems. There were problems the past three or four months where they continually argued about Sherry being in Linda and Michael's house. He said his house was large, a new car and the expenses caused him to get side jobs for extra money. He asked Sherry to get a job and she refused. He had to work longer hours and his off duty time at home was quite short.

Ronald Noodwang explained, when at home he wanted "family time" and for those three or four months Sherry wasn't spending any time with him but she and their daughter was at the Kantaras house. (TR 2513)

He was working a sixty (60) hour week at the St. Petersburg Police Department, as a detective. He had no objection to Sherry just leaving his house or to go to the Kantaras house, as such.

The style of living he and Sherry had was expensive, two mortgages, a new car, large swimming pool, and high electric bills. Three bedrooms, two baths, two car garage and screen enclosure over the pool and large patio.

The neighborhood association gave him compliments on his yard care. Now, the house is a complete turnaround. He deeded the house to Sherry in the divorce for his three daughters. Now the house is in foreclosure. The daughters are ages 11, 14 and 16. Sherry never told him about being four to five months behind on the mortgages. He was notified by an attorney's letter that foreclosure proceedings were started.

In the divorce settlement he pays child support and incorporated in the youngest daughter's support is an amount of alimony for Sherry, to last until the youngest reaches eighteen (18) years. She was eight (8) years at the time.

His support was sufficient to cover the mortgages and the bills. Sherry now has a job of cleaning houses. Sherry also bought a new car and is looking for an apartment. (TR 2521-24) The letter from the attorney says the deficiency is $79,560 to bring the mortgages current. His communications with Sherry are very brief, she doesn't want to talk. The letter from the attorney was received in evidence as Respondent's Exhibit #1.

He is paying $400 a month for each daughter (3 x $400 = $1,200) and $450 a month alimony.

The past weekend before the trial began, his daughter let him in the house (he can't go in otherwise) to use the restroom. He looked in the garage and found the entire ceiling had fallen down on the car he purchased his oldest daughter. The garage door is broken and won't open without force.

A front window is broken and the floors inside the house are cement. The family room, and a living room have the carpeting gone. The pool water has turned green and the screen enclosure has holes allowing bugs and mosquitoes to enter. The air conditioning system is broken. When he has his daughters during visitation at his

apartment he has noticed they showed mosquito and flea bites. Sherry has a dog and cat inside the house. The house has an odor inside.

Mr. Noodwang testified the blankets, pillows the daughters bring to his apartment to sleep there have the same odor. He has to iron their clothes when they visit because they carry their clothing in bags and in Sherry's house they pile up their clothes in a dump. He talks to them about folding their clothes and being neat but they go home and just throw their clothing on the floor. His oldest daughter's bedroom is a "pig pen." They don't even notice the odor. (TR 2538-40) They didn't act this way when he was married and living in the house.

During his efforts to have phone contact with his daughters it has been so difficult he had to buy pagers for them so he and they could stay in contact.

The middle-aged daughter has a tendency to wonder the neighbor's houses.

The oldest daughter stays at home but she ended up having problems with a young man. In his opinion Sherry does not keep "tabs" on their daughters. (TR 2547) The oldest daughter started socializing with a young man, he was uncomfortable about that. For three weeks he could not find out the name of the boy – (so he could check on him) through the police computers. He found out the true name. His middle daughter gave him a phone number, from which he contacted the boy's parents in Massachusetts and got the details from them. The computer showed the boy was a "fugitive," he had escaped from a criminal facility up north. He was eighteen and had been inside Sherry's house. He was arrested at the local hotel, his name was Thomas Hickey, on an outstanding warrant.

He loves his daughters and they love him, and while he thinks Sherry's not a bad person, very good, very beautiful, intelligent and witty, but since her "new relationship" she's not focused on her parenting skills. (TR 2555)

In the summer of 1998, he asked Sherry if she was seeing Michael after she told him she didn't love him anymore and wanted a divorce. Other people told him about Sherry and Michael – he had no knowledge before this what was going on until he confronted her. (TR 2560) She denied having an affair with Michael.

There was no domestic violence in their entire marriage. However, after the divorce, Sherry reported him to his employer, the St. Petersburg Police, for "stalking," child abuse and threats against Michael. (TR 2569)

In regard to stalking, it came about because when he drove up to the house to baby-sit his daughters, at Sherry's request because she wanted to go out, he saw Sherry and Michael drive away (she told him she was not dating anybody) so he followed them for two to three blocks and at a traffic light pulled beside them and took three pictures – he said nothing.

When he returned to the house his oldest daughter was waiting and apparently had just finished talking to Sherry on the cell phone. She became very negative toward her father and he told her she was not too old to be spanked (she was 13 years) so he placed her over his knee and spanked her for showing disrespect to her father. (TR 2575) Sherry reported to the police that was child abuse. St. Petersburg police and the Pasco County Sheriff's Department investigated him. (TR 2576) Both police agencies found the report "unfounded" but because he took the pictures from a city vehicle they

withdrew his privilege to use a city vehicle after that. The "stalking" charge was determined to be "unfounded."

The threats to Michael were alleged to be by use of Michael's pager number to threaten him – but he never knew the number – and the charge was found to be "unfounded." Mr. Noodwang testified between December of 1998 and early 1999, he did talk personally to Michael, face to face, and once on the phone. He told Michael to stay away from his family, he did not threaten him or threaten bodily harm or to kill him. Michael didn't seem to be influenced, or threatened because he continued to see the Noodwang family. (TR 2580) It was on January 15, 1999, he took the pictures of Sherry and Michael together because Sherry was still denying she was seeing Michael.

Cross-Examination

BY COLLIN VAUSE, ESQ.

Ron Noodwang testified during the investigation of the charges his gun was not removed from his possession. (TR 2596) It was Monica Jordan who told him about Sherry and Michael.

He explained about Sherry hanging out at the Kantaras house, he would call her when home from work and ask her to return but she would "refuse" and would spend her weekends there even though he was at home. (TR 2608) Sherry would take the daughters with her and not leave them with their father.

Sherry would go to the Kantaras house in the mornings before he would wake up – she was gone. This was their entire problem he was having in his home. Up to this time, he had a good marriage for fifteen (15) years and the children were well supervised.

He was asked if he was aware the cement floor in his house is painted with three stain coats and covered with polyurethane. (TR 2614)

Photographs of the cement floors, as painted, was offered in evidence as Petitioner's Exhibits #18, 19, 20, 22 and 23. The water in the pool has changed from green to blue, said Mr. Noodwang looking at the pictures. He denied over the years that he was controlling of his wife. (TR 2622)

Once again, while not relevant to this case, he testified he pays support of $400 for each child with the younger receiving $850, the additional amount is alimony of $450 to Sherry. He pays $1,650 per month by agreement. (TR 2639) A considerable portion of the cross-examination concerned the child support, which has nothing to do with this case.

Ron Noodwang admitted he calls Michael an "it" and "Margo." His concern is his children and he feels Michael ruined his family and actually took them away. And, in his deposition he said he didn't want Michael to have custody of the Kantaras children. And according to the pictures, changes have been made to the interior of his house since he last saw it. He has joint parental responsibility in the divorce final judgment over his children but Sherry refuses to talk to him. (TR 2667-68) He is not informed about his children's academic level in school by Sherry. (TR 2674) He has tried to discuss it but she "terminates the conversation."

He stated the very limited times that Sherry and the daughters would be at home with him, Linda "would constantly call the residence and interrupt the family time we tried to have. It was a continual thing. I mean – almost, as if it was a purposely intended thing to do." (TR 2679)

This concluded the testimony of Ronald Noodwang.

## FINDINGS OF FACT

## PASTOR REBECCA J. BAKER

BY MS. WHEELER, ESQ.

Respondent called to the stand Pastor Rebecca J. Baker of the Calvary Chapel Worship Center, New Port Richey, Florida. Pastor Baker said there are 3,000 members of her church, and they are in the process of building a new chapel. She has a Bachelor Degree in Social Behavior, Political Behavior from the University of South Florida, and Bachelor Degree from Faith Theological Seminary. She also has a paralegal certification from Rollins College. Her degrees were awarded in 1972 and Theology in 1999. She has been a pastor at Calvary Chapel since 1997. She is one of thirteen pastors. Her responsibilities are single parents, singles, discipleship, woman ministry and Spanish fellowship. She knows both Michael and Linda Kantaras, and Linda for 18 to 24 months. Linda is part of the single parent ministry. "Through salvation" we have a process where we get in contact with people. Linda set up one appointment to talk to her and it was in that conversation that she "really got to know Linda," and subsequent meetings. Linda was very open about her divorce, straightforward about her situation. She was "very distraught," concerned about the children. She came to Pastor Baker as a single parent to talk about Mathew's anger and Irina. Within the last six months the children had gone through "the process" of finding out that Michael was a "woman." And, having to endure ridicule from the children at school. Linda shared her concern about how angry Michael was. How withdrawn Irina was. How Mathew "takes it out" on his mother, Linda told her the "whole story." Pastor Baker said:

> "She came to me. I was struck by the fact that she seemed to be a victim. She came in, she was ashamed. The

> children, when I first saw them, their heads were bowed. They were not communicative. They didn't look me straight in the eye."

Pastor Baker said her first meeting with Linda, when she seemed ashamed, was only with Linda. The children were not there. Linda said, "I'm going through a divorce. I'm concerned that I am going to lose my children." And, then she proceeded to tell her:

> "That she had been in a relationship with Michael and he was very controlling, very abusive, he made all the decisions for her, she had no money and she wasn't allowed to go places and make choices. She had come to a relationship with Jesus Christ and it began to change her perspective. Michael was actually divorcing her."

(TR 2685-90)

Pastor Baker continued to relate that Linda told her Michael was a "woman" and she was artificially inseminated to have children.

Pastor Baker said to Linda, Okay, so this is a "lesbian relationship?" And Linda replied, "Well, I guess so." I said, well, are you both women? I said, "Is this a pattern for you? Have you been in a relationship like this before." Linda said, "No."

Pastor Baker said, "So you're having sex with him?" And, Linda said, "No, I'm not" - - - "she never had sex with him." (TR 2690)

Pastor Baker said she asked about a prior relationship, if this is a pattern, was she with another woman, a lesbian relationship?

Pastor Baker continued:

> "Well, I was asking her sexually and she said, I didn't have a sexual relationship. I said, But he is a woman. I said, Well, that's a lesbian relationship. But she clarified, because I asked her --- did you have sex with him? She said "No." --- And, I said Linda, look at me and tell me this --- you have these children. Linda said, he was mean to me I didn't want to be near him and, he was a woman, and I

didn't want to have sex with him because he couldn't have sex."

Pastor Baker was asked how does she function with single parents. She replied, she does the teaching at the discipleship classes. Linda brought the children to class for them to get some biblical background. (TR 2693-94)

It was in the course of those classes, on a Sunday morning when they were brought to church, after being with Michael. I noticed Mathew was very upset and he couldn't look at me. Irina also walked around, she wouldn't look at me. "So I made a point of beginning to talk to these children, so they would know that I was interested in them and they had "nothing to be ashamed of for whatever reason." And in the course of time – what I have seen is the children they are "very happy." Linda and the children are involved together in our carnivals. It's kind of like a fair carnival, games and food set up at the church.

I have just seen a growing sense from Mathew and Irina that they are part of the church. We have a program where we mentor the children through activities with different men in our church, mentoring them in sports and different areas. Last night was our basketball night. I saw the children, Pastor Baker said, "do you want to come tonight to basketball?" And they both responded, which to me is so wonderful. The difference between being "despondent" and their "heads down" and "shame" and they said, "Yeah, Mom, we want to come." "Can we go?" And they were there and had a great time. "So it was healthy." (TR 2695)

She has observed Linda with the children weekly, about two hours each, at the single parent ministering. With respect to Mathew, Linda was concerned about his

attitude, his anger, his confusion about finding out that Michael was a woman. And, Linda's involvement. Pastor Baker said about that:

> "I said, well, Linda you've got to understand, these kids are confused about your involvement in this. Linda said, "Yes." I said you must speak to them. She said, "I have." You must tell them how you feel and what you think. She said "I have and I've told them 'I was wrong.' I've had a change of thinking. I see things differently now. I know this isn't what I wanted," and she expressed to me that she had come to that kind of understanding while that relationship was on, but didn't feel she could get out of it."

(TR 2697)

Turning to Mathew, Pastor Baker said, she's had to deal strongly with Mathew because he's been angry. He's been rebellious, but again, he's a you know – "teen." He's starting his teen years. I have one too – it's just their independence. . . . She, Linda, responded on the spot to Mathew's conduct. Se wasn't "ashamed." She could correct "in front of us," but she could call him over and she would give him a look and say, "Mathew we are going to talk about this later. That's no way to talk."

And, I am like "great," you know. Pastor Baker was asked if Linda was trying to embarrass him (Mathew)? She replied, "Oh, no. She was very discreet, but you know, I was watching." I just wanted to see, you know, I want to learn, too, as a single parent. (TR 2698)

Did you find it inappropriate how Linda handled him when he was being disrespectful? Pastor Baker said, "No. It was excellent."

The children love Linda, they want to be with her, around her, Pastor Baker said, they are not afraid of her.

In addition, Pastor Baker said she gives mentoring to Linda, other than the two hour periods, in other areas. Linda has said to me that the children do not want to go with Michael. That they "hate going with him." It was further explained by Pastor Baker that Linda was put in very difficult situations in the eyes of the court because the children have been "upset" and wanting to come home and she "had to go."

Linda has been offered a position with the church, and Pastor Baker said: "You look for people you can trust when its your life (she worked in 43 countries around the world and smuggled bibles in the 80's behind the iron curtain). You look for people you think will tell "the truth." After 32 years in the ministry, "I think I can judge people's character and let me put it to you this way, if I had to go behind the iron curtain and I needed to take somebody strong, sure and honest, I would take Linda." (TR 2701) She said Michael never came to the church with the children, "I have not seen him fathering his children."

She recommended Linda to the pastor as a hard worker to work in the ministries. The church is expanding to 6,000 members and they need support staff. She will be hired for twenty (20) hours a week at minimum wage.

If Linda is awarded primary residential custody of the children, Pastor Baker said she would have no concern.

Cross-Examination

BY COLLIN VAUSE, ESQ.

Pastor Baker was asked on cross-examination if Linda told her Michael was a "man" or that throughout her marriage she considered Michael to be a man?" She

replied, "no." Was this a husband and wife relationship? She said, there was no relationship, first of all sexually. And, that when she, Linda, entered into the relationship . . . with Michael "thinking he was a man" – it went sour in the way he treated her. He was mean to her. She wasn't happy with that. And, he was a woman – "there was no sex." She didn't want to be near him. So she wouldn't sleep with him. (TR 2710-11) She did not counsel the children, only Linda as a parent. Michael never came for counseling and she assumed he knew of the church counseling service. She did not talk to him specifically.

Pastor Baker was asked: "Does your church disapprove of gay and lesbian relationships?" and again, "If you find that a member of your church is gay or lesbian, do you discourage them from having a relationship with someone of the same sex?" She answered:

> "We preach – are you familiar with Christianity or the followings of Jesus Christ? --- Okay. So what I am saying --- this is a code of conduct. Okay? A code of conduct that Jesus Christ has given people who want to follow. All right.
>
> Part of the code of conduct is that, number one, it seems to be that heterosexual relationships are the norm, according to the teachings of the bible. And number two, that premarital or sex outside the marriage is not permissible. So, when anybody is engaged in sex outside of marriage, as a Christian, that would be discouraged". . . . We welcome, Michael is there. We have a lot of gays and lesbians in our church. They're welcome. There is nothing, absolutely no reason they cannot attend our Church."

(TR 2717)

Once again, Pastor Baker was asked: "In your personal opinion, do you approve of lesbian and gay relationships?" She said: "I have no problem with having a

relationship, a friendship or pasturing anybody who is in a gay or lesbian relationship --- but "I will teach them the teachings of Jesus Christ as we are teaching it within the Church. . . . Number one, you don't have sex of any kind with somebody outside of marriage. Number two, marriage is between a male and a female." (TR 2718) She has never seen Michael interact with his children. When the children come back from being with him the children were down and frowning, but she was asked if she knew Michael had no visitation during the time she was referring to, and she replied, "My impression was that they were with him because that's what Linda was expressing to me." (TR 2721)

Pastor Baker said she would have no concerns if Linda was awarded primary residential custody but she was asked what if Linda was calling Michael a "woman" in front of the children? She replied, "No, I would not have concerns." So, in your view, it is perfectly okay for Mrs. Kantaras to refer to their father as a "woman" in front of the children? Pastor Baker replied: "Well, she is a woman. He should be comfortable with that. He is." She was told by Linda her children were "artificially inseminated." (TR 2723) Maybe Mathew has another father, she said.

Pastor Baker was asked if having sex reassignment surgery is wrong, and she replied "he can have all the changes to his body, but he's still a woman . . . if that's his choice, he can do that, but he's still not dealing with the reality that he's a "woman." Michael has his belief system and Linda has hers. But when I am looking at facts, I can only look at chromosomes and the ability to give life through sperm.

This concluded the testimony of Pastor Baker.

## FINDINGS OF FACT

## MARIA CUATT

BY MS. WHEELER, ESQ.

Respondent called to the stand Maria Cuatt who testified she met Linda Kantaras in the school year '93/94, at Anclote Elementary, and her boy was the same age as Mathew, 4 years. Their friendship was instant and grew to the point Linda was one of her very best friends at the time – it lasted for two years. She met Linda when she was living with Michael's parents in Holiday, Florida, and when they bought their home. They visited each other's homes and went to the beach. She never saw Linda feed her children "junk food." Her children were always neatly dressed. When Michael and Linda were together they seemed happy but Michael was overprotective of Linda – she wasn't allowed to do things unless she asked even to visit her. She was not allowed to ride in Maria's car. (TR 2748-49) Linda would drive her own car to the mall to meet Maria – but not ride with her.

Anywhere Linda went, her children were there. Linda loved her children. Linda's house was very clean all the time, immaculate.

She sees Linda at church and they are friends, but not close.

This concluded the testimony of Maria Cuatt.

## FINDINGS OF FACT

## DANA BRUSSOW

BY MS. WHEELER, ESQ.

Respondent called to the stand Dana Lynn Brussow a teacher employed at Gulfside Elementary School and Linda works at the Place Program in the same school. She had Mathew in her class last year and Irina for this year.

She was Mathew's homeroom teacher and academic teacher for all subjects last year. He was her student all day. Mathew is in middle school now, a different school, he's in the sixth grade. Mathew is an average student, a lot of energy, he liked to be up and around, socializing. He didn't stay focused. He has a sense of fairness and likes to talk it out with you if he is going to have a consequence. She sees Irina now all day, who is a very good student, well behaved, very well liked by her peers. Mathew made mostly c's, maybe some b's in grades while Irina does all a's and maybe a few b's.

She had two conferences with Linda about Mathew and she had no concerns about Linda's parenting with reference to Mathew's education. The children seemed to be happy. Linda caused no difficulties at the school but there were rumors about her having problems with Michael picking up the children. (TR 2775-76)

This concluded the testimony of Dana Lynn Brussow.

## FINDINGS OF FACT

## ALLISON HOSKINS

BY MS. WHEELER, ESQ.

Respondent called to the stand Allison Hoskins who is the assistant principal at Trinity Elementary School, since May 2002, and prior to that held the same position at Gulfside Elementary for three (3) years. She knows Linda and both her children. Linda was an instructional substitute and in the Place Program. Linda had no problems and was a good substitute. She recalled having an unscheduled conference with Michael, who was upset about not being able to see his children and he proceeded to tell her about his operation. It may have been in 1999, she wasn't certain.

### Cross-Examination

BY COLLIN VAUSE, ESQ.

She testified she had a copy of the court document of visitation and they knew the dates Linda would pick up and Michael's dates. We would be out at the car rider loop if there may be possibly be an issue.

She saw that Linda had written on the pick-up card for Irina – "Do not release to father" and the same was on Mathew's card.

This concluded the testimony of Allison Hoskins.

## FINDINGS OF FACT

## JOHN SHAFCHUK, JR.

BY MS. WHEELER, ESQ.

Mr. John Shafchuk, Jr., was called to the stand by Respondent, who is the Principal of Gulfside Elementary School. Linda works in the Place Program at his school. He has been principal for five (5) years. Linda was also a substitute teacher for him, and she was very capable in the classroom. There were no complaints about her substituting. She has a good, caring rapport with the children. He has observed her with Mathew and Irina and she has a good relation with them and a very caring concern for Mathew. (TR 2837) A few years ago he called Linda into his office, "my concern was that the information about her husband, Michael, would be too widespread at the school . . . to make sure that it didn't go any further than it had to go." There were at least three people he knew of that knew. That didn't concern him because he knew those people would keep it "confidential." Linda had not told him about her husband's surgery. The ones who knew were his assistant principal, Allison Hoskins, the guidance counselor who heard it from Michael. He heard it from the assistant principal. His confidential secretary/bookkeeper knew it from him. He also told Mathew's teacher because she ought to know. It was not common knowledge. (TR 2844)

Cross-Examination

BY COLLIN VAUSE, ESQ.

The principal stated he had seen Michael come to lunch at the school with Mathew who seemed happy and excited to see his father. He saw Michael with both children and they would run up to him, pleased to see him.

Mr. Shafchuk testified before the rumored incident about Michael's sex change, Michel started having pick-up on his court ordered visitation days. Linda said she didn't want him to pick up the children. She refused to allow the release of the children to Michael. Mr. Shafchuk had a copy of a court order that allowed visitation so he called the police to mediate the dispute. The police arrived, saw the Court Order and the police told Linda Michael is entitled to visitation. She refused the police and they told her she was violating the court order. The police said Michael would have to go to court over the matter and the children were not released to Michael. (TR 2851)

In regard to the teacher being told about Michael's sex change, that was Mrs. Bayless, Mathew's teacher. A Mrs. Dris, another teacher of Mathew's, may also have known about it. He did not want the information to get around the school.

When he called Linda into his office he said to her "only the people who need to know should know and I was doing my best to make sure that happened." He did not tell Linda that five teachers knew or that there were any students who knew. Linda did not tell him she was now going to inform the children.

Before this event, the St. Petersburg Times Newspaper ran an article about the divorce case and Linda was concerned the students might see it in class but the teachers had already "pulled" the article from class work just to prevent that. (TR 2861)

This concluded the testimony of John Shafchuk.

This concluded all the witnesses called by Respondent, Linda Kantaras, to corroborate Linda's testimony.

The Petitioner, Michael Kantaras, called one witness in Rebuttal to the testimony of Lidna Kantaras, namely Sherry Noodwang and then Michael Kantaras took the stand to present his own rebuttal testimony.

## FINDINGS OF FACT

## SHERRY NOODWANG

In view of the relationship between Michael and Sherry the concern arose over the Kantaras children becoming directly involved in her style of housekeeping and the apparent deterioration of Sherry's house with Ron no longer taking care of maintenance.

Sherry Noodwang was recalled to the stand in rebuttal and she explained in lieu of alimony she receives an extra sum on her smallest child's support in addition to support for her other two daughters. She also requires her children to check in with her whenever they visit another friend in the neighborhood, and she pages them if she doesn't hear. (TR 3490) Her oldest daughter is 16-1/2 years. She denied ever saying she wanted to date both Michael and her husband, Ron, then decide which to live with. (TR 3493)

She explained about her pool turning green as described by Ron Noodwang that her pump was turned off due to a leak and crack in the filtering system which she had repaired. She admitted the central air conditioning system froze up and because of closing the house windows due to rain her carpets began to smell and get mold. She removed the carpets and in turn stained the concrete floors, in three different colors and finished with polyurethane on top. She and Michael did the painting. This included the living room, dining room and family room. She now uses large area rugs and smaller rugs. (TR 3496)

Sherry was shown three photographs, (Petitioner's Exhibits #18, 19, 21, 22, and 23), which were taken over the last weekend of the trial, Sunday, February 3, 2002, and of each of the rooms, the swimming pool and exterior of the house from the front. She

admitted the front main window had a crack in one panel and the screen over the pool had a 12 inch cut.

In her divorce, Ron Noodwang has liberal visitation with the children and he talks with them frequently. (TR 3507-08)

Sherry recalled the birthday party given for her by Michael and Linda and the gift of two bears that had a necklace around both necks that said "Best Friends." It did not say "Best Friend Michael and Sherry." Matthew and Irina made her homemade birthday cards.

She explained the incident about the garage ceiling falling down and why the garage door would not open. A couple months ago, she said, the large coils on the garage door snapped which loosened all the metal brackets that held the door and the plaster ceiling fell. It has all been cleaned up but she lacks the money for actual repairs. (TR 3518) She stated Michael sleeps on the couch, not in her bedroom when he stays overnight.

This concluded the testimony of Sherry Noodwang.

## MICHAEL KANTARAS REBUTTAL

Michael Kantaras was recalled to the stand for purposes of rebuttal and he was examined by Karen M. Doering, Esquire.

Michael was asked if Linda Kantaras discourages Matthew and Irina from having any of their friends over when Michael has visitation. He explained, as follows:

> A. The children have been reprimanded, so to speak, for having their friends spend time at my home when I have visitation with the children.
>
> Linda has expressed concern to the children, as well as myself, that they should not have friends stay at my house because they may somehow see me naked and that's a concern of hers.
>
> So she kind of tells the children that they're not allowed to have friends over when I have visitation.
>
> Q. Are you ever naked in the house when your children have friends in a place where anybody would be in a position to see?
>
> A. No.
>
> Q. Have you asked Linda to participate in counseling with you and the kids to help work out issues related to the parenting?
>
> A. Yes.

(TR 3535-36)

On the issue of discipline that Linda believed she was better at than Michael, he stated he sets boundaries for the children and he was asked "What do you do to discipline Matthew and Irina when talking to them does not work?" He stated:

> A. I usually take away something that we have planned for the weekend if it's just playing Play Station for the weekend or if it's just playing Play Station for a couple hours, they're not allowed to do it. Or if it's

to go skating that evening and they wanted to or something came up where their behavior was inappropriate, then they don't go

Q. Do you allow your children to manipulate you?

A. No.

Q. Is that something that you consciously look for?

A. I think children have a tendency to manipulate parents even in a healthy marriage. So I do not allow my children to manipulate me.

Q. Do you allow your children to play you and Linda against each other?

A. No, I do not.

Q. If you don't allow your children to play you and Linda against each other, then why did you allow Matt to go skating when Linda had grounded him?

A. I wasn't aware that Matthew was grounded that day.

Q. Mr. Kantaras, what type of belts have you seen Linda Kantaras hit your children with?

A. A leather belt.

Q. Have you ever seen her use a woman's cloth belt?

A. No, I have not.

Q. When is the last time that you're aware of –

THE COURT: Was that a leather belt; did you say?

A. Yes.

THE COURT: Could you give us some idea of the size?

A. It was just kind of like a leather belt. I don't use very many belts, but Linda owned a couple. It was just like a regular lady's belt.

THE COURT: It was a lady's leather belt?

A. Yes.

THE COURT: Not a man's?

A. No.

THE COURT: Well, you described it, how long?

A. I would say about three feet.

THE COURT: What would you say?

A. About three feet.

THE COURT: Three feet. And –

A. About an inch wide.

(TR 3539-41)

Michael was asked to explain why Linda felt she had to call him at work to explain when she was going to be outside the home, and he replied it was a mutual thing, he would call when leaving work as well. It was a "mutual understanding." (TR 3543)

Michael during the nine years of the marriage slept both in the bedroom and at times on the couch. That he and Linda were very affectionate in the marriage but it got to be less so.

In regard to Matthew not having contact with males, he answered the boy was around his grandfather, uncles on his and Linda's side of the family, cousins and his sister's boys. And that, he himself has "tons" of male friends. He feels secure in his masculinity and denies he ever discussed his having menstrual cramps and using a hot water bottle with Linda. He denied he has any difference between his public and private demeanor with regard to his gender. (TR 3548-49) He does not change into the female

role when he comes home from work. He denied leaving rolled up socks laying around the house and Linda never told him Matthew when young, imitated him placing a sock in his pants.

Since the children have been informed about his sex reassignment he was asked how does he discuss it with them, as follows:

> Q. Since Linda told the children about your gender reassignment, have you had discussions with the children about this?
>
> A. We do have discussions, yes.
>
> Q. Can you tell me approximately how many discussions you've had with the children about your gender resignment?
>
> A. Well, in the beginning through counseling with Dr. Shelef we talked about it quite often. We talked about it openly. When the kids have a question I answer them.
>
> I've noticed that when Linda started being more into the church that some of the questions that the children asked me, when I talk about an answer, when I try to give them an answer, they kind of rebut me with, Well, God said you should have never changed or God said you should have stayed a tomboy or you didn't have the right to make that decision.
>
> So it leaves me kind of concerned because it's, you know, we are trying to be open and discuss it, but somehow I think that they're thinking that it's, you know – I can't explain it. It's just that the religion is kind of like God's telling them if it wasn't okay, there's something wrong if they accept me.
>
> Q. Are you able to have these conversations with the children both in counselling and out of counselling? Do you only talk to them about it in counselling?

A. No, the children talk to me quite openly. More so Matthew than Irina. Matthew is not afraid to just come out and ask me anything.

Q. Is talking to the children about your gender resignment something that you feel difficult or painful or uncomfortable?

A. No. I think they have a right to know and understand.

Q. Have the children asked you any questions that you've avoided answering or that you felt uncomfortable answering?

A. No.

THE COURT: What about Irina? Let's contrast Irina now. What does she say to you?

A. Irina asks – she asks like, Do you consider being a tomboy the same as, you know, you changing? You know, if you just like sports and stuff like that, I like sports and stuff like that, so does that mean that there's something wrong with me?

And I explain to her, No, because when you're done playing you run in the house, take a shower and you get your nail polish out and you do your nails and then you fix your hair.

Those are all things that you like to do as a girl because you know inside you have the mind of a girl. Well, when I was growing up, when I got done playing they had to force me to go take a shower or tell me you need to comb your hair. I didn't want to do those kind of things.

I got resentful of having to do those types of things. So she understands that you can still like to play football, but still be a young lady verses feeling that the gender that I was born in was just not me.

THE COURT: Does Irina fear that she may have your gender anxiety in her young age?

A. No. Irina is very much a young lady.

(TR 3551-54)

He was asked, "To your knowledge, does Linda still tell the children that you're not really a man?" He answered, "yes." The impact on the children he described as follows:

> A. I don't feel that they feel safe or free to be able to show me that they still love me as their dad or that they do view me as a male because they get the opposite from Linda.

(TR 3555)

Ms. Doering, Esq., posed the question to Michael about the incident in the house when Linda confronted Michael and Sherry about their "feelings" toward one another, as follows:

> Q. Your Honor, my notes reflect that and then, again, this is not an exact statement of what Mrs. Kantaras testified to, but that Mrs. Kantaras testified that Matt told – Matthew told Linda that daddy loves Sherry and he doesn't want to be married to you no more.
>
> Then she asked Michael what he had said and Mrs. Kantaras claims that Michael – when she said, what did you tell my children? She claims that Michael said, The truth.
>
> And so, what I'm getting at here is I'm trying to rebut the inference that she made. She absolutely didn't say that he said that, but she clearly made that inference.
>
> And what I'm asking Mr. Kantaras is did anything like that, did that conversation, regardless of the exact wording or phrasing, did that incident occur.
>
> A. No.

THE COURT: Matthew said what again?

MS. DOERING: Mrs. Kantaras alleges that Matthew told Linda that daddy loves Sherry and he doesn't want to be married to you no more. And then, again, Mrs. Kantaras alleges that when she then asked Michael, What did you tell my children? She alleges that Michael said, "the truth."

THE COURT: That's what she said?

MS. DOERING: Correct, Your Honor. And I was just asking Mr. Kantaras if there was ever a situation where that occurred and he responded –

A. No.

THE COURT: In other words, this incident that the children being involved and they're crying and all that stuff, that never happened?

A. I don't recall that happening as Linda said, Your Honor. I know that when we had been in the room and we had – Linda had left the room first and I had heard the children crying and I walked out of the room and they were crying.

At that time Sherry left the home. I don't even remember, you know, what was going on, but I at no time came out and told my son that I was going to marry Sherry or that I didn't love their mom.

BY MS. DOERING:

Q. Mr. Kantaras, just so that the record is clear, the incident that you're describing is the incident – well, tell me what incident you're describing.

A. It was a day that they had gone to a PTA function.

Q. And afterwards Linda had invited Sherry into the bedroom?

A. Correct. She called Sherry and myself into the bedroom and confronted both of us about our feelings.

Q. Okay. And then, just so we don't rehash all that testimony we've had –

THE COURT: Where were the children, presumably?

A. They were out in the family room watching TV.

THE COURT: And you and Sherry were together in the bedroom?

A. Yes.

THE COURT: With Linda?

A. Correct.

THE COURT: Then she confronted you about what were your feelings for each other?

A. Right.

THE COURT: That's what you recall?

MS. DOERING: And, Your Honor, just again to keep this to rebuttal there's –

THE COURT: But what do you recall was said then to Linda when she said –

A. She looked at Sherry and said – I don't know the exact words, Your Honor, but, okay, tell him. And Sherry had said something to the fact that she did not want to break up our marriage.

And she could not – I don't recall her exact words, but I remember Linda getting upset saying, you can't tell him that. You have to tell him you don't have any feelings for him.

And I looked at Sherry and said, Was that true? And at that time Sherry started crying. I believe she got up. Linda got up and exited the room. Sherry got up and exited the room.

At that time I heard the kids crying. I walked out into the family room to see what was going on.

THE COURT: Why were the kids crying?

A. I don't know, Your Honor. I don't know what was said or what had happened. I just went out to see why the children were crying.

BY MS. DOERING:

Q. Mr. Kantaras, when you exited the room was Sherry already gone from the marital home?

A. Yeah, I believe she had waked out of the room.

Q. Did you follow Sherry?

A. No, I was trying to console the children.

(TR 3556-61)

Michael's work schedule at Sam's Club is from 5:00 a.m. to 3:00 p.m. daily, and Saturdays 4:00 a.m. to 2:00 p.m. If he was granted primary residential custody his general manager and direct supervisor are very lenient with him to arrange his hours to adjust to his children's schedule. (TR 3561-62)

When he was asked "does Linda reassure the children that you're their father and that you will continue to be their father no matter who is awarded custody?" He answered, "I don't believe so." He explained his reasons as follows:

A. Even though visitation has gotten better and phone contact has gotten better, Linda still at times will make statements to me in the front of the children, such as even a couple months ago she had told me that when she was saying to the children that she was very sorry for the decision that she made marrying me, that she was sorry that she put the kids through that, and that she was getting it taken care of through the courts, that she was just waiting for the Courts to relinquish my rights and then she wouldn't have to deal with me anymore.

(TR 3564)

This concluded the testimony of Michael Kantaras in rebuttal.

## FINDINGS OF FACT

## DR. WALTER BOCKTING, PH.D., CLINICAL PSYCHOLOGIST

The Court believes the logical presentation of the medical testimony concerning transsexualism and Michael Kantaras should follow the presentation of the testimony of Petitioner Michael Kantaras and Respondent Linda Kantaras.

Medical science has become a major part of this case. The testimony of each party has to be understood in the light of the issue in this case. It is a simple question. May Michael, born a woman transition into a man, and, thereafter, enter into a marital relationship with a woman under the laws of Florida? The very statement of the question begs for an answer – It is unfathomable, that that can be accomplished. Medical science says otherwise. That is where this trial turned to listen to the testimony of Drs. Walter Bockting, Ph.D., Dr. Ted Huang, M.D., and Dr. Collier Cole, Ph.D.

The first called to testify was Dr. Walter Bockting, Ph.D., a Clinical Psychologist.

Dr. Bockting testified he first became involved in counseling transsexual clients as part of a team, at the University Hospital, Netherlands, which is known worldwide for the treatment of transsexuality. At the University of Minnesota he became part of an early sex reassignment clinic founded in 1960. In 1979 this clinic took over from the Department of Psychiatry of the University of Minnesota dealing with transsexualism and "gender identity disorders." John Hopkins University in Baltimore, Maryland, was the first to treat transsexualism and the University of Minnesota followed. (TR 24)

Dr. Bockting emphasized that mental health professionals are critical to the diagnosis and treatment of "gender identity disorders":

> "No one can change their sex without consulting with a mental health professional to evaluate whether the person

> truly has a gender identity conflict of that magnitude and to help this person to make a fully informed decision about the irreversible effects of sex reassignment."

(TR 25)

The mental health professional acts as a manager of the entire sex reassignment process, Dr. Bockting explained:

> "So the mental health professional has to evaluate the problem, the role of counselling the patient, of making sure the patient knows exactly what he or she is getting him or herself into. Also connecting this person with other people who have gone through the process and then ultimately making the recommendation to a physician to prescribe hormone therapy and to the surgeon to perform the surgery."

(TR 26)

The mental health professional is involved from the beginning, all the way through to the end, and follow-up after sex reassignment. This not only involves the patient, but also their families.

Dr. Bockting stated in medical parlence there are Standards of Care established by professional organizations that are widely accepted, that dictate it is "unethical" for a physician to prescribe hormones or to perform the surgery without the written recommendation from a mental health professional who knows the patient to be sure the candidate "is making a fully-informed decision that is going to result in no harm but improvement in a person's adjustment." (TR 28)

When the patients first come to the clinic, Dr. Bockting described how they generally present themselves, as follows:

> "Well, the patients come to us with their conflicts and at that point really they're in pain and are very uncomfortable with their sex and their gender. As a result of that, they

> may experience anxiety, depression, isolation . . . and we give them a place to talk about their feelings and let them know that there is help out there for them." At this stage, the patient meets other transsexuals and that "helps a great deal, that they can see people at different stages of the treatment process, and then the patients will make decisions with us, consultation with us, about what they need to do to become more comfortable with their gender identity."

(TR 29)

As the patient is ushered along, he or she will come in contact with the "team" members, who consist of several psycho-therapists, a physician who specializes in hormone therapy and a psychiatrist.

Elsewhere in the University is the Department of Urology and OB-Gyn, who have surgeons who perform the selected technique of sexual reassignment surgery. They also are referred to surgeons nationwide. "So we really have a comprehensive service and we are involved in every aspect of their sex change process." (TR 29)

Dr. Bockting has had 28 years of medical practice involving transsexuals and has treated about 150 female to male (F to M) transsexual patients. They average 16 patients per year, 25% of whom are F to M. He has edited two books and written one, on the subject of transsexuality, published by Haworth Press and two by the University of Minnesota. He has written numerous articles as well, and teaches at continuing education courses for doctors. He has been qualified as an "expert" in three other legal proceedings but not in a divorce case that involved a sex change operation. (TR 30-37)

Dr. Bockting's *curriculum vitae* was received in evidence as Petitioner's Exhibit number 1.

The organization that sets the Standard of Care is known as the "Harry Benjamin International Gender Dysphoria Association," founded in the 1970's. They have

international meetings every other year to exchange the latest in terms of research and clinical experience in treating gender identity disorder or transsexuality. They provide "all the mechanisms in which professionals net work together to address issues in this field, such as new studies. It is the leading organization with regard to transsexualism. In the late 1970's they set or defined the standards of care that need to be met in order to ethically treat the transsexual person especially, when it comes to sex reassignment. Dr. Benjamin was a pioneer, an endocrinologist who worked in New York during the '50's and '60's on transsexualism and wrote the book, *The Transsexual Phenomenon*. He is the grandfather of sexual reassignment.

The organization has approximately 400 members, and Dr. Bockting is on its Board of Directors, and all are professionals in transsexualism – a requirement to be a member. (TR 42)

These standards are the ground rules for treatment – "it provides safeguards to make sure that the candidates for sexual reassignment are well selected, that only those people who can definitely expect that it will be an improvement will have the procedure as well as, that they are well prepared for sex reassignment." These are the Standards of Care worldwide and for the United States, and currently are in the sixth version. Some of the principles are the same but "as more research becomes available and we understand the phenomenon better and better, the guidelines have been refined." (TR 44) They were last updated in February 2001. The standards were received as Petitioner's Exhibit Number 2. (TR 52)

**A. Transsexualism**

Dr. Bockting was asked to define "transsexualism," which he did, as follows:

"Well, transsexualism is -- the term that we use today is gender identity disorder. And gender identity disorder is defined as having an intense discomfort with one's sex and gender assignment at birth, and an intense discomfort with one's primary and secondary sex characteristics.

At the same time, there is a preoccupation with obtaining the sex characteristics of the opposite sex. So they're in intense conflict between the basic conviction and psychological sense of who a person is.

And their anatomy, their body, they have conflict. Patients who have an intense conflict in that area meet criteria for gender identity disorder. An intense conflict means that they report clinically significant distress as a result of this mismatch between their body and their sense of identity.

Gender identity disorder is a conflict between the anatomy and your gender identity.

Gender identity is a basic conviction of being a man or a woman. And I think most of us take this for granted because it is so consistent with our body and our anatomical sex.

But what we have learned from transsexuals is that's not the case for everyone and that their sense of being a man or a woman is the conflict with their body."

(TR 52-53)

**B. (F to M)**

When asked to describe a female to male transsexual, he stated:

"A female to male transsexual is somebody who was born female with female anatomy and female genitalia, but who feels that – has an aversion towards the female sex.

Who does not want to do things that girls do. That objects often as a child to wearing dresses, expects a penis to grow in time; doesn't understand; is upset by the fact as she gets older she's not fitting in with other girls and feels she should be --- have been a boy. She fits in better with boys.

> Oftentimes children also will say, I am a boy" and this is going to go away as I get older. My penis will grow; and, I will grow up to be a man because this is how I see myself."

(TR 54)

The aversion towards the female sex, means their own body parts – so they feel like their female anatomical parts don't fit. For girls female to male, that often happens later, so going into puberty is quite traumatic when breasts begin to develop.

Dr. Bockting was asked about the root causes of transsexualism as understood in the medical community. Is that something that is physical or is it something that is just emotional? He replied:

> "Well, I think if you take all the research together, we don't have consensus. But there are theories that are supported by research that hormones may play a big role.
>
> There is research about the brain differences, because I think the understanding is that the sex is more, you know, between the ears – and the brain – than it is between the legs, even though for most of us it is consistent.
>
> So the research right now focuses a lot on the brain and on hormone influences on the sexual differentiation of the brain."

When asked if transsexualism is a "mental condition," he replied, "Yes, because it's in the ICD Manual for psychiatric and mental disorders . . . and in DSM-IV."

The symptoms are "an intense discomfort - - - a preoccupation with the other sex and being able to live in the role of the other sex. In order to meet the criteria for a diagnosis, there has to be clinically significant stress which, you know, pretty much all of my patients experience because it is a tough conflict to live with, an impossible conflict to live with." (TR 58)

The total number of transsexuals in the world population, Dr. Bockting said:

> "Based on studies in the Netherlands they found that one in 11,900 persons is male to female (M to F) transsexual. And one in every 30,400 is female to male.
>
> The male to female are more common. They are three times as common as female to males - - - I think female to males "pass" better so hormones "have a greater impact, irreversible impact on female to males. So female to males masculinize more as a result of hormones and are therefore, unrecognizable from other men."

(TR 60)

Dr. Bockting made the observation about male to female transsexuals, as follows:

> "From male to female transsexuals some pass very well but the majority you can tell. There are physical differences even after hormone therapy and surgery for the male to female transsexual that is --- you could still tell that the person had a sex change."

**C. Born Transsexual**

When asked does a person choose their own gender identity? He replied:

> "No. This is something that develops. It's believed to develop very early on in childhood. There are some theories that say that it is fixed at the age of two. So this is not something we choose, this is something we become aware of as we grow up."

(TR 61-62)

**D. Medical Ethics**

Dr. Bockting was asked if counseling or psychotherapy could cure gender identity dysphoria and he replied in the '40s and 50's psychotherapy was tried but none turned out successfully. So, nowadays, the treatment of choice is sexual reassignment for people who meet the criteria for gender identity disorder. He added:

> "It's considered unethical to try to keep somebody in therapy to try to change their gender identity. Again, that's one of the reasons why we have the Standards of Care.

> And, it's based on our scientific evidence because there have been follow-up studies that study the ethicacies of reassignment that indicate that it's highly effective."

He was asked:

> "[T]he conflict between a transsexual person's anatomy and their gender identity, how does this affect the person?
>
> Well, its devastating. I think that's – people really isolate themselves and it results in depression and a feeling of not fitting in, a great deal of shame about it, and it becomes so painful that the person oftentimes is not functioning very well in other areas of his or her life.
>
> Then once a person seeks help and we address it, we see this whole transformation of someone coming out of that being able to – its very rehabilitative, being able to help them to rehabilitate themselves in almost every area of their life."

(TR 63-64)

Dr. Bockting confirmed that all transsexuals have an urge to remove their own sexual organs, such as the penis or breasts. So if one can't change a person's gender identity then for those patients with severe gender identity disorder, the medically prescribed treatment is "sex reassignment." This means:

**E. <u>Reassignment</u>**

> "Well, sex reassignment is referred to as the process of changing one's sex. And, it's really three components: <u>One</u>, is hormone therapy. <u>Second</u>, is the real life experience . . . which is changing their social role and living for at least one year in the role of the other sex. <u>Third</u>, is sexual reassignment surgery."

Dr. Bockting was asked the effectiveness of these three components on female to male transsexuals, and if there were any studies done and he replied:

> "Yes, there have been many studies done. If you pull the data together it shows that it is effective for females to males (F to M) in 97 percent of the cases. - - - for the male to female it's a little lower than that, - - - and there's a great deal of satisfaction after the sex change in all of my patients." (TR 67-68)

Dr. Bockting was asked what was the length of the sex reassignment process. He stated about two years. In the beginning, his clinic may be the first instance where the transsexual talks privately about how they "can't go on living" like this and they need assistance. They have a great deal of worry about family, friends and co-workers accepting them if they go through the process. Once they find out that they can get help in terms of changing their sex, that's a big relief. The mental health practitioners meet with their family, their children and go to their work places where "they train people in the work places or help with a team in the work place to deal with this change, this transition."

The doctor was asked what about the "impact" on persons from post-reassignment surgery? Dr. Bockting replied:

**F. <u>Metamorphosis</u>**

> "It's really a <u>metamorphosis</u>. You see a tremendous difference from a very isolated, depressed, worrisome person with a terrible body image and generally low self-esteem to someone who is relieved, is happy, is content, is closer to family and friends because they're no longer struggling with the secret and their conflict. . . It really lifts the burden of their sense of inappropriateness of their sex - - - and they can go on with life like anyone would."

Dr. Bockting responded to the court's inquiry about third party non-acceptance of the sex reassignment and what does that do to the psychology of the transsexual? He replied:

> "[T]hat issue is a big part of his field of expertise, in that, to others, it is difficult, a surprise, their worst fear, its almost like a grieving process, it feels to them that their relative is dying. But at some time, there's a new person, a transformation ---" "At the end of that process, they will recognize that it is still the same person. But I think in the beginning there is – there are different stages of the grieving process. It might initially be denial. "You will always be my daughter." Then there might be anger about this. There are fears, what are the neighbors going to think? But eventually, when people are allowed to work through those feelings they arrive at a level of acceptance and really see the effort being rehabilitative for the transsexual, it's so overwhelming, that that goes very far in recognizing this really was a change for the better."
>
> "My testing is also to encourage the client, the transsexual person, to keep communication open even though family members may be very upset, may be very angry. To keep communication open to allow them to get through their feelings to reach that point of acceptance. So it feels like someone is leaving or dying, but eventually, that "person is simply transformed and transformed for the better."

When asked, do the transsexed, post-surgery, say they "regret" what they have done? He replied: "In terms of regret, that has been studied and is really less than one percent that regrets it. It does happen. But it is extremely rare." "Most transsexuals who attempt to reconcile themselves to the conflict and live that way, are typical of all transsexuals, who attempt that to the maximum, but that's when they recognize that they can't go on any further and turn to the sex reassignment process"

When asked if anyone can get sex reassignment surgery, he replied: "Absolutely not, such a doctor attempting sex surgery without a diagnosis of gender identity disorder would be unethical and lose his/her license." (TR 77)

**E. Medical Costs-Phalloplasty**

The medical costs of the surgery are generally not covered by insurance, except for "evaluation" and possibly hormone therapy. The cost of female to male genitalia surgery at minimum is $25,000 and goes up to $100,000. The other procedures such as "chest surgery" and "hysterectomy" are less expensive but several thousands of dollars. When asked about the medical construction of a phallas, Dr. Bockting stated:

> "Well, that particular procedure of sex reassignment – the creation of a phallas and functioning penis, is really a technique that needs way more improvement because its not adequate.
>
> The phallas created through surgery - - - there are many steps in that surgery and there's a risk of complications. May need to take a skin graft usually now taken from the forearm, the lower arm . . . so the first problem is there will be a major scar in the donor area. And, it still remains, a question whether the skin will take - - in some cases the skin graft will die off - - that's devastating - - - they can not fix that. It will fall off - - - and, even if that doesn't happen, the esthetic result is really not satisfactory. And, one can clearly see that it's a surgically created penis. And it just doesn't look like a penis of a male who is born male. It looks strange and it also doesn't function in the sense that it doesn't become erect . . . there is another complication due to attempts to extend the urethra for urination (to the tip of the artificial penis). There is a risk of fistula or infections in meeting the desire to stand and void and the result is a catheter to void.
>
> So it is very challenging, and most female to male transsexuals do not opt to have that part of the genital surgery."

(TR 81-82)

In view of all these medical procedures, the Standards of Care are resorted to, "to make sure that people are fully informed and that they get good quality of care to

minimize the change of post-operative regret. And they've been very successful in doing that." (TR 82)

**F. Diagnosis**

Dr. Bockting testified the Rosenberg Clinic of Galveston, Texas, has an excellent reputation. They work closely together and sit together on committees of the Harry Benjamin Association. The professionals of both clinics work together as teams with their patients. How is "gender identity disorder" diagnosed? The doctor replied:

> "It's quite a comprehensive psychological evaluation, psychiatric evaluation. Sometimes there's also physical evaluation if there's a question about intersexuality, like a physical ambiguity or intersex condition – a battery of psychological testing – it is a very comprehensive assessment of their mental health, their sexual history, the history of their cross-gender feelings, how they have attempted to cope with it or alleviate their conflict."

Chromosomal tests are not uniformly done to all transsexual applicants at Dr. Bockting's clinic, "That happens when we have reason to believe that there might be something wrong with the chromosomes that is atypical. Rather than take a cromatin test, he stated:

**G. Chromosomes – and Sex**

> "We can find that out through the history, through the family history or by looking at the anatomy of the person. There are certain signs where one could tell. Well, it is likely impossible that this person has a chromosomal variation. Yet, we do not do it for every patient because the research shows that the majority of the transsexuals do not have chromosomal variation. So the female to male, the majority of them are XX and for the male to females, the majority is XY. If there "is reason for us to wonder about their chromosomes and in those cases we have the test done. The test is rather expensive, so that's why it's not done routinely. Now, the chromosomes are just part of one's sex. What it is basically is a chromosomal sex and it

> does not necessarily mean that out of that we can tell whether the person will identify as a man or a woman.
>
> I mean, there's certainly research that shows that people with a certain chromosome variation are more likely to identify as female - - - and there's also reason to believe that chromosome variation might be more common than we think because most of us will never have our chromosomes assessed. But I think the important point is that chromosome sex is just one of the dimensions of sex.
>
> But I think in our work with transsexuals we see their self report is so consistent all over the world, in self reports of transsexuals.
>
> Sex is not just your genitals, but sex is your anatomy, the sexual differentiation of the brain, the chromosomes, the hormones are believed to be one of the most powerful places where it comes to sex. And, in a person they all come together.
>
> Chromosomal sex – has value, but it's not the only dimension of sex that we take into account because there's also people with chromosomal abnormality who have no gender conflict.
>
> Well, it's well established that "there are other variations in between (male and female) – some of them will result in ambiguous genitalia at birth and others go undetected until maybe some of them may come out in puberty."

Dr. Bockting stated that besides genetics or chromosomes being the primary determinant of sex, he said: "I think other things are as important, so there is the chromosomal sex, the hormonal sex, their internal genitalia, their external genitalia and their gender identity."

For the definition of "gender role," he replied:

> "So in medical terminology it would be gender identity, that would be one's internal conviction of a man or woman. In gender role that would be one's presentation to the world."

(TR 89-100)

**H. <u>Treatment Process</u>**

Once the diagnosis is made of "gender identity disorder," the treatment process of sex re-assignment is as follows:

> "For a female to male this would be hormone therapy with androgens, with testosterone; which will result in irreversible effects in terms of the voice would drop; there would be a fat-redistribution away from the hip, more towards the stomach; there will be increased muscle growth; there would be body hair growth, at times balding which is irreversible, and a beard, facial hair growth and that completes the hormone therapy. Some will start the real life experience before the hormone therapy, but definitely when the hormones start to take effect, that's when that test needs to start, because they are masculinizing rather rapidly. And so that's when they start living socially in the male gender role and taking on a male name and living their lives as men. And then if, they've done that successfully and they've shown continued improvement, then there will be additional steps of surgery. They need to have either lived full time for three months or have a therapeutic relationship with a specialist for a minimum of three months. We usually see the clients for (significant counseling) six months before they are to proceed with hormone therapy. The hormones are prescribed by a physician with expertise in that area and the mental health provider needs to write a letter to recommend the hormone therapy to the physician. Then there's consultation between the physician and the mental health provider. That's when the blood test will be taken to make sure there are no medical contraindications and that's when the hormone therapy begins."

The appropriate regimen of hormone therapy for a female to male transsexual is give testosterone in an amount to override the influence of estrogen in the body by use of injections, a patch or a gel may be used and the latter are administered daily. A fairly significant amount of androgen is prescribed because the "goal is to masculinize." The

dosage is "reduced after removal of the ovaries. And that it's also better to reduce them after masculinization has been achieved."

The menstrual cycle will stop, so the period will cease; muscle mass will increase so it's easier to build muscle; a positive effect will result to bone density and after surgery the female to male needs to continue to take some level of testosterone to keep bone density up. Upper body strength will definitely improve and skin becomes oily and more rough looking. Body hair and facial hair will develop along family lines. So, if the person is from a family where people have thick beards, then it's likely that this person will also develop a thick beard as a result of testosterone, also a mustache and hair on the arms. Family genes show up in baldness too.

The doctor observed "interestingly" when the testosterone therapy starts, balding will happen in the person with, like, an XX pattern as well . . . so that's an example of where the hormones are, as far as we know, now have a stronger influence on a person's gender presentation than the chromosomes.

So if an XX person gets testosterone we see the same propensity towards balding that an XY person would have in the family. So hormones are very, very powerful.

Dr. Bockting was asked what is the "impact that hormones have on the erectile tissue or the clitoral tissue? And he replied:

**I. Clitoris**

> Yes, the hormones do enlarge the clitoris and the clitoris is erectile tissue. It's out of the same developmental structures as the glands of the penis. And the hormones will result in an enlargement of that tissue. . . It looks like a little penis. There's a clear size difference, but it does look like a penis. The voice drops irreversibly. The penis is an irreversible change, as well as the hairline. There is a personality change to somewhat more aggressive."

(TR 100-108)

The chromosomal make up of the human body consists of 46 chromosomes plus two sex chromosomes of "XX" for the female and "XY" for the male. This is considered normal or standard.

In the development of a "male," Dr. Bockting explained the importance of the "Y" chromosome as follows:

> "The presence of the "Y" chromosome, it would be the first step . . . to give the message that testes need to be developed. But they are like a number of decision points in the sexual development, and at each decision point there is something that needs to be there for this person to develop testes to develop into a male direction . . . There are other people that have the "Y" chromosome who had developed testes even though they are not descended, so they are in the abdomen where the ovaries are in a female that are producing testosterone, but the person can be insensitive to the effect of testosterone. The testosterone receptors cannot be working. So there is a number of moments during the sexual development where it needs to be right for the Y chromosome to eventually end up with the testicles that produce testosterone that is accepted by the body and, therefore, there's a masculine development . . . if they have testes that are where ovaries are, they are not descended and that person is born and looks like a female but does have the "Y" chromosome and that's because the testosterone that the testes was producing wasn't accepted by the body.
>
> It is the testosterone that triggers the body to form male external genitals, for the testes to descend and for that same tissue to develop into a gland and a penis rather than a clitoris.
>
> So, I think, yes, chromosomes initiate the process, but then there are all these other factors that play a role. And we believe that in the case of the female to male transsexual, yes, indeed the majority of female to male transsexuals have "XX" chromosomes, but there are other influences in sexual development including the hormonal environment in

> the uterus during pregnancy and the hormonal environment during the first years of life that influenced the sexual differentiation of the brain. . . . But if . . . pretty much if the testosterone is not present or its not accepted by the body, the "XY" person will develop as a female. So the female, if you will, is the default option . . . and then, the people who have a "Y" chromosome that are born with female external genitalia, many of them are raised as girls, live normal lives as women." (TR 117-121)

Dr. Bockting was asked, so at some point the hormones (testosterone) becomes more important than the chromosome? He answered:

> "Yes. You could argue that if there was testosterone without the "Y" chromosome that there might still be some male external male genital development.
>
> The sex reassignment process does not make for superficial or accidental changes in the body, but very purposeful, a very well-thought thorough intervention to provide relief and to help this person make sense of, you know, himself and his (her) body and to allow this person to live according to what feeling you could say his (her) mind is telling him (her) . . . It's a matter of life and death, really, for our patients."

After being on hormone therapy for a number of years, does a female to male transsexual look like a man? The doctor replied: "Yes, in most cases indistinguishable from another man." (TR 122-124)

Dr. Bockting was asked "you were talking about the changes to the erectile tissue that in a typical woman would be the clitoral tissue. In a typical male that erectile tissue would form into a penis, is that correct?" He answered, "By good and large it would look like a very small penis." Dr. Bockting was asked, "so in a female-to-male transsexual who has undergone hormone therapy, the genitals of that person would not resemble the genitals of a typical female, is that correct?" He answered, "you could tell the

difference." That would mean to observation they are no longer typically female. (TR 126)

**J. Genitals**

Dr. Bockting said the enlarged clitoris would look like a small penis and the genitals of that person would not resemble the genitals of a typical female, "you could tell the difference." "It does well up during sexual excitement, it is erectile tissue. Some patients reported they're able to have intercourse with it but I think that's not the norm, but some patients do report that."

What about orgasm? "Yes, all of that is retained and actually it is a result of the testosterone and the enlargement of the erectile tissue they have – its easier for them to reach orgasm. So we fine in research that they are quite orgasmic and sexually active." (TR 125-26)

**K. Male Role**

When Dr. Bockting was asked if the sexual performance of the "female to male" transsexual was really that of a woman? He replied:

> "No. I think that, among our clients, I think already before even they start the hormone therapy, but definitely after that, they feel better about their body and they have the testosterone which really makes – increases – results in an increase in sexual desire. They enjoy sexual activity. With a partner they take on the male role.

The doctor was asked, if the "male role" was merely psychological? He replied:

> Well, some do report that they have intercourse with their, you know, the enlarged erectile tissue, but they would otherwise be – you are using maybe a prothesis for that or they would hump their partners, so to speak.

> So they very much take on the male role. Again, for some its impossible, that their genitals are not big enough to really penetrate, but everything else will be the same."

They take on the dominant role, aggressive, "but they already felt masculine. Their sexual fantasies are the kind of activities that they have the - - - that is their preference to take on that role."

The following colloquy took place:

> THE COURT: Well, in other words. They have the urge to perform the sex activity as a male?
>
> A: Yes, indeed.
>
> THE COURT: If their sexual organs are left as they were, you've removed by hysterectomy all the internal sexual organs, but we're now dealing with the external, they are untouched?
>
> A: Yes, Your Honor. If they maintain their vagina they technically could receive a penis, could have intercourse with a man.
>
> THE COURT: Yes. Correct. They could reverse roles and now become a woman?
>
> A: Technically, yes. But we find that most FTMs, . . . are attracted to women and are identified as heterosexuals and most FTMs would not allow that. You know, they would feel horrified just by the thought of being penetrated. (TR 128-29)

**L. Dating**

Dr. Bockting was asked: Is it common for many female to male transsexuals when they're dating or having relations with a female partner to . . . is it common for them not to allow their female partner to touch them in that way? "It's common until they've had hormone therapy and surgery. So after surgery they may allow some of that, some of them are still - - - feel uncomfortable with it. Its more tolerable for them, but

they will not allow their partners to touch them. Especially, before the reassignment, it is very typical . . . they even have difficulty with pap smears done to check for cervical cancer, you know, there are some of our clients who just cannot tolerate that . . . that is not something that I mean, its esthetically "possible, but it would have to be forced onto them." (TR 129-30)

The female to male transsexuals typically remain on hormone therapy throughout most of their life, if they stop, its not good for their health, especially after the ovaries are removed and that could affect their bone density and develop osteoporosis. "So, its recommended that they continue to take a lower dosage, they continue to take them. It does happen that people for a while do not take them. Its not advisable, but it does happen. And it doesn't affect the masculinization, as I said, its irreversible." (TR 133)

**M. Real Life Experience**

Preliminary to the hormone therapy or during it, the "real life experience" is required, which is: "Well, its really a period, a minimal of a year, where somebody lives 24 hours a day, 7 days a week, in the role of the desired gender." They ask family, friends, co-workers to address them with "male" pronouns, they change their names, change their documentation, driver's license and live as a man. The reason? "I think its to make sure that as we are talking about the irreversible physical changes, that the person can make that adjustment, and that transition socially. So, it's a safeguard. Its to prevent regrets. Its to optimize their adjustment." (TR 135)

While a "female to male" transsexual prepares for the surgical intervention they must go through the "real life" experience for a year adjusting themselves to live in the

opposite sex role. How do they face the problem of public restrooms? The male verses female entry door? The doctor replied:

> "[T]he bathroom is indeed a big issue. - - - On occasion when they used the female bathroom, i.e., the female to male, the women in the female bathroom get upset because it's a man in the room. So the female to male will use the men's restroom . . . after surgery they may be able to stand to void (urinate) but before that they will use the stall (toilet)."

In the doctor's practice the percentage of female to male transsexual who have phalloplasty are 10% and 90% do not make that election. The 90% continue to use the toilet stalls in the male restroom.

The issue also arises in Health Spas and the use of showers. Male showers are generally open whereas, female showers are private. The approach of a female to male to this problem during the "life experience" was answered, as follows:

> "I think that some may not choose to shower, they shower at home, and others wear a bathing suit. . . . I mean, this is one of those things in the real life experience that, you know, the first time entering the male locker room and usually its more self consciousness because they can deal with the pragmatics and actually "female to males" have very little problems in the male facility.
>
> If there's an issue with bathroom, its usually "male to female" in a women's restroom because of women's concerns. . . about safety. But for "females to males". . . they deal with their own anxieties over it, but they just treat it like any other guy in there so it passes."

(TR 144-45)

In the workplace, he said:

> . . . If there isn't a unisex restroom we sometimes recommend that one is designated. So that means that for an adjustment period, say for three to six months the "female to male" person would use the unisex bathroom

> until everybody is adjusted, until the person also has masculinized further and then it's a known issue and the person, you know, disappears in the man's bathroom."

(TR 148)

The reactions of third parties to the transition of a "female to male" is not always positive. He testified:

> "[T]hat's an important ingredient of being successful at making this transition and that's what people learn in the "real life" experience, to understand - - - that people will react very upset and there, as the person continues to be consistent, the transsexual person, people will come around or, sometimes - - - initially somebody will be very supportive and three weeks later the person is having difficulty seeing their friend change from female to male. So its an adjustment that needs to be taken into account - - - its going to take some time. I often tell my clients, well, it took you 25 years to come to terms with yourself. Give your environment at least three months, you know, to adjust and to get to bringing around the whole issue."

**N. <u>Children - Disclosure</u>**

The doctor was asked what if the issue comes up in a family, with children, and one parent begins the transitional sex process?

> "Our experience is that especially children under the age of 12 deal with it very well when the parent is out in front and preferably where they are together on this (both parents). So what happens is that the parents will bring in the children and we sit down in a counseling session and the transsexual parent explains what is going to happen. I think its better when children are informed beforehand, but sometimes that's not possible. It's a blended family and then, you know, it will be explained in a very straightforward manner so that when later on when these changes become physical, the children have had time to prepare themselves. They may have reactions. As long as they can talk about it with not only their parents, but oftentimes we look for family, very close friends or a grandmother or a teacher that can support (the parent) because the children might hesitate to ask certain questions

> of the transsexual parent in order (not) to hurt the person's feelings. . . . So, the children under age of 12 seem to do very well because all they care about is that their parent is not going away and that their parent loves them.
>
> Now for kids in adolescence, it's more challenging because for them their parents are weird anyway during that time in their development. And they might be self-conscious. They are preoccupied with their own sexual development. They care a great deal about what peers think of them and that's usually their biggest worry, you know, what are my friends going to say? If they find out about this they're going to tease me. I think it is most challenging and that's where the counseling is really very important. And, with adult children it's a little easier again. So I think that being up front about it and explaining it preferably, before the changes take effect, is the way to deal with it."

(TR 150-154)

The doctor was asked what if the children are not yet born are adopted or come through artificial insemination? And the children have not known the transsexual parent, except, as daddy?

> "I would say [he replied] that most of them (the transsexual) eventually will tell their children, but they may wait until the children are at an age where they feel they understand it. Now, ideally, because the risk it causes, they would hear it from somebody else and maybe not in a very caring way. So that's why I think the two parents sitting down with the children - - - there is something personal that we want to discuss with you - - - daddy used to be a girl, was born a girl, but felt like a boy. (He) didn't feel comfortable this way and made a change and he has been living now as a man for many, many years. . . <u>the children will be really surprised and ask questions but then they can talk about it and as long as its done in a respectful way and both parents are found on the same page and provided, (there are) other people to talk to, that can go over very well</u> . . . <u>when parents have a fight and it (is) being used as a weapon (transsexuality) in that fight, that would be very unfortunate</u>."

Later, he said:

> "Well, I think it would be devastating. I would be very concerned about it. And I do believe that children are resilient – they usually do understand. But, I think they'll - - - have great emotional turmoil over this - - - especially if they are at that time when they need to be proud of their Dads. It can be really tough. It's not a good thing."

When asked if it potentially would cause psychological or emotional harm to the children, he stated: "Yes, I think so. I think that's the literature." (TR 157-161)

**O. <u>Surgery (F to M)</u>**

Dr. Walter Bockting was asked the types of surgery typically available for female to male transsexuals, and he replied chest surgery and genital surgery. It needs to be recommended by a mental health professional with a letter to the surgeon on the team. The chest surgery is not a typical mastectomy because its not just the removal of the breast---

> "[B]ut its also the creation of a male looking chest to make sure that the nipples have – look like that of a person born male. So they usually have to take some extra tissue away from the nipples so that they can be larger and to reposition them. Most female to male transsexuals undergo chest surgery. Because that part of their body they are most dysphoric about, most distressed about. The cost of the procedure is about four to $5,000 and not generally covered by insurance. The procedure is not high risk, its routine for surgeons who operate on FTM transsexuals. The challenging aspect deals with scarring and sensitivity in the nipples. If the breasts are sizeable, two scars would be visible under the pictoral muscle. Chest hair growth may cover it. They, FTM, really experience the surgery despite discomfort during recovery, as a major relief that they have a chest that is now more male appearing, bringing about a dramatic improvement in the quality of life and psychological well being."

(TR 172-179)

The genital surgery typically would be a hysterectomy and ovariectomy which is removal of the ovaries – total hysterectomy. The purpose of this surgery is two-fold. One, is that with hormone therapy if the FTM were to maintain the uterus and ovaries there's the increased risk of uterine and ovarian cancer. So for that reason its better for those organs to be removed. Second, the FTM transsexual feels that those organs shouldn't have been there in the first place – its not how he identifies. The pronoun "he" is proper to now use because "by the time that he is having the total hysterectomy he's also living fully as a man and is accepted as a man. And usually the client has a male name and uses male pronouns.

The woman who has to suffer a double mastectomy plus total hysterectomy considers it a terrible traumatic experience. The female to male considers the same surgical procedures as less traumatic. When in puberty those breasts develop for a FTM transsexual, it is traumatic "so once the breasts are removed and the male chest is created and the female internal genitalia are removed the female to male experience it as a "relief." So that's where the two are very different and, you know, that way you cannot compare the two." (TR 182-83) In the one instance the gender identity of the one person is still female but in the other it becomes male.

After FTM has undergone chest surgery and total hysterectomy, is the sex reassignment process considered complete at that point? Dr. Bockting said:

> "Yes, I would say that for a female to male who is taking hormones, who has had chest surgery and the internal organs removed, that would be complete sex reassignment under the Harry Benjamin Standard's of Care because many do not go on and have the phalloplasty because of the limited results. (TR 184)

**P. <u>Phalloplasty – Undesirable</u>**

Dr. Bockting was asked once again to describe phalloplasty.

Dr. Bockting stated only ten percent (10%) of his clients pursue phalloplasty because the results are not satisfactory, there are multiple surgeries with a high risk of complications, its very cost prohibitive $25,000 to $100,000, with a result that is not esthetically pleasing and its not functional. The phalloplasty would include lengthening the uterine tract, use a skin graft to create a phallas . . . It doesn't function sexually and it doesn't look very well as a penis. It's really very compromised. (TR 186-88)

Dr. Bockting testified he is knowledgeable about the technical surgical procedures to create a phallus or an artificial penis. While not a medical doctor, he does "counsel his patients through these options before they have the chance to discuss it with their physician" because he has an "obligation to do that, so as not to raise expectations - - - So it allows me to also talk to my patient about what it would be like to have a less than ideal result in relationships, how important is that. So that is also part of my role, to talk about this type of social implications of the surgery." The results he described as follows:

> "Well, first there is a big scar on the donor site and its on the forearm and that gets exposed. People like to wear short sleeved shirts, so that is really a big concern right there and how to explain that to people.
>
> Then, second is that there can be difficulties with the lengthening of the urethra. The skin might not be accepted by the donor site and then it would - - - simply – one would lose parts. If those things are going well, then there will be something that looks like a placid penis that does not become erect during sexual arousal. There are ways to put a siffener in, - - put a rod in. They could put an implant in but they can increase the risk of ruining the esthetic result that has been created. And also, as time goes on, the palloplasty might eventually lose some of its initially reasonable appearance. And, you know, it looks like there

> is something hanging there, there is a lump of flesh, but it still leaves a lot to be desired. It doesn't really resemble a penis."

(TR 194-95)

The doctor was asked: So according to the Standards of Care, a female to male transsexual who's undergone hormone therapy, chest surgery and a total hysterectomy has completed sex reassignment? "Yes. From a medical perspective - - - is a 'male.'" When asked would it be consistent with medical ethics to require that type surgery (phalloplasty) in order to complete sex reassignment? He replied: "I think it would be unethical to require that - - - a still questionable procedure because it could worsen the patient's adjustment."

**Q. <u>Copulation</u>**

The other 90% who do not have phalloplasty, can those people go on to have a satisfactory healthy sexual relationship with a woman? He replied: "yes, indeed. Absolutely . . . I think they will use what they have, the erectile tissue is there and that is enlarged. And they might use prosthetic devises - - - a plastic penis that they can wear in harness." They would not have direct sensation, but at the same time there could be through the rubbing, there could be stimulation of the enlarged clitoris, that is very sensitive. That part of the body of erectile tissue rubs against the body of the other person.

The doctor stated his patients that use prosthetic devises have a satisfactory sexual experience. He has dealt with men who suffer from micropenis. He counsels them since "every man feels that their penis should be bigger, it's too small and there are those who have an abnormally small penis. He helps them to adjust, they learn to work with what

they have and realize that it's not the size of the penis that makes the man. This is consistent with the female to male transsexual as well. (TR 198-99)

A man who suffers micropenis has the same risks of enlargement surgery, loss of sensitivity. When asked if a man has a small penis or none at all (due to accident – war injury). Does that make an individual less of a man?" He replied, "No."

**R. <u>Homosexuality</u>**

When asked what is the difference between transsexuality and homosexuality, he replied:

> "Well, transsexuality applies to the feeling that someone has about him or herself. So it's the relationship with one's self. Am I comfortable being a man? Do I feel like a woman even though I have a male body?
>
> And, sexual orientation or homosexuality really refers to are we attracted to men, women or some people are attracted to both. So we first do sexual relationships as opposed to - - - with another person, as opposed to one's relationship with one's self. That's the difference."

He was asked: "From a medical point of view, what would be the sexual orientation of a female to male transsexual who has completed the sex reassignment process, in accordance with the Harry Benjamin Standards of Care, if that person is attracted to women?" The doctor replied "heterosexual, straight or heterosexual." He explained further:

> Usually sexual orientation doesn't change, so it's a separate thing from one's gender identity. So the person is born female, feels like a boy, like a man, is attracted to girls, women.
>
> So, as this person grows up and also completes sex re-assignment from female to male, the person continues to be attracted to women and therefore the person is

"heterosexual" because sexual orientation is based on one's gender identity.

So whether we have a "female to male" or someone who was born "male," they both live as "men," are attracted to women so they're both heterosexual.

The questioning proceeded:

BY MS. DOERING:

Q. So a female-to-male transsexual who completes the process, they're not lesbian?

A. No, they're not.

Q. If they're attracted to women?

A. No.

Q. So, they're a male and they're attracted to a woman and that makes them heterosexual?

A. Correct.

Q. If a person begins the sex reassignment process but for whatever reason stops the process, does not complete the sex reassignment process and opts to stay a woman and that person remains attracted to women, would that person then be a lesbian?

A. Yes, indeed.

Q. . . . So even pre-transition, a "female to male" transsexual, some people might consider that person prior to their transition since they're a woman, they might consider that person to be a lesbian if they're attracted to women?

A. Yes, sometimes.

Q. Sometimes. And the "female to male" transsexual themselves, is it common, in your experience, that although the female-to-male transsexual has a female anatomy and they are attracted to women, that they don't consider themselves to be a lesbian,

that they consider themselves heterosexual, just in the wrong body?

A. That's right. I mean, in the process of attempting to make it work they might try to take it on and say, well, maybe I'm a lesbian, but they very quickly find out that - - - that's not it for me. I don't belong there. That's not my identity.

Q. So is there any basis whatsoever for labeling a transsexual man or a "female to male" transsexual as a lesbian.

A. No.

THE COURT: Well, I suppose carrying out that concept, if the transition is complete, now "male," female to male, but if that "male" now becomes attracted sexually to other males, crosses the line, becomes homosexual?

A. Yes. That does happen in a minority of the cases, about 5%, but there are "females to males" who identity as "gay" because they are attracted to men. That's correct.

Q. Is it common for a - - - when a transsexual goes through the sex reassignment process, is it common for their sexual orientation to change? The people that they're attracted to, is it common that that changes, or does that typically stay consistent throughout the process?

A. It generally stays consistent.

Q. So a female to male transsexual who prior to undergoing the sex reassignment considers themselves attracted to women, after the sex reassignment process they remain typically attracted to women?

A. That's correct.

THE COURT: And if they're attracted to both, they're then bisexual?

A. They will be bisexual indeed.

(TR 201-07)

**S. <u>Parenting By Transsexual</u>**

Q. Does being a transsexual who has undergone the sex reassignment process in accordance with the Henry Benjamin Standards of Care, does that have any kind of a negative impact on the person's ability to be a parent?

A. No, it doesn't.

Q. . . . Does that have any kind of a negative impact on their psychological stability?

A. Well, it should improve it. . . as I said earlier, in 97% of the cases they have made significant improvement in their adjustment and their satisfaction and their ability to function in different roles in life. ** a very positive impact.

THE COURT: What happens to the so-called mother instinct? Now, when you have a woman who goes into transition, becoming a male, does she still have a mother's instinct despite being now called a "male?"

A. Well, Your Honor, I do think that a female to male transsexuals have a unique experience - - - that is different from men or who are not transsexuals. So I think they do have an experience of knowing what its like to be thought of as a woman. And if that is something like a motherly instinct, then its possible that they would still have that.

Q. Assuming that a person was otherwise qualified, would you have any concerns about a court awarding custody to a transsexual man who has completed the sex reassignment process in accordance with the Henry Benjamin Standards of Care?

A. If he's a good parent, no.

Q. In your clinical experience do children suffer any kind of harm as a result of being raised by a transsexual parent who has undergone sex reassignment in accordance with the standards of care?

A. No.

**T. Onset of Transsexualism**

Q. In the case of a typical transsexual person, when does gender dysphoria first manifest itself?

A. Typically in childhood, so it can already be evident by the age of three or four. We've seen children of that age who are amazingly communicative about how they see themselves and how that is not the way others see them or what their body tells them they are. So very early on. And its believed that gender identity is established by the age of two.
The female to male child has an aversion to dresses, prefer to stand to urinate, plays with boys and boy sports – rough and tumble, tom boys. *** And actually research has been done that have studied those girls who show more typically boy behavior and the majority will not grow up to be transsexual but a very small minority will.

**U. Legally Male**

Q. Dr. Bockting, in your expert opinion should a female to male transsexual person who has completed the sex reassignment process in accordance with the standards of care be legally considered a male?

A. Yes.

Q. What would be the impact on a person who has gone through this extensive medical process, what would be the psychological, emotional, physical response of a person - - - to then be declared by a court to be legally the gender they were assigned at birth rather than the gender of their completed sex assignment, in this case, a "male?"

> A. Well, I think it would be devasting . . . it's like their whole life is ripped out from underneath of them. . . . They really experience it as an invalidation of their being. So I think it's very serious. It's really invalidating their being because being a man is an essential fundamental part of their being, like it is for me.

(TR 212-17)

Part of the consulting process in the clinic of Dr. Bockting is to advise their clients to have their names changed through petition to the court – that is routinely done and his clients voluntarily proceed to have it done.

Likewise, after the sex reassignment is complete the clients are advised to amend their birth certificates where it is allowed by the respective states. (TR 220-21)

Dr. Bockting had testified that "gender identity disorder" is a recognized diagnosis in the Manual of Psychiatric Disorders. It's when people have experienced dysphoria - - - to the point "that they experienced clinical distress, the kind of pain and suffering that I talked about when they come into my office initially, that's when they meet those criteria." Dr. Bockting admitted on cross-examination he had not had a chance to evaluate Mr. Kantaras, no tests given. He only met him casually that day in court.

Dr. Bockting was asked to explain his reference in regard to a Social Security claim. He testified: "There was a question about a male to female person and whether she was the "spouse" because her husband had passed away, they were denying her the Social Security benefits of her husband, she was not yet 65, based on the fact that she was born a male.

"So after I sent them a letter that she had gone through the sex reassignment process and was living many years already as a woman, they reversed that decision and said, indeed, "You know, Mrs. so-and-so is really - - - this person's wife and is entitled to the Social Security benefits of her deceased husband." (TR 241)

CROSS-EXAMINATION

BY MS. WHEELER, ESQ.

Dr. Bockting was asked "do you know anything about the history of Michael Kantaras?" He replied, "No." "So all that testimony about trans gender people or people who go through sexual reassignment surgery, you couldn't tell us what, if any of that, applies to Mr. Kantaras, correct sir?" He replied: "That's correct, I was testifying more in general."

The following colloquy proceeded:

> Q. . . . Opposing counsel asked you if there was anything psychologically damaging, in your opinion, if a transgender or someone who has had sexual reassignment surgery becomes a parent and you said no, correct?
>
> A. Well, I don't think that was the exact wording. I think it was more like whether for a parent being transsexual whether that resulted in trauma for a child.
>
> Q. Okay.
>
> A. Just the fact that the parent is transsexual, does that, in and of itself, does not need to have a negative impact on the children. Children, in my experience, can adjust to that and they look for parents who give some guidance, loves them or cares about them regardless of the fact that the parent is transgender or not.

Q. How many cases, if you could tell us, have you been involved where the children are informed after they're old enough to understand what that means that was told to the children in the middle of the divorce proceedings?

A. I think what is not uncommon is that when two people are already married and the one person comes out with – I need to change my sex, that the (other) spouse may have difficulty adjusting to that and there is a divorce going on and then the children find out as well. That, I would say is a common scenario . . . where people are married and this change is something in the past and that becoming a big issue is not as common, in my experience.

Q. Have you ever counseled people in a situation like this?

A. Yes, I have.

Q. Where it came out during a divorce?

A. Yes, I have.

Q. How many people have you counseled in that situation?

A. In that situation? Probably three, four families.

Q. And that's after one parent had already had sexual reassignment surgery?

A. Right.

Q. . . . You said that one of the things that you counsel people is on going out into the community through their jobs or their work place and the spa and letting it be known that they've had sexual reassignment surgery?

A. . . . I do assist people on making the transition. So when they are working and people think that they're female, are working in the female role and I'm making a change to the male role, that's when we

usually provide assistance. - - - in the earlier years, so in the '60s, '70s and '80s there were actually professionals that advocated that people would keep this very private to facilitate the social acceptance and the integration in the role. Nowadays there is a little bit more acceptance and openness about this issue. More people choose to be more open about it, especially to their own social circles . . . nowadays its safer for people to be more open about their transsexuality.

Q. Would it be your opinion that you should keep it very, very private from your children?

A. I think it's a good thing for the children eventually to find out when they're ready to understand it. And, I think it's a judgment that belongs with the parents in the family. So I respect the parent's judgment about that.

Q. The Harry Benjamin Standards of Care, what are those in layman's terms?

A. These are the standards of care for professionals when they encounter transsexuals in their practice, to know to refer them to specialists who have adopted their work according to these guidelines. So these are ethical guidelines for the treatment of gender identity disorder that needs to be followed.

Q. Could you tell us where in the standards of care is it that a former client takes the hormone therapy after surgery, a female to male?

A. They need to be followed up annually and yearly for a test of the liver.

Q. What happens to someone, such as Mr. Kantaras, if he just quits taking the hormones for a while.

A. Well, after the irreversible effects of the masculinization it really doesn't have an immediate bearing. Its not uncommon that patients do that, its not advisable. They may run the risk of developing cancer if they haven't had their sex reassignment surgery. But if their ovaries have been removed and

their uterus has been removed, their risk for concern isn't present either. What happens is that they may develop problems of bone density or osteoporosis.

Q. What might happen to somebody if they don't take the testosterone?

A. It can result in some depression because they are at that point no hormones are being produced in the body.

Q. [are] there any studies done on the personality changes - - - in a person whose had sexual reassignment surgery from a female to a male that doesn't take their hormones as they're prescribed?

A. No . . . . There's some studies on the affect of the testosterone on people's mood but not about not taking the testosterone.

Q. The level of testosterone in a person, doesn't it have a direct effect on a person's mood?

A. Yes. I think they feel a little bit more - - - empowered - - - there might be an increase in aggressiveness. (TR 144-55)

Q. Under the Harry Benjamin Standards, - - - how much counseling does a person need that has gender identity dysphoria?

A. It really varies from person to person, so when we do an evaluation we assess that. And it's a minimum of three months and sometimes – for over a year or longer before they start the reassignment process. It depends on their level of suffering and other problems that they may be experiencing.

Q. After they get sexual reassignment surgery, how much counseling is required by the Harry Benjamin Standards?

A. It is not required. Its encouraged. *** Well, we do follow them up is terms of hormone therapy, so they do come annually and so we keep tabs on them . . . also for their physical.

Q. What happens if they don't come in for their annual check up?

A. Then their prescriptions will - - - they will be contacted because they wouldn't show up on the physician's case load. The physician would be concerned what's going on with their health and what to do when the prescription refill is due. And so there would be communication by phone or through a letter to urge that person to come in.

(TR 255-60)

On the issue of the pap smear, that test is required of a female to male transsexual, to check for cancer. It's part of the physical before hormone therapy. Some transsexuals refuse the pap smear "because they're so anxious or they cramp up so that the physician cannot insert the speculum. The anxiety closes the vagina and they have trouble and they can't insert the speculum." (TR 285-86)

Q. How many of them say (transsexuals) "I want to go from female to male because I see myself as a male. I want to be a male. I want to live as a male. I've always thought I was a male. I have this obsession with being a male." I guess that's what you write about – this obsessive compulsive disorder isn't that obsessed with the opposite sex - - - being the opposite sex?

**V. <u>Transvestites</u>**

A. Well, the obsessive compulsive is more common among heterosexual transvestites as a man who cross dresses who may – for whom it may have become – those compulsive features. So they're cross dressing not only for them, it's typically not an expression of their gender identity as in the case of transsexuality.

(TR 292)

The bulk of Dr. Bockting's practice he testified on cross-examination deals with people who have sexual dysfunction, sexual and gender identity issues. Most of the people who see him are well informed about "female to male" transsexualism due to books on the subject, videos, educational materials and conferences where they get together . . . there is the internet ". . . so based on that, yes, they do come in and say . . . I want to change my sex but as far as this phalloplasty . . . that's the part I don't want. I will wait until techniques are more advanced." (TR 294)

> Q. Would you say, sir, if it wasn't cost prohibitive and it was extremely successful physically and sexually, that most of the female to male transgenders would get a penis? Let's say it costs less than a mastectomy?
>
> A. Yes. I think that the majority would.
>
> Q. Would you say (transsexualism) is more of a psychological problem or more of a physical problem?
>
> A. I think it's both. It's not physical in the sense that they have been able to detect with certainty a physical cause of their conflict.
>
> Q. So you think its both, or you think its only psychological?
>
> A. I think its psychological distress, but there's also an aversion - - - sense of a process that people feel physically. I think that's part of this condition. It's really the anatomical and the psychological really interact in this condition ***
>
> Well, I mean, another way of saying is that what we have been able to establish very consistently the emotional suffering and distress when somebody has this conflict.
>
> Yet, the way to alleviate that conflict it involves physical changes because the conflict is very tied to

their body image. And, then - - - there is evidence of studies that hormonal and sexual differentiation of the brain is believed to play a role. So its really a condition where all of these things come together.

Q. Right. But it's a medical condition, correct?

A: Its recognized – in the medical field, a recognized disorder. That is, a mental health disorder - - - where a physical intervention is providing the relief.

Q. Okay. And that's exactly my point. It's a psychological disorder with a – what did you say?

A. Where a physical intervention - - - well, it's rather a social role change.

Q. Okay, so it's a psychological disorder that physical intervention medically physical intervention relieves?

A. Correct.

**W. No Penis**

Q. So how much relief, on a scale from one to 100, does a person want, to go from female to male, when they get no penis because its cost prohibitive and because its not possible (functionable)?

A. The follow up research really shows 97 percent satisfaction - - - despite the fact that the phalloplasty has a questionable result. So, in other words, even though phalloplasty is not a good option now and the majority of my practice choose not to have that option, the whole process of changing and the effects, of the hormones, the social role change, the chest surgery and the removal of the internal genitalia really result in a very significant amount of relief.

Q. Very significant amount of relief?

A. Yes. Yes. That despite the effect that many female to males do not have a functioning penis, they feel very content and to the point that I think that, even

> though they still may have a desire for a penis, that has become an issue that they can live with and adjust to and its in perspective of the whole process, no longer as profound and no longer debilitating. * * * As I said, what I have found is that with increasing time after the surgery the concern about not having a functioning penis declines.

(TR 300)

Dr. Bockting stated the Harry Benjamin Standards of Care had nothing specific about requests to change birth certificates after completion of the sex reassignment surgery except to cooperate with confirmation as to the surgical procedures. (TR 305)

> Q. When do you think someone like Mr. Kantaras who has had the mastectomy and complete hysterectomy, when do you think that person should be able to stand up and say "I'm no longer a female, I'm a male?"
>
> A. Definitely upon completion of sex reassignment the person can stand up and say that with confidence.
>
> Q. Do you think as soon as they have surgery they should be able to change their sex or go from being one sex to another?
>
> A. Yes, because it certainly would imply that they also have lived one year full time 24 hours a day, seven days a week in the role and made that transition. So once that surgery has been completed that's the time that the person can say with confidence my sex has changed.

(TR 207-08)

The court asked what is the difference between women who for medical reasons, usually cancer, must go through the procedures of double mastectomy and complete hysterectomy and the female to male transsexual going through the same procedures, ending up thinking they are men? Is it the hormone therapy?

A. Your Honor, it really depends. First of all, there's a difference between just removing the breasts and at the same time creating a male appearing chest. Second, it depends on the timing of the surgery. In the past - - - the hormone therapy was required - - - up to the 1998 Edition of the Standards, the hormone therapy was required before the breasts are removed. In today's standards they have changed that because they feel its problematic for a female to male to live that one year of real life experience with big breasts. That's why they have made it - - - they changed the timing on which the mastectomy and the chest reconstruction can take place.

So it depends in an individual's situation when this person is having the chest surgery. In addition to that, there are rare, but there are some of my clients who for some reason cannot take the hormone therapy because it provides a risk to their health.

And they may change the role, have their breasts removed and the chest created, live one year full time in the male role without the aid of those hormones that are so powerful for most of the female to male transsexuals.

THE COURT: Now, let me understand that correctly . . . now they come out with a reconstructed chest . . . it's male. Are you saying some of them cannot take the hormone because its damaging to their health. So its not uniform that they all take these hormone treatments?

A. Well, Your Honor, I'm talking about exceptions. But I've had two clients who have not taken the hormones, have their breasts removed and a male chest created who are living as men now for several years. So, these are just different steps of the process. . . There are some exceptions but it is a totally different situation where the breasts are removed for other reasons – when it's not happening (to) someone who has a gender identity disorder, and who is also making a social change in addition to the physical change.

THE COURT: Well, can they make that social change you talked about having every thing else done, but do not take any of the hormone treatment? Are they still going to end up being considered male?

A. On rare occasions this has happened and those two individuals live as men, have a male chest through surgery, but have not had any hormone therapy.

THE COURT: And have they then been considered successful in the transition?

A. Right.

THE COURT: Without hormones?

A. Without the hormones. But I think certainly socially the hormones are a big aid in that process because the masculinizing effects are so profound, but I think these are just different steps of the complete process and they need to be taken into consideration in an individual personal situation. . . .
And I think for people who do all of it, I think that certainly it can be said with confidence that after the surgery has been completed and the person has been on hormones, that this person, you know, is considered a male.

(TR 314-15)

Dr. Bockting was asked to refer to the definition of "transsexualism" as found in the Harry Benjamin Standards of Care, after which there was an extensive examination of how the clitoris becomes a penis through hormone treatments, as follows:

A. Well, transsexualism is people who are assigned one sex at birth and who feel that that doesn't match their internal conviction of being a man or a woman. And they have a great deal of discomfort with the role associated with living in the case of a

female to male with the female gender role and seek to change that role . . . change their physique.

Q. Is that the same as a person with gender dysphoria?

A. Gender identity disorder is basically - - - it refers to the same thing. So initially the DSM also had transsexualism and then it was changed to the term "gender identity disorder."

Gender dysphoria is a more generic term and it allows for more different degrees of gender dysphoria. So, not everyone with gender dysphoria meets the diagnosis of "gender identity disorder."

Q. Well, which one of those two classifications would a person who actually undergoes the surgery, would that put them in a different classification?

A. That would be gender identity disorder in the DSM or transsexualism in the ICD.

Q. OK. I would like to direct your attention to the first sentence (of the Standards of Care) could you read that?

A. "There is a desire to live and be accepted as a member of the opposite sex usually accompanied by the wish to make his or her body as congruent as possible with the preferred sex through surgery and hormone treatment."

Q. Okay. Number two - - the transsexual identity has been present, persistently present for at least two years. Could you read number three?

A. Number three is, "the disorder is not a symptom of another mental disorder or chromosomal abnormality."

Q. - - - Would you say that "gender identity dysphoria" - - - is a mental disorder?

A. Well, it is in the manual of mental disorders so it is a type of mental disorder.

Q. Could you tell us what is the care for that mental disorder, according to Harry Benjamin?

A. That is a combination of the counseling, the hormone therapy, the Real Life Experience, the surgery – sex reassignment.

Q. According to Harry Benjamin it is to make your body as congruent - - -

A. As possible.

Q. As congruent as possible with the preferred sex through surgery and hormone treatment, correct?

A. That's correct.

Q. Did you ever have a part of re-writing these standards?

A. Yes, I have.

Q. Was there ever a time when to go from being a female to a male it required a penis?

A. No.

Q. But the Standards say to make them as congruent as possible, yes?

A. As possible and the creation of a phallus is still not very possible.

Q. So the medical community would like us to accept this person as having a sex change operation although its only partially complete because its not medically feasible to be successful - - I'll call it the third stage?

A. Well, we do not consider it partially complete. We consider it complete, because additional steps are not at a point that they are available and satisfactory.

Maybe in the future, we'll learn - - - something else that can really further masculinize a female that we

don't have available as yet. *** We might find other chemicals or other ways of treatment, whether that be surgery or hormonal, that might succeed even more in making a person's appearance and looking in accordance with their gender identity.
And the fact that those are not available now or that those are not tested, or not satisfactory now, doesn't mean that what we're doing now is incomplete or partial sex reassignment.

Q. But it is incomplete, isn't it - - - because you can't make the penis - - - work correctly for a female to male sex reassignment surgery, isn't that correct, - - - its cost prohibitive and it is not successful, isn't that correct?

A. The phalloplasty is cost prohibitive and not successful.

Q. *** Isn't that what you said - - - the clitoris enlarges?

A. Yes.

Q. It doesn't look exactly like a penis, does it sir?

A. It looks like a very small penis.

Q. Well, it doesn't have foreskin - - - does it?

A. Well, it does have the hood of the clitoris, it is like the foreskin. . . See the hood of the clitoris.

Q. When they look in the mirror they still can't see a penis, can they?

A. Well, I think if you would ask a female to male they see a little penis. That's clearly how --- my clients refer to it.

Q. And they can see it when they stand in the mirror?

A. If they looked there they can see something there, a very small penis.

THE COURT: It's really an enlarged clitoris.

A. Right.

THE COURT: And only as a result of hormones?

A. That's correct. . . If the person doesn't take hormones, the clitoris does not enlarge.

Q. Do you see the clitoris of your clients?

A. No, I do not. . . but I do have like a book of photographs, a medical book *** The enlargement varies from person to person, how much their clitoris enlarges.

Q. * * * You made kind of a general statement that, yes, you can see it.

A. Well, I think when the person might be having it might be hard for the person to see it. The person can work with a mirror. I mean, that is another part of what we do in our work to help people work on their relationships with their genitals and it includes them exploring their bodies and finding ways to take a closer look.

THE COURT: How does this person (who) does not take the hormone treatment therefore, does not get an enlarged penis - - - consummate a marriage?

A. I think that - - - would be very difficult if not impossible.

THE COURT: Now, what if they take the hormone shots and they get an enlarged penis?

A. In the literature by surgeons who performed those surgeries it is reported that they are able to have intercourse . . . I've heard the same thing from some of my clients. So some people report that they are able to have intercourse with the erectile tissue of the enlarged penis . . . without ejaculation as it would occur in a male. (TR 284-328)

THE COURT: Can a boy feel a reciprocal bonding with a father who he understands is born a woman and may still have some characteristics of a woman in the eyes of the boy? Should we lose male bonding?

A. Your Honor, I don't think so. I think that in the case of a female to male transsexual this person is a man in many different ways. Might not have as big a penis, but is a man. And I think that male bonding, you know, that's what I hear from my clients, they do experience that with their children. I think that male bonding - - - that male role model they can certainly provide that because that's who they are.

THE COURT: If a boy knows that his father has no penis and/or testicles and resents that fact, doesn't that psychologically put a barrier in front of the boy so the bonding process would not take place or would have difficulty taking place?

A. Well, I don't think so. It's not my experience because its not the penis that the child is bonding with. I mean, it is the person, the man, the father figure, the role model. And the genitals are really, if part of that, an extremely small part . . . It could come up (if) the boy would have questions about his penis. The person (transsexual) person could still answer that, educate himself on that and answer - - - or involve another male role model that can answer these questions.

So, that's maybe the only area where I could see it might be a little bit harder for a female to male transsexual to draw from the experience, if the boy would have a question about his (own) genitals.
But I think the genitals are not the primary part of the male bonding between a man and a boy or a father and his son. (TR 331-332)

Q. Is there such a thing as a partial surgery under the Standards of Care?

A. There's really no such thing as a partial surgery.

This completes the testimony of Dr. Walter O. Bockting and the Petitioner called to the stand Dr. Ted Huang, of the University of Texas Medical School, who performed the sex reassignment surgery on Michael Kantaras.

## FINDINGS OF FACT

## DR. TED HUANG, PLASTIC SURGEON

Dr. Ted Huang is a medical surgeon, Board Certified by the American Board of Surgery and the American Board of Plastic Surgery, and a graduate of the University of Texas Medical School. He studied eight years of post graduate training after medical school to become a plastic surgeon. He does 50 hours of continuing education per year. He holds the rank of a clinical professor of surgery at the University of Texas Medical School. He is also in private practice. He teaches at the Medical School of Texas and is a visiting professor at Tokyo Women's Medical College, the National Defense Medical College, Taiwan, and at the Taiwan Army Hospital. Dr. Huang's *curriculum vitae* was received in evidence as Petitioner's Exhibit No. 3.

In plastic surgery, he was trained in body recontouring caused by problems due to birth defect, trauma, cancer, and burn injury. He does cosmetic and gender reassignment surgery. The worst trauma he deals with is fire trauma and he is a consultant to the Shriner's Burn Hospital in Galveston, Texas, where he volunteers his services without compensation.

Around 1970, while still an intern, he studied under a professor who performed reconstruction of genital structures, a specialty in congenital abnormalities or birth defects. Sex reassignment surgeries was new in 1970. The first case in the United States was done in 1966 at Johns Hopkins Hospital and one in Galveston in 1966. As the number of patients increased the operation became more popular. Today, typical reassignment surgery consists of constructing female genitalia for the male transsexual;

mastectomy, body recontouring, and breast contour on the female transsexual. Those are the most common operations he performs. (TR 351)

When dealing with "female to male" transsexuals he is consulted mostly on chest contouring. Chest surgery. He also is involved with reconstructing genital structure to resemble that of a penis, a male penis. He has been treating transsexual patients for thirty (30) years. He has treated one hundred twenty (120) to one hundred twenty-five (125) female to male patients. He is an active member of the Harry Benjamin International Gender Dysphoria Association. He calls their standards, guidelines.

His private practice is located in Galveston, Texas, where the Rosenberg Clinic is located. He is not part of that clinic. It is owned by Drs. Cole and Emory. He is part of the Galveston Gender Treatment Program team formed by Dr. Paul Walker, Psychologist, Ph.D., who came from Johns Hopkins University and acted as Director and leader of the program. They cooperate with the Rosenberg Clinic. Today the team members consist of himself, plastic surgery; Dr. Cole Psychology; Dr. Emory Psychiatry; Dr. Myers Endocrinology and Psychiatry (also a pediatrician); Dr. Avery Psychiatry; and Dr. Powell Gynecologist. Dr. Huang acts as the surgical consultant to the team. He was accepted as an "expert" by the court. Ms. Doering asked the following question:

> Q. Dr. Huang, in your opinion, what's the purpose of sex reassignment surgery?
>
> A. "The surgical treatment which we prescribe for the patient who has gender (identity) dysphoria is when a patient has a problem with their own sex identification, the only treatment which is effective would be to change the body configuration to fit their mind. That is a plastic surgery specialty. We reshape and contour the body structure which either patient or doctor feels is normal. The cost of the chest surgery is $3,000 to $3,500 exclusive of

> hospital costs, i.e., anesthesia and laboratory costs. He has performed 125 chest surgeries. The risks associated with the surgery are infection, bleeding and excess ugly scar formations. This is probably less than 1% of the patients."

Dr. Huang was asked to describe, the chest surgery procedure. He responded:

> "When you evaluate the patients, you need to talk to them first. You need to ask what bothers them. Of course, 99.9% of the time they will tell me that, I just don't like those two protruded structures in front of my chest. The next question is: why not? They always feel that to have the two protruded structures called the breast is very embarrassing to them. They cannot wear a "t" shirt. In order to camouflage that protrusion they have to come up with a kind of a device to do so, such as elastic under garments - - - I have seen them duct tape the breast so that they can wear a "t" shirt. Few patients become reclusive. They will not come out - - - meet with people during the daytime, they will only work at night because of embarrassment. Therefore, that will be the first complaint - -- Once I understand their having chest surgery, next, I need to understand what kind of effect I will leave by cutting off this skin because they will end up with a scar formation."

(TR 365-66)

Dr. Huang confirmed that when he sees the patient they have already been diagnosed by the team as having "gender identity disorder." But he still checks out the patient, as a safeguard. "You see, there are psychiatrists and psychologist who look at surgery – sort of light hearted. As a surgeon, I am dealing with a live body and I'm the one that has to cut, I'm the one who has to stop the bleeding - - - Therefore, I have to be very careful, to make sure that they can go through the hour and a half anesthesia, make sure they can wake up alive rather than wake up dead - - - those are my problems" (TR 369)

He has to make sure the patient can recover from the surgical trauma. "Surgery is not a piece of cake. It is very traumatic to the body." He has to make sure that they can recover fully with minimum problems. (TR 369) "The chest surgery aim is to achieve a contoured chest to the patient's liking. Sometimes they would like to have a muscular type chest or have no scar on the chest. They can express their desire, a wish list. It will be my responsibility to tell them, guess what, I cannot do A, B, but I can do C for you. And those are the very important initial communications that I must obtain from the patient." (TR 370)

**A. <u>Chest Surgery</u>**

Dr. Huang was asked to describe chest surgery in detail, as follows:

> BY MS. DOERING, ESQ.
>
> Q. And can you tell me what – can you describe the surgical procedure for me in some sense and if it's different for female-to-male transsexuals, for example, who might have a large chest to start with or if it's different for, you know, smaller chested woman.
>
> Tell me some of the differences and just tell a little bit about the chest surgery.
>
> A. Okay. The surgeon must understand there's a difference in terms of chest shape or contour between man and a woman. Besides having two mounds, the nipple size is different.
>
> Q. Okay.
>
> A. For woman they have a nipple which is about inch, to inch-and-a-half in diameter. In contrast, the man average size is about three-quarter of an inch.
>
> The nipple which is called the tit is much smaller in the male. The size is about three quarter of an inch in size. Therefore, if you create the nipple the same

size or let's say inch-and-a-half they will look weird or strange.

Therefore, that is the surgeon's responsibility. The position of a nipple is also different. The male nipple is located usually at the junction of midsection of the arm, upper arm, to the midsection of your chest. So if you make a little cross line that will be the usual place. In contrast the woman's nipple is much lower.

Now, those are factors or knowledge that the surgeon must have before he can do the operation.

The second problem is depending upon the size of the mound the length of a scar will be different. If you take out the breast tissue leaving the skin because you do not want to make a long scar, then you will have a wrinkled up chest because skin will contract, will shrink, and look like they have a prune, dry prune up on the chest wall.

In order to avoid that kind of a consequence you must take out all the excess skin and that will lead to a long scar in the chest wall.

So you have a problem of preexisting condition it allows you to tell the patient how long the scar will be. The bigger the breast the scar on the chest will be longer. If they have a small one to start with the scar will be much, much shorter. Sometimes, it can be made such that they can't even see it.

Q. Okay.

A. So those are the factors that you can determine by examining a patient before surgery.

. . .

Q. So if in a female-to-male transsexual if the nipple is larger do you have to surgically alter it to make it smaller and more contoured to look - - to appear like a male nipple when you're doing the chest reconstruction?

A. I think you make it smaller so that it will fit into the chest shape.

Q. And also the location where the nipple is actually located, if I understand your testimony correctly, would be different you would – if it's a female-to-male transsexual, the actual permanent nipple location that you create through – as part of this chest surgery, is different from where it would be if it was a woman?

A. Right. Or people with big breasts.

Q. Right. Okay.

A. Some men had big breasts and they don't care.

(TR 371-73, 374)

When Dr. Huang does a mastectomy on a woman for cancer surgery. The approach is entirely different. The primary goal of that treatment is to try to cure cancer. "Therefore you have to take out all the breast tissue which includes the nipple. I rarely reconstruct the breast mound right away because I want to make sure that the patient recovers properly and nicely from this cancer surgery." "That's not cosmetic surgery." That's to cure the cancer. I think that's very important. Therefore, there's no discussion in terms of the length of the scar which I will create or where I am going to put it. "I want to cure this patient first. The most concerned problem of breast cancer." Therefore, I will do everything I know how to do so that she will live long enough to enjoy the breast reconstruction later.

So that's completely different. In contrast to the patient - - female to male, the breast is really, in a way, it's cosmetic surgery. They want it, and I think they will benefit for the mind, -- to fit into the mind that I am a man. That's cosmetic surgery.

There is no difference from the kid with the floppy ear and the protruded ear and they would like to have the ear pinned back so that nobody will call him "Dumbo." A man with a hump in the nose always has a complex because of the hump in the nose. So, we do a rhinoplasty and remove the hump. The same philosophy and the same idea behind it. (TR 376)

Dr. Huang stated of the female to male transsexuals who come to him, 100% request chest reconstruction surgery. Most of them afterwards feel it is successful, even though he cannot overcome the scaring effect. He does not perform any hysterectomies, although 60% to 65% will go through that surgery. They are performed by another surgeon on the team. Usually the hysterectomy is performed first and then chest surgery.

The reason the internal sex organs (ovaries, uterus, fallopian tubes) are removed even though not visible and therefore not causing a psychological problem to a transsexual, is because "its been known that any kind of reproductive organ left inactive because of hormone conditions such as testicles in the man or ovary in the woman tend to become cancerous. That accounts for that 65%. The doctors strongly recommend that those organs be removed. (TR 381-83)

If a woman undergoes hormone therapy but does not have the internal reproductive organs removed those organs become inactive and cease to function and "that kind of inactive structure left inside becomes cancerous." This is due to administering the male hormone. If there is no hormone therapy then the female hormone will continue to be produced and the production of eggs will result. (TR 385)

In the event, a "female to male" transsexual is unable to receive hormone therapy for health reasons, they will still undergo the hysterectomy in order for that person to no

longer be able to reproduce as a woman. (TR 385) The hormone treatment stops the monthly period but has no direct effect on the breasts.

Dr. Huang was asked if transsexualism can be cured by psychotherapy and he replied "No." He was asked "is there a way that you can treat a person with 'gender identity syndrome'"? He replied:

> "My feeling is this: When all the medical therapy for the patient who has a gender dysphoric problem or gender identification problem fails, there is only one thing left, I have to fix the body to fit the mind.
>
> And that's the sole objective and purpose of a surgical treatment for gender dysphoria patients."

(TR 388)

Over the 30 years of treating transsexual patients, he has performed about 15 or 18 phalloplasties. (TR 388)

**B. <u>Phalloplasty</u>**

When a patient requests phalloplasty, Dr. Huang needs first to find out "why they would like to have a phallus. To me, I think that's very important. And they have to give me a reason that will convince me that, yes, I am willing to put this patient through many months, if not years, of misery, inconvenience, to create the structure which does not resemble anything and does not function."

> Q. Okay. Tell me – why don't you tell me a little bit about the risks and – well, tell me, first of all, let's start first with the appearance and then we'll go to the risks.
>
> What are you able to create surgically with this phalloplasty? Tell me about the appearance of the phallus that you're able to create.

A. At best, at best, it would be a tube of skin and meat hanging between their legs.

Q. And does it resemble a penis?

A. No, ma'am.

Q. Does it function like a penis? Can you function sexually with that phallus?

A. Sexually, no.

Q. Can one urinate with that phallus?

A. You can divert the urine flow so that that patient can stand up when you urinate.

Q. Is that successful in all of the cases that you've treated? Have you been able to create that?

A. No, ma'am.

Q. Approximately what percentage –

A. No, I cannot create the diversion of urine flow in 100 percent of the cases.

Q. Can you give me an estimate of approximately what percentage of your patients that undergo this phallus creation are able to successfully stand and urinate?

A. I would say about 75 percent.

THE COURT: Are you saying you could do it successfully, 75 percent?

A. That's correct.

BY MS. DOERING:

Q. So about 25 percent of the time, even after undergoing the procedure which we will talk a little bit more about in a minute, about 25 percent of the time they're still not able to even urinate?

A. That's correct.

(TR 390)

**C. <u>Erection of Phallas</u>**

THE COURT: No erection?

A. No, sir.

THE COURT: What about sensitivity?

A. None.

BY MS. DOERING:

Q. Can you – can they – is there anything that can be implanted to create something to resemble an erection or –

A. <u>You can insert a plastic rod into that meat tube, which I described for you, to provide some firmness</u>.

Q. So a firmness, is that different from an erection?

A. <u>Of course</u>.

Q. Okay. Well, describe for me what would be the purpose of having the firmness then if that's not an erection?

A. <u>So that they can penetrate the vagina of a mate</u>.

Q. Okay. But it's not an erection, though, so it's not the same sort of penetration?

A. No.

Q. Describe for me a little bit about – are there problems with this firmness if it's not – if it's not erect?

A. <u>Because of the nature of the firmness we created for the patient, which means the piece of plastic located within the fatty tissue is a segment of that meat tube that can go into the vaginal vault, vaginal cavity,</u>

but patient doesn't know it's in or not,because it has no sensation.

Q. So the female-to-male transsexual who's had this phallus, they don't get any sensation out of that?

A. That's right. And when you have a so-called piston motion of an intercourse that phallus has no movement back and forth because the meat or skin and the fatty tissue on the top of that plastic is what is moving around. So in the true sense of sexual intercourse it really does not take place.

Q. Okay.

A. That's at best.

Q. What about if – can they – I'm thinking about the firmness now. Is it -- is this phallus then firm all day long as they walk about and live their everyday life or is there a way to, you know, have it relax or –

A. No way. It's going to be the same situation from sunup to sundown including when you are asleep.

Q. And for your female-to-male transsexual patients, do they experience any discomfort with this firmness?

A. None, because they don't have a sensation.

Q. No? Oh, okay. So they don't feel it?

THE COURT: What about infection?

A. As a result of the lack of sensations they can traumatize, but they still don't know until they become red, swollen and drainage coming out. That's, Oh my God, what happened?

(TR 392-93)

BY MS. DOERING:

Q. So unless they – okay. So they're not feeling this, so they won't get the initial early warning signs that you typically get, like if I got an infection on my arm I would probably feel it. I would feel something or if I've got some sort of infection I might have some sort of warning sign that you don't have if you have this phallus with no sensation?

A. That's correct.

Dr. Huang was asked to explain the medical procedure of creating a phallus:

Q. Well, let me – we're going to get into some of the risks and complications again in a minute, but tell me more – how do you create this phallus or this meat tube as you called it? Where do you get the skin to create this?

A. As a surgeon you have to try to find some method, try to move a piece of tissue, which including the skin from someplace that can be spared. Therefore, we look at the arm. We look at the buttock. We look at the shoulder. Look at the abdomen and then try to transfer that piece of tissue to the area between your legs.

In the past, let's say 1970s or 30 years ago we really did not have a good way to do that except transfer in stages, like an inchworm from one point to the other, then look like coming down to the place between your legs. Sometimes we use the arm as what we call a carrier.

Now, with the advent or using microsurgical technique, we can go ahead and cut the tissue with its blood vessel intact and transfer it to what we call the perineum area and hook the vessel back together using microscope. That's called microvascular surgery. And the most common tissue which we use will be from the forearm.

A. Yes, this portion of the arm (indicating).

Dr. Huang was asked to describe the forearm as the phallus donor area and its results:

Q. Okay. Well, I want to ask you both what the arm looks like at the end and then what the – that tissue looks like as a phallus. But tell me about the arm first, what do you do with the arm and tell me about – everything about the arm.

A. Okay. Since we have not talked about my meat tube down in between the legs here, but because of the removal of a large piece of tissue from the area that will expose the muscles as well as nerves which supply the finger.

You must find some method to cover it up. You had to put a piece of skin graft which you harvest from other parts of the body. Now, skin grafts sounds very nice, but in practice it's horrible because it look like a scar.

How, just imagine that half of your forearm, this portion of arm skin is gone because you took that as a tissue to try to create the phallus. Then you cover this area that donated the piece of skin with a skin graft and then you have a scar up on your arm - -

Q. Where?

A. -- if you're lucky. Right here from your wrist all the way to the elbow. Now, if you're lucky you have a scar arm. If you are unlucky, you might end up with a problem using your hand because the muscle was destroyed.

What we call the donor site morbidity. The doctor have a fancy term to describe the problem that does – nothing, but for the patient that's a big problem.

Q. Because they've got the exposed muscle and then you've got to take the skin graft from somewhere else. Where would you take this skin graft from?

A. Most of the time we get from the upper thigh or buttock area.

Thigh or buttock area to cover the area, to cover the now you have a scar from the area where you took the piece of skin graft.

BY MS. DOERING:

Q. Okay. So you've got the scar. Is there a chance – a risk of infection on the arm?

A. Yes.

Q. And how often do you have complications and problems to the donor site or the arm?

A. Donor site complication would be in the range of 15, 20 percent. If you operate on 10 people, two will have problem with that.

Q. Wow. Okay. And what about is there a risk of infection from the skin graft as well?

A. Yes.

Q. And is that a common problem that happens or not as common?

A. Not as common. It would be about 5 percent.

Q. Okay. Now, let's move to the phallus itself.

A. Okay. Now, we are moving the piece of tissue down into the area between your legs. Then you try to reshape the piece of tissue into a tube. That part technically is easy. You can make it into a tube very nicely except it looks like a tube, nothing else.

Then you try to create a tube within the tube. There will be as a pipe which – to direct the flow of urine when they stand eventually they are able to urinate standing up.

Unlike plumbing, we've got a problem. Try to hook that tube within the tube to the original tube, it's very difficult. The breakdown is very common. And when they urinate, the urine that used to come

through the tip of the meat tube, it comes from the bottom.

A. When we move the piece of meat down into the area between the legs and form into like a sausage – now you have to create another tube within that sausage.

THE COURT: For the urinary flow?

A. THE WITNESS: That's right. We frequently use a skin graft for that purpose.

A skin graft. A piece of very thin skin shaved from other parts of the body to line that tube. You cannot use plastic. You cannot use the – some donor. It has to be patient's own tissue and it has to be skin.

Now, that is okay in terms of theory, but now you have two tubes, one is in that phallus, we call it. And one is from the bladder coming out where the urine has been coming out for many years.

You try to hook that tube back together so that the urine now will continuously flow into the tip. Now that's a different problem.

The healing will not take place and, therefore, you're going to have another hole develop over there and when they urinate, they just come through the bottom. Now, that's usual.

BY MS. DOERING:

Q. So that's usual –

A. That's usual.

Q. - - that they would get that kind of a complication? So instead of actually coming out the tip of the phallus, which is the ideal, it comes out at the base?

A. That's correct.

Q. And if it comes out of the base, they obviously can't stand and urinate?

A. That's correct.

THE COURT: The base is the phallus or the base of the body?

A. The base of the phallus.

THE COURT: -- you're saying from the inner tube –

A. And it come out through the tip.

THE COURT: -- to the end of the artificial penis?

A. That's right.

THE COURT: -- where it's supposed to come?

A. That's right.

THE COURT: But instead of doing that, it goes – the water goes someplace else?

A. Right at the bottom part of your – Judge, it will be right at the junction of your scrotum and your penis.

BY MS. DOERING:

Q. So a person could not stand and urinate, then? If the urine is actually coming out of the base of that phallus rather than the tip of that phallus, they're not able to stand and urinate then, correct?

A. You can stand and urinate, but it's just messy.

THE COURT: They're dribbling, in other words?

A. That's correct.

BY MS. DOERING:

Q. And is that something that you then have to go in surgically and perform another surgery to attempt to correct?

A. That's correct.

Q. Okay. What are –

A. This is the usual.

Q. That's the usual case?

A. That's correct.

Q. So usually you have to go in at least once to –

A. Twice, three times.

Q. Eventually, though, in 75 percent of the cases you're able to correct that problem?

A. That's correct.

Q. But if often takes multiple surgeries?

A. That's correct.

Dr Huang was asked to detail the infection problem of urination:

Q. What are some of the other – what are some of the other complications that might arise with the creation of this phallus?

A. We talked about the scar formations. When you create the phallus and we try to create the inner tube as a conduit for the urine, that piece of skin graft a tendency to shrink, become scar. When that happens the urine will not come through the tube.

Q. So what happens then?

A. Then you have obstruction. Then urine will stay in the bladder and they become source of infection because stagnant urine, like in sewer line, is source of infections. There is recurrent, consistent bladder infection.

Now, if you don't talk about that part then pressure in the bladder become – can become so great they

begin to affect the kidney functions, that pressure. I know that we do not lead the patient to that kind of predicament, but in theory, if you neglect them that is what happens. That will create the kidney problems, high blood pressure, eventually death.

Now, that is if you neglect it.

THE COURT: Potential death?

A. Yes.

THE COURT: From kidneys?

A. That's right. Kidney failure.

THE COURT: Loss of kidneys.

A. That's right.

BY MS. DOERING:

Q. So if someone who has this phallus created gets some sort of obstruction that causes bladder infections and if they don't seek out medical treatment either because they don't have health insurance, they can't afford it, for whatever reason, if they don't seek out medical condition – medical assistance they can die from this?

A. That's correct.

Q. Is this a relatively common thing that occurs, this obstruction that you talked about?

A. Fortunately, no because we – regardless of the conditions that we have, the financial condition the patient have, this is the United States, we take care of them. So, therefore, no. This is in theory and it can happen, but in practice I never heard of it.

Q. Yeah. I'm not talking about the ultimate possibility, I'm talking about the obstruction that you talked about, just the initial obstruction where you said the tissue shrinks and it causes an obstruction.

A. The obstruction can occur and, therefore, we render the care right away so that they won't have a problem of a chronic bladder infection and other problem that they may associate if left unattended.

Q. So there's a surgical intervention, again, that has to happen to clear that obstruction?

A. That's correct.

Q. So another possible surgery that they might have to undergo?

A. That's correct.

The creative life of a phallus is a separate issue, and Dr. Huang with his usual bluntness said:

Q. Okay. In talking about the phallus itself, is there ever any problems with pieces – because you take the piece from the arm, is there ever problems with the tissue dying or tell me a little bit about that.

A. Early on I testified that we can move a piece of tissue from other parts of the body and move down to our perineum area, that is between the two legs.

Now, mechanically speaking, it's pretty simple. However, the transfer requires one important factor, to reestablish the blood supply to that piece of tissue that we transferred. If that process reestablishing the blood supply to that piece of tissue, moves, fails you are going to have a dead tissue area.

Q. So is it possible that pieces of the tissue would die or the whole tissue would die or some combination thereof? How does that work?

A. All of the above.

Q. All of it can die? So –

A. Sometimes 100 percent. Sometimes 50 percent. Sometimes only a little tip.

Q. Okay. I want to go through each of these individually then. If just a piece of it dies, just the tip or something, then you've got – don't you have some sort of a malformation there?

A. Yes.

Q. And what does it look like esthetically?

A. Terrible.

Q. And, I mean, it's literally like a chunk of it could just be missing?

A. Just imagine that you have a black tip on a sausage. That's what it looks like.

Q. Okay. And can functionality be impacted by that?

A. Yes.

Q. The ability to urinate?

A. There won't be no functions.

Q. No functions?

A. Uh-huh.

Q. And then – but there could be bigger chunks taken out as well?

A. That's correct.

Q. And –

A. Or remove the whole thing.

Q. The whole thing. So you could have just undergone this whole procedure, the grafts, the scars, the –

A. All over again.

Q. And you're back at ground zero?

A. That's correct.

Q. If you have just a piece of it fall off, what does that do – is there ever any problems with urination? I mean, are there sometimes when you can urinate, but can it go out of the places where the pieces of the phallus fall off?

A. Let's say the piece of the tissue, the tip fell off while we tried to reconstruct the tube, what I call the pee-pee pipe.

Q. Okay.

A. Then you won't be able to urinate through there because of swelling. And swelling can cause the duct to be completely obstructed. Therefore, you have to find some method to try to bypass the urine so we could put a tube into the bladder while waiting for that rotten part to slough off or remove and we can close it. That takes weeks.

THE COURT: Do you put on a colostomy, I guess, as an alternative to get rid of the urine and the pressure?

A. Not, sure. Colostomy is the bowel, but sometimes the urologist will put the tube into the bladder called the cystostomy, and – but that is pretty heavy operation.

So we try to avoid that by putting the tube through the pee-pee pipe that we created and then into the bladder. That's called Foley catheter that some of the older –

THE COURT: Foley catheter?

A. Some of the elderly patients or people that have the prostate operation done. So it's not an easy operation as some people like to convey to the lay people.

BY MS. DOERING:

Q. And if people – say after however many surgical

procedures one has to go through and ultimately they are able to stand and urinate, are there then sometimes problems with the stream, so to speak?

A. Because of the tip, the shape of the tip where the pipe is, and of the spraying, spraying the urine so instead of a stream coming out there's about two or three streams going out at the same time.

Q. Okay.

A. So even though you can urinate standing up, maybe you create a bigger mess than if you go ahead and sit on the toilet, the toilet seat.

Q. So, again, even though you've got the phallus, and you're able to urinate you still – some of your patients still can't stand and urinate because of the spraying and they have to –

A. That's correct.

(TR 389-409)

Dr. Huang having described in detail the medical problems with pallophasty, testified about even additional concerns for the patient, as follows:

Q. Okay. You've told us a little bit about – what are some of the other problems that might accompany this procedure?

A. Mostly concern with the scarring and infections. That will interfere with or limit the function which we aim to achieve, namely that of urination, standing up urinate, and that is a problem that we deal with.

And, therefore, we got to find some other easier way to do it rather than put the patient through five, six, seven, eight, nine, ten operations become crippled because of surgery for 12, 13, 14 months.

Now, that is the biggest problem or factor that I have to consider before I can come out and recommend the operation to my patient.

Q. Well, tell me that – tell me a little bit more about that. The length of recovery, if someone decides to go ahead with this procedure. I want the creation of this artificial phallus. It can last up to a year or more?

A. That's correct.

Q. Well, what can they do during that period? Can they go to work? What are their limitations during that period of recovery?

A. Depending upon what kind of work you do I think they can go to an office and sit there and use the finger to dial the telephone or work on computer, but they say, no, no I had to go out and actually do the work, for instance, be a mechanic, plumber or whatever, require physical –

Q. A baker?

A. That's right. They might have trouble with it and it's because of the swelling around the perineum area which is very uncomfortable and, therefore, you know, creates a lot of financial stress to the family, to himself.

Q. So, if somebody has a physical-type job they may not be able to work during this entire period in their appropriate field anyway, right?

A. That's correct.

Q. And so if somebody had a job where they did a lot of heavy lifting and things of that nature, they would not be able to do that after they've had – while they're undergoing the recovery for this?

A. That's correct.

Q. What's the typical cost for this procedure? And we'll start with just your fees, what you end up charging for these fees, and then without the additional costs of hospitalization and all of the other associated costs that are charged by others.

A. My fee would be in the range of 35 to $50,000.

Q. Okay. And that's for the original phalloplasty or does that assume a couple of surgical procedures or –

A. That will be when whole thing went through without those horrible complications we had just talked about, which is not very common anyway.

So, if a problem, complication set in, that requires more operations, the fee is going to be more because they will be charged.

Q. So the more complications there are, the more surgeries they have to do. So it starts in the range of 30 to 50,000, depending on what procedure you initially set out to do, and then to the extent there are complications and additional surgeries required, then there could be additional charges on top of that?

A. That's correct.

Q. And those are just their surgeon's fees, that doesn't count the hospitalization fees for the cost of being in the hospital, the cost of anesthesia and all of the other costs associated with the surgery?

A. That's correct.

Q. Okay. Of these surgeries that you performed, I believe you said in the ballpark of about 16 of these. Of the 15 or so surgeries that you've performed to create an artificial phallus, how many of them have you done that have had no complications?

A. All of them have complication.

Q. All of them have complications?

A. Yes.

Q. You've never been able to perform one of these –

A. Always end up with a tiny hole develop in the area, I got to go back and close it. The only complication I never had one was a horrendous infection or bleeding. Thank goodness.

In my 15 patients I operated on, I never had the bad infection.

I never had the bad bleeding problems. I have four or five end up with the sloughing of the tip which partially or half –

I have four or five where the meat tube tip got sloughed off or half of the whole thing died.

THE COURT: Meaning it dropped dead?

A. That's right.

THE COURT: And fell off?

A. Yes.

THE COURT: Four or five out of the 15?

A. About, yeah.

BY MS. DOERING:

Q. And in that case when half of it drops off then you have to go and recreate it again?

A. That's correct.

(TR 409-14)

Dr. Huang explains how the phallus is structurally different from a normal male penis, as follows:

A. Structurally they are different. The penis consists of four or five components. One, we have gland of the penis, which means the head of the penis. You have the shaft of the penis, which consist of three structures that is part responsible for erection.

The tissue is so delicate they become engorged when blood flow into the area become abundant. Those processes are controlled by the nerve.

Then you have urethra, which is not pee-pee pipe. That has a lining of mucosa and itself has a muscle around it. Then you have a scrotum, and then you have a testicle.

Reconstructed phallus does not have those components. Doesn't have the nerves and the blood supply to the structure, at best, is very, very precarious. It can die at any time.

So those are the differences that I can see. And, as a result, as I've expected, function differently between two structures.

Q. Is there something in the function of a penis that enables it to pump the urine out appropriately as compared to the structure that you create? Is there a shortcoming, if you will, in the phallus that you're able to create surgically?

A. The reason why can propel the water is because, I think I just said, it is a muscle around that, the urethra, and they can construct, they will squeeze the fluid out.

Q. And have you been able to create anything in the phallus that recreates that action?

A. No, ma'am, unfortunately I can't. (TR 415-16)

* * *

You've already testified that it doesn't look like a penis, is that correct?

A. That's correct.

Q. The shape of the phallus that you've created. Can that – does that shape change or fluctuate over time or does it continue to look like it did the day you first created it? Tell me about that.

A. Unfortunately it changes. It changes as we grow older because the skin become very flaccid. The thin layer changes, so it can become kind of flaccid and wrinkled up piece of – to me I think it looks like a dried up cucumber.

(TR 417)

**D. How the Clitoris Resembles a Penis**

Dr. Huang testified a female to male transsexual under going hormone therapy, the male hormone exerts an effect on the length and size of the clitoris, which is the equivalent of a penis. "We just call them differently. So its actually the same erectile tissue in a clitoris as in a penis? He answered, "Correct." Because of the hormone treatment the clitoris becomes a "smaller version of a penis.

There are non-transsexual men born with a medical condition that results in a small penis because of a hormone factor in the embryo stage where the entire genitalia "did not go through the transformation and they end up with a small penis" that looks "like a clitoris, and with the pee pee hole located in the bottom, in the base of the penis like a woman." This condition is called "hypospadias." In order to cure this condition, or deformity they have to go through the staged operations similar for phallus reconstruction." To a lay person "looking at the external genitalia of that male person who presumably has XY chromosomes" they would think it is a vagina – "That's right. It's a girl." A birth malformation a congenital malformation, called micropenis." (TR 421-22)

Are there any situations where a person with XX chromosomes could have a penis or what appears to be a penis? Dr. Huang explained during intrauterine development the hormones could produce a clitoris that is very large and long – it looks

like a penis and the baby could be mistaken for a "male" by the physician who delivered the baby. This condition is called "adrenal genital syndrome. The body of the child will have rapid growth for first two, three years, then become stunted, small. This all results, is derived from abnormal adrenal glands that are setting on top of the kidneys." (TR 425-42) In this syndrome the vagina usually is closed in. "You can't even see the vagina, which means the vagina just disappears, didn't develop. This is called "vaginal stresia." (TR 426-27) The doctor who delivers this baby thinks that it's a male who simply has an undescended testes and this person could be identified as a male. The parents are told it's a boy and they continue to raise her as a male until they find out the diagnosis was wrong. The hypospadias person, an XY, without a penis, but appears to have a vagina would be identified at birth as a female.

These persons as they grow up could have gender identity dysphoria. (TR 427-29)

Dr. Huang has perfected a method of taking the enlarged clitoris brought about through hormones and operating on that elongated clitoris over the course of three operations, instead of multiple operations, he can use the elongated clitoris" as a devise to attach the urethra to the bottom of the clitoris just like a hyposadias repair. They can urinate standing up and enjoy sexual intercourse. The tip of the structure has sexual sensation in the gland. (TR 438-39)

Today, in the year 2002, if his patients ask for phallophasty, he stated: If they ask, I just tell them to forget about the whole thing because as of the year 2002, plastic surgery has not come up with a good operation that will give you a good looking penis, not only good for urination, but also good for sex. In the future, it might be by

"transplantation." (TR 441) Dr. Huang testified his airplane ticket and hotel was being paid for his expert testimony in court, but that is all he is being paid.

**E. <u>Michael Kantaras – Medical/Legal Male</u>**

Dr. Huang testified he performed chest surgery on Petitioner Michael Kantaras and saw him about five times, 1986 and 1987, Michael was in the Galveston Program of Dr. Cole. Dr. Powell performed a hysterectomy and three days later the chest surgery was done. After meeting all the Standards of Care, in the opinion of Dr. Huang, Michael was a "male" – both legally and medically. (TR 451) He was specifically asked:

> "In your opinion, do you believe a female-to-male transsexual who has been diagnosed with gender identity disorder or transsexualism who has received the hormone therapy, has had chest reconstructive surgery, has had a hysterectomy including the removal of the ovaries and all of this was performed in accordance with the Harry Benjamin International Gender Oysphoria Association's Standard of Care, do you believe, in your opinion, that person should be legally considered a male?" He replied, "In answer to your question, yes. I think he should be considered as legally male. (TR 457)

On cross-examination, Dr. Huang once again explained the "adrenal genital syndrome" as found in the XX chromosome (female) the hormone secreted by the adrenal glands was abnormally high which produced male genitalia characteristics, which means elongated (clitoris) and complete absence of a vagina. The glands look like male genitalia without testicles. The absence of the vagina is called "atresia." At birth generally the wrong gender is assigned and the child has to live with that and may have psychological problems being misidentified of the male gender. When asked if his patients with gender identity disorder might be suffering because of this syndrome? He asked, "in my patient population I have not seen one like that. (TR 461-64)

**F. Chromosome Test**

Michael Kantaras did not have a chromosome test because it would only add to the cost and not serve any purpose. It would add to medical science and be academically interesting but of no help to the patient who needs the care. (TR 465)

Dr. Huang was again asked about constructing a phallus and he stated, "I do not construct anything. Only God does that. A plastic surgeon only reconstructs whatever was not complete or adequate." Next he was asked, "Tell us how you reconstruct something that's not there?" His reply: "There was something there to start with. May have tissue there, therefore, you reconstruct from the tissue a structure resembling that of a phallus." (TR 468) Dr. Huang confirmed that gender identity dysphoria is a "psychological disorder." (TR 473)

Dr. Huang described the first meeting with Michael Kantaras was for thirty (30) to forty (40) minutes where he obtained the patient's history and feelings during his life of being a male trapped in a female body. There was no physical examination. This meeting took place about six (6) months before the formal evaluation meeting with the team of doctors. And that was three (3) to four (4) months before the chest surgery. (TR 480-81) Over 30 years Dr. Huang has performed surgery on 400 patients who were both male transsexuals and female transsexuals and not one claimed they chose the wrong treatment. (TR 496)

He met in his office with Michael Kantaras about a month after his surgery and hasn't seen him since 1987 or seventeen (17) years. (TR 504)

When Michael first went to the Rosenberg Clinic in Galveston, Texas, he met with Dr. Cole who did the initial intakes several months before Dr. Huang first met with

Michael. (TR 513) He was asked if any chromosome tests were conducted on Michael when he first came to the Rosenberg Clinic as a female (named Margo). Dr. Huang testified:

"I testified that I didn't know if they had run tests. However, I also testified that it doesn't make that much difference to me as a plastic surgeon when it comes to rendering surgical management - - - it is immaterial – We try to change the body to fit the mind rather than try to change the mind to fit the body, which is ineffective and useless. He sees the patient almost at the end of the evaluation process, typically, 18 to 24 months after they come to Galveston.

Dr. Huang stated the birth certificate should not indicate male or female or any references to race. (TR 517-20)

This concluded the testimony of Dr. Huang. Dr. Collier Cole, M.D. of the Rosenberg Clinic was the third medical witness to testify and it seemed appropriate Dr. Cole's testimony should flow in sequence after Dr. Huang.

## FINDINGS OF FACT

## DR. COLLIER COLE, PH.D.

Dr. Collier Cole, Ph.D., in psychology from the University of Houston, his *curriculum vitae*, (Petitioner's Exhibit No. 7), testified he is a clinical psychologist, licensed in the State of Texas, a licensed health service provider and a certified sex therapist and a certified sex educator with the American Association of Sex Educators, Counselors, and Therapists. He is a registered sex offender treatment provider in the State of Texas.

He works with all of the various populations that have disorders that are listed in the DSM, those include individuals with sexual dysfunction, men, women, individuals with disabilities such as spinal cord injury, heart problems, traumatic brain injury and cancer patients. He works in the area of sexual abuse with victims and perpetrators. He works in the area of gender identity disorders.

He is also a clinical full professor, Department of Psychiatry and Behavioral Sciences, University of Texas Medical Branch, Galveston, and a clinical full professor in the Department of Physician Assisted Studies in the University of Texas, Medical Branch in Galveston, Texas.

Dr. Cole maintains a private practice located at the Rosenberg Clinic which is a private mental health clinic in Galveston.

He specializes in the assessment and treatment of sexual disorders including individuals with gender identity disorders. Dr. Cole explained the Galveston Gender Treatment Program consists of a collection of professionals who specialize in the treatment of people with gender identity disorder. The program began in 1976 in the

Department of Psychiatry, then moved into the private sector in 1980. He currently serves as its Director, since 1980.

He is a member of the Harry Benjamin International Gender Dysphoria Association since its inception in 1980 and is familiar with the Harry Benjamin Standards of Care for the diagnosis and treatment of people with gender identity disorders. The Galveston Gender Treatment Program meets those standards of care.

The portion of his practice devoted to the treatment of transsexuals is at least one third or 35%, starting in the mid-1970's. He has treated over 200 female to male transsexual patients.

He has authored peer review publications on transsexualism and gender identity disorders, and speaks at professional meetings on the topic, and continuing education training on transsexualism.

Dr. Cole has been qualified as an expert on five to ten occasions in court. He has testified in custody cases but never one involving a transgender parent – this is the first such case.

He holds two teaching positions and spends two days a week teaching, and four days a week at the clinic.

He was tendered to the court as an "expert." In his 26 years of practice he has never testified in a transsexual custody case, however, the court accepted him as an "expert" in this case. (TR VII. 1147-57)

## GALVESTON GENDER PROGRAM

The Galveston Gender Program uses the team approach to diagnose and treatment of people with "gender identity disorder." As its Director, he is the first contact when individuals come into the program. His colleagues are Dr. Lee Emory, a board certified forensic psychiatrist; Dr. L.C. Powell, OB-GYN surgeon, physician; Dr. Walter Meyer, Psychiatrist and Endocrinologist and President elect of the Harry Benjamin Association, and Dr. Ted Huang, a board certified plastic surgeon and Dr. Eric Avery, a psychiatrist.

In Dr. Cole's experience most transsexual men have chest surgery to create a male appearing chest. In fact, it's 100%. The majority of female to male transsexuals also eventually have surgery to remove the uterus and ovaries. That is, two thirds to three quarters have a complete hysterectomy. The female to male patients who opt to undergo phalloplasty, genital reconstructive surgery, would be 15 percent.

As Director of the clinic, it is part of his professional medical job to advise transsexual patients with respect to the surgical options available to them. He knows the surgical techniques available and the risks and limitations associated with them. He has kept abreast of the latest techniques and, for example, at the last Harry Benjamin meeting in Galveston in 2001, all of the surgeons showed their slides for the FTMs and the MTFs, and their latest techniques, pro and con.

### A. Phalloplasty

Dr. Cole was asked "Do you generally discuss phalloplasty as an option available to your female to male transsexual patients?" He replied, "Absolutely," and then stated: "I meet with the FTMs, I will show them photos provided by former patients, and explain the pros and cons. Basically I just out and out advise them "not to undergo that

procedure." If it were me I would not do it because of the scarring involved, the cost and the problems with functions. "I basically tell the guys to wait until something better comes along." (TR 1162)

If a transsexual man has a phalloplasty in its current state, would that prevent him from benefiting from an improved technique in the future? Dr. Cole said, "Yes, it really could. Surgeons have told me that it's almost kind of a "one shot deal." By the time they do all the re-routing of the urethra and the scarring involved, it can be very complicated to try to go back through scar tissue. It's a one shot possibility. (TR 1163)

Dr. Cole was asked "in your professional opinion, can a transsexual man whose genitals have been altered as a result of hormone therapy be said to have a penis, albeit a small one?" He answered, "Most definitely." He was further asked, "in your clinical experience do most transsexual men view their genitalia as consisting of a small penis after undergoing hormone therapy? He said in reply: "That's correct. After six months or more of hormone therapy the clitoris itself is lengthened, enlarged much to the size of a small phallus, almost the size of a small finger.

Conversely, those taking female estrogens, the male to females, find that the penis and the testicles begin to shrink up. Basically, these two organs come from the same genital tissue in utero." (TR 1165-66)

**B. <u>Partners</u>**

Dr. Cole was questioned about the partners of female to male transsexuals and their acceptance of the enlarged clitoris as a small penis, and whether he counsels the partners in that regard, and how many partners he so counseled. He replied the number has been 100 partners over his 27 years of practice. The court then asked:

> Do you try to convince the partners to accept the physical transformation that they're being told to believe, that the transsexual female to male is now a male, even though physiologically they don't see any genitals of the male? Do you try and convince them that the clitoris which is enlarged, as you said, into a small penis through the hormone therapy to accept that as a substitute for what would otherwise be a large genital organ by a man?

(TR 1169-70)

Dr. Cole replied:

> A. Um, well, Your Honor, that's complex because one's gender identity is located between the ears, not between the legs. What's between the legs is sexual anatomy.
>
> I've worked with a lot of individuals who, for whatever the reason, through surgery, for example, men with testicular cancer have the testes removed, woman have hysterectomies, mastectomies for cancer. That does not make them any less of a woman or a man in their mind which is the seed of identity they are male.
>
> In this particular case, this person is a male from birth, in my estimation. We are now trying to line things up in a correcting way through hormones and surgery.
>
> So most of the partners have already identified with this person as being male long before they saw them naked in the bedroom.
>
> So, I mean, women who meet these men see them as men, are attracted to them as men, date them as men, and then usually some time down the road the patient has to say, I've got to tell you something, and then tells them about the story.
>
> And that – believe me, I've been there hundreds of times when that's been done, too, and the women may be surprised and, you're kidding. That's not right. And I'm there to reassure them they're not

> gay because sexual orientation is a whole different thing.
>
> I simply ask them, What attracted you to this person? They'll say, Well, he's a nice guy. He's a friendly guy. And I'll say, Wait, what did you say? You said he. That's the point. They've been identified, they are attracted to this person because of the maleness, not because there is a big penis, a small penis or no penis.
>
> So basically when I try to work with these folks I encourage them to understand this process or understand the penis and the clitoris come from the same basic origin.
>
> In some cases my patients have been able to have satisfied intercourse with this small penis. I've also worked with males with microphallus, small penises, and they're capable too.
>
> In other cases these patients may use prosthetic devices, but whatever they want to do and is satisfying to them behind closed doors that's the important way for them to express their sexual behavior with each other.

An inquiry was made by the Court about the number of females who were able as partners to accept the enlarged clitoris.

> How many of these partners that are confronting this problem would you say are willing to go along with it or accept it or do you have them say, No, I can't. I can't adjust?

Dr. Cole replied:

> In my experience, particularly with the genetic females who are dating the FTMs the vast majority can understand and accept this. It's not that big of a thing. For them, love and sexuality is much more than a big penis.
>
> It has to do with that bonding, that caring, the compassion and so on. So they can overlook this. Yeah, it can be frustrating from time to time and they share that, but a lot

> of times they can experiment and do other things that can be very satisfying.
>
> Sex is not the be all and end all of the relationships for most people. They work, pay taxes, they have their intimate moments and they're happy and satisfied with those.
>
> THE COURT: So is your general viewpoint a majority of the partners or what percentage, do accept it?
>
> A. Well over the majority. I would say probably, again, 75, 80 percent.
>
> THE COURT: Is that, we're speaking of female partners?
>
> A. Correct, genetic females who are with the FTMs.

(TR 1170-73)

**C. <u>Lesbian Activity</u>**

Dr. Cole was next asked "When a transsexual man has intimate sexual relations with a woman is he engaging in a lesbian relationship?" He replied, "Absolutely not." Then he was asked, "How would you classify the sexual orientation of a transsexual man who is attracted to women?" The response was "Heterosexual." By way of explanation he testified: "We are dealing with different elements, i.e., one has a gender identity; one has sexual orientation; one has an anatomy; one has chromosomes, one has sexual roles," and "I mean sexuality encompasses a whole realm of factors that need to be taken into consideration." (TR 1173-74)

**D. <u>Michael Kantaras</u>**

Speaking of Michael Kantaras, he said: "In this particular case, we have an individual who has an identity of male and like most men he's turned on by women. So we would have a "Heterosexual female transsexual."

Michael Kantaras was his patient in the Galveston Gender Program. Michael phoned him in July 1985 about the program, after seeing a film entitled "What sex am I" appearing on an HBO documentary.

The initial interview of Michael was November of 1985. Dr. Cole personally diagnosed Michael as transsexual. Four members of the team worked with Michael, namely, Dr. Lee Emory, M.D., (Medical Director); Dr. L.C. Powell, Jr., M.D., and Dr. Ted Huang, M.D. The period of evaluation of Michael leading to his diagnosis of transsexualism was described as follows:

> BY SHANNON MINTER, ESQ.
>
> Q. Dr. Cole, approximately how long a period of time did you evaluate Michael before making a final diagnosis of transsexualism?
>
> A. That final diagnosis is confirmed when someone gets to the end of that real life test, where they've been successful, where they've adjusted well to the hormone therapy.
>
> So, in Michael's case we're talking about a year-and-a-half or so. So it's a continuous process from day one when you first get information, you first get a letter. We put out a very extensive questionnaire to individuals they complete which takes hours for them to do. And this whole process takes place over time to be able to see how they adjust to this.
>
> Q. Now, in addition to the questionnaire, did you administer any psychological tests to Michael before finally confirming his diagnosis of transsexual?
>
> A. Yes, I did.
>
> Q. Which test did you administer?
>
> A. As part of our final evaluation we – all individuals undergo a psychological evaluation. This can

include a standardized intelligence test, it includes a standardized test for psychopathology, basically the MMPI which is well documented in 50-plus years of research.

Also a test for organic brain damage. There are a number of tests that we use that are standardized.

MS. WHEELER: Judge, I'm going to object. I think this – counsel is trying to find out what tests were administered to Michael, not what tests are administered to the general transgender population that this expert has practiced with.

THE COURT: Yes.

MS. WHEELER: This case, once again, I just hate to keep saying this, this is about Michael Kantaras. It's not about what they normally do, what they do now, what they have done. It's what they've done with Michael Kantaras .

MR. MINTER: I understand, Your Honor.

THE COURT: The specific tests performed on Michael.

MR. MINTER: That was the question.

Q. Dr. Cole, could you just clarify, is that the question that you're answering?

A. That's correct. It's the standard procedure that I've done in over 25 – 27 years, whatever it is.

Q. And that you did administer these tests to Michael?

A. Correct, myself.

Q. What is the purpose of these tests?

A. The purpose is to rule out any other psychopathology, to be able to document the person doesn't have any underlying depressions or schizophrenias or other mental disorders that would contraindicate pursuing the surgery and completing the process.

Q. And what did the tests show in Michael's case?

A. That there was no underlying psychopathology.

Q. Dr. Cole, based on your extensive experience diagnosing and treating the female to male –

THE COURT: Excuse me. Excuse me. Give us an example of what you mean by these psychopathologies? What would, in other words, rule him out in these particular psychopathologies; if he had one?

A. If there were notable elevations on the test. In terms of depression many times people – there had been cases and I've seen them personally where individuals going through a serious depression may think, Well, gee, life is terrible as a woman, therefore, as a man maybe things are better. I mean, you have to rule that out.

Certainly there are cases of schizophrenia where people are psychotic and not in contact with reality to where they may believe that somehow being or living or transforming to the other sex is going to solve their problems.

People with a great deal of paranoid ideation or suspicion. People who may tend to be evidence of personality disorders where you will see a lot of impulsivity, a lot of quick ideas or thinking that, gee, if I just switch and try this it will make things better for me.

Those are the kinds of clinical scales that are on MMPI to be able to identify whether people fall within that normal range or if they have those kinds of elevations.

THE COURT: And you gave all of these considerations to Michael?

A. Most definitely.

THE COURT: What happens if somebody, such as you have said, that is depressed thinking that it's their solution to their misery? How do you counsel such a person?

A. Well, we would treat the depression itself. My associate who is a psychiatrist would meet with the individual, probably begin prescribing antidepressants and working with the individual and say, Wait, we're not disagreeing with you. Let's take a look at these issues.

Because sadly what I've seen happen sometimes is if we say, Wait a minute, we're not going to treat you, you've got this problem, people leave. They go find the back street doctor, they go find whatever to get their needs met.

So we basically say, Let's put this in a little black box and put this on the shelf. We're not saying this is not true, but let's take a look at this other more pressing issue right now.

And nine times out of ten people will go with that and they will allow us to treat that kind of problem. And we have people who are transsexual who do take antidepressants, but that doesn't mean that has anything to do with their decision at all.

I mean, transsexuals could be depressed. I've treated transsexuals who have been schizophrenic and have a diagnosis like that. But we're very careful in those cases where there's something like that to make sure that we're not acting in an improper way.

That's why we operate under a peer review basis. All of us must be unanimous in terms of our vote, so to speak, to allow people to go forward with the steps.

So we would treat the other problem first and then bring this issue back out to the look at.

THE COURT: They could be borderline and, if so, could they then eventually get in under this program of transsexuals?

A. Well, we have worked with some borderline patients, too, Your Honor, borderline transsexuals, but usually these people are so unstable because of

the borderline issues they're never able to get it together.

They're never able to really function successfully in terms of work and relationships and the real life test and it's very difficult. It's a very sticky kind of situation with the borderline. And we've never approved anyone with borderline personality disorder.

THE COURT: You don't approve of it?

A. Absolutely not.

THE COURT: Do you then just tell them, sorry, but you can't get into our program because you won't make it? Do you explain that to them? Do you let them down gently?

A. Yes, we do. And I can remember one case many, many years ago of an individual like that who came to us on the hormones and the cross-living and so on and we kept some of that going, but we finally got to the point where we said, We can't be your doctors anymore. We'll help you find a medical doctor to continue with your medications or whatever other needs you have, but we simply could not work with him in our programs.

So, certainly, we will be upfront with people if we feel they're not candidates for our program. That's the part of our screening process is to try to get people on the right track.

I've had some people come to me who basically are homosexual and literally I can remember two individuals, two males, who said, I want to have a sex change so my love will be happy and like me better.

That's not grounds for a sex change. That's not grounds for treatment in our program. We try to help them understand and accept the homosexual issue and point out that, you know, maybe they're dealing with other problems or fears of stigmatization or things like that, but they're not candidates for hormones and surgery.

So that's part of the process we put people through is to make sure that we have a select group of individuals who fit that kind of criteria we're looking at and then we can assist them along that road. They meet others along that road and so on.

THE COURT: In Michael's case did you go over with him all of these tests and what the results were?

A. Um, I believe I did at a later point because this is done close to surgery so when I see people on followup I'm able to share that information with them.

And certainly if there's any contraindication, if there's a problem with those tests, I get back to people immediately. And, of course, then I would say, I don't vote. You know, I would not vote it an approval.

And certainly if any of the other doctors, generally my associate who is a psychiatrist also interview these people because it requires two letters by a behavioral scientist to approve people for surgery, one who is the primary doctor, as myself, and the other person may know the individual or simply review the records of the individual. But in this case my associate and I follow these people for a long period of time so any red flags we see we're on top of, so . . .

THE COURT: That's a psychiatrist letter and a psychologist letter?

A. Well, it's actually described in the Standards of Care as a behavioral scientist, meaning that it can be a psychiatrist, psychologist, someone who's a license mental health provider. At least one person has to have the Ph.D., and the M.D. level.

THE COURT: All right. Thank you.

(TR 1176-85)

**E. Michael Kantaras – In Treatment**

Dr. Cole was asked about Michael Kantaras' diagnosis, based on the doctor's experience in diagnosing and treating female to male transsexuals "was Michael a typical or an atypical case?" The replay was "a very typical case." Dr. Cole described how Michael's questionnaire and initial letter to the Program revealed "the kind of things I see so often, the torment as far back as he can remember of having to fit into the female role. He had the classic things that female to males experience of the battle royal in the family making them put on a dress – it doesn't feel right, "it's like asking a man to put on a dress." Michael had these long standing feelings where he identified with male activities. His sister remarked that the family thought that Michael should have been a boy.

Michael had no evidence of any post psychiatric history. Dr. Cole remarked "he, Michael, found a program that might offer him a chance to sort of acquire the American dream and get on with a normal life." "Was one of Michael's goals in undergoing gender transition to marry and have a family?" To that question, he answered, "most definitely." (TR 1186-87)

Michael moved from Florida to Texas in order to go through the Galveston Program. It was in February, 1986, Michael had his initial medical evaluation, lab work, medical history, and a physical. At that point the prescription was initiated to start hormone therapy, which was three months from his initial interview in November of 1985. (TR 1175, 1187) Dr. Lee Emory, M.D., was in charge of his hormone therapy. Michael began the Real Life Experience around March of 1986 when he moved from Lake Jackson, Texas to Beaumont, Texas, for work. "This is common to move to start

off that new identity, a new city, new co-workers and new people who don't know anything about the past."

In April of 1986 Michael had had five hormone shots – he said he felt 100% better. He was going through physical and emotional changes that accompany hormone therapy, its like going through adolescence again. Two months after Michael started he began to experience physical changes. Dr. Cole was asked to describe the actual physical changes that were taking place with Michael and he reported the following:

> "With the Depo-testosterone injections what occurred with Michael was the development of hair growth on the abdomen, down the legs, the voice deepens, the vocal cords get masculinized.
>
> The facial characteristics begin to change. There's more of a ruddy complexion. Acne can occur in terms of the face and the back. Michael also began to experience much more upper body strength as the muscles in the arms develop and people are able to pick things up that they previously were not able to do so.
>
> Sexual interest and drive goes up. The size of the clitoris, then it begins to evolve from a female clitoris into a male phallus.
>
> MS. WHEELER: Judge, I'm going to object again. I absolutely am going to object. Once again the clitoris becomes enlarged. Did he see Michael's clitoris? Is this what he's trying to tell this Court or is this what happens generally?

(TR 1193-94)

Dr. Cole responded, he was testifying from the clinical records kept on Michael at the clinic, as follows:

> A. We're one of the few programs where my associate actually gets out a tape measure and she will measure the size of the breast, measure the size of

the clitoris. Before anybody starts treatment we get base line measures.

And then as people see her for follow-up every four months she measures those things again and puts them in the chart, actual numerical figures which I observed were increasing or decreasing.

The breast size decreased to some extent, the clitoris size increases. Personally, I did not view Michael unclothed, my associate did and recorded the results.

Q. And can we just clarify that you reviewed Michael's medical file before coming to testify here today including the notes of those physical exams indicating the physical changes that you've described?

A. That's correct.

THE COURT: You've seen the recorded differences with respect to Michael? While you may not personally have examined him, you said that you did look at the recordings of the changes which took place in the physiology?

A. Yes.

THE COURT: And your partner – who was your partner who did that?

A. Lee Emory, psychiatrist, medical director.

THE COURT: Lee Emory. Okay. Well, let's be gender specific in this sense. What happened to his clitoris?

A. Basically it elongated. As a result of male hormones it became a small phallus.

MS. WHEELER: Judge, I'm going to object to the witness' characteristic that it became a small phallus unless he can tell us what the measurements are. That's absolutely, I think misleading this record.

(TR 1195-97)

Mr. Minton stated the question about Michael's clitoris size was intended to embarrass and humiliate Michael and he would not ask any more questions on the subject. The Court ruled that was a matter of Mr. Minton's choice but that Ms. Wheeler had the right to pursue the issue since he opened the door to the subject matter. (TR 1198) Mr. Minton said "the size of Michael's body parts has no relevance to this case. And I think its an outrageous question." (TR 1198)

When asked how did Michael meet the Real Life Experience, he replied there were no significant problems at all. He continued to work, to function, very well in the real world, in the male role. He entered into the Real Life experience in March 1986 and continued through to April of 1987 or 13 months. Then the surgery was performed. At the end of the Real Life experience Michael's outward physical appearance was questioned: "Did he look like a man?" The response: "Most definitely." He had been on hormone treatment starting February of 1986 and then for over a year. "He was very presentable as a male in public, certainly living and working. The hormone shots were given very two weeks, and lasted from February of 1986 to the point of surgery in April of 1987, or 14 months. The shots are given to the muscle in the butt – one cc of Depo-testosterone. Dr. Cole outlined the possible negative side effect of hormone treatments, as follows:

> "Those are delineated in the Standards of Care as well the potential problems in terms of shifts and lipid profiles, the fat, test of fat basically in the blood.
>
> In terms of infertility and these things are all pointed out to people from day one and we have them sign a consent form saying that we've explained this to them.
>
> THE COURT: Possible increase of fat in the blood supply?

A. Let me look, if I can, Your Honor. Side effects in biologic females treated with testosterone may include infertility, acne, emotional liability, increases in sexual desire, shift of lipid profiles to male patterns which increase the risk of cardiovascular disease, and the potential to develop benign and malignant liver tumors and hepatic dysfunction, that's live dysfunction.

That's why, again, when people undergo this and Michael was certainly the case, you do periodic lab work and you monitor to make sure that there are no problems developing.

(TR 1203-04)

The team has to give unanimous approval before surgery can begin and that happened in Michael's case.

The medical procedures that Michael underwent were as follows:

BY MR. MINTER, ESQ.

Q. Which surgeries did Michael undergo?

A. He underwent the breast reduction or the chest reconstruction. He also underwent total abdominal hysterectomy.

Q. When did Michael have these surgeries?

A. April 1987.

Q. Prior to Michael having the chest surgery, did you write a letter of recommendation to the surgeon?

A. Yes, I did.

Q. Prior to Michael having the complete hysterectomy, did you and Dr. Emory write a letter of recommendation to the surgeon?

A. Yes.

Q. Who performed Michael's chest surgery?

A. Ted Huang, M.D.

Q. Who performed Michael's hysterectomy?

A. L.C. Powell, Jr., M.D.

Q. Did the treatment that Michael received at the Galveston Gender Program adhere to the Harry Benjamin Standards of Care?

A. Absolutely.

(TR 1205-06)

Dr. Cole said he discussed with Michael having phalloplasty, as he does with every female to male transsexual but he did not recall the specific discussion with Michael. (TR 1206-07) Since completing surgery on Michael, Dr. Cole was asked how many times he had seen Michael and if he had met Linda. He answered:

Q. Dr. Cole, have you seen Michael since he completed his surgery in April of 1987?

A. Yes, I have.

Q. How many times have you seen him?

A. It looks like I've seen him four times. He's actually come to the clinic five times, but I saw him myself four times.

Q. When was the last time you saw Michael?

A. July of that year.

Q. What's been the nature of these contacts?

A. Basically this is where we've talked some. He's continued to work. There have been no significant medical problems. His mother came to one of the visits along with him. He had his medical evaluations. And at least the last couple of times, about three of those times, is basically where he was

sharing his ongoing problems with his spouse at that time and this whole custody matter.

Q. Did Michael's wife Linda ever accompany him to any of these visits?

A. Yes, she did.

Q. How many?

A. One that I recall.

Q. And when was that?

A. This was in August of 1989. Michael had come for a visit to one of our group meetings that was being held, support group meetings. Linda was there with the baby, I assume it was Mathew.

What we often do at our group meetings is to take photographs of individuals – to take photographs of individuals so that we can share these with other patients as they're coming through the program.

Show, you know, people that are happy and successful and those photographs often reflect, you know, people with partners and kids and so on.

And I recall in my possession there's a photograph that shows Michael holding the baby and Linda standing next to him and then there's another patient, another FTM, on the other side. So I recall that.

Q. Do you recall any of your conversations or interactions with Linda?

A. No, I really don't. I didn't talk to her specifically I think other than introduce myself to her and she was present for that meeting and probably heard me talk and heard everybody else talk, as this is basically a sharing meeting of things going on workwise, relationshipwise and so on.

Q. Dr. Cole, it's been suggested by opposing counsel that Michael was somehow at fault or remiss in not

continuing to undergo therapy after completing the surgery.

I want to ask you, according to the Harry Benjamin Standards of Care once a person has completed sex reassignment surgery, is any further counselling or therapy required?

A. Not at all.

Q. Once a person has completed sex reassignment do the Standards of Care mandate any continuing therapy past that point and your answer, Dr. Cole, is?

A. The answer is no. At that point people are considered to be functioning well within that role and much like somebody who has a depression and gets cured, there's no need to go back to the doctor. You don't go back to the doctor when you're feeling fine.

Q. And in your actual clinical experience, do most of the transsexual men who have completed sex reassignment in the Galveston Program continue to undergo therapy or do they typically go on with living their new lives?

A. They go on with living their new lives…. Once a patient has undergone sex reassignment surgery, the Galveston Program does offer some post operative services, such as medical evaluation, writing prescriptions, lab work and counseling for any issues the patient is struggling with. These services are voluntary.

(TR 1207-10)

Dr. Cole was asked about remarks Linda has made, as follows:

Q. Dr. Cole, Mrs. Kantaras in this case has taken the position that when she accompanied Michael on a visit to the clinic in Galveston he was one of the only transsexual men in the program there who had a wife and child.

Now, is that consistent with your recollection?

A. No.

Q. In your experience, do a significant number of your female-to-male patients have spouses after they transition?

A. Yes. Many have spouses when they come into the program and these are often the same spouses with them as they exit the program.

Q. Do a significant number have children?

A. Yes.

Q. And, in your clinical experience, are transsexual men capable of having successful marriages?

A. Yes.

Q. Are they capable of being good fathers?

A. Definitely.

(TR 1212-13)

Dr. Cole testified about the gender identity disorder being classified as a psychological condition in the Diagnostic and Statistical Manual or DSM, as follows:

Q. Dr. Cole, is gender identity disorder classified as a psychological condition in the Diagnostic and Statistical Manual the DSM for short?

A. Yes, it is.

Q. The DSM lists various disorders and describes the symptoms associated with each disorder; is that right?

A. Correct.

Q. Does the DSM indicate or explain what causes a particular disorder?

A. No, not at all. It simply describes the behavioral characteristics. Nothing to do with the etiology.

Q. Does medical science understand what causes all of the conditions that are listed in the DSM?

A. No, unfortunately.

Q. Are there some conditions in the DSM that are known or believed to have a physiological or biochemical cause?

A. Yes.

Q. What would be some examples of those?

A. Well, many types of depression, certainly your biological depressions, schizophrenia –

* * *

Q. Dr. Cole are there some conditions that are listed in the DSM that are known or believed to have a physiological or biological cause?

A. Yes, and just off the top of my head I can think of such problems as depression. Oftentimes biological depressions appear to have a biological reason. There's also what's called seasonal affective disorder, SAD.

Affective disorder. Seasonal affective disorder which, these are individuals, who during the winter months of the year actually undergo serious depressions.

And it has to do with a lack of melatonin in the brain and you treat these people with light boxes, literally. You have people stand in light boxes or you put lights in front of them which can help produce this hormone in the brain which can help alleviate the depression.

Then you have schizophrenia. Many of the schizophrenias have biological causes. Virtually all of the organic brain disorders, your dementias, your

> deliriums, things that happen to people as they age or they've been exposed to chemicals or they have traumatic brain injury, some damage, physical damage to the brain that can alter behavior.
>
> So there are many conditions in the DSM which have biological contributors.

(TR 1213-16)

TRANSSEXUALISM ORIGIN

Dr. Cole was directed to answer the issue as to whether or not transsexualism has a biological contributor – or if its solely psychological? He replied as follows:

> "Well, with transsexualism the final word is not in there, but there is, in my estimation as an expert, some compelling evidence in recent years to suggest that it may well too be biological in nature, that an individual is born with a gender identity. It's not something that you acquire or choose. You are born this way.
>
> We have some evidence from animal studies where they've actually been able to tamper with animals in utero and when these animals are born biological male animals they act like females and vice versa.
>
> There have been some case histories in human beings where it looks to be that gender identity is present from birth. See, our understanding, Your Honor, is that during the nine months of development in utero all those things that develop into a human being occurs.
>
> You have the circulatory system, the respiratory system, the arms, the legs, all these things develop. Your sexuality develops as well.
>
> You know, it starts off with the XX female, the XY male, but that's just the starting gate. And as you go through nine months of development in utero you have your hormones start to kick in and develop, you have your anatomy that develops, and towards the end you have your brain sex which develops.

> And what we think goes wrong with the transsexual is something goes awry towards the end of that process such that the person may be, in the case of Michael, XX have normal female hormones, female anatomy, but at the end of that gate something happens to where the brain is masculinized, such as the person comes out with this sort of problem.
>
> Probably the best analogy I can think of is Ford assembly plant. You know, you may start at the beginning of that assembly expecting a Ford Explorer, and by the time you get down the assembly line there could be problems all along the way.
>
> In most cases it comes out a nice Ford Explorer, but in other cases there could be missing bolts or missing parts, and in some cases you may not even know there's a defect until a year or two after the car is on the road.
>
> Same sort of thing. In my view this is a birth defect. People can be born without an arm, without a leg and medical science can treat that.
>
> The same thing here, this is a condition which is correctable through medical intervention. It is merely, in my estimation, a birth defect.

(TR 1216-18)

## BIRTH DEFECT

Since Dr. Cole believes transsexualism is a "birth defect" he was asked if all the medical interventions are a cure or just an amelioration to reduce the psychological pressure of one's gender identity? He replied:

> There is no cure, Your Honor. We can't go in and tamper with the mind. What basically the Harry Benjamin Association has espoused is we now change the body to fit the mind. We try to line things up so that they're all nice and fit together.

This certainly is rehabilitative. We can help people get as close as they can possibly be, but they'll never be XY or they'll never have the perfect normal male penis or they won't have this or that.

Basically what we're trying to do is rehabilitation. And this is the current consensus of the experts who established these guidelines of care, this triatic approach involving a real life test, hormones and surgery.

Those things work for people and there are outcome studies to suggest they could work very well. Some studies we've done in our own clinic.

(TR 1218-19)

Dr. Cole was asked again what is the significance of transsexualism being listed in the DSM? He answered, as follows:

Dr. Cole, does the fact that a condition is listed in the DSM mean that it necessarily has a purely mental or psychological cause?

A. Absolutely not. It's listed in the DSM because it has to do with the mind, with the brain, with emotional suffering. I mean, you also have learning disabilities in there.

You have, you know, people who have sexual problems, a man with erection problems, a woman with orgasm problems, that's listed in the DSM, but it has nothing to do with somebody being unstable.

Q. So the fact that gender identity disorder is listed in the DSM, does that tell us anything one way or the other about whether the condition has a physiological or biological cause?

A. No, it doesn't. It's very controversial even within the Benjamin Association to have it listed in the DSM. There are many people who argue it should be moved over to a medical kind of diagnosis as opposed to a psychiatric diagnosis.

Q. And is it part of your professional responsibility as an expert in the field of transsexualism, as a clinical psychologist who treats transsexual patients, someone who teaches as well in this area to keep up with medical studies and medical literature about the possible causes of transsexualism?

A. Yes.

Q. And do you keep up with that literature?

A. As much as I can, yes.

Dr. Cole was asked about the origin of transsexualism and, based on his knowledge of the current research and literature on that issue, causation of transsexualism, what do you believe causes a person to be transsexual?

A. Well, I think, as I've indicated, my belief is that it's something – it is an neuroendocrine condition. It is a condition involving the brain and the endocrine systems, something that develops in utero when somebody is being developed.

Parents don't cause this, bad cities don't cause this, bad upbringings don't cause this. In my estimation, it is a biological phenomenon.

Dr. Cole was asked about Michael Kantaras and if he is a victim of a more mental problem, there's been some suggestions in this case that because gender identity disorder is in the DSM that Michael Kantaras should therefore be viewed in a pejorative sense as sick, or unbalanced or mentally ill. He was asked some questions as an expert in this area to help sort through this issue. He was asked if he was familiar with the criteria for gender identity disorder in the DSM?

A. Yes, I am.

Q. And do those criteria refer exclusively to the conflict between the person's gender identity and

their anatomy as well as distress that conflict causes?

A. Yes.

Q. Is there anything in those criteria relating to having any kind of bizarre or disordered thinking or behavior or to any kind of emotional unbalance or instability apart from the distress caused by having the wrong body?

A. No.

Q. So would it be true that being diagnosed with GID does not mean that the person is otherwise unstable or disturbed or mentally ill?

A. Absolutely.

Q. In practice, are transsexual people who have completed their gender transition anymore likely to have psychological problems than non-transsexual people?

A. No.

(TR 1219-22)

Mr. Minton thus asked Dr. Cole are transsexual people who have completed their gender transition any more likely to have psychological problems than people who are not transsexual? Dr. Cole answered "no" and added that in the mid-nineties he and his colleagues undertook a scientific study of over 400 charts of people they worked with at the clinic and found that this group of transsexuals had no more pathology, meaning problems with suicide attempts, depression, etc., compared to the normal American population. They took a subsample of 100 people who completed MMPIs, personality tests and they did not have significant elevations on anxiety, depression, or paranoia. Dr. Cole expanded on his answer, as follows:

> . . . Then we went and found another study that had done MMPIs on a psychiatric population, people that have depression, schizophrenia, borderline personality and we compared those MMPIs.
>
> And as you would expect, as it turned out, the psychiatric population had an elevation on practically all of those scales compared to our transsexual group.
>
> So our summary was that oftentimes, and this has been corroborated by other literature, transsexualism is a unique diagnosis. There are no co-morbid diagnoses, meaning it can stand in and of itself.
>
> Just being transsexual doesn't mean that you are going to find depression, schizophrenia or other mental health problems. You're dealing with one particular problem and that's gender identity conflict.

(TR 1226-27)

## POST-OPERATIVE DISTRESS

A transsexual man post surgery can experience some periodic or occasional sadness or irritation or distress about having scars. When asked if that was unusual and he said "absolutely not." The same distress might arise from having to use a stall rather than a urinal, but that isn't unusual. He was asked "would there be anything unusual or concern to you if a transsexual man experienced some periodic or occasional sadness or irritation or distress about not having a standard size penis?" He answered, "No. Not at all." The Court asked, "Is it normal for him to feel sadness or distress over the fact that he doesn't?" Dr. Cole replied, "A person may."

He went on to state: "sometimes people get into this talk about size of the penis, somebody might think, I 'wish I had an eight inch, a twelve inch' – But, again, I think nobody becomes suicidal over that."

The questioning shifted to phalloplasty, as follows:

> Q. Well, Dr. Cole, there had been some suggestion in this case that because phalloplasty is not currently very successful and because most transsexual men do not obtain it and are therefore forced to deal with the reality of having only a very small penis as a result of hormones –
>
> MS. WHEELER: Judge, I'm going to object to counsel's terminology. It's not a penis. It has the same similar tissue as the plastic surgeon in this case so eloquently and articulately described. It is not a penis.
>
> This hormone treatment does not turn a clitoris into a penis. It turns it into an elongated and enlarged – excuse me. I strike that.
>
> The clitoris does not have the same function as a penis. The tissue is similar to a penis and that is all. It doesn't urinate like a penis. It doesn't have a urethra and it's not a penis and I object.
>
> He keeps saying that a transgender FTM has a penis and it is not a penis.

(TR 1231-32)

The fact that a transsexual man has no penis or an undersized penis was further pursued as to its psychological effect, as follows:

> Q. Dr. Cole, despite not having a standard sized penis, is it possible for a transsexual man to come to a satisfactory psychological resolution in accepting that fact?
>
> A. Absolutely. It's ludicrous to think that the idea of penis size has anything to do with maleness. As I said earlier, your sense of identity is located between your ears, not between your legs.
>
> And for 20, 30, 40 years it's been these stereotypes that I, as a sex therapist, have had to fight across the board with all patients that the size of penis, size of breasts, or whatever makes a man or a woman, that's ridiculous.

(TR 1233)

When a transsexual man is on hormone therapy for several years the dosage and number of injections are typically decreased. It would not be unusual if the transsexual man who has been on hormone therapy for a number of years to go through periods of not taking hormones. Dr. Cole knew of a couple patients who stopped for several years, when the cost of the hormones becomes a factor to some people. "There's not going to be any magical reversal. It's not going to suddenly throw somebody back to a female stage, absolutely not." There may be a softening of the skin on the face; there may be some loss of muscle; there may be some moodiness of a temporary nature; but no change in the voice. "No serious psychological problems." (TR 1234-35)

MICHAEL – TRANSSEXUAL MALE

With respect to Michael Kantaras, Dr. Cole was asked "is there any doubt in your mind that he was correctly diagnosed as a transsexual?" He replied, "Absolutely not." And he has a male gender identity.

He was asked, "Is there any doubt in your mind that based on that diagnosis and after having undergone treatment in accordance with the Harry Benjamin Standards of Care at your clinic that Michael is a male?" He answered, "Not at all. He's male in my estimation." Michael's transition has been successful, he has no doubt.

As an expert on transsexualism, Dr. Cole was asked "is it possible to alter a transsexual person's identity through any form of counseling or psychotherapy?" And he stated, "Not that I am aware of. If that's the sole basis of the approach, absolutely not." Is it possible to change the transsexual person's mind to fit their body through therapy?"

and he said, "Not at all." He said the psychoanalytic approach was attempted back in the '40s and '50s with abysmal failure. There is no change in contemporary scientific thought, either. (TR 1237-38)

INTERSEXUALS

With respect to intersexuals and transsexuals, they are different categories. Someone who is intersexual has tissue of both sexes or there could be chromosomal anomalies, such as Klinefelter Syndrome where someone is XXY. They have had several people, who were Klinefelter Syndrome, go through the program, and the approach still used is Real Life tests, hormone therapy and surgery, "to help that person line things up the way they feel." In the early days at the clinic chromosome tests were run on everyone to see if any person was intersexed." The tests were expensive and nothing came out of it." Unless a physical appearance may make them wonder, what appears to be ambiguous genitalia, the test is not done. "We often treat those folks pretty much the same way. By the time they get to a certain age and they have a sense of who they are and what their identity is, then they want to kind of line up things again to fit that. So they come to the gender clinics, come to the doctors for assistance in that regard." (TR 1239-40) Numbers-wise, it has only been a handful, five or six intersexuals.

Michael Kantaras had no chromosome test at the clinic. The cost ranges from $500 to $1,000 to conduct the test, and a "lot of times it doesn't prove anything." The clinic avoids running up the costs for medical tests for their patients. If they detect problems, such as elevated liver enzymes, they have to be fixed before hormone therapy. In Michael's case they found evidence of a benign breast tumor and he had some surgery

for that before he came to the clinic. They wrote for his doctor's records and hospital records just to make sure they understood before they went further. (TR 1243)

Dr. Cole testified sex reassignment is an effective treatment for transsexualism. "There have been a number of studies in the last 20 years to indicate that people can be very well adjusted, can go on to lead very productive lives having followed this type of procedure that is currently espoused in modern medical literature of dealing with individuals with this concern." His own clinic has 100% satisfaction, in terms of no one would ever go back, in accordance with their own surveys. Some people complain about scars and difficulties associated with surgery – that is expected." "There was not a single individual who regretted their decision to go through this process at all." Michael was recorded to have said "I wish I had done it sooner." (TR 1245)

Dr. Cole said it would be "unethical" for him to diagnose someone as a transsexual and then encourage them to undergo psychotherapy to try to change their gender identity. (TR 1246)

## TRANSSEXUAL AS PARENT

Dr. Cole was asked if he had experience dealing with issues relating to transsexual parents and their children. He replied, "Yes," and he does counsel parents who are planning to talk to their children where one parent is transsexual. "That comes up a lot." He also counsels the children separately. "If it is done in sensitive fashion and I often recommend that both parents sit there and tell it. It works very well with teenagers and younger." The kids see a man and dad and it's ok with them. They are not

as hung up about this as, I think, the big grownup kids are when it comes to these issues."

(TR 1249)

The court asked the following:

> THE COURT: Now, what if (the proverbial question), what if it's mishandled? The children are told that their father is a woman and bluntly told.
>
> They're in a situation where they're not allowed to have a discussion with the transsexual male. Let's say, the mother, sitting down, as you have said, where she shows affirmance of what they are being told about the father. Doesn't make a big deal out of it.
>
> What if the transsexual male is not present. Doesn't even know that the children are being told. Now, what is going to be the fallout to those children as a result of that? Is there a fallout where the children are distressed, from that information?
>
> How do you handle the children after that?
>
> A. Part one of that question, Your Honor, is it could be devastating, psychologically devastating to the children who love their mom and dad and suddenly they're getting this kind of information related by one or the other.
>
> I mean, that happens in a lot of messy divorces. Sadly parents don't sit down and use the books that are out there on how to talk to your kids about divorce. You know, mommy and daddy have problems. Nothing to do with you. We can't live together. We'll always take care of you. That's the nice way to tell kids about divorce.
>
> That doesn't happen that way a lot. It could be devastating. In a case like this, again, it can be unimaginably devastating in terms of kids, boys and girls.
>
> I would predict acting out problems. I would predict a whole hornet's nest. I would predict it

could be a long time before this could be turned around.

THE COURT: Psychologically for the children?

A. Exactly. I mean, this happens whether it is a transsexual phenomenon or mommy tells the kids about daddy's affairs or mommy's affairs or this or that.

I mean, you're berating a loved person. I mean, our primary reference group, if you will, for all of us growing up are parents. They are infallible. We love them. To have one parent jumping down on the other about anything, I think you're asking for a lot of trouble.

THE COURT: So psychological damage could be done to the children, could that be just temporary, they will get over it, they will forget about it or is it long lasting? Is it a lifetime possible impact that a child may have to carry right into their own adulthood?

A. One, I concur quite heavily with Sigmund Freud that things that happen early in life can last a lifetime.

If, as a child, you've gone through a divorce, you've gone through a natural disaster, you've gone through a traumatic event, you're never going to forget that. It will be with you forever.

Maybe it could be corrected some, maybe you have a better understanding, but those feelings of trauma, having been traumatized with that information, is going to be with you forever.

(TR 1250-53)

Dr. Cole was asked is it harmful for children not to be told that one of their parents is transsexual? He replied, "No, not at all. I think many times that's just a need to know basis. . . . that's just family privacy."

Mr. Minton asked what the affect would be on children to tell them their father is a transsexual and a lesbian? He replied: "I think it could be confusing, devastating, cause a lot of problems, certainly.

## HE-SHE-IT-HALF MALE/FEMALE

Mr. Minter asked, "Dr. Cole, in your professional opinion do you have to be a highly educated or an intelligent person to know that it is likely to be extremely upsetting and damaging to a child to refer to the child's father as 'he-she,' or 'it' or half man – half woman?"

Dr. Cole responded: "No." He was then asked "Do you think that's something any parent with common sense should realize?" Dr. Cole said, "I would certainly hope so." (TR 1268-69)

On the question of transsexuals being parents, he was asked, assuming the person was otherwise qualified to be a good parent, would you have any concern about awarding custody to a transsexual parent?" He replied, "Absolutely not." Do they, the children, suffer any harm?" He replied, "No." He believes transsexual fathers can provide a good male role model for a male child and a good father to his daughter. (TR 1271) His clinical experience supports these views.

Dr. Cole was again asked to address the issue of a transsexual man lacking a penis. "Is it necessary to be a good father for a man to be born with a penis or to have a standard size penis?" He replied, "Absolutely not. I can't imagine how that would affect the father/son relationship."

Dr. Cole as a clinical psychologist knowing what qualities make a person a good parent, was asked if transsexual men are less likely than other men to have those good qualities of parenting? He said, "No, not at all."

Dr. Cole was asked about children of a transsexual parent, as follows:

> Q. Dr. Cole, do you think that a transsexual man would be able to provide adequate guidance to his son in terms of helping the son understand the changes in his own body as he goes through puberty and adolescence even though the transsexual father has not had that exact same experience?
>
> A. Well, he's not had the exact same experience, but, as I indicated earlier, going through the process of hormone therapy is akin to puberty and adolescence and I don't think that would be a problem at all for dads to talk with their sons about what to expect.

(TR 1274)

An MMPI test when administered to a transsexual man is done for the purpose of determining whether he has any psychopathologies. That is the only purpose of an MMPI whether the man is transsexual or non-transsexual. It is used to determine if anyone has mental problems.

## IS MICHAEL LEGALLY FEMALE

Dr. Cole was asked the consequence of this Court ruling that Michael is legally a "female," as follows:

> Q. Dr. Cole, as the psychologist who initially diagnosed Michael as a transsexual and who has had a lot of experience with him over the years, how do you believe it would affect Michael to have this Court declare him legally a female? What would be the psychological impact?

A. I think it would be absolutely devastating. I think individuals go through this kind of treatment process, that's this sex reassignment process, some folks refer to it as sex realignment process, following the best of medical advice.

And being able to be granted legal status as "male" for Michael puts the period at the end of the sentence. It gives him the ability to enjoy the rights of other males in terms of access to health care, parental rights, the ability to marry, rights to inheritance, all of those things that have occurred with other non-transsexual males and non-transsexual females that they've not been able to obtain because courts have not recognized that.

I think it would just be devastating. I think so often medicine tries to offer its view of the world and certain phenomenon like this in the hopes that the courts can understand. Medicine and the courts can come together on some general understanding.

This is one of those areas that's very difficult for the average person to understand, yet we do have a medical society. We do have very learned individuals who have set these standards of care. Michael met them completely.

I think to not then be able to grant him that status as male, relegates him to second-class status. In my mind, it's much like a sexual assault victim having to be dragged through the courts and the background and history smeared in the courts. Or the civil rights movement where people had to sit in the back of the bus. Couldn't be citizens.

I see that very much as the same kind of situation here, an individual is not recognized legally when, in the eyes of the medical world, this person is "male." I think it would be very devastating.

Q. Dr. Cole, how do you think it would affect Michael's ability to be an effective parent if he is declared to be not legally male?

A. Again, I think it would be very difficult for Michael not to have that recognition. I think Michael being male, I mean, he knows it. I know it. His other treating doctors know it.

I think he would still go on and try to be the best parent that he can be. I don't see that that would adversely affect the children. But I think this is something that's very important in terms of what is right in this case.

(TR 1278-80)

## BORDERLINE PERSONALITY DISORDER

Dr. Cole was asked as a clinical psychologist if he was familiar with the diagnosis of "borderline personality disorder?" He replied, "Yes," that such a diagnosis is found in the DSM and he has treated such patients. There is no one specific test to determine if a person has the disorder. He was asked to describe the chief symptoms of the disorder and he stated the following:

A. Generally this is an individual who has a lot of instability in his or her life in terms of inner-personal relationships, work relationships and the like.

Often these relationships can be very intense. If a person loves you or loves the job and then suddenly feels wronged in some fashion they can become very angry, very vindictive.

In many cases, there is evidence of individuals engaging in suicidal gestures or attempts, self-mutilating behavior. These are often the most difficult patients for any therapist to treat because you get calls at all hours of the day and night.

One of the hallmarks of all personality disorders is that the person doesn't think there's anything wrong with them, yet then you see this kind of evidence

where they run into problems with relationships and work and people, but they tend to not think there's anything wrong with them. They tend to externalize it or project it. It's other people.

That sort of cuts across all of the personality disorders in addition to the criteria I mentioned of borderline personality disorder.

Q. Is borderline personality disorder a serious disorder or is it relatively superficial? Is it considered a serious and severe condition?

A. Well, it is – in my estimation it's certainly a serious condition, but it is diagnosed on Axis II of the diagnostic nomenclature. In other words, Axis I is reserved for your major clinical syndromes, your depressions, schizophrenias, things like that.

Axis II is reserved for such problems as personality disorders. They are pervasive problems that have been in existence usually since childhood, adolescence, they begin to show up on into adulthood.

They get people into a lot of trouble and difficulty. But they, a lot of times, do not necessarily impact one's functioning in terms of the ability to know who you are and where you are and function in the world. It's more of a pervasive type of personality trait.

Q. When you say it's pervasive, does that mean that it's not likely to be confined to one area of a person's life, it's likely to affect their behavior and functioning across the board?

A. In many cases, yes. Sort of an across-the-board kind of thing.

Q. Would that include their ability to function as a parent?

A. It certainly could. Sure.

Q. In what kinds of ways would having borderline personality disorder tend to affect a person's parenting?

A. Well, I think it would probably manifest in terms of not always being consistent, perhaps being impulsive, maybe not necessarily checking things out with the other parent if you're going to discipline or do things.

I mean, generally it's the impulsivity, the intensity that you see.

(TR 1283-85)

The court inquired about the number of patients the Rosenberg Clinic has treated since its founding and Dr. Cole said approximately 800. Not all of them went through the program but they were interviewed and treated to a certain extent. These are individuals who have presented themselves to the clinic with the "self diagnosis of transsexualism." About two-thirds of them or 400 have completed the program. He stated the current number of transsexuals in the United States he didn't know, but that some of the old estimates in the Benjamin Standards was 50,000 to 60,000 people.

In the Netherlands they report one in 11.900 for males to females and one in 30,000 in female to male transsexuals. It is a world-wide phenomenon.

Dr. Cole described the case of John Jones where identical twin boys were born. There was an accident during circumcision with one that basically burned off the penis. The doctors then reassigned the child as a "female." The parents raised the child as a female, he was given female hormones. "The same kind of outcome occurred." The boy grew up unhappy and finally when told what happened, "it was like the lights came on." Today he's living "as a man," married, kids, the whole thing and is very happy.

This suggests Dr. Cole said, to us today that "your gender identity is probably fixed at birth. It's not something that you tamper with or try to change. It's that gender identity that's in the brain, that's there at birth."

## TRANSVESTITE/CROSS DRESSERS/LESBIANS/HERMAPHRODITES

## HETEROSEXUAL TRANSSEXUALS AND THE ANDROGYNOUS

Dr. Cole testified about the distinctions between a transsexual, homosexual, intersexual, lesbian, transvestites, cross-dressers, hermaphrodite and androgynous persons, as follows:

> THE COURT: A transsexual is not a homosexual?
>
> A. Correct.
>
> THE COURT: Why?
>
> A. You're talking about apples and oranges. You're talking about gender identity and sexual orientation. Just as you would be talking about sexual anatomy or sexual chromosomes, these are all different aspects that make up the total picture.
>
> Your identity is the personal private sense, are you male or are you female? Sexual orientation has to do with partners you are attracted to.
>
> So the vast majority of individuals, particularly Michael in this case, being an identity of male and he's attracted to females, that would render a diagnosis of a heterosexual transsexual.
>
> Now, in the case if there were someone whose identity was male and they were attracted to men, then you would have a homosexual transsexual.
>
> THE COURT: Do you have those?

A. Yes, we've had some of those. They're pretty rare, at least in my clinical experience. I would say – I've only had one, in fact, in 25 years. The rest have all been heterosexual female-to-male transsexuals.

Now, to the world, Your Honor, upfront before this person has any type of procedures done, they may be perceived by the world as being lesbian, but to those of us who are the experts, know that's not the case.

When we hear the story this person has always been male and they're attracted to female, that's not lesbian. If you have a female identity, if you are a woman anatomically and you're a woman between your ears and you're attracted to women, that's what a lesbian is.

The vast majority of transsexuals like Michael don't like what they're born with. They don't like that female anatomy. They don't identify with it. They don't like to look at it. It's just on the wrong body.

So, again, a lot of times people just focus on what's in between the legs, they don't focus on what's between the ears, which is the key issue here with identity.

THE COURT: Now let's take transvestites. How do they fit in the equations of what we're talking about?

A. Well, we've got apples, oranges and some other type of variation here. Currently the term "transgender" is like an umbrella. It refers to all individuals who tend to go against the traditional male/ female approach.

And under that transgender umbrella you have transsexuals, transvestites, you have female impersonators, you have a whole class of people that fit under that umbrella.

Now transvestites or as it's termed today in the DSM, "transvestic fetishism," or your heterosexual

cross-dressers, these are basically individuals who periodically cross dress.

In fact, the Benjamin Standards here, I think, offers a definition, if I may look – the transvestism has three criteria, the individual wears clothes of the opposite sex in order to experience temporary membership in the opposite sex.

Two, there is no sexual motivation for the cross dressing.

Three, the individual has no desire for a permanent change to the opposite sex.

So most of your cross-dressers just do this periodically or temporarily as it's indicated here. The vast majority of cross-dressers, in my experience, are heterosexual. They are married. They have kids. They enjoy the male role. They live and work and present as man, but periodically they also cross dress as woman.

The desire to live full time is not there. The desire to alter the body is not there as it is in the case of a transsexual.

So these are really totally separate kinds of issues even though they fall under that same general umbrella.

It's much like, I guess, the analogy to cancer. Ten years ago, 20 years ago we thought cancer was just one kind of thing and it could be any part of the body. Today we know there are hundreds of types of cancers, hundreds of types of intervention. They're not just the same thing, although they share the same term.

THE COURT: Hermaphrodite?

A. Hermaphrodite is your classic intersexed person who has either chromosomes or organs generally a blend of both male and female anatomy or tissue there. Oftentimes –

THE COURT: They will have the genital parts of both sexes?

A. Correct. Correct.

THE COURT: Do they decide which sex they want?

A. Again that's sort of the rule of thumb. You wait until they grow up and they begin to identify with male or female. In some cases, too, Your Honor, to be quite frank, and not to confuse the Court, there are some cases of people who have an androgynous kind of identity.

I work with some people who sometimes they're male, sometimes they're female in terms of their sex. They're really not crystal clear.

In other words, they sort of are on that border and it doesn't appear to be related to anything psychological, again, that just appears to be who they are as people. Very rare, but it spans the continuum.

THE COURT: The androgynous, is that generally a male?

A. It could be both ways, anatomic female, anatomic male.

THE COURT: Well, I think it's definitely valuable for us in this case to have definitions for all of these terms so we're not confusing one with the other.

A. Exactly.

(TR 1297-1303)

## CROSS-EXAMINATION OF DR. COLE

By Ms. Wheeler, Esq., Dr. Cole admitted he had not published any articles on how transsexuals on completing the clinic's program "live on happily ever after." Out of the 400 treated and put through the program, he has personally treated about 200.

The Harry Benjamin Association has over several hundred professionals members from all over the world. It was established in 1980. The DSM lists transsexualism as a "mental disorder" but it is not considered a physical (biological) deformity. Dr. Cole's experience includes cases where "individuals have transitioned, like Michael, have gone through this process, then married, then had children, – or an individual in the female anatomy first had children, then goes through a transition, is now 'male,' gets married and goes on." (TR 1318)

When asked if he has seen a case like the Kantaras divorce and he answered, "No, I've not seen a case exactly like this, I guarantee that --- this case is very unique." (TR 1320) Dr. Cole is familiar with the Littleton case in Texas, an appellate court case that he says applies only to 30 counties, Baylor County and surrounding counties, out of 254 counties in Texas.

He was asked, "would you tell us, did Michael and Linda have sex?" and he said, "I honestly don't know." Dr. Cole was asked "Would you agree that a penis is important for a man that's "born a man" and he's happy with that and doesn't have any gender dysphoria?" He responded, "I think a penis, is, yes, is a part of the anatomy of males and could be very satisfying, yes." He agreed phalloplasty was cost prohibitive and except for that and being unsuccessful more might go that route. But female to male transsexuals left with their vagina are still 100% satisfied with that. (TR 1328)

People for other health reasons or as a result of an accident, lose their sexual function, as a sex therapist, "I try to point out that sexuality is a continuum, its not just intercourse, it's not just a penis. There are all sorts of other sexual behaviors . . . I've known many who've had great sex lives, they just don't have a penis or they don't have

intercourse. I mean, that's not necessary. He expanded on the issue, as follows: "I think here with somebody like Michael, you know, does not have the phalloplasty, does have, in my thinking a small phallus and is able to experiment and have fun with the partner sexually. That's done."

Ms. Wheeler, Esq., asked, "Your speaking in hypotheticals, someone like Michael. You don't know, do you, you can't really say that under oath here today, can you? Someone like Michael can have good sex with a small penis-like clitoris. You can't really say that. If we stop generalizing, you can't say that about Michael Kantaras, can you?" Dr. Cole replied:

"I can say that about of lot of patients that have told me that. I cannot say that about Michael, Linda came along." * * * "I have no knowledge of Michael Kantaras and Linda's intimate life. Whatsoever." (TR 1331-34)

On the occasions when Michael returned to the clinic, Dr. Cole was kept abreast of Michael's divorce case, the separation, and Sherry came on one of the visits when he met her. The meeting with Michael lasted an hour.

When asked if he published any articles based on statistical analysis of post-surgery statements of transsexuals, confirming their happiness with their transitional state, an objection was interposed by Mr. Vause, Esq.

> THE COURT: She merely wants this doctor to verify these conclusions by pointing to something that you have done or somebody in the institute has done.
>
> BY MS. WHEELER:
>
> Q. That's exactly what I would like to do, Dr. Cole. Did you understand – you probably didn't understand me, but did you just understand the

Judge? That's a perfect synopsis of what I was trying to do.

A. I believe so.

Q. Okay. Well, why don't you tell us what studies did you look at or what studies did you create by your own research?

A. By our own research, I believe it was back in 1994, we published a study in Texas Medicine, and I don't have it with me. I don't know what numbers. 50 or 100 people were followed and asked in terms of their satisfaction and adjustment following the treatment.

Q. Was that like a survey?

A. Yes.

Q. Was that a test? Did you call them in or was this done through the mail?

A. I think it was done through the mail plus sort of snowball technique in terms of those that hear about it call us and we provide a questionnaire, that sort of thing. Then the results are sent in and are tabulated.

Q. So it's a just through the mail survey.

A. Yes.

Q. So that was 50 or 100?

A. Correct.

Q. So that would be one thing you based your statements on that you made on direct examination?

A. Correct.

Q. Okay. What else did you base those statements on?

A. The rest of them really come from my clinical experience because I've not conducted – I simply

have not had the time to do any long term follow-up studies.

I think, as I've said before, when people come back maybe a year afterwards or 10 years or 15 years afterwards, come to a group meeting and they sit there and they share what they're doing, by and large the majority are happy and productive and doing well.

Now, those who do not come back I honestly don't know what happens to them. I certainly can't speak to their outcome. But those that do come back, I've had nobody who's ever regretted it.

(TR 1349-51)

The significance of a penis to a female to male (F to M) transsexual was discussed again, as follows:

Q. Well, what did you say about the difference about what's in a person's mind or between their ears? I think you said between their ears and between their legs. You didn't say anything like that?

A. No. I think what I said was that the problem of gender dysphoria or transsexualism is a problem of identity which is in the brain between the ears.

It seems like everyone is making a big deal about whether you have a penis or not and that has to do with what's between the legs and that has no relationship to a sense of identity.

Q. Well, except for one thing, if a gender dysphoric person sees himself as a person with a penis, didn't you just testify that Michael asked you what the latest research on phalloplasty was?

That's one of the incongruities. Isn't that one of the problems recognized by Harry Benjamin?

A. That's one of the things that I routinely go over with everybody, is the current status of techniques and surgery. My associate goes over with them what's

the current status in terms of hormonal issues and medical problems.

We just update people about the state of the art as they come back to us. We're not pushing one thing or the other. As things get better, I can certainly encourage phalloplasty, but if people ask my opinion I say, hey, I wouldn't do it myself.

Q. I thought you said 100 percent of the females to males inquired about penises? I thought that's what you said. I asked you how many came in and said, female-to-male transgenders, I really hate my breasts. I can't stand having a menstrual cycle and I love looking in the mirror and seeing a vagina because I don't think I have a penis. I don't think I need a penis and I don't think men need a penis?

A. No, I believe what you said, Do 100 percent of them love the vaginas? I said, No, 100 percent do not like the vaginas.

Q. And why is that?

A. Because that is incongruent with their sense of how they see themselves. They don't like –

Q. Absolutely. It would be more incongruity, that's my whole point, if they had a penis to match what is in their brain or their sense of being, correct, Dr. Cole?

A. For many, yes.

Q. For many or for 100 percent?

A. I think probably 100 percent would like to see this gone and whatever comes in its place, again, with the hormone therapy one gets the small phallus, the enlarged clitoris and many are very satisfied with that because they don't want the scarring or the other kinds of problems.

Some want to go the route of phalloplasty and I can certainly refer them on for that, but I think for many

of them it's – they don't have to have a penis to be a man.

Q. Well, for many of them, what we've heard is it's cost prohibitive. For many of them we've heard it's totally unsuccessful. For many of them we've heard it looks like a sausage with a black spot when it gets infected.

For many of them we hear it either falls off or it peels off or it flakes off. For many of them we heard from the plastic surgeon that 100 percent, it doesn't give you any sexual satisfaction.

Wouldn't that be a little closer to the truth?

A. I think so.

(R 1357-60)

Dr. Cole was asked does he have any statistics on how many patients said they were satisfied with their enlarged, elongated clitorises, or dissatisfied and found them satisfactory for sex and unsatisfactory? He replied, as follows:

"Probably 100 percent have told me they are happy. Their periods have stopped with hormones, the clitoris is elongated now, much like a small phallus. It's starting to look right to them. It's starting to line up to them. So 100 percent are happy. How many are happy sexually? He said 100 percent." (TR 1363-64)

He stated he did not ask Michael. The issue was pursued, as follows:

Q. How many of them are happy sexually, as a sexual partner male to female, the transgender being the male, how many of them are satisfied and happy sexually using their elongated and enlarged clitoris for a penis or in lieu of a penis?

THE COURT: I think you said it reversed. You talked about –

MS. WHEELER: Female –

THE COURT: Male to female.

MS. WHEELER: -- I meant female to male. I'm sorry, Judge.

Q. I meant female to male, Dr. Cole, I didn't mean to misrepresent that.

A. I would say, and again, I don't have those statistics, but I would say the vast majority are happy with their sex lives. Many of them will attempt to use the small phallus for intercourse or they may use prosthetic devices.

When I generally ask them about their sexual lives I ask them to share with me if there are problems or concerns. Are they satisfied? Are they happy? I don't always get into the real nitty-gritty and whose on top and all that kind of stuff.

Q. Why don't you tell us how often you have gotten into the nitty-gritty? Let's just try to answer that nitty-gritty question of using the changed clitoris, if you will, elongated and enlarged now by hormone therapy.

Let's talk about how many times you have asked that nitty-gritty question? Ever?

A. Oh, yes, I have.

Q. Could you tell us on how many patients of the ones that presented at Rosenberg did you ask?

A. I don't have those numbers.

Q. You have no clue, do you?

A. I don't have numbers, no.

(TR 1365-67)

The percentage of gender identity dysphoria patients seen at the clinic over the years, amounts to 200 patients, out of which one third of that would be spent on female to male patients. (TR 1388)

Dr. Cole explained the use of the MMPI test in dealing with transsexuals is to identify and rule out psychopathology problems, as follows:

> A. Not necessarily. I think, again, according to the Benjamin Standards you try to rule out psychopathology, so you would use a test like MMPI to rule out other kinds of problems like depression, schizophrenia and so on.
>
> And then the kinds of criteria used to define transsexualism have to do with that sense of persistence and some discordance with perceived self-anatomic self, that sort of thing.
>
> But this test would be used to rule out pathology, not to rule in transsexualism.
>
> Q. Okay. So you don't see a gender disordered person with gender dysphoria, you don't see that as any psychopathology?
>
> A. I see that as not in a typical example of the schizophrenia or affective disorders, the psychopathology of that nature.
>
> Q. So you do or you don't? Maybe I didn't follow you. You do see it as psychopathology or you don't?
>
> A. Oh, I don't.
>
> Q. Well, does Harry Benjamin or the people in the Harry Benjamin Association see it as some form of psychopathology?
>
> A. I don't think so. I believe it's simply seen as a persistent misidentification in terms of that sense of identity with anatomic self.

Q. Okay. Well, let me ask you something, why is it listed as a mental disorder then?

A. Well, I think, as I said in my earlier testimony, that is because it has to do with the mind and distress of the mind it was listed in the DSM way, way back. But there's still controversy even today of having it listed in the DSM as opposed to some other type of medical disorder.

(TR 1395-97)

Dr. Cole explained some individuals could be diagnosed as transsexual and schizophrenic, such as a person could also have diabetes, asthma and heart disease, and have depression and a personality disorder. These additional problems are treated by medicine, such as insulin for diabetes, but none treated by surgery. He was asked:

Q. Okay. So let's just discount diabetes and asthma for the moment, okay. Let's move onto schizophrenia and gender dysphoria.

How is that treated, sir?

A. Well, schizophrenia is generally treated with long term anti-psychotic medications.

Q. And how is gender dysphoria treated?

A. Gender dysphoria is treated with the triatic approach espoused by the Benjamin Association, which involves a real life test, hormone therapy and surgery.

Q. Okay. And when could you – that's the real life test, that's hormone therapy and then surgery, correct?

A. Correct.

Q. And when, according to the Harry Benjamin Standards, is treatment completed?

A. Treatment is – would be completed with the transsexual issue when the person has completed their surgery. As far as the schizophrenia issue, that's a lifelong issue.

Q. Okay. Well, let's just discount schizophrenia for the purpose of this conversation. So would it be your testimony, as an expert in the field of transsexualism and gender dysphoria, that treatment is complete upon surgery and maybe your post-op visit?

A. Yes.

Q. And there's no need for any further treatment?

A. Oh, yes, we recommend follow up. We recommend individuals continue with seeing the therapist or seeing the endocrinologist for hormones and so on, but that is not a mandatory requirement in the standards. It is optimal and advisable.

Q. Okay. Well, let's talk about what you recommended as a follow up. What does the Rosenberg Clinic recommend as a follow up after someone had sexual reassignment surgery? That's how we've been referring to it; is that correct?

A. Sure. Well, once they get to the end of the process what we typically do is request that folks continue to be seen at least during the subsequent year.

We recommend one follow-up appointment during the year just to be able to see if they need any assistance with post-operative issues in terms of legal questions, be able to help and try to identify a physician to continue the hormones.

So we ask that people come back at least one time within a 12, 12-month, 18-month period to see us. Some do, some don't.

Q. And so that's it? That's all that's really required by the Harry Benjamin Standards?

A. That's all we request. But they're going to continue in terms of long term, continue with their hormones with a physician and probably see a counselor as needed.

Q. Okay. Well let me ask you something, specifically as to Michael Kantaras, what I need you to answer for this Court is how you all could write a letter, such as one you drafted, I believe it was you, maybe it was you and Dr. Emory, after the history of what you told us about Michael Kantaras and the number of times and the dates and the reasons that he returned to the Rosenberg Clinic, how you could write a letter that says throughout his period of involvement with our program over the last decade he is evidenced no signs or symptoms of major underlying psychopathology?

THE COURT: That's in Dr. Dies' report?

MS. WHEELER: Right. That's in Dr. Dies' report and it's also in the record and it's in evidence and it was written in 1998.

A. Uh-huh. Yes. Again, based upon my contact with Michael during the intensive period he was involved with us and my psychological testing of Michael I saw no evidence of psychopathology.

And over the course of 10 years seeing him for the four, the five follow-up times he came to the clinic, again, I saw no evidence that he was decompensating in terms of serious affective disorders, major depressions, suicidal thinking, schizophrenic processes. I saw none of this.

My basic litmus test, so to speak, in terms of mental disorders, is when a person is unable to function in the real world, hold down jobs and function in daily life where – or it begins to upset them, when it begins to tip the balance I think that's when they start to have mental problems and a need to see someone.

Based on my contact with Michael during these years of follow up, there was no indication to me

that he was unstable emotionally. He continued to perform in terms of work, continued to have family support, was going through a nasty divorce and custody battle which happens to people, but I saw no evidence of major psychopathology and that would require intervention. And I wrote this letter.

BY MS. WHEELER:

Q. Let me ask you something. When is the last time you administered an objective test, a standardized test, to Mr.Kantaras?

A. 1987.

Q. Okay. So basically you wrote that letter in 1998 and I think you stated that during his continued involvement in our program in the last 10 years.

So really his continued involvement that you've testified to under oath here today that's now part of our record, was really nothing more than subjective involvement, correct? There was nothing objective about your – anybody's contact with Michael Kantaras?

In other words, if Michael told you when you were sitting in a room or he was in group therapy, I'm employed and I go to work every day. Only been late eight times in the last two years. That would be what Michael Kantaras told you, correct?

A. Correct.

Q. And the same with Dr. Emory, she didn't give him any objective tests, any standardized test. So there isn't anything other than Michael's perception or what Michael told you since 1988, correct?

A. Basically Michael's self report, correct.

Q. Right. Michael says, I'm doing fine. I'm happy. I'm happy in my life as a father. It was all subjective information, correct?

A. Correct.

Q. Why is it that you were able to report from 1988 to 1998, which would have been a 10-year period, that there was no signs or symptoms of major underlying psychopathology, thought disorder, as in schizophrenia, mood disturbances, as in major affective disorder, if there was actually no objective information gathered by the Rosenberg Clinic during that 10-year period?

A. Such observations are often made not only with objective testing, but also with a subjective report, clinical experience and observation. But I and my associate signed off on that. We concurred that there was no evidence in our minds of any major ongoing psychopathology with Michael.

Q. But you would agree with me for the record that that was also an subjective observation?

A. Correct.

Q. And subjective evaluation?

A. That's what we do in our business a lot of times.

Q. Well, that's what you do in your business a lot of time, but that's not what you do in your business all the time, correct?

A. Yes.

Q. And that certainly isn't what you do exclusively, i.e. subjective observations to make determinations such as those? Like you certainly wouldn't be here under oath here today telling this Court that you use subjective observations to diagnose the things you ruled out, correct?

A. No, absolutely not. Correct.

Q. In other words, you would never take the stand and say to any judge, I've diagnosed this and I did it by talking to him in group therapy, in a physical thing, in a meeting.

That I did it totally subjectively and I've decided that you could diagnose these things. Do you see what I mean? You're saying that there isn't any evidence and you did it by subjective information, correct, in the last 10 years? Between '88 and '98 there was only subjective information?

A. During that period, yes.

Q. Yes. And it says during the last decade. Let me read it to you again. "Throughout his period of involvement with our program over the last decade he has evidenced no signs or symptoms of major underlying psychopathology." But he hadn't been given any tests between September of 1988 and September of 1998, has he?

A. No, there was no indication to do so.

Q. As a matter of fact, he had only been out there one time in 1989. I think he had called – did you say he called in 1990?

A. I believe so.

Q. Once he called on the phone. And then how many times had you seen him actually by 1998, by the time this letter was written, sir, three times?

A. One, two – yes, three contacts.

Q. Before this letter was written?

THE COURT: I thought there were three. Three or four?

A. Three contacts, '89, '90, '98.

BY MS. WHEELER:

Q. And when was the last one in 1998?

A. It was August of '98.

Q. Okay. So there was three subjective contacts. Did you see him all those three times?

A. Yes, both I and my associate – well, no, I did not because one of them was a phone call, but the other two I saw him both times and my associate saw him both times.

Q. All right.

A. And then the one time with the phone call was just my associate.

Q. And would it surprise you to know that maybe you two were the only two people of the team to see Michael during those three visits?

A. No.

Q. So the team doesn't have to see any follow-up patients, just certain members of the team?

A. Certainly. There are times when people come back to see the surgeons that don't see us or they come see us, don't see the surgeons. At that point there is no standardized protocol requirement.

Q. Well, does the team stop being a team at a certain point?

A. No, we continue to function as a team, but, again, if there's no need for individuals to be seen or approved by the whole team it's much more cost effective just to go to that individual that you need to see as opposed to see four or five people just because you need a prescription or four or five people just because you need to have some surgery done.

At that point you've been approved as a result of passing the psychological tests and so you can certainly make contact with any member of the team that you need to.

Q. Well, is that another indicator that really treatment stops post-surgery?

A. I think that's an indicator that once people get to the end of that process and they're satisfied that there's

no requirement that they have to keep coming in for follow ups and appointments.

It's recommended that they see us, but sometimes they find their own doctors or sometimes they go elsewhere. That's one of the big problems in this area of all of my colleagues is it's very difficult to do follow up because people are happy and just take off. They don't keep coming back and spend money to see the doctor when they're well.

Q. Right. And that would be my next point, that under the Harry Benjamin Dysphoria Association it's also very hard to do research because there is no follow up post-op, no imperative, no mandated follow up?

A. That's correct.

MS. WHEELER: I have nothing further. Judge.

(TR 1399-1415)

## FINDINGS OF FACT

## DR. COLLIER COLE, PH.D., (Continued)

Dr. Cole returned to the stand the next day and the Court asked a series of questions concerning the sex life of a female to male transsexual, generally, as follows:

> THE COURT: Do you ever have a patient who tells you that they would like to have your treatment, let's say you call it triatic, beginning to end, to the point of discharge.
>
> And they are not interested in the performance of any sex. They have no interest in sex. They just want to go through the program to have themselves free of the burden of feeling like, in a situation of a female going to male, they want to release themselves, the burden of feeling like a male in a female body, but the net result is, do they ever say to you, I have no interest in sex? I want to enjoy having the physical appearance of a male your hormone treatments, and the results in your surgery.
>
> Or with a woman, I don't care about my reproductive organs, go ahead and take them out, but I like this hormone treatment. I'll go through all of that.
>
> And after that's all done I want to tell you I don't care about sex? I'm not interested in sex. I have a low libido, whatever you call it. I just don't feel I have any urge sexually to satisfy myself. I'm going to be neutered?
>
> I don't care if I lose all sexual desire. In fact, it would be desirable if I could so I wouldn't have that burden.
>
> Have any of them come to you and said that to you, I don't want to talk about sex because I'm not interested in it as a result of this?
>
> A. The answer to that question, Your Honor, is absolutely, yes.
>
> THE COURT: You have?
>
> A. I have. People do not have this kind of treatment to go out and have sex. They have this kind of treatment so they can feel right about themselves.

And particularly, and again, it's just my clinical experience, older patients tend to say that very same thing.

Younger patients tend to be, and I say younger, probably in the 20s, 30s, into the 40s. I mean, yes, that's important to them to, you know, look male and be male and do this and have relationships, but there are some folks that have come to me and we've operated on people up in their 70s who have come to us and say, I finally want to do this for myself.

I've raised my kinds, my family. I've done everything what people wanted, now it's time for me. And they simply want to live the rest of their lives as a man, as a woman and when you ask them about sex they say, That's not important to me. You know, I've been married or I've been through that. I've raised my kids.

Sex is not a issue – is not a priority. It's more important to them to be able to live as they feel they should live, to be as they feel they should be.

THE COURT: All right. Now the reverse. Let's say I'm young. I'm very interested in sex. I want to go through this program and since I'm starting out as a woman, I've always wanted to be a man, I want to be able to perform and enjoy sex as a man when this is over.

Do they say that to you, too?

A. Sure.

THE COURT: They do?

A. Yes.

THE COURT: Do you have any therapy, any courses, where you teach them how to perform sex in this new body as a male?

A. Well, quite frankly, Your Honor, I don't have to teach them because when they come in they're probably already doing it, meaning they're already

using prosthetic devices, they're already sexually involved with women seeing themselves as a man.

And believe me, Your Honor, under oath, I swear, there have been cases where some of the female to males have had sexual relations with heterosexual women who don't even know they're transsexual.

Now, you might say, How could that be?

THE COURT: Yeah.

A. I ask them the same question, How could that be? And they tell me that, Well, we got back to the place and the lights went out and, you know, I was undressing her and we got into bed and I used a prosthetic device.

And I said, Honey, let me pleasure you and they proceed to have intercourse and these women think it's great and never know that they're not with a biological male. That's what I'm told.

Then later on when some of those women come in they tell me the same thing, they never knew he wasn't a guy. So a lot of these folks are already having sex. So I don't have to do much in terms of educating.

But the best way that I try to educate is simply to ask them, What are you doing now? What have you tried? Here are some things guys try that are in your same situation and then I let them talk to the guys.

A lot of times when they come to those group meetings the guys go off in the rooms and they literally may share and show and tell you where I wrote off and got my device. Here, you write off and get yours. So there's a lot of that kind of peer support in terms of what they do.

THE COURT: Is that at your institute?

A. Yes. Yes.

THE COURT: Is that part of your therapy?

A. Oh, most definitely. I encourage –

THE COURT: To bring them into this group?

A. Sure. Oh, yes.

THE COURT: To experience –

A. As I said earlier, I'm a big believer in peer support. As a doctor I only know so much. I haven't been there myself.

It's important for patients to talk to other patients. That's why we do these kinds of get-togethers several times a year and we have people come back that have completed the process years ago and brand new people coming down the pike have a chance to talk to these folks. It could be very inspirational.

I constantly hear that from new patients that say, Wow, I never thought I would meet anybody like myself. And they come and they're in a room with 20, 30 other people like that, you can just simply imagine how uplifting that could be, much like a support group for the spinal cord injured or others.

And they're able to share tidbits and, of course, I hear these things and then when I'm asked in individual appointments I will share that information, Well, Joe told me this and Bill says he does this. And maybe this is something you and your partner can try and a lot of times they do.

A lot of times they take friends with the other patients and a lot of our folks will get together outside of support group meetings. A lot of them go camping together. I mean, it becomes a social kind of thing because you know somebody else.

THE COURT: So it sounds like they try to stay within the male role sexually?

A. Exactly.

THE COURT: And they may or may not communicate with you about their private sex role. If they do, you respond, give them guidance. As you've been saying, you give them peer involvement with a group and so forth.

In other words, you respond in a positive fashion to encourage their sexuality?

A. Correct. To experiment and find what's comfortable for them and for their partners.

THE COURT: Right. Have you had occasion now to call the partners in and talk to them without the transsexual being present to find out how their partners are responding to all of this?

A. Oh, definitely.

THE COURT: You have?

A. Absolutely.

THE COURT: You make notations? In other words, they fill out forms? Do you give them some written tests or anything like that so you could gather and do statistical information on what their reaction to it is?

A. I guess – do they fill out questionnaires? No. Do I make notes? Yes. As I've said before, we're somewhat limited in our clinical practice to be able to do the fancy research I wish we could do.

THE COURT: Yeah.

A. But what I often do is I will ask the female partners, How is it going sexually with Bill or with Joe?

THE COURT: Right.

A. And they'll describe, Hey, no problems, we're doing great. Or they may sometimes say, Gee, he's still a little uncomfortable with me touching his chest or seeing him naked.

That's classic in almost 99 percent of the cases. At first most of the guys will keep pants on or keep a shirt on because they don't like what they've got, they don't want another partner to see it, they don't want another partner to touch it. It's almost like it's very aversive to be touched.

They will do a lot of activities –

THE COURT: You mean to touch the scars –

A. No.

THE COURT: On the chest?

A. Pre-surgery.

THE COURT: Oh, pre-surgery?

A. Yeah. When they first come in they don't want a partner to see there's nothing down below or see breasts. I mean, they really dislike their body. So when they do engage in sexual activity it's usually much more in the giving role to the partner –

THE COURT: This is the woman?

A. This is the female to male, to the woman.

THE COURT: Female to male, correct?

A. The woman will come in and say, Gee, he won't let me touch him. And I try to explain that's part of this whole scenario. That he's uncomfortable with what he has.

And sometimes down the road, then, with comfort in a relationship once the woman knows and is aware, I have had those women come in and say, He's getting better. I mean, now we could have sexual relations and he doesn't have anything on.

Does that mean that's lesbian? No, it doesn't. It just means that the person is comfortable now with his partner and trusts his partner not to ridicule or do anything.

Again, 99 percent of the males don't want to be touched in the genitals, don't want anything inserted in their genitals because they don't like it.

Now, after surgery, again, the same thing, I will have the women come in and I will say, How is it going now? And I will hear the stories about, Well, gee, it's small, but we have fun playing around or we still use a prosthetic device.

Or for those individuals who have had phalloplasty they say, We enjoy that, too. Does it normally get erect? No, it doesn't. Sometimes you have to use devices to provide an erection, but I think partners can accommodate that.

Again, as with any sort of disability, I'm thinking again spinal cord injury or others where people have to just be flexible, have to try different things for fun and arousal.

As a sex therapist the prime thing I have to teach people the goal of sex is not to have intercourse or orgasm, the goal of sex is to have fun, to be together, to enhance the relationship.

If you have intercourse, great. If you have orgasm, great. If you do this or that, great so as long as you're feeling good about that encounter.

I mean, what has happened certainly in the standard populations that I see, just the normal men with sexual problems and women with sexual problems, so often their problems largely come from that notion that as a man I've got to have a big penis or as a man I've got to give her an orgasm and people get themselves set up for all sorts of trouble.

Along comes a spinal cord, along comes a heart attack, along comes something like this, then I have to really go back and re-educate them and say, Wait a minute. You're thinking wrong. There's a whole menu to sample from, not just one thing.

> And the same thing often goes here with the transsexual guys is just to let them know, Hey, there's a lot of capacity you could do to be a loving man to your woman.
>
> And I talk to the woman, too, there are a lot of things that you could do to be loving and caring to him. If he doesn't want you to touch him in those spots, fine. Find that earlobe, find that whatever special spot is and have fun.
>
> And in most cases they do. And those are individuals who want to be sexy and sexual as compared to those who sometimes they just don't care. They have a low libido. It's not an important thing. They maybe have had bad relationships in their past.
>
> I mean, there are a lot of people that had bad marriages and decided I ain't going to marry again. I mean, that happens.

THE COURT: What if, now this is the proverbial question, the partner, woman, says, When I get in bed with my transsexual partner, to me he's more woman.

He still is a woman. He's not a man. Doesn't perform in any way like a man. And, as far as I'm concerned, he hasn't crossed the barrier. He's still a woman. And I'm a woman. And I'm a woman having sex, I feel, with a woman.

She says, I'm troubled. I'm his partner. Should I tell him that he's having sex with a woman as a woman? What should I do? Should I leave this relationship? She pleads with you to give her some understanding.

Have you faced a situation like that? Have you had that problem come to you?

A. A variation of that.

THE COURT: A variation?

A. By that I mean, I've never had anyone come to me and say, He's still a woman and I'm a woman and this is lesbian and I don't like this.

I mean, by that point usually that person has left very early on in the relationship. Usually at the point where the person has disclosed I'm transsexual, I was born a woman, and at that point the person may react negatively and off they go.

I mean, they may love the person, but they say, Wait. I'm a woman. I can't handle this and that happens, and nobody is at fault.

More commonly, and I guess commonly, in that, I've seen this several times, a woman will come later and say, Look, he's a guy. I know he's a guy, but he just doesn't have a penis and I need to have a penis to satisfy me. That happens.

And I know there have been some relationships that have broken up because of that. Is that right or wrong? I don't think so. It means that they simply can't meet each other's needs.

Does that mean the man is less than a man? No. This is a woman who wants a particular kind of sexual stimulation. Maybe she's a woman who wants a vibrator. Maybe she's a woman who wants sex 10 times a day.

I mean, some men can't meet that. So fine, the relationship ends. I don't think it has to do with somebody being less of a man or something, but, yes, there are women that – and I think some women out there, that size is all important to a penis as such.

And I try to counsel them to maybe try some experimentations or other things, prosthetic devices, but there does come a time when a woman just – and I'm familiar with a couple of cases like that where she says, We can't make it because I need this and he can't provide it, so they split.

THE COURT: Okay. To get into this – is there a possibility that a woman has sort of a natural instinct, to be able to recognize another woman in bed?

In other words, the transsexual may be telling you one thing, but you're not getting in bed with a transsexual. You're relying purely and simply upon what you're told. Whereas the partner goes beyond and actually gets in bed.

Then, based upon the natural experience of her as a woman, she psychoanalyzes her partner in her way, not an MMPI. She doesn't give him a whole list of questions and say, here, answer those question on the wall in the bedroom.

She just knows, instinctively, or feels her psyche is that he hasn't crossed the barrier. Whether he knows it or not he's still a woman. He tried hard. Went through all the efforts, sincere as he can be. He wants to do it, but, I'm sorry, she says, in my opinion, not as a psychiatrist or a psychologist, just as a woman she says, he didn't make it. I feel sorry for him. Wish he had, but . . .

A. I guess I've just not really seen that.

THE COURT: Yeah.

A. I think what I have seen in cases where somebody may present as a male, let's say this person they meet each other and he says, Hi, I'm Bill, I'm the guy. And the female sort of say, Oh, okay. Hi, Bill. But sometimes in the back of her mind she's wondering is that really Bill or is that somebody else? But they don't say anything.

But maybe they start to go out and they start to date and he's coming to me saying, Oh, I've met this woman. I'm all nervous to tell her about it.

And I say, Well, you need to say something. When things look like they're getting involved I always advise people to tell. Not to keep that a secret from a partner.

Then he does tell her and I've had cases of this where she then comes in and says, I knew. It wasn't a big deal to me.

THE COURT: She knew he –

A. She knew he was not anatomically male. They may or may not have had sexual relations, often they have not because they've started to date and go out and do things together, but he perceives himself as male, introduces himself as male.

She recognizes that. I mean, that's what he says, but she has kind of that inkling. Usually I hear this after the fact when he then brings in the girlfriend, he's told her about himself. She says, Oh, I already knew or it makes no difference, I care for you.

Then they share that story with me and I can add it to my, you know, anecdotal repertoire, but I've heard that happen.

But there are cases where some biological women will stay with the men and some won't.

THE COURT: Well, have you faced a situation where she tells you that he hasn't made it. He has not successfully –

A. Been able to satisfy her –

THE COURT: Well, no. She analyzes his personality in bed and being around him. And she says, You may have discharged him. As far as you're concerned your treatment was successful. She tells you, It didn't work. He's still not over the barrier. He might want to be, but he hasn't made it.

A. I can't honestly say I've seen a situation like that, if you're just basing it on sexual performance in bed.

I guess the only thing that I can think of are those cases where I said that she recognize he's a male. He's working as a guy. He's a good man in public. Everybody knows him as a guy, yet in the bedroom she's not satisfied and may think I've got to have this or he doesn't' have that. I've seen those situations.

> But, in my estimation, that does not detract anything from that individual being male. I mean, there are men who are well-endowed and men who are not well-endowed in the real world.
>
> And some men are good lovers, I mean, that's kind of learned, and some men are lousy lovers. People have got to talk with each other to try to improve a sexual relationship.
>
> So that's one of the steps that I try to do is encourage them both to talk, express their needs and wants, but sometimes it doesn't work out, as with non-transsexual people that I try to counsel around sex therapy. I try to counsel about things to try to do, but sometimes it just doesn't work. The relationship is just gone too far down south.

(TR 1416-46)

Dr. Cole stated there are approximately 40 gender programs in this nation that are very respectable and members of the Harry Benjamin Association run them, some are University affiliated and some independent. (TR 1446) They all attempt the team approach, and do exactly the same as the Rosenberg Clinic. The Clinic offers the most comprehensive program in Texas. There are specialists and programs in Louisiana, Illinois, Missouri, California, and Washington state.

Dr. Cole's experience with the team at the Clinic, is that they do not rely on a birth certificate to indicate the sex of a patient. Rather, they rely on the physical exam all applicants at the Clinic must undergo. A birth certificate merely reflects what the doctor saw by way of genitalia on the body of the baby. If a physical exam reveals ambiguous genitalia, the team would start chromosome studies to look into the possibility of an inter-sexed patient. The birth certificate alone does not decide. (TR 1456)

In the notes of Dr. Cole he recorded his observations of Michael Kantaras during the period from 1985 through 1987. He was on hormone therapy and Michael's voice became lower. He got more hair on his chest and legs, increased muscle mass and had growth of the clitoral tissue. Increased libido, and a notation that Michael thinks only about food and sex. (TR 1457-58)

Returning to the subject of parenting he said the fact that someone is a transsexual "doesn't have much relevance to their abilities as a parent." (TR 1463)

Returning to the subject of sexual fantasy Dr. Cole was asked the following:

> Q. Dr. Cole, very briefly, I just want to revisit this sexual fantasy issue to make sure again that we've got your testimony clear.
>
> Did you testify that in your clinical experience when you were talking with transsexual men, female-to-male transsexuals, about their sexual fantasies, they have consistently told you that they see themselves as men in their sexual fantasies; is that right?
>
> A. Absolutely.
>
> Q. Now, to our knowledge as a sex therapist, do most non-transsexual men also see themselves as men in their sexual fantasies?
>
> A. Absolutely.
>
> Q. I just want to check. So when you testified that most transsexual men see themselves as men in their sexual fantasies, did you intend to suggest or imply in any way that a transsexual man cannot, in fact, function sexually as a man and, therefore, can only fantasize about it?
>
> A. Absolutely not.
>
> Q. Now, based on your clinical experience and knowledge, is there anything inherent in the nature

of being a transsexual man whose undergone sex reassignment that would prevent him from having a satisfactory sexual relationship with a heterosexual woman?

A. Not at all.

(TR 1475-76)

Dr. Cole testified the survey conducted through the mail of their post-operative patients showed that among the female-to-male persons, there was reported some dissatisfaction or poor techniques with the phallus, and scars on the chest from reconstruction. "Well, I think 100 percent of them would like to have a fully functioning phallus, but medical science isn't there yet. Many of them simply have to do it (intercourse) do with what they have until something better comes along.

Dr. Cole stated "Well, first of all, there's no perfect cure for this disorder. It is rehabilitative in nature. And right now we just don't have the skill or the techniques to, in my estimation rehabilitate in that satisfactory area. So I think what a lot of the guys do is they just recognize its not here yet, I'm not going to worry about it." (TR 1484)

Dr. Cole went on to explain, as follows:

Q. Is disappointment in the sexual arena a common complaint that you hear from your female-to-male transsexuals if you were going to rank the concerns and issues? Is that one of the more common complaints?

A. Disappointment in the sexual arena?

Q. Like inability to have a good sexual relationship or –

A. Well, I think they are capable and they do have good sexual relationships and, yes, they wish they could have more. But, at this point in time, I think most of them recognize that they don't want to go

the route of the cost, of the lack of a guaranteed success, and would rather wait and simply get on with living their lives or using their prosthetic devices during sex or things like that.

I mean, sex is not something that they're doing 24 hours a day. You know, they recognize there is some limitations there, but I think a lot of them can function given those sort of limitations. They seem to be happy.

Q. So one last time, in your clinical experience, it's been your observation and experience with your patients that you've discussed this issue with that transsexual men, who've undergone sex reassignment surgery are generally able to have a satisfactory sexual relationship even if it's not everything that they might wish they could have if they had a fully functioning standard sized penis?

A. That's correct.

(TR1488-89)

This concluded the testimony of Dr. Cole.

## FINDINGS OF FACT

## CUSTODY EVALUATION

## DR. ROBERT R. DIES

Dr. Robert R. Dies, 5610 Grand Boulevard, New Port Richey, Florida, took the stand. He was the court- appointed independent custody evaluator in this case. He testified there have been three "therapists" involved in this case, the most recent psychologist was Dr. James Boone, who conducted 16 sessions with the family members.

Prior to Dr. Boone, was Dr. Lonnie Shelef who saw the family between January and June, 2000. And then prior to Dr. Shelef there was Ms. Glenda Davenport who saw the family in the fall of 1998 and again in 1999. (TR 580-81)

Dr. Dies is a clinical psychologist, who's career has spanned over 30 years and the bulk of that time he was a Professor of Psychology at the University of Maryland. He taught courses in psychological assessment and maintained a private practice throughout that time. He also traveled all over the country conducting workshops for psychologists on how to conduct assessments. He left the University of Maryland in June of 1996 and entered full time private practice, first in Tampa for two years and opened his own office in January of 1998.

In private practice he has devoted himself to psychological assessments, therapy and serving the court system in terms of competency evaluations, incapacity evaluations and guardianships and particularly focused on personal injury cases and child custody work. He *curriculum vitae* lists 300 publications and presentations. There are roughly 115 publications included.

He obtained his degree from the University of Connecticut and worked for one year after that at the University of Kentucky.

The *curriculum vitae* was received into evidence as Petitioner's Exhibit No. 4. (TR 584-87)

Dr. Dies briefly explained the Kantaras family history as follows:

> BY MR. VAUSE, ESQ.
>
> Q. Can you briefly explain the Kantaras family history up until the time of involvement?
>
> A. My understanding is that Michael and Linda worked together, developed a friendship, and out of that friendship became very close to each other. They got married in 1989.
>
> At that point Mrs. Kantaras was fully aware of Michael's transformation. At the time Matthew was born, it was , I believe four months prior to the marriage.
>
> Michael quickly adopted Matthew. And the couple then decided to have another child and through the donated sperm of Michael's brother, Tommy, Irina was conceived, and she was born about 10 years ago. As you know, she just had a birthday.
>
> The couple stayed together for approximately nine years and then separated in 1998. And that's their history. I became involved in the case in April of '99.
>
> Q. After you were appointed did you conduct an evaluation of the Kantaras family?
>
> A. Well, the history is a little different than that. When I first became involved in the case I was contacted by attorney.
>
> I was contacted by Mr. Peter Brick, who was then Linda Kantaras' attorney. And at that point I was asked to conduct a psychological evaluation of the

children and only the children, which I proceeded to do starting in April of '99.

And I worked with Linda and the children over a period of time and testified in court in December of that year, continued to work with Linda and the children, but subsequently became appointed by the Court to do a custody evaluation at which point my role shifted. I then began to do my evaluation of both parents and continue to work with the children.

And so I have had that new role since roughly August of 2000.

Q. So your original report was the result of a gathering of information over a two-year period; would that be accurate?

A. That's correct. I filed my final report in April of 2001 and it began in April '99.

Q. And in that report of April 2001 you rendered your professional opinion as to who would be the best parent for the children as far as being the primary residential caretaker?

A. Yes, I did.

(TR 582-84)

**A. <u>Custody Guidelines.</u>**

Dr. Dies testified in his original report regarding his recommendation as to which party should be the primary residential parent of the children in this case, he followed the guidelines listed in the Florida Statutes, utilizing 10 out of 13, saying he relied heavily on the first 10 criteria. He actually devoted a considerable portion of his report to that first criterion, which said, from a wide variety of sources, including the reports from the children, the reports from Mr. Kantaras, and the reports from the three different therapists, and from Mrs. Kantaras's own admissions and various behaviors he observed,

from multiple and extensive sources of information, it became "clear to him that Mrs. Kantaras over the span of time that he worked with the family, she repeatedly and consistently undermined the quality of the relationship that the children had with their father." And this is relevant to the tenth point as well. "She interfered with visits, in many ways down graded Michael, blamed him, faulted him, and essentially made him look bad in the children's eyes." "It was very difficult for him to find that Mr. Kantaras had behaved similarly. So it became very clear to me that this was a core issue in this case." (TR 587-89)

The first criteria that applies to custody evaluation, that he was referred to says: "The parent who is more likely to allow the child frequent and continuing contact with the non-residential parent" (page 12 of his Report). Dr. Dies stated his conclusions in that regard as follows:

> A. Well, very quickly, because it is rather extensive, the kids, in numerous interviews, in structured interviews and more informal contacts highlighted how their mother would disallow them to talk with their father on the phone.
>
> How visits were sometimes interrupted. Two therapists, Dr. Boone and Dr. Shelef in particular, highlighted Mrs. Kantaras and her frequent efforts to interfere with visitation. And they gave example of cancelled sessions, they gave examples of not allowing both youngsters to attend for one reason or another.
>
> They even talked about how she interfered. She admitted interfering with visitation. Those are quotes from the therapists. Certainly there's information from Mr. Kantaras, but in custody cases I'm very reluctant to trust either party because obviously they're biased on their own behalf.

So whenever I get that kind of information I confirm it with independent sources. There are –

Q. Let me interrupt you just for a second. Regarding independent sources, I noticed that you included a quote from Ms. Glenda Davenport under that first criteria section in your report. Ms. Glenda Davenport was a therapist that was involved with the family several years ago; is that correct?

A. This was the initial therapist who worked with the family.

Q. All right.

A. And that quote is there in my report.

Q. What is that quote?

A. Ah, she asked how the children – how their visits were going with their father and then what I quote is that they feel torn that their mom is attempting to stop visitation.

Q. And I noticed that you state in your report that this quote is from session notes from the spring of 1999; is that correct?

A. That is correct.

(TR 590-91)

Michael's parents observed the interruption and disruption and they shared with him their own frustration that their visits and Michael's visits were interfered with. (TR 592-93) Dr. Dies stated he utilizes a questionnaire which he prepared based on his review of the custody literature and what other evaluators have used. And there are various questions on the questionnaire regarding the kind of visits that would be appropriate and a range of other issues. And he said, the following:

And I give a quote there when the question was, What would be the ideal custody and visitation

arrangement for your family? And Linda wrote, That I have full custody. Michael has no visitation until Michael has good counseling.

And then when she talked about the advantages and disadvantages of joint custody she relayed, There are no advantages. The disadvantages are that Michael don't listen and hear what Matthew and Irina say.

Michael in contrast talked about his willingness and eagerness to have both parents involved in the children's lives. He said, Joint custody with open and liberal visitation, shared holidays, successful phone contact, active involvement in schools, doctors, and social activities.

And in terms of the benefits and drawbacks of joint custody he wrote, The advantage would be that the children would feel loved and safe by having both parents in their lives. And the –

Q. That is a direct quote from –

A. That's a direct quote.

Q. -- Michael Kantaras' written materials provided to you?

A. That's written material provided by both parties, yes.

Q. About the first criterion contained in the Florida Statutes which you applied in this case which is that you need to consider the parent who is more likely to allow the child frequent and continuing contact with the non-residential parent.

What are the, or what is the view of the psychological community regarding the importance of this criterion?

A. In a survey and this is a survey that's been done numerous times among attorneys, custody evaluators, and judges that particular criterion emerges as one of the two or three most important.

> And there is considerable consensus on that, among those three groups.

(TR 593-95)

Dr. Dies was asked if the questionnaire told of the attitudes of both Linda and Michael towards allowing the non-residential parent frequent and continuing contact? He responded:

> A. I think the quotes and I just read adequately summarize that and convey that Mr. Kantaras would be very supportive of Mrs. Kantaras being actively involved in the children's lives.
>
> In contrast, the responses that I retained from Mrs. Kantaras, not only on the share parental responsibility questionnaire, but elsewhere, would suggest that she was adamantly opposed to frequent and continuing contact between the children and Mr. Kantaras.

(TR 596)

**B. <u>Guideline Criteria.</u>**

Dr. Dies reached his conclusion with regard to <u>criteria one</u>, for custody evidence strongly favors Mr. Kantaras. Linda's "resistance to frequent and continuing contact would escalate when the children would have the opportunity to interact with Michael's partner Sherry." (TR 596)

Considering <u>criteria three</u>, it reads: "The capacity and disposition of the parent to provide the child with food, clothing, medical care of other remedial care and other material needs."

Rather than answering questions about that criteria, Mr. Vause, diverted the witness with other criteria, saying he would return to the third criteria. Next he asked about <u>criteria six</u> in his Report, as follows:

> [O]n your last page of your report you state that under criteria six, Michael Kantaras appears to reflect moral value as an effective role model. And in parentheses you state, this is not a religious issue, but an ethical one.
>
> Could you please explain what criteria six is and what you found in that regard regarding Mr. and Mrs. Kantaras?
>
> A. The statement as listed in the Florida Statutes simply says, the moral fitness of the parents, and it doesn't define what that means. What I said, essentially in my report, was that in terms of some of the traditional ways we look at morality, criminal record, abuse of the children, physically or sexually, drug or alcohol abuse, that neither parent displays those kind of behaviors.

(TR 597-98)

Now, asking about Criteria Ten, he said:

> Under criteria 10 you state that he, meaning Michael Kantaras, is much more likely to foster a close and continuing relationship between the children and the other parent. That seems very similar to criteria one.
>
> Can you explain that criterion and its importance?
>
> A. Well, the verbatim statement in the Florida Statutes for Number 10, is "The willingness and ability of each parent to facilitate and encourage a close and continuing parent/child relationship between the child and the other parent."
>
> And by this point in my report I had reviewed earlier the substantial evidence of Linda's continuing interference with visitation, significant name calling of Michael, blaming Michael and Sherry for the marital breakup, using various tactics to essentially threaten the children and denigrate their father.

And I cite that information on page 11 of my report in which, for example, Linda used a variety of foul and profane language to describe Michael as well as his significant other Sherry.

The children were making statements that clearly could not have come out of their imagination and their own minds. Irina, at one point in therapy with Dr. Shelef, I think this was very early in that treatment, spontaneously in confronting Michael said, You need to have privates and balls to be a man.

And in subsequent interview with Matthew after he strung out a series of criticisms against Sherry, he ended up calling her a slut. And I said, What does that mean? He didn't know the meaning of the word. And I suggested to him that was a word he probably should not be using. That was not a kind word.

Q. How old was Matthew at the time?

A. At that point Matthew would have been 10 or 11. I'm not sure.

Q. And Irina would have been eight when she talked about privates and balls?

A. Correct, with Irina. Yes. The point being, is that there are all kinds of evidence to that effect that led me, under criterion 10, to talk about Linda interfering with her – of Michael's relationship with her children.

I give an example of a session I had jointly with Linda and the children as we were sitting in the waiting room after I had talked with the children separately. We ended that session with a joint conversation.

And in that April of 2001 interview in the children's presence she portrayed Michael as the troubled individual living a lie because of his gender reassignment. The children have often heard Linda, and they report this in numerous occasions, hearing

> Michael described as a woman, an it, a he-she and given the name Markel which is a contamination of Margo and Michael.

(TR 603-06)

An interview in February 2000, with Linda's brother-in-law called "Uncle Billy" and her sister, called "Aunt Crystal," provided the following information to Dr. Dies:

> A. These are – when I asked both parties for collaterals, meaning people I could interview to help support their case, Linda provided the name of Uncle Billy and Aunt Crystal who live in Michigan, but who were visiting in February of 2000.
>
> So I had – 2001. So I had the opportunity to interview them. So I spoke with them on the phone for approximately 15 minutes each. And in the context of those two interviews it became very clear to me the kind of labeling, name calling, denigration of Michael that was occurring within the household.
>
> Within the first minute of my conversation with Uncle Billy he said, Can I use the word Margo? Do you see Margo as a man or a woman? And during my very brief interview with him he called Michael an "it" many times and described how he, meaning himself Billy, and the children joke about the contrived name Markel and how he-she behaves.
>
> Q. So Uncle Billy was joking with Michael and Linda's children about Michael's gender.
>
> A. Correct.
>
> Q. Okay.
>
> A. And the same thing happened – and there are comments there in my report. The same thing happened with the aunt who also said, We act toward him, Michael or Markel, as a woman, not a man.
>
> When asked about Michael's significant other Sherry the aunt noted that although she's never met

> the woman from what Linda tells me she's not nice. She has no values or morals. She is a sick person. There are all kinds of weird, twisted stories about Sherry.
>
> So I concluded from that that not only were Uncle Billy and Aunt Crystal interacting with the children in these insidious and derogatory ways towards Michael, but it was kind of the environment within the household.
>
> And I took that and contrasted it with how the children and Michael have described James, at that point, Linda's significant other. And throughout the course of my interaction with the children and Michael and asking questions about their attitude toward James all of them were very supportive.
>
> Michael, for example, says on the shared parental responsibility questionnaire I put together, he says he talks very positively about James. And he's always civil toward him. The children do well with James because I talk positively about him to the children. And there are other comments like that.
>
> So basically he was not putting James down or compromising the quality of that relationship. Nor did I ever hear from Michael in any of the written materials, any of my interviews, nor from the children any derogative labels that Michael put on Linda.
>
> He describes some of the behaviors he found offensive, such as her angry outbursts and her lying, but he never called her names. So on the basis of that kind of evidence I essentially concluded that on that 10th criterion that the evidence clearly favored Michael.

(TR 606-09)

**C. <u>Children Attitudes.</u>**

Dr. Dies had six interviews with the children before they began to get therapy from Dr. Shelef. His first interaction with the children he found they were positive

toward both parents. They had a change in attitude toward their father over a span of time. His first meeting with the children was in April of 1999 when he was hired by Mr. Peter Brick, Esq., who represented Linda, to be a spokesperson for the children in court. He conducted a psychological evaluation and a structural interview of the children each separately at that time. "It was real clear that the children at that point were favorably disposed towards Michael." They certainly didn't like the separation of the parents in marriage, and were critical of the relationship between Michael and Sherry but in terms of their attitude towards their father, they were very positive. (TR 611) In answer to a sentence completion test asking Matthew what he wanted most to do, he wrote "What I want to do most of all is go fishing with my dad." Irina said "the most important thing is, is that my mom and dad love me." (TR 612)

Three months after his initial contact with the children, he observed "that they were much more outspokenly negative toward their father." (TR 613) He gave examples, as follows:

> Matthew saying, I don't like dad. He's a jerk. I can't tell him what I feel because he might try to hurt me. He's done it before. He then went on to describe an incident when he was five years old when his father threw him against a wall, is the way he described it.
>
> In that one instant Matthew never confirmed other examples of Michael acting in any abusive manner. And, indeed, Michael's description of that whole situation was very different, he stood him against the wall firmly. But Matthew hung onto that idea and it was frightening at the time.
>
> Matthew indicated that his mother wanted to get custody. And he said, she says bad things about his father. And I hesitate to quote what it says because it's rather foul language, but it's in the children's

words, quote, "That he's a prick." Excuse me. And "the F-word bastard."

Matthew also mentioned that Sherry and Michael are planning a family and he says, I wish I could punch them, Sherry and dad. I don't like Sherry, she's butt ugly.

During that interview in July of '99 Irina was neither outspoken nor negative. And generally she shared positive feelings toward her father and about the visits they had and about Sherry and Sherry's three daughters.

Probably the most critical thing that dramatically escalated the level of hostility of the children toward their father happened in November of that year –

Q. Before we get to November of that year, do you have an opinion as to why Matthew was becoming so hostile towards his father?

A. Well, I think the quotes that I just read is that his mother essentially was faulting Michael for the divorce, blaming him, calling him these names, these rather foul names and those are quotes from Matthew.

So my sense was that at that point Linda was seriously labeling Michael, putting him down, and essentially blaming Michael and Sherry totally for the marital failure.

At no point in any of the interviewing or any of the written materials that I read any acceptance or responsibility for the marriage failing at no point did I hear Mrs. Kantaras ever say anything about Michael and – to the children to suggest that she had loved him as a man and that the children should recognize that, that there was a bond, there was a relationship. None of that was ever there.

(TR 613-14)

**D. <u>Shared Parental Responsibility.</u>**

Dr. Dies was asked about the shared parental responsibility questionnaire that Linda filled out and what it reflected about her attitude. He replied:

> A. Her response to the questionnaire well, the questionnaire does a number of things; it asks the parent to essentially give their appraisal of the other parent.
>
> I provide a list of adjectives. For example, there are 30 adjectives that I carefully selected, 15 of which are negative, 15 positive and I say, which of these adjectives characterizes the other parent particularly in their relationship with the children.
>
> And on that list of adjectives she judged the quality of Michael's relationship with the children as negative, hostile and rejecting. Depicted him as controlling, manipulative, selfish.
>
> She talked about him in her own words now, and I'm quoting her, "very controlling, manipulative, confused, selfish, he lies, hormonally unstable, bad temper."
>
> I then provide in that same –
>
> Q. Just so we're clear, those are the written words of Linda Kantaras?
>
> A. Those are her written words, yes.
>
> Q. Okay.
>
> A. I then provide a list of potentially either inappropriate, immoral or illegal behaviors that are mental health issues the parents might display such as sexual abuse, physical abuse, alcohol abuse, drug abuse, hurting the children in any way, being mentally unstable and so on.
>
> And on that simple list – she expressed concerns about drug or alcohol abuse, neglect of the children, emotional abuse, physical abuse, child snatching,

> Michael's own poor physical health, his mental health, potential for both violence and suicide.
>
> So she virtually checked every category. Her depictions of Michael were extremely negative and not at all consistent with any of the evidence I gathered from other sources.

(TR 615-19)

**E. <u>Disclosure to Children.</u>**

The attitude of Matthew toward his father in April 1999 was positive but by July, 1999, Matthew's attitude was changing "significantly." Then in November of 1999, a significant thing happened, as follows:

> A. In early November, the first week of November, I received a telephone call from Mrs. Kantaras labeled as an urgent message.
>
> What she shared with me was her considerable concern that the facts regarding Michael's sexual transformation were becoming known to teachers and the children at the school.
>
> She described how she had been called into one teacher's office and informed that people know about Michael. And she expressed considerable concern that she did not want the children to hear about Michael from other children. She thought they would be embarrassed. She thought they would be humiliated.
>
> And she certainly didn't want the children to be called aside by teachers and informed about their father. So she felt it imperative that she tell the children what was going on with Michael.
>
> The way she describes the situation is that Uncle Billy and Aunt Crystal were in town and they wanted to do it as a family. Linda felt it was such a loaded issue that she wanted support and so she felt it would be appropriate for her sister and brother-in-law to be part of the process.

Q. Is it the same Uncle Billy and Aunt Crystal who you later spoke with and interviewed and they referred to Michael as "it" and she?

A. Yes, the same couple.

Q. Okay. So those are the persons that Linda told you she wanted to have present when she disclosed to the children Michael's gender change?

A. That's correct.

Q. Okay.

A. Well, as it unfolded there indeed was the disclosure to the children. And at the same time the children learned not only that their father was born biologically a woman, but obviously that their father was not their father.

Now, up until that point my understanding is that both children looked at Michael as their father. All right. But because of this disclosure, it became clear to Matthew that his real father was someone else and he was given the name of that someone else, which I don't need to label. And Irina apparently learned how she was conceived.

So not only were they told about Michael, the transgender issue, but also that Michael was not their father. So obviously the children were rather shattered by that disclosure or those disclosures, it would be a shock to anybody.

Q. Irina was eight years old at the time and Matthew was ten years old?

A. Yes.

Q. This disclosure to the children occurred at a time when Linda was not allowing Michael to have any visitation with the kids; is that your understanding?

A. No, I don't think that's accurate. I think visitation was limited because I subsequently met with Linda

and the children because they were to see Michael on the following Wednesday.

I think the disclosure to the children happened on Friday. And they were to see Michael shortly thereafter, I don't recall the exact dates. And so the question was, how do we handle the visits? So there was some visitation going on.

Q. But you're talking about the Wednesday following the disclosure?

A. That's correct.

Q. Are you aware that that visitation did not take place?

A. That's my understanding it did not take place.

(TR 617-21)

The effect on the children of the revelation that Michael Kantaras was not only not their father but that he was also born a woman, was described by Dr. Dies as follows:

A. Well, certainly when I heard from the children now that they knew of the issue was a variety of terms. This is where the he-she, the Markel, this is where the whole concept of Michael being gay or Michael being a lesbian, all of these issues came up in our subsequent meeting, my meeting with the children.

Matthew said, They're both retarded, meaning both parents. And she said – Irina said, They should not have brought two children into the world. We discussed what a lie meant because obviously it was a lie that was promulgated for years in this marriage.

And that lying is bad, says Irina. And she turned to her mom and told her mom that she should ask for forgiveness. They had the attitude that Michael should have completed the third step essentially getting an artificial penis attached to become a man.

Q. Where do you suppose they got this idea of Michael needing to complete the third step?

A. Well, it would be mildly speculative on my part, but I don't know of any other source except their mother or their aunt and uncle. I mean, it was within the family, certainly. It couldn't have come from anywhere else.

(TR 621-22)

When Linda called Dr. Dies about Michael's condition being discussed with her by a teacher in the teacher's office and did not want the children to hear about it, and therefore she, Uncle Billy and Aunt Crystal took it upon themselves to make the disclosure to the children. Dr. Dies gave advice to Linda during that phone call to be sure to take notes and record the children's reactions.

And, the notes were taken by two of the three adults and they reflected the reactions of the children to the disclosures, as follows:

> And the notes indicate the children were quote, grossed out, which is understandable given the nature of the disclosure. That the children were feeling sick. The children were saying awful things like, Oh, my God. Matthew said, I kissed a he-she was his reaction. So it was obviously an extremely upsetting event for the children. And it was –
>
> Q. Clearly Irina got the idea that Michael did not complete his surgery from either Linda or Billy or Crystal?
>
> A. That's correct. Matthew at one point subsequently said, If he really loved me he would have become a man, meaning getting that third step completed.
>
> Q. So the message that both children got from this disclosure from Linda or Billy or Crystal was that Michael is a woman?

A. Yes. And that's what launched us into the discussion of what is homosexuality? What is a lesbian? What does it mean? We talked subsequently, does it mean that mom was a lesbian because she had a relationship with Michael?

And the conclusion was, no, mom wasn't a lesbian because mom thought Michael was a man and that's the way it was described throughout the marriage. But it certainly raised questions in the children's mind about the whole concept of homosexuality.

And obviously they're not going to understand that transgender and homosexuality certainly don't mean the same thing. They're very, very different concepts.

(TR 623-25)

Michael was not invited to be present with the children when Linda decided to "reveal all" but the question arose how did this information about Michael get out into the community? Dr. Dies pursued that issue, as follows:

Were you able from independent persons to find out who was disclosing to people Michael's gender reassignment?

A. Well, first Michael had provided me with a list of names because he categorically denied that he was disclosing to anyone about his gender reassignment.

So he provided the names of three individuals Denise White, Diane Barber and Monica Jordan, as well as his sister, Cathy Denowitz (phonetic).

I subsequently called all four of those people, two of whom confirmed that Linda had approached them and disclosed facts about Michael's surgery and that they were not, prior to that, aware of that.

So, it was clear that Linda was sharing that kind of information in the community, at least to several people.

Q. So, based on your interviews of these third parties, would it be fair to say that the situation where word was getting out which Linda used to justify informing the children about Michael's gender reassignment may have been created by Linda Kantaras herself?

A. I think I'd rather put it this way: That is certainly Mr. Kantaras' position. I have no way of independently confirming that indeed the children were aware, the teachers were aware of that.

So, it would be very difficult for me to state with any certainty, yes, this was totally contrived on Linda's part. Whether it was contrived or whether she actually believes that that was happening I do not know. But certainly that's Michael's position.

Q. You were discussing how the children's attitudes were changing over time. Would you please continue with how the children's attitude developed since the disclosure in November of 1999?

A. Well, I saw them November 16th after the disclosure and both children were candidly hostile, let me put it that way. Irina said, I really want to go to Michigan. The idea was that the children would move with their mother to Michigan.

He's not really my dad. I don't want to live with Sherry. And she voiced her opinion that she would – she did not even miss her father. I'm tired of him.

Matthew remarked, I don't want to go with that sick person. And that, kids will say that there's that he-she. I don't care if he buys me all the toys in the world. And Matthew claimed he'd tell the judge, I don't want to see my dad. Please let us move to Michigan.

By December I saw them for now a fifth time; their remarks were exceedingly hostile. Again Irina repeating, I found out he's not my real dad. I don't think what he did is right. She reiterated, I want to go to Michigan. I don't want to live with Sherry.

> The son made numerous threats about shooting his father. Matthew is prone to make very extreme statements. He made me miserable. If he loved me he would really change to become a man instead of a half boy, half girl. Then again he repeated his notion of calling Michael Markel.
>
> So that's what I saw in the children up until the time I testified on behalf of the children and their mother on December 14th of 1999.
>
> Now a lot happened subsequent to that, but that's where – that's where the peak of the most hostile, degrading attitudes towards Michael occurred.

(TR 625-28)

**F. <u>Alienating Behavior.</u>**

Dr. Dies was asked with respect to his field if he encounters parents who engage in "alienating behaviors." He described that condition in the following terms:

> A. Well, there would be a variety of behaviors in which one parent would persistently and strongly use words, use labels to denigrate the other parent. They would put extreme labels on them. They would use profanity and they would fault that parent for the entire problems in the marriage.
>
> They would systematically assault anything that that parent was involved in, such as another relationship. They would blame that person. They would attempt to disrupt visits. They would interfere with the quality of the relationship.
>
> They essentially would bond with the children, we don't want this to happen. So it essentially becomes that parent's mission to alienate the children because that parent feels so hostile and alienated from that parent.
>
> So it becomes a kind of systematic set of tactics to bring about a rupturing of the relationship between the other parent, the alienated parent and the children.

Q. Would you describe Linda's reference to Michael as "it" to be an alienating behavior?

A. Yes, I would.

Q. What about referring to Michael as "she" in front of the children, would that be an alienating behavior?

A. Yes.

Q. What about taking the children aside when the father is not present and telling the children who are eight years old and ten years old that Michael is not your real father. Would that tend to alienate the children against Michael?

A. Substantially.

Q. And obviously telling them about Michael's gender reassignment would also alienate the children against their father?

A. Certainly.

Q. And would these alienating behaviors then affect the attitude which you described that you saw on December 14th of 1999 regarding the children's exceedingly hostile feelings towards their father?

A. Without question.

Q. So, in your opinion, on December 14th, 1999 when you found that the children were saying all of these negative and hostile things about their father, was this because of the alienating tactics being use by Linda Kantaras?

A. I would certainly say that that was a substantial portion of it. We must consider, of course, that the simple fact that children – that any child would learn incidentally your father is not a man would lead to questions on their part. No doubt about that.

Or the fact incidentally your father is not your father would lead the children to conjure up all

> kinds of things. But too many other things happen, too many other labels happen, too much other systematic alienation of the children from their father transpired.
>
> The nature of the words they used to describe their father. There was just too many other things. So, I don't have any question that Mrs. Kantaras fueled the children's animosity toward their father even prior to the November event and then when the disclosure to the children happened that just played into the bigger picture of alienation that was transpiring within this family.
>
> So the bottom line is, yes, I think it is a product of insidious alienation.

(TR 628-31)

The underlying motivation behind alienating tactics of a parent, is as follows:

> A. Well, other than alienation itself turning the children against their father certainly the purpose would be to say, these children are mine. You have no right to these children, and there are some written statements to that effect from Linda.
>
> So it certainly would be the purpose of saying, the kids are mine, you can't have them. You did your awful deed. You're a no-good person. This is the way it's going to be.

(TR 633)

The children's preference for which parent they might prefer to live with is a consequence of the alienation, and this influenced their thinking as stated by Dr. Dies:

> Q. What effect has Linda's alienating behaviors had on the children's preference as to which parent they want to live with? And you may as well, before you tell us that, what is the children's preference as expressed to you?
>
> A. The children throughout much of this process have initiated interviews and conversations with me or it

> has come up later in the session or it has come up in the sessions with the therapist that typically voiced their preference to live with their mother.
>
> That has been quite consistent. And because of that, it has been very difficult for me to wrestle with that issue. The way I view that, is that given the systematic poisoning of the children's relationship with their father that I have witnessed and other professionals have seen in this case, is that Michael has not been given a fair chance to maintain the quality of bonding that is necessary, I think, for children to have two viable parents actively involved in their life.
>
> In the context of parental alienation the children are forced to deal with the level of tension and alienation that's going on.
>
> One of the leading experts in the field who writes about parent alienation Dr. Philip Stahl in his textbook says that one of the ways the children resolve the open animosity between the parents is that they're forced to chose a side. The side is the choice made by the children for their own adjustment to get away from the hostility, the tension, the anxiety they experienced.
>
> So I am concerned that the children have made a choice and stated it consistently over time for their mother for a variety of reasons. One, in several therapy sessions there is one specific session I recall that Dr. Shelef wrote about –

(TR 633-35)

**G. <u>Children Attitudes.</u>**

Dr. Dies in preparation of his Report to the court had access to the notes of Dr. Shelef, the court-appointed therapist for the children (from January through June 2000) and those notes told about Dr. Shelef's opinion the children were afraid of not expressing a favortism for their mother, as follows:

A. Well, what I was saying in light of that was that one of the interpretations of the children's choice would be that they would be afraid to choose otherwise.

Irina, for example, verbalized on several occasions including in a session with Dr. Shelef, that she would be afraid to state a preference for Michael because of their mother's attitude.

There's a quote in Dr. Boone's most recent session that I have which is December of a little over a month ago, actually less than a month ago, where he says that Irina verbalized her concern that even when she talks favorable about Michael it's very upsetting to her mother and makes her mad.

So part of the dynamic that I think may be going on is the children are afraid to candidly state, We like our dad. I would like to live with dad.

Now, in point of fact, the children have changed very substantially in a large part because of these six months of therapy with Dr. Shelef and the 18 sessions of therapy with Dr. Boone.

So at this point in time the children have substantially reduced their animosity toward their father and they are no longer openly hostile and confronting and simply saying, I don't want to live with dad.

Matthew, as a matter of fact, chose to live with his father for a brief period of time when he and his mother got into a serious clash, disagreement about something and Matthew chose to live with his father, did that for a few days.

But subsequent to that Matthew concluded, He's a pretty cool dude, quote, about his father. Dr. Boone writes that even though over the course of numerous sessions the children stated I want to live with mom, they stated no aversion to living with Michael.

And certainly as I said, What would happen if the Court ordered that you live with your dad, that you live with your mother? Again, playing it both ways,

they were no longer outspokenly negative against Michael. They both said, we would rather live with mom.

I suspect there are other factors that play into that. For example, Michael has a relationship, a significant relationship with Sherry. And Sherry has three kids.

Well, when Irina and Matthew look at Michael's situation there's a family there that seems reasonably happy and intact.

Linda, on the other hand, at this point in time, has no significant other since James is no longer in the picture and she is alone. So Michael is doing okay. Mom's alone. Maybe mom needs us. It's not an uncommon dynamic in divorce situations where the children would chose to live with the more vulnerable, potentially more unhappy or lonely kind of parent.

Now, furthermore, in the last session note from Dr. Boone he writes in those session notes, For the first time Irina states, I'd like to live with my dad because she's more strict, meaning mother. It's the context in which it is written.

Now, for that youngster to say that is a considerable risk when I had earlier asked the children, What would you say to the judge? Matthew said, I would tell the judge that I want to live with my mother.

When I asked Irina the same question she said to me, Are my parents going to be there, because she did not want to make that kind of disclosure in the presence of her parents.

So the point being, is I think the children have dramatically changed their position and there are lots of factors that play into that. There's been substantial therapy that has gone on since the most negative November, December hostile attitude the children have toward their father they have done considerable work.

> And, for example, in Dr. Shelef's therapy sessions she talks about how the children blasted Michael. They let it all out. They vented their hostility. They just let him know what they felt.
>
> And as Dr. Shelef writes about it she said, Michael withstood that storm, essentially weathered that storm, and worked with the children, praised them for expressing their hostility, their anger.
>
> And as each session started with that venomous expression of anger by the end of the session the children were playing with Michael, the children were interacting with Michael.
>
> And that therapist, Dr. Shelf and Dr. Boone, both praised Michael for the excellent parenting skills and being able to handle that explosive kind of attack on who he is and what he has done.
>
> And I think that kind of work has allowed the children to deal a lot with their animosity and have a better understanding of their father.
>
> Q. And, if I understood you, that explosive kind of attack that you just described occurred in Dr. Shelef's office shortly after or within a couple of months after the November 1999 disclosure to the children?
>
> A. Well, that therapy I believe started the subsequent January. So it was not long after that.

(TR 636-40)

Michael had been deprived of his visitation, since the November 1999 disclosure to the children until Dr. Shelef's sessions began on January 2000. (TR 640) Dr. Shelef had the distinct belief that despite her court ordered charge to give treatment to the children and to structurally prepare the children for court ordered visitation that Linda was systematically abusing the legal system in various ways by canceling treatment sessions six or seven times, disrupting the sessions with her explosive temper and

listening at the door while the children were privately inside a room having a treatment. Linda would cancel the sessions at the last minute, until warned the treatments were court ordered. (TR 642-44)

Michael attempted to repair the damage done to his relationship with the children in very creative ways, as described by Dr. Dies, as follows:

> A. Michael was engaged in a variety of efforts to repair his relationship with his children. He did that by openly encouraging their expression of hostility, by adequately defending himself, by repeatedly stating his love and affection for the children.
>
> He, according to therapist's reports, introduced a variety of rather creative and sensitive techniques to work with the children.
>
> For example, there was a session in which he brought a heart made out of cardboard or paper and on each picture of the heart as the heart beat was a picture of one of the children.
>
> He said, and this was subsequent to the disclosure of Irina who said, you have to have privates – I forget her direct quote. Her comment about genitals and you're not a man unless you've got the equipment was essentially the comment.
>
> And Michael's sensitive comment was, I love you with all my heart. Essentially saying, not because whatever genitals I have. My compassion for you is personal.
>
> There was another example, Michael brought in some puzzles, one for each of the children. And the task was for the children to put together the puzzles.
>
> And the two puzzles both of them were a similar picture and it was a picture that Michael – I think an eight-by-ten picture of Michael holding both children on his shoulders and the children making goofy faces, but also leaning on their dad and being very affectionate.

This was from earlier in the family. So he was trying to recall productive, caring, happy times shared so that the kids would get beyond their animosity and resentment towards him.

Q. When you say recall them, he's trying to recall the times when Michael and Linda and the children lived together as a family for nine years?

A. That's correct.

(TR 644-45)

The therapy session with Dr. Shelef were concluded in June 2000, because of objections by Linda and Michael filed, through his attorney, eight motions for contempt based on Linda not complying with his court ordered visitation. The court ordered visitation included picking up the children at the conclusion of classes. (TR 648)

In referring to Dr. Boone who succeeded Dr. Shelef, who proceeded on the same basis of repairing the relationship between Michael and the children, Dr. Boone's notes about these sessions, reflected the following:

And the sessions again were – I think there were about eight sessions that I reviewed prior to writing my report. And Dr. Boone described Michael as in a very laudatory terms.

Certainly talked about his anger towards Mrs. Kantaras. Makes reference to earlier in the marriage he may have been angry and controlling and those are his most negative comments about Michael, but, for the most part, his comments are quite favorable, talking about Michael as being a very caring, skillful parent.

He regarded him as a stable individual and as he made comparisons between Mr. Kantaras and Mrs. Kantaras he very clearly had a much more favorable disposition toward Michael in terms of the quality of parenting, in terms of the emotional or mental stability of the two people, and in terms of other dynamics that he saw going on.

He talked about alienation, for example, picking up on the theme that was witnessed by two prior therapists and consistent with other information that I had gathered.

He certainly talked about Linda in terms that were not necessarily favorable, but they were the professional's opinion about her adjustment. He talked about her as having a personality disorder.

(TR 650-51)

## Cross-Examinations

## DR. ROBERT DIES Cont'd #2

The next day of the trial testimony proceeded with the recall of Dr. Robert Dies for purposes of his cross-examination by Claudia Jean Wheeler, Esquire, attorney for Linda Kantaras. Referring to his Report of April 2001, he was asked what psychological tests he administered to prepare such a Report. He answered:

BY MS. WHEELER:

A. In terms of specific psychological tests I used the MMPI-2, the Rorschach Inkblot Test, and the Parenting Stress Index. Then there were extensive interviews, but the broader question you asked is what tests I used in rendering my opinion.

Q. What instruments?

A. What instruments. There was also a questionnaire, which is essentially a structured interview, called the Shared Parental Responsibility Questionnaire, which I had crafted over a two-year period to help me gather information regarding necessary material.

But I also relied heavily upon collateral reports, observation, numerous interviews. There's a substantial amount of time devoted to this case.

Q. Right. But what I'm just asking you about is your instruments. I understand you talked to several people and you made observations, you talked to the parties, you talked to the children, you tested the children.

I'm just talking about the instruments. Would you say that – I think you referred to it in your report the – I don't know, is the acronym SPRQ?

A. Correct, the Shared Parental –

Q. Share Parental Responsibility Questionnaire. What do you consider that, sir?

A. I simply consider that in lieu of a structured interview sitting face-to-face. It is a questionnaire that helps me gather relevant information from both parties which I send home with them and then allow them to bring back and then we review it in my office.

(TR 777-78)

Dr. Dies was asked to explain gender dysphoria and he answered:

A. It's one of several different concepts which communicate the individual's unhappiness with their biological gender and a desire to change their body to match the psychological image they have of themselves.

Q. Would you describe it, sir, or do you know it to be a mental disorder?

A. It is listed in the Diagnostic and Statistical Manual of the American Psychological Association as a mental disorder along with other mental disorders, such as reading disorder.

So, do I regard it as a mental disorder as we think about an individual who is mentally ill? I certainly do not think of it that way.

(TR 785)

Dr. Dies was asked to read from the Harry Benjamin Standards of Care and he read into the record the diagnosis for the gender identity disorders, as follows:

"Transsexualism, F640 has three criteria. One, the desire to live and be accepted as a member of the opposite sex usually accompanied by the wish to make his or her body as congruent as possible with the preferred sex through surgery and/or hormone treatment.

Two, the transsexual identity had been present persistently for at least two years.

Three, the disorder is not a symptom of another mental disorder or a chromosomal abnormality." (TR 787-88)

Dr. Dies testified that he had a strong criticism of the diagnostic and statistical manual from which we make a diagnosis of mental disorder. He explained as follows:

> The implication of that concept, mental disorder, is that the individual has a disease, is that they are suffering from some very serious symptoms of cognitive dysfunction or loss of touch with reality and so on.
>
> So I have difficulty when you say, is an incongruity a mental disorder? I would say, no, I would not regard Mr. Kantars mentally disordered.
>
> If you asked me, if gender dysphoria or gender identity disorder is one in which there is an incongruity between the individual's biological birth and their self concept of being of the opposite sex, I would say, yes, there is an incongruity.
>
> But does that imply a disease or an illness or a mental disorder? I would categorically say, no.

(TR 792)

Dr. Dies agreed that "gender identity dysphoria" is classed as a mental disorder in medicine although he disagrees with the diagnostic and statistical manual from which that diagnosis is drawn. (TR 792-95) With respect to Michael Kantaras' transsexualism, the doctor stated he understood Michael went through a hysterectomy, a mastectomy, hormone treatment, and a trial period of two years living as a man, as well as, "psychotherapy and psychological testing to detect the presence of mental disorder in the way we traditionally think about it in terms of symptoms of depression or psychosis." (TR 797)

He was asked after the mastectomy and hysterectomy, "do you believe that that transferred him from a female to a male?" His answer was: "In my personal opinion even if those surgical interventions did not transpire Michael Kantaras would still view himself as a male." (TR 797)

Dr. Dies was specifically asked about the importance of a penis, in the process of surgical intervention of a female to male transsexual, as follows:

> Q. Okay. Do you think that a mental disorder that's caused by an incongruity between the way someone looks and the way someone thinks could be corrected completely or treated completely without the addition of a penis?
>
> A. Sure.
>
> Q. Pardon?
>
> A. Yes.
>
> Q. Why?
>
> A. Because Michael's identity – we don't – I don't define gender based on whether one has a penis or not.
>
> Q. Well, how do you define it, sir?
>
> A. I define it in terms of the individual's acceptance of self as woman or male, because if we were to look at the range of human behaviors, they're lots of people who engage in behaviors that is very incompatible with their own definition.
>
> Looking at the area of homosexuality, for example. There are people that engage in homosexual behaviors who do not define themselves as homosexuals, who are not homosexuals.
>
> And there are people who engage in homosexuals – homosexual behavior who are not. I mean, it's just inconsistent, but they live in relationships with the

same sex individual, they may engage in sex, but they specifically define themselves as heterosexual.

***

(TR 800-01)

A. The specific example – I have many clients who are gay or lesbian. Many of those clients, I'll give one example, that fits this question of yours is a young woman who has been in a relationship for many years with a woman she truly loves.

And they engage in sexual intimacy. But her identity is that she's heterosexual. She's attracted to men, but she has been living with this woman for a variety of reasons. They care for each other deeply, but her identity, her self-identity is not that she's gay or lesbian. She defines herself as heterosexual. She would prefer having sexual intercourse with a man, but her life's circumstances, according to her, make that impossible.

Q. So is that causing her a problem?

A. Yes, it is.

Q. And you're trying to treat that problem?

A. I'm not trying to treat the homosexual problem. I'm trying to treat the relationship problems because the homosexual is not a problem.

(TR 802-03)

**A. <u>Is Michael Mentally Ill?</u>**

Dr. Dies has never testified before in a case involving a transgendered parent. (TR 812) He relied upon and received a letter from Rosenberg Clinic regarding Michael Kantaras which he included in his report, wherein the clinic writes about doing the evaluation on Michael and not finding any signs or symptoms of an underlying

psychopathology or thought disorder as in schizophrenia, or mood disturbance as in major affective disorder. He made no effort to contact Drs. Cole, Emory or Dr. Huang in Texas. (TR 816) He did independently evaluate Michael Kantaras, as follows:

"What I did was very carefully evaluate Michael from my own independent perspective and I found no reason to conclude that I could diagnose him as having a mental disorder other than the traditional label that's assigned to individuals with that incongruity (transsexualism). But in terms of thought disorder, mood disturbance and so on, that's not any form of diagnosis I would render in Michael's case."

Dr. Dies agreed when the children are told their father was born a woman would have an impact on the children and lead them to question, then who is my father? That would be a natural question. He did administer the Rorschach test to the children. Matthew's test confirmed he was "a troubled young man in many ways." (TR 819-20)

He was asked if Matthew interpreted one ink blot as his father's sexual organs? He did not, replied Dr. Dies, and if Mrs. Kantaras remembers that he did, would that be wrong? She would certainly be wrong, he replied. He would have discussed with her Matthew's anger and suspiciousness, his difficulties with his feelings, his impulse control, and his capacity to perceive realistically.

Dr. Dies said he was not aware that Michael would put a "sock in his pants" to simulate a penis, so never questioned Michael about that. He was likewise unaware that Matthew would put a sock in his pants to imitate his father, so he never inquired about it with Matthew. (TR 827)

**B. Mathew's Test Results.**

Dr. Dies did discuss with the children their observation of seeing Michael taking a bath in his shorts, and seeing him sitting on the toilet to urinate. Mrs. Kantaras never shared with the doctor these routine household experiences of Michael, or that he would walk from the bathroom to the bedroom naked and the children could observe, "saw his sexual parts because he doesn't look like a man down there." Dr. Dies believes Matthew is aware of his own penis and Matthew would consider it as a man important to him. (TR 829-31)

Dr. Dies described the testing results on Matthew, as follows:

> A. The quote I have here is that Matthew was found to be a very angry and distressed young man with significant problems in self esteem, depression, conflicts in social relationships, difficulties with impulse control, limited resources for coping with stress, poor information processing, and major problems in both perceiving and adequately reasoning realistically.

(TR 832)

Dr. Dies was asked in relation to the test results on Matthew, if the boy's problems are the result, "could have been caused by Michael's transsexualism in the house that Matthew observed?" "No," he answered. When he evaluated the children they, at that time did not know of Michael's transsexualism. (TR 834) He explained, "It was Matthew's understanding that his father had a penis. Matthew's direct quote to me was, I thought it was covered with hair. Irina's quote to me was, after they found out what was going on, Irina said to me, I thought when men got older it fell off." Neither one of them could say they saw Michael with a penis. (TR 838) Since he was not told about any of these household activities, he did not question the children specifically on

these questions. Dr. Dies said all the emotional and stress problems of Matthew could not be tied to his father's lack of a penis, as follows:

> I could tell you with a high degree of confidence that what I wrote here cold not be tied to the specific events you're talking about because the pervasiveness of the problems, the angry distressed young man with significant problems in self esteem, depression, conflicts, et cetera, all of that, it would be much too simplistic to tie it to that.
>
> And, as I say in my report, it would be very difficult, in my assessment of the children, to pin responsibility on either parent for the outcome of the test findings because the divorce process, the separation process, is inherently stressful and there are long standing problems that are identified here. And to attach it to a sock or to a penis, I think, would be a gross misrepresentation of the findings.

(TR 841-42)

Dr. Dies returned the following day, January 25, 2002, to complete the cross-examination, and the court opened the session with the question dealing with Matthew's psychological problems and if Dr. Dies had any insight to the cause. He answered, as follows:

> A. As I understand the history of this family, tension and conflict had been growing over years. There are a number of other issues that were mentioned to me in various interviews.
>
> As, for example, something as simple as Matthew having bad teeth and being then very concerned about his appearance, that certainly would affect the quality of his social relationships.
>
> Matthew having the feeling that he was less loved perhaps than his sister by Michael, could contribute to that. The level of volatility within the home at times contributed to perhaps by both parents, the lack of intimacy that both children witnessed within

> the family. This was described where there were virtually no expressions of closeness between the parents. The children obviously were tuned into that.
>
> So there are a whole host of issues. The issue regarding the sock or not sock, for example, it's difficult for me to believe that that would be a core issue because it never surfaced as a core issue in any of the interviews other than a mention in the initial interview by Mrs. Kantaras that Michael would put a sock in his pants. Never was it mentioned that Matthew did that. So it never surfaced as a core issue for me in the dynamics of the case.
>
> I think the feeling of differential treatment that the children experienced with Matthew being much more rough-housed, outgoing and Irina being much more passive and compliant so he became the focus of the disciplinary tactics much more often.
>
> So there's a whole host of issues involved here, totally unrelated to any gender identity issue.

(TR 851-52)

It was Dr. Boone who observed Matthew and stated he was odd and suffered an oppositional defiant disorder. Dr. Boone has had 18 sessions with majority being with Michael and the children. Six sessions were with Linda, she alone was interviewed for 2 sessions, one hour each the first time and no tests were conducted.

Dr. Dies was asked if he was aware that in this case Judge William Webb, on October 14, 1998, issued a modified domestic violence injunction, and before that a temporary injunction had been issued on September 16, 1998? He said, he was not.

Actually, at a final hearing, Judge Webb found there was insufficient evidence to support the petition filed by Linda Kantaras and the petition was dismissed. No

permanent injunction against Michael Kantaras was ever issued. That case was number 98-5251 CA. Section 741, Florida Statutes. (TR 860-61)

Judge Webb had ordered Michael Kantaras to have counseling and a structured visitation was set by the judge for Michael. It was due to this order that Dr. Shelef was retained for counseling. Linda Kantaras was to participate in the counseling but she cancelled seven appointments. (TR 871)

Dr. Shelef recorded her views of the sessions and on March 8, 2000, she stated:

> A. I begin the session by seeing Linda and Michael in the room. The children are busy in the waiting room. My goal is to talk about reestablishing normal visitation outside my office, however, Linda is aggressive and angry because Michael will not pay the library fine for the kids' lost book.
>
> In parentheses Dr. Shelef writes, I actually think that Michael is being financially abused. Linda bills him for absolutely everything, car repairs, library books, et cetera, and Michael is paying all these bills yet has no visitation except coming to my office for an additional fee.

(TR 876-77)

The attorneys for the parents, Peter Brick, Esq., for Linda and Collin Vause, Esquire, for Michael had entered into a stipulation that Michael Kantaras would pay for the counseling. The court had ordered visitation with a therapist present and it would allocate the costs at a later time. (TR 883)

**C. <u>Custody Guidelines.</u>**

Dr. Dies was directed to Florida Statute, section 61.13, the elements of which guided him in making his recommendation to the court that Michael was the preferred parent for primary custody. He stated out of 13 elements to consider, he utilized 10.

Under number 2, the parents scored evenly – that pertained to the house visits, and having found Linda and Matthew were arguing just before his arrival and visit with her.

Number 3 dealing with the capacity to provide the child with food, clothing and medical care was mentioned but not pursued in cross-examination. (TR 902) He was directed to the incident where Irina stepped on the leg of a puppy accidentally and broke it. The pursuing effort of Michael to get the dog to a veterinarian with the help of Sherry was not a violation of a court order that Sherry was not to be around the children because of the emergency nature of the situation. (TR 907)

He was next asked about the church incident where the children, the parents were both with their significant others, James and Sherry. Dr. Dies felt that Linda misrepresented that church incident to be a violation by Michael of the court order. He thought otherwise due to the nature of the accidental meeting at the church. Likewise, Dr. Dies thought the handling of the puppy dog injury showed the sense of responsibility by Michael which carries over to his children. (TR 918)

Element Number 4, concerned the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity. After the separation of Linda and Michael in 1998, the children have been residing with their mother, starting at age 7 for Irina and age 9 for Matthew, both of whom at trial were now 10 years and 12 years respectively. (TR 920) Without resolving this issue, the cross-examination proceeded to element number 8 concerning school and community records of the child. (TR 930) He did not check out the schools but noted the children had been switched schools multiple times over two and a half years. They were taken out of Anclote Elementary, put in Gulfside Elementary, and then placed in Sunray Elementary

School. After one month they were pulled out of that school and put back into Gulfside Elementary. (TR 931) Dr. Dies stated with respect to the school records, "that I spoke with both parents specifically about giving me information from the school, from doctors, from anybody who would have contact with the children. I was given no such information." (TR 933) He explained it would have been helpful to have gathered the information about the school, and to the extent it's not incorporated in his Report its due to oversight or neglect on the parent's part to provide the information he requested numerous times. (TR 937-38)

**D. <u>Parental Custody.</u>**

Other factors he considered were "what if" factors he called "projections," and he testified about hypotheticals, as follows:

> A. The projection, and that is the word I believe I used, would be, what would happen to the children if? There were a variety of scenarios.
>
> At the time I interviewed the parents there was on each side a significant other. With regard to Linda, for example, James was in the picture at that point.
>
> The status of that relationship, the future of that relationship was uncertain. The implications of what that would mean for the home environment was uncertain.
>
> With regard to Michael, there was the relationship with Sherry. That was uncertain as well. The feedback I got was that their relationship was strong, stable and they certainly would provide for a home environment that would be supportive of the children in terms of potentially building on an addition onto the home.
>
> But even in the context of that interview, the issue of what happens in the trial was still important. And there were two factors that weighed into that:

One, the statement from Michael at one point is that it would not be beyond the realm of possibility that he would request that home.

Secondly, there was a statement from Mrs. Kantaras regarding about what would happen depending upon the outcome of the trial. And that statement, for example, was when I asked her her preferred outcome for this trial she said, That I have complete rights. That Michael have no rights. That only after substantial therapy should he be allowed visitation.

And I said, what if joint custody is assigned? And she said, If that's what happens I don't want the children.

Q. And that's in your notes somewhere, Doctor?

A. It sure is.

Q. Could you tell us when she said that?

A. October 2nd or 20th, one of the two.

Q. Of what year?

A. 2000. This is October 2nd of 2000.

THE COURT: Do I understand that correctly, if the Court should award joint parental custody she told you that she would give up her –

A. Her words, If Court says joint custody I don't want my kids, quote.

BY MS. WHEELER:

Q. That would be joint custody, like 50/50 custody?

A. Just joint custody. We didn't discuss 50/50, 60/40, just the concept of joint custody. That followed from the earlier statement of what her first choice would be, that Michael have no legal rights to the children, but with counseling he be allowed visitation. But she wanted full custody, her words.

(TR 938-40)

Dr. Dies was asked if Linda was cooperating with more visitation of the children by Michael recently and he said she was.

He was asked if he has interviewed Sherry or given her any tests and he said he had not. But he met Sherry Noodwang four times. (TR 946) Michael was present those four times. Did he know that Sherry would spend the weekends at Linda's house, bringing her children? Dr. Dies said he was aware of that. (TR 946-47)

Dr. Dies was asked if Matthew's problems could stem from seeing his father living openly with Sherry, his mother's former "best friend?" He replied it does, "I think given the circumstances it probably plays some role in the children's adjustment problems." He states he addresses this problem throughout his report, and that Sherry and Michael are blamed for virtually all of the problems that have evolved. And, so it became a very central part of the children's perception of their father and probably some adjustment problems.

Dr. Dies was asked if its his testimony that Michael was without responsibility? And, he replied "of course not --- for any of the trauma that these children experienced in this separation?" "That's not my testimony." (TR 949-51)

**E. <u>Disclosure to Children.</u>**

The cross-examination shifted to the issue of Linda Kantaras, her brother-in-law, "Billy" and her sister "Crystal" disclosing to the children that Michael was a transsexual, as follows:

> Q. It's not your testimony because Linda and her sister and brother-in-law happened to tell the children at

your direction, after Linda's phone call to you, to tell the children about Michael? It's not your contention, is it, Dr. Dies that it's her fault the children went through this trauma because Michael is a transsexual, is it?

A. I've lost you in the various –

Q. Okay.

A. Because I got stuck on a clause in your sentence which was under my direction. I never directed Mrs. Kantaras to tell her children. I guided her in that process. If this is the case, and you are choosing to do that with the children because your sister and brother-in-law are in town, then, if that is going to happen, here are some parameters that I would provide, including note taking. It is not what I would have chosen as a matter of disclosing to the children about their father.

Q. Right. I know. I heard you yesterday on direct examination, and correct me if I'm wrong, you said, you know, Michael could have been there. Did you tell Linda get Michael on the phone right now?

A. No, I did not.

Q. Michael should be a part of this. Schedule an appointment for my office tomorrow and we'll discuss it tomorrow?

A. I did not do that.

Q. No? So you let this under-educated, not too bright of a lightbulb off the phone with those directions, would that be your testimony? And I'm talking about my client.

A. No, it wasn't – I don't think it was the phone. I think we met in person.

Q. Okay. Well, once you met in person and then you just let her go what did you think was going to happen, Dr. Dies?

MR. VAUSE: Objection to the premise that Dr. Dies let her go. Dr. Dies didn't let her do anything. She chose to disclose this on her own. She simply consulted with Dr. Dies first.

So, to accuse Dr. Dies of letting her do it seems to be an inaccurate way of putting the question.

THE COURT: I think I will sustain that objection. That seems to be a matter that originated with her.

MS. WHEELER: Pardon?

THE COURT: Her decision to tell the children about their father seemed to have originated with her. She didn't seek anybody's consultation whether it was appropriate.

BY MS. WHEELER:

Q. Dr. Dies, why don't you tell us about that conversation? Did Linda Kantaras call you prior to telling the children?

A. Yes, she did.

Q. Okay. And did she tell you she felt it was imperative or it may be imperative to tell the children because people at the school knew, the principal had called her in and told her?

A. Yes, she told me that.

(TR 951-54)

Dr. Dies checked his notes to find the date he returned Linda's phone call, and continued to testify, as follows:

However, we then made contact.

THE COURT: What day would that be?

A. That would have been on the 4th, I believe, and that's a Thursday. And I believe the disclosure to the children was on the 5th.

So, my understanding or exchange was that we indeed talk about what should happen. At that point I clarified my role. And in that clarification – and I did this multiple times in this process because there was a delicate balancing act here – I very clearly said, I cannot play a counseling role. I am involved in an evaluation. It is unethical for me to be a therapist in this process.

I very clearly stated that. And that's in writing to the attorneys and so on. So I know that I struggled with that issue. So in terms of telling Linda what to do I said, If you are deciding to do that based on what you're telling me, this is in a phone conversation, then if you're going to do that, please, do the following, and that is, have people take notes about what happens in that session. It will help in my evaluation.

BY MS. WHEELER:

Q. Okay.

A. But I could not say, Well, you know, the way I would handle this is.

Q. Did you have them take notes?

A. Did I – yes, I did.

Q. And are those notes reflected somewhere in your report, Dr. Dies?

A. Yes. I talk about somewhere in my report the children's reactions to the disclosure.

Q. I'm asking you if you talk about specifically the notes?

A. The notes were not terribly revealing. They essentially tracked the events. The notes were rather scant and they would talk about the questions the children asked, questions –

THE COURT: Whose notes are these? Are these notes that Linda took?

A. There were three adults involved in that –

THE COURT: Billy and Crystal?

A. -- disclosure. Uncle Billy, Aunt Crystal and Linda. And I asked for two people to take notes. I'm not confident, I believe it was Linda and Crystal, it could have been two others in combination.

BY MS. WHEELER:

Q. But you did say if, indeed, this event is going to happen, please take notes?

A. Yes.

Q. Okay. So you did – you will agree that you made that statement?

A. Did I make that statement?

Q. Uh-huh.

A. Yes.

Q. And then notes were provided to you, correct?

A. That's correct.

Q. Could you find those notes?

A. I will try very hard. Remember, I have about seven folders of notes.

THE COURT: Doctor?

A. Yes, Your Honor.

THE COURT: Did you caution her that this was not appropriate for her to take on this responsibility of telling the children. That she should wait?

A. The dilemma, the emergency that I was given, Your Honor, was that it is absolutely imperative that this happen because –

THE COURT: She gave you that impression?

A. She gave me that statement. Not imperative, but it is urgent that I speak with you. So what I was led to believe was it had to happen because the way Mrs. Kantaras put it was that she was called aside by one of the teachers in the school and informed that, quote, everybody knows.

BY MS. WHEELER:

Q. Could it be the principal, Dr. Dies, or one of the teachers?

A. My recollection was the teacher. I'm not sure. It could have been the principal, but some other person within the school.

Q. Within the school. Within the children's school?

A. Correct. And that even children know. That's what I was presented with. So it was a matter of some urgency, according to Linda, that this matter be dealt with immediately because the children were going to be hit with teasing, humiliation, disclosure.

And given that information, if I have to choose between would it be better for the mother and aunt and uncle to do that or would it be better for it to be done in school, not have the parents – not having Linda do that, not having the aunt and uncle do that, but have it come out in school when the children next went to school?

There's no question which option I would go with.

Q. Did you ever call the principal and see or call the person that Linda said told her that to verify whether or not Linda was being truthful with you?

A. I did not. At that point in my evaluation process I trusted the information that I was hearing.

(TR 955-60)

**F. <u>Everyone Knows.</u>**

Dr. Dies reflected on what he was told by Linda regarding "everyone at school knows" about Michael being a transsexual and if that was true or not. Could he trust that being the truth? He replied:

> Q. Well, do you trust it now? Did you trust it yesterday as you testified? I don't mean that you testified that way, but yesterday while you were testifying, did you trust what Linda told you?
>
> A. At this point after having gathered considerable more information and being hit with numerous highly questionable presentations to me by Mrs. Kantaras I am significantly in doubt that the events are exactly as they unfolded including, as I re-reviewed my notes, a disclosure to me by Mrs. Kantaras in a May interview.
>
> For example, this is a May 5th, 1999 interview. Four months before the disclosure. Linda is talking in this interview with me which lasted an hour.
>
> I want to get out of here because everybody knows. Question, children's parents. Even children know Michael used to be a girl. And I never put that together with what happened in November until I began to review these kinds of things.
>
> So, given that, and given the timing of the disclosure, that disclosure occurred right at a point when Michael was beginning to get visitation back. He had not seen the children for a long time.
>
> He was scheduled for a visit, I believe, on the following Wednesday. The children were disclosed to, let me put it this way, by Linda and the other adults prior to that visit.
>
> So, given the sequencing, given this information, and given the pattern that I've come to understand at this point, I have serious doubts that the information that was provided was entirely accurate.

(TR 960-61)

Dr. Dies was challenged, "Isn't it true, Dr. Dies, that you don't believe one single word my client tells you?" He replied, "That is not true." (TR 961)

Attempting to show that Dr. Dies is biased against Linda regarding the details of the so-called "church incident," and the puppy's "broken leg incident," and the telephone log prepared by Linda to show the amount of telephone contact Michael had with the children, being "misconstrued" in the opinion of Michael are inaccurate, all of this collectively put in his Report to the court, means that Dr. Dies construes everything adversely to Linda."

Dr. Dies replied:

> She was given the same opportunity to provide me with information. She did that verbally. She also refused the opportunity to meet with me one-on-one so that I could challenge things and get a better understanding.
>
> She refused that opportunity. She refused to provide me with any documentation despite reminders, written reminders, telephone reminders and requests.
>
> Q. Dr. Dies –
>
> A. I cannot help it if she does not provide me with anything that would help her case.
>
> Q. Dr. Dies, let me just interrupt you there because I think you haven't answered the question, but I don't think you're going to.
>
> But how can you blame her? How can you blame her when you take the church event and you don't get down to the bottom of it? How can you blame her when you take the dog thing when Michael is in blatant violation of a court order and you don't even

construe it like that in your report, you call it a moral issue?

How can you blame Mrs. Kantaras when you never get down to the bottom of it from anybody else? In your report repeatedly you talk about talking to Michael, talking to his parents. And the only two people that you talk to for Linda are Billy and Crystal, correct?

A. Those are the only two names she ever provided despite numerous requests.

Q. Billy and Crystal are the only two names she ever gave you?

A. That's correct.

(TR 971-73)

Dr. Dies was asked if he believed Linda's statement she was called by the principal of the school to discuss rumors about Michael, as follows:

Q. Do you believe the principal called Linda in, Dr. Dies?

A. I don't know for a fact whether or not that happened.

Q. You don't believe it, do you, Dr. Dies?

A. I can't say I believe or disbelieve, but if you're asking me whether or not I believe, I think, given what I know in terms of a dozen or so examples it is harder for me to believe that.

(TR 974)

The issue of the believability of Linda was pursued and Dr. Dies was asked: "Does that explain your inability to be impartial in this case?" He replied, "I think that's one unfair indictment. I believe that I was impartial as I could be. If the weight of the evidence falls more heavily on one side than the other, that's not my prejudice or

impartiality. That's the way the accumulated evidence, the multiple independent sources of evaluation (falls)." (TR 981-82)

**G. <u>Sherry Noodwang.</u>**

During the cross-examination of Dr. Dies the issue regarding Michael Kantaras and Sherry Noodwang and their relationship can present a "stable household" for the children, and his opinion was "I do believe that, yes." That issue was pursued as follows:

> I do know from having met with that couple that their perceptive on what they needed to do and the time they would take was well-reasoned. I do know from having discussions multiple times with Matthew and Irina about their interactions with the children and their increased bonding, if you will, with Sherry that what I heard was a lot of positive things, but I knew that that – most of what would happen would be future projection. And I also knew that my task was to do a custody evaluation of the primary parties in this case and that would be these two people and their children.

(TR 985-86)

> Q. Well, Dr. Dies, knowing what you know about Michael and Sherry where do you think you're sending these kids if Michael gets them, to Michael and Linda? To Michael and Sherry? Sherry's house? Or did you think Michael and Sherry are going to break up? What is your testimony?
>
> A. Where I knew I was sending them was to a very responsible parent who assured me that the way he and Sherry would work things out would be at a pace. If that's the way the Court went, would be at a pace that would be appropriate with counseling, counseling which has begun conjointly with Sherry, Michael and the children or with Sherry and Michael alone, as I recall.
>
> But I knew that they were thinking in very mature, responsive ways including saying we would not live together until the timing was right. So, I trusted

those kinds of comments that it would be carefully considered and appropriately implemented.

Q. So you don't think Michael and Sherry live together?

A. That's not my understanding. That they do not.

(TR 987-88)

A. My understanding is that Michael and Sherry have been a stable couple for a couple of years and they have been very upfront about their relationship and they have worked very hard to confront the difficulties the children would have with their relationship in many ways.

(TR 988-89)

Dr. Dies explained: "I said the relationship had been going on for quite some time now. I did not say they were living together for quite some time." (TR 990) Dr. Dies was asked "Did you ever ask them, are you all having sex while the children are present in the house?" He said, "No, I didn't ask them that question . . . I don't think I would ask that question when I was meeting a couple for a different purpose, no. I would not get into virtually any couple's sex life. Even when I do therapy, I'm reluctant to do that." (TR 993) He continued: "I was meeting for the purposes of a custody evaluation given Michael's qualifications as a parent and Linda's qualifications as a parent, not Sherry." (TR 993)

**H. <u>Mathew's Coping.</u>**

The cross-examination concentrated on Matthew now, and the boy's coping with his father's transsexualism, as follows:

Q. Okay. And Matthew's got a litany, a plethora, if you will, of problems that you have described in your report, doesn't he, Dr. Dies? He's not your

normal, average, happy-go-lucky, doing-well-in-school, compliant child, is he?

A. He is not.

Q. Okay. And I don't mean to demean Matthew. I don't mean anything disparaging by this, Matthew has got a problem, doesn't he, Dr. Dies?

A. He's got quite a number of problems, yes.

Q. If you didn't think it was important to ask him about whether – what he thought about his dad's penis, you didn't think it was important to ask him what his dad does without a penis, you didn't think this was important to ask Michael where he sleeps when he has the children, and you have a troubled child that you're telling this Court should go with Michael Kantaras.

And you can't tell us where he sleeps when he has Matthew, and you couldn't make some connection?

A. I could not make the connection you're making, no, because –

Q. Because you didn't ask. Because you didn't ask?

A. I didn't ask those specific questions you were setting forth, that is true.

**I. <u>No Penis.</u>**

Q. You didn't say, Matthew, how do you feel about your dad not having a penis?

A. No, I did not ask that question.

Q. You didn't even say, Michael, as somebody with a mental disorder that is caused by having the body of a female, how do you feel now that you've had surgery at the Rosenberg Clinic and you still don't have a penis? How are you going to handle that with your son Matthew who does have a penis?

You didn't ask, did you, Dr. Dies?

A. Well, that kind of question we got into extensively. I've talked with Michael a great deal about his surgery and the process. I also have testimony –

Q. Dr. Dies, let me be real specific. I'm not talking about his surgery. I'm talking about his son.

A. So am I.

Q. No. No. I'm not talking about –

A. I'm talking about the conversation –

Q. I'm talking about – I'm not talking about the surgery and how complicated and expensive it is. We've spent hours talking about that surgery and how unsuccessful it is and I'm really sorry about that, but I'm sure everybody that heard – and I'm sincere about that.

I'm talking about Matthew. I'm talking about how Michael is going to handle it. Forget about the surgery. Matthew has a penis. I'm talking about why didn't you inquire of Matthew how he felt about that? You know he knew at some point –

MR. VAUSE: Objection. Is there going to be a question sometime in the future or are we going to have argument at this early stage of the trial? She should just ask him a question.

BY MS. WHEELER:

Q. Why didn't you ask Michael about that?

A. Because we talked about it extensively. I didn't just talk about the surgery. Michael and the children have talked very specifically. Michael has handled it very responsibly.

Part of the therapy was to do that. Irina asked him specifically, Why didn't you take the third step? Why didn't you get a penis? Okay. He handled that very responsibly.

They talked about the risk factors involved. These children have gotten an education most children would not get and maybe should not get, but they've confronted those issues. And I have lots of evidence to that effect.

So I didn't have to ask him or Matthew about that question you're asking me because I know what's been going on in terms of the children and Michael.

Q. Well, that's the root of gender dysphoria, you know, incongruity. And so you didn't think it was important to ask Mr. Kantaras or Matthew. You didn't even know about what Mr. Kantaras does to make it look like he has a penis, did you?

A. I didn't ask that question, that's true.

Q. No, you didn't. And you didn't think that was important knowing you're recommending a male child in his care?

A. What I thought was much more important was the nature of the communication that Michael has had with his children and he has been exceedingly open with these kids about his gender identification.

He has talked to them about the surgery, about not having a penis. He's talked about the scars on his body. He's talked about the hormone treatments. He's talked about his struggles.

He talked what he used to be like when he was a child. He has been exceedingly open with these children and they have moved considerably in their understanding of the issues and their fondness of their father because of the considerable openness that he's manifested.

So I know what they have talked about, so I didn't ask that specific question you were asking me, but I have all the information I need to know about this man's qualifications to be an effective parent and to confront his gender issues and Matthew's.

And, as a matter of fact, I have seen him confront Matthew's gender issues.

Q. But you didn't ask Matthew. Let's just say that what you're saying is very commendable of Mr. Kantaras. He described the surgery, he described his feelings, he described his problems, he described his openness.

He showed him his scars. He told them why he didn't have the third surgery. That is all about Mr. Kantaras, isn't it, Dr. Dies? That's all about Mr. Kantars, his problem, and his therapy for it, correct?

A. And that's the first half of my answer.

Q. That's right. But that's not about Matthew, is it?

A. I can move to that, if you would like.

(TR 994-1000)

The Report prepared by Dr. Dies was challenged on the basis it ignored the significance of Gender Identity Dysphoria impacting the children. Dr. Dies described how he undertook that issue, as follows:

**J. <u>GID and Children.</u>**

Q. You didn't move to it in your report. You didn't even address it in your report. Show us where you addressed gender dysphoria, being the child of a gender dysphoric parent, show us where, Dr. Dies, you dealt with it about the secrets, about the lies, about now knowing, about not telling your friends, about not telling people.

Show us in that report where you even said that Michael's condition is going to have some bearing on these children.

A. Throughout my report are discussions of the labeling process. Throughout my report are examples of how in therapy Michael and the children, I have talked with the children very

specifically about how do they feel, what questions do they have for their father, about the surgery, about being a transgendered individual, about how they feel about that.

So I've had conversations very directly with the children as have the therapists involved in the case. And throughout my report are all those emphases about the children's struggle.

Unfortunately the whole issue has been packaged with so many loaded concepts: He-she, it, Markel and so on, and that is throughout my report.

So much of my report focuses on the gender issue, if you will, as viewed by Michael and the children and Mrs. Kantaras.

Q. Right. And you lay most of the blame about this issue on Mrs. Kantaras, which is my whole point. The problem in this case is Mr. Kantaras' mental disorder, not Mrs. Kantars; wouldn't you agree?

A. I would absolutely not agree.

Q. Okay. So you are going to tell us again that Mr. Kantaras does not have a mental disorder, correct?

A. I would absolutely not agree.

Q. Okay. So you are going to tell us again that Mr. Kantaras does not have a mental disorder, correct?

A. He has a label in the Diagnostic and Statistical Manual, yes. I do not believe in any of the evidence that I have that Mr. Kantaras has a mental disorder.

Q. Okay.

A. That is true.

Q. So any other expert that comes in here and tells this Judge that they're an expert in gender dysphoria, that gender dysphoria is classified by the medical experts and by our now famous and almost notorious Harry Benjamin International Gender

Dysphoria Association's Standards of Care for Gender Identity Disorders Sixth Version, February 2001, that's labeled, that's characterized, it's called a mental disorder, gender dysphoria, correct?

A. I have no trouble with the notion, counselor, that that is in the Diagnostic and Statistical Manual as a mental disorder.

(TR 1000-02)

The cross-examination shifted to the tests, psychological taken by Dr. Dies on Michael and Linda, which consisted of the MMPI- II, the Rorschach Inkblot test, and the Parenting Stress Test. These are standardized tests. (TR 1003)

The standardization sample began way back as far as 1940, over the course of many years with thousands and thousands of research projects and recent updates, it includes a representive sample of various groups, of terms of education, socio-economic status, and that becomes the normative, a normal group against which scores are compared. Dr. Dies was asked when comparing Michael to the norm, "did you test Michael as a 'male' or a 'female?'" He answered, "as a male." "And why is that?" To which he replied as follows:

A. Because he's a male in my mind.

Q. Well, medically he's a male, correct?

A. Psychologically he's a male.

Q. Okay. And let me ask you something, could you please tell this Court, before this Court accepts your report or before the Court decides on how much weight to give your report, what your proof is, if any, that under – any gender dysphoric person was used in creating the standards for the MMPI-II?

A. I have no data specifically on whether a gender disordered patient would be used.

Q. Okay. And gender dysphoria is a mental disorder. What kind of adjustment did you make and, although you may disagree with it, Dr. Dies, let's just say for the moment that the Court is going to find gender dysphoria from the evidence, mental disorder as outlined by the medical community and I mean no disrespect to you.

A. Uh-huh.

Q. What adjustments did you make for the mental disorder of gender dysphoria, for Michael Kantaras, when you were interpreting results of his tests?

A. I didn't make adjustments. I simply reported that there were a number of areas in which Michael manifests problems. I talked about his abnormally elevated scores on the MMPI. I talked about his validity scores.

So, if I'm looking at somebody whether they're gender disordered or paranoid or neurotic or whatever depression is what I'm going to look at or anxiety is what I'm going to look at or paranoia.

Q. But since they weren't standardized with people that were presented as gender dysphoric, don't you find that difficult, Dr. Dies?

A. No, I don't find that difficult.

Q. Well, why don't you tell this Court, if you could, please, how many gender dysphoric clients have you had to evaluate and report to a court about on an interpretation of an MMPI-II?

A. In terms of that specific question, Michael is the first individual that I've evaluated that I've known to be gender transformed.

Q. Well, or gender dysphoric or transsexual?

A. Well, dysphoric isn't a word that I would use.

Q. Okay.

A. Gender identity disorder.

Q. So Michael is the first one?

A. Correct.

(TR 1007-09)

Dr. Dies stated with respect to the norm of a couple thousand people, there may well have been gender identity disordered persons included, but he did not know. (TR 1011)

With respect to the Parenting Stress test, the following questions were asked primarily concerning the children, as follows:

Q. Okay. Let's talk now about the Parenting Stress Index. Did you think it was standardized using gender dysphoric –

A. I'm sure that it was not.

Q. Okay. Let me ask you all the same questions. What were you able to use to adjust your scores on the Parenting Stress Index?

A. I didn't adjust my scores. I quite candidly reported the difficulties that Michael perceived in his relationship with Matthew. I didn't discount the abnormal elevations that I saw.

I took them at face value as being an honest statement of what he saw in terms of his relationship with his son. And on that test both parents, for example, elevate the same to you've got problems with this kid.

But I also took at face value the statements from both parents that they felt competent to deal with Matthew. So, whether or not Michael was gender disordered or whatever, I took his scores as a statement of his perceptions of his relationship with

his son. And there were disturbances in that relationship.

Q. Okay.

A. Disturbance in the relationship in the sense of seeing Matthew as an individual, as a child, who had a number of problems. So I didn't feel there was a need for any adjustment.

Q. And a number of problems, and did you ever try to figure out what was creating these problems? What were causing these problems?

A. No. At that point I didn't do that. I mean –

Q. And it would be your testimony today that Michael's condition or his treated condition, his surgery or his children would say his unfinished surgery as Irina said, why didn't you do the third step, is not a cause of any of these problems?

A. What I have to say to that is that when I evaluated the children and we pull out those statements about Matthew they were not aware of Michael's mental disorder, as you're putting it.

Q. They were not aware – you didn't ask them, though, but they might have been aware that there was some incongruity between the way a father should look and the way a father looked?

I mean, you were able to establish that, that they saw him urinating sitting down. That he might have given them a bath in jockey shorts and they might have been able to tell he didn't have a penis.

He might have walked from the shower, walked around half naked so the children might have seen him. One of the children told you it was covered by hair, the other one said they wondered why he urinated sitting down.

There was some evidence that they knew something, wasn't there, Dr. Dies?

MS. DOERING: Again, I just want to state my objection for the record that her question again assumes facts not in evidence.

THE COURT: All right. Thank you.

A. So the question is was there some evidence the children had questions about that kind –

BY MS. WHEELER:

Q. Right?

A. Sure.

Q. So there was some observations by the children and I think we've been over this, so maybe it is in the record, the children did make some observations about Michael not having a penis without being able to maybe synthesize it or without having to be able to articulate there's something wrong with my dad.

There were some observations that would lead you to believe at least they had made some observations. I think you stated urinating at times sitting down?

A. Uh-huh. Yes.

Q. And Irina said she thought the penis was covered – she just thought it was covered by hair. She just sort of –

A. Actually, she thought it fell off.

Q. Right.

A. When you get older it falls off. It was Matthew who said –

Q. Who said it was covered by hair?

A. It was Matthew who said –

Q. Matthew said he just thought it was covered by hair. So there was some indication that they had seen Michael's privates. But I'm not trying to disparage

Mr. Kantaras, it could have been causally. And I'm sure it was causally, but there was some indication that there was a problem, that they had made the observation?

A. I think there was evidence to that.

(TR 1012-16)

This concluded the cross-examination of Dr. Dies.

## FINDINGS OF FACT

## DR. ROBERT DIES (Continuation #3)

Dr. Robert Dies was recalled for the purpose of redirect examination since Claudia Jean Wheeler, Esquire, concluded her cross-examination.

The Court asked Dr. Dies his opinion about joint custody in this case, since he was the appointed court advisor, as follows:

> THE COURT: Before we get into redirect I would like to ask the doctor a question about his viewpoint of shared parental responsibility.
>
> Where these children are concerned, either with the mother as primary residential parent or with Michael as the primary residential parent, what would be your opinion about them having shared parental responsibility?
>
> A. I think my opinion, had you asked me that same question several months ago, certainly would have been given the nature of the conflict, this is a high conflict couple in many ways, that shared parental responsibility, joint custody, would have been exceedingly difficult because of the nature of the conflict that the children were exposed to.
>
> I also have to raise an earlier point I made which is a statement by Linda that if joint custody was the decision I don't want my children.
>
> Obviously I would be very worried about that kind of statement and I think –
>
> THE COURT: What do you think she meant by that? She was giving up her children?
>
> A. That was my understanding literally taking what she meant by that, Your Honor.
>
> THE COURT: Isn't that awfully extreme?
>
> A. Part of my concern about this entire matter which is why I made the recommendation that I did was

those kind of extreme statements. Yes, I think that's a very extreme statement.

THE COURT: By that would she mean giving up just custody, but she would expect to have visitation or she would forego such things as visitation?

A. That was unclear, Your Honor, I did not pursue that given the timing of the question in the interview. I was simply asking at that point what would be the desired outcome in terms of the case.

So, I don't know the answer to that question.

(TR 1032-33)

Dr. Dies reported that Sherry is not an unknown in the situation, he spoke with her for two hours and that she and Michael were having separate counseling from Dr. Boone. They had met with Dr. Boone on May 11, June 20, and August 29, 2001. He made the following observations with respect to the August 29th meeting as follows:

A. Correct. And in that final session was Michael, Sherry and Matthew. So Sherry is not completely an unknown. I have observed her interact with Michael. I have talked with the two of them. I have challenged them in terms of issues.

I've also talked to the children and heard their reactions, not only with Sherry, but the three daughters. Irina, for example, was very positive. She gets along very well.

Matthew, being the boy, is less comfortable with all those women, but he doesn't state negative things about them.

So, I don't think that it would be, to use your last sentence, a problem that would be imposed on them, essentially you were saying something to that effect, because they've been working on the issue for quite some time. They've been working on building the quality of relationships.

The other thing, of course, is that this past summer all of them spent four weeks together, and I talk about that in my report.

THE COURT: Sherry and the children?

A. Yes, Your Honor.

THE COURT: Matthew and Irina with Michael?

A. Here's, if I may read this brief statement, Since the last hearing in May Linda and I each had a four-week period of uninterrupted visitation.

During my four weeks Matt, Irina and I were able to reestablish and reinforce our bond as a family.

The children very quickly adjusted to Sherry and her girls once again. We had a great time enjoying daily family life. We allowed the children to enjoy typical summer vacation activities, skating, swimming, sleepovers.

THE COURT: Excuse me. What page is that on?

A. That's not anywhere in there. That's in my materials from Mr. Kantaras.

THE COURT: Oh, okay. Those are his notes or observations back to you in the letter?

A. That's correct.

THE COURT: How long were they together?

A. Four weeks, Your Honor.

I believe in my updated report I quote some of those – as a matter of fact, I quote that we had a great time together. So that's in my updated report. Sherry's three girls at the trial date were ages 12, 14 and 16.

(TR 1043-45, 1046)

**A. <u>Michael and Sherry.</u>**

Dr. Dies studied the possibility that Michael and Sherry contemplated a future marriage after this trial concluded. He stated the following:

> My sense of interacting with Michael and Sherry is that they have long-range views of what is necessary to happen. And those long-range views include easing into the relationships and being a family.
>
> The other thing you said, Your Honor, which I respectfully disagree with, is the notion of being a substitute mother. I think there's an effort to be sensitive to that. There's not going to be a substitute mother. You did correct yourself and say a stepmother and I think that's a better way of putting it.
>
> If anything, the negative I heard is that Michael I suspect in his desire to have the children accept Sherry, has pushed a little harder than felt comfortable for the kids.
>
> I don't have that sense any longer. That is not what the children are saying anymore. And, as a matter of fact, I recall a statement after the puppy incident the children saying, perhaps it's time to get to know Sherry. All right.
>
> So they're easing into the relationships as a family, as a bigger family. They're not going to not have their mother as part of their family, but Sherry is not trying to replace their mother. But she is Michael's partner.
>
> THE COURT: But she is?
>
> A. Michael's partner.
>
> And they want to build their relationship. They want to build their family. And they want all of the children to be able to interact comfortably and freely.

THE COURT: Do they plan marriage?

A. They would like to have a marriage, yes. Do they plan it? Yes.

THE COURT: Now, does this planning take into consideration visitation by the mother Linda?

A. From the point of view of both Mr. Kantaras and Sherry they have consistently stated a desire to have the children's mother actively involved in their lives.

That's always been a part of the planning any time there's been discussion in any of the materials that I've read. There's no effort to preclude the children's mother from being involved.

(TR 1046-48)

Because of the openness in the attitude of Michael toward having Linda in contact with her children, Dr. Dies said, "and it's because of that position that I came ultimately down on the side of this case that I did. That was one of my major criteria for struggling with that issue, about how to make a custody recommendation."

It was that ease and facility of wanting Linda to be involved with the children in so many ways. I've heard that. I've read that. And I've talked about that and that's why I came down the way I did. "So I don't have any doubt that they would make every effort to make that happen." (TR 1050)

When Dr. Dies was asked if he thought joint custody was appropriate in this case and he replied:

"But given where I ended up with my recommendation, I did not feel that I could recommend joint custody. Given the level of animosity, friction, alienation and so on that I have reported on throughout my report. So it would have been very difficult for me

to recommend joint custody. . . . So if they're embroiled in ongoing conflict, in my mind, joint custody does not make sense. Both parents' active involvement in the children's lives do not require joint custody. It requires a visitation plan that will allow the non-custodial parent to be intimately involved with the children, but that does not mandate joint custody." (TR 1053-55)

In reference to the allegation that Matthew would wear a sock in his pants to school imitating his father's actions, Dr. Dies testified Linda Kantaras never told him that that happened. Neither did Matthew or Irina. None of the notes of Ms. Glenda Davenport (1998-1999) or Dr. Shelef, or Dr. Boone make mention of that fact. The only time he has heard mention of the event is during the trial. (TR 1068-70)

Regarding the timing of when Dr. Dies tested the children, Matthew and Irina, the psychological problems of Matthew were analyzed prior to the children being told about their father being a transsexual, and up until that point Matthew believed his father had a penis, covered up with hair. So Matthew's psychological problems existed prior to the disclosure Michael had no normal penis, and has nothing to do with such disclosure. (TR 1072) And such problems have been seen in other children by Dr. Dies where the family dynamics have contributed to them where the father was not a transsexual. (TR 1073) Matthew's problems were discovered in April 1999. The disclosure event was November 5, 1999. The parents separated in July, 1998, and Matthew's problems far preceded the date of separation.

Dr. Dies asked both parents what are the factors that contributed to the divorce and their reply was:

> A. [W]hen I asked both parents that very question, What are the factors that contributed to the divorce,

and this was the Shared Parental Responsibility Questionnaire, Mr. Kantaras said nothing other than because of the ongoing friction, the distancing between he and Linda that he ultimately fell in love with another woman.
Linda, on the other hand, specifically says the reason for the divorce is Sherry.

Q. Did Linda ever admit that possibly there was something wrong with the marriage other than Sherry?

A. Well, I think she would admit that there were things wrong with the marriage, sure. They were talking about communication. She would mention the difficulties with intimacy. There was no closeness.

She talked about – I'm trying to recall her exact words, I just read it a little while ago. With regard to – they had a – I will use the word which is close to what I think she used, an unstable sexual relationship.

(TR 1078-79)

The parties stipulated the domestic violence proceedings in court were dismissed by the judge on April 28, 1999, and that was about the same time that Linda came to see Dr. Dies.

The question of Dr. Dies' report being "unfair" to Linda Kantaras, was addressed, as follows:

BY MR. VAUSE, ESQ.

Q. What is your response to Ms. Wheeler's implication that your report is not objective and somehow disfavors Linda Kantaras?

A. I actually tried to slip that into my answer when I said that the fact that the findings come down substantially in favor of Mr. Kantaras is not a function of my prejudice or bias or unfairness.

The weight of the evidence from multiple sources of information collected over two years independently gathered and the children seen separately from several therapists who are involved in the family, from my observations directly of Linda, the children, and Michael, the parties' self reports, collateral reports, psychological test findings lead me to the conclusions I got to.

It's not a function of bias. It's not a function of unfairness. The weight of the evidence is substantial to buttress the arguments that I made if you will look throughout the sections in my report, in each and every instance I look at issues from multiple angles and I work very carefully to check out my conclusions.

So, I would have difficulty with the notion that the results of this evaluation, the recommendation I came to, was because I was biased in this case.

As a matter of fact, if you look at the situation where I started in this case was that as a psychologist who was hired by her attorney and I went to court to testify in her behalf.

Q. And, in fact, Dr. Dies when you were appointed as independent child custody evaluator I, on behalf of Michael Kantaras, objected to your appointment?

A. Thank you. That makes sense.

(TR 1114-15)

The redirect examination of Dr. Dies was concluded by Collin Vause, Esquire. The next re-cross examination by Claudia Jean Wheeler proceeded.

RE-CROSS EXAMINATION

The children told Dr. Dies they have a preference to live with their mother. (TR 1120)

In connection with the issue of the Kantaras' marriage breaking up, Dr. Dies was asked if either Linda or Michael said "that there was absolutely, positively no sexual contact between Michael and Linda?" He replied, "Neither one of them said anything like that, that there was absolutely no sexual contact."

The question of "no sexual contact" between Linda and Michael was further pursued, as follows:

> BY MS. WHEELER, ESQ.
>
> Q. Well, did either one of them say there were sexual problems because of the lack of sex between the parties and that's one of the reasons for the separation?
>
> A. I don't recall it being framed as lack of sex. I recall it being framed more as difficulties in the sexual relationship. Linda wrote something to that effect.
>
> Q. Difficulties? Did she tell you that they tried sexual relations? I would like you to find that in your notes if she did.
>
> A. No. That's not said, no.
>
> Q. Okay. Well, if she ever told you that these people had sex I would like to know when she told you that. And these people I mean the parties, Linda and Michael?
>
> THE COURT: Did they stop having sex; is that what you're saying?
>
> MS. WHEELER: If they ever had sex. If either one of these –

THE COURT: If they ever?

MS. WHEELER: Ever, Judge O'Brien. Ever. If either one of these parties ever reported that they had sex. If that was one of the problems that led to this breakup.

THE COURT: Well, there's a difference between whether they had sex problems –

MS. WHEELER: Well –

THE COURT: -- or whether they had no sex.

MS. WHEELER: No sex is what I'm talking about and if that was one of the problems. I think Michael reports it as growing apart and I can't remember how Linda reports it, Judge. But I think the root of this problem – I don't want to say anything more. I'm just –

THE COURT: We'll get that from your client.

BY MS. WHEELER:

Q. Well, we'll get that from my client, but I would like to know if either of them told Dr. Dies anything differently. I think it's very important because my client – just wants. . .

A. What I'm reading from, and I'm not finding that reference I'm looking for, is a document provided to me by Linda. And I'm not sure that I'm going to be able to find that reference that I'm thinking of.

I'm sorry about the delay. I cannot find that, counselor. In terms of the statement I'm recalling simply saying by Linda that there was a – I use the word unstable. The implication was that their sexual life was not happy.

Q. Okay.

A. There was no statement that we never had sex. As a matter of fact, the way I read that was that there must have been efforts, however, I didn't get into the details to share intimately sexually.

Q. But you don't have any details on them ever having sex? Did Michael ever tell you they had sex?

A. No.

Q. Okay. Did Michael ever tell you we had sex, and I don't mean it as literally. I don't mean it –

MR. VAUSE: I will object. I guess I got a question really, is consummation of the marriage going to be an issue because I don't recall it being pled, maybe it was, but if it was I don't recall it being pled.

MS. WHEELER: It was pled, Judge, but that's not where I'm going with it. It was pled somewhere in Mr. Brick's pleading, but that's not where I'm going with this. This distancing because there's been a lot of talk, we danced all around this subject, but I would like to know if either one of these parties had confirmed with Dr. Dies there was sex in this marriage, any sex.

THE COURT: The implication you're saying there was none. Are you saying from the beginning as counsel had said from the date of the marriage going forward –

MS. WHEELER: No sex.

THE COURT: -- to the time they separated?

MS WHEELER: No sex. No. From the date they met until the date they separated I'm talking between Linda and Michael no sex. I want to know if anything Dr. Dies has controverts that.

THE COURT: She didn't tell you?

MS. WHEELER: Well, I just like to know what he –

THE COURT: Knows about –

MS WHEELER: From either one of them.

THE WITNESS: I recall no specific statements. I certainly had no statement from either party that there was no sex.

BY MS. WHEELER:

Q. Okay.

A. That I know.

Q. Okay.

A. What I'm looking for is how Linda framed her statement which led me to believe that there was certainly intimacy.

Q. Would that be sex?

A. But what is that?

Q. Well, I don't know, Dr. Dies, you're the psychologist.

A. Certainly if you're defining sex as intercourse, no, there wasn't any intercourse.

Q. I know that. I'm not talking about boy meets girl sex. I'm talking about any sex.

A. Okay.

Q. I'm obviously not trying to insinuate something that Mr. Kantaras – I'm not trying to do that. I'm just asking you if there was any sex. If you have any evidence of any sex of any type and I don't mean kissing.

A. Well, would you call kissing as part of intimacy and sex in the broader definition?

Q. Well, let's talk about a deeper definition.

A. Okay.

Q. Was there any sex?

A. Okay. I don't have any indication that there was. No clear statements that said incidentally we had sex or a statement that said incidentally we never had sex.

Q. And there's no sex – that we used to have sex 100 times a year the first year of our marriage and now it's like that joke we have, I don't know, once a year or something like that. You know how, you know, those jokes go?

A. I have no statement like that, no.

MS. WHEELER: You know, I don't even know what the joke is anymore, Judge. I'm not going to be, you know, I'm not going to tell you that I forgot it. I can't even think of it right now, but I know there's a joke about what happens before marriage and what happens afterward.

BY MS. WHEELER:

Q. Is there any kind of comments like maybe even like Linda would do it once a month and then she wouldn't do it at all or just anything that would insinuate that these parties had sex?

A. The sexual statement I'm looking at right now comes after a brief discussion where Linda says, I am a woman who looked at you and saw a man. Then she goes on to elaborate, but your sexual need to be satisfied had to be done.

So at any cost you got what I could and would never do for you, that was be a woman with you – let me reread that. That was be a woman with a woman, which was you.

Q. Okay. So doesn't that clearly state that – is that after the separation?

A. This?

Q. Yes.

A. This was submitted to me as a statement written to Michael January 30th, 1999.

Q. After the separation. So at any cost you got what you wanted, keep going.

**K. <u>Private Letter.</u>**

THE COURT: Is that a letter that she wrote? (Pet. Ex. #6)

A. Well, this was given to Michael.

MS WHEELER: Yes.

Q. May I see that for a moment?

A. Sure.

Q. What page was that on, sir?

Q. In the context of his entire letter, isn't it clear that Linda is saying Michael left Linda because she wouldn't be a woman with a woman because she saw her husband as a man?

If you read this entire letter, isn't it very clear, and you might want to read it, Dr. Dies, that she's very upset because Michael is with another woman and now it could be woman on woman because she sees Michael as a man, but Michael is not a man. Isn't that what this letter says?

MR. VAUSE: I'm going to object to that interpretation because it simply doesn't make sense. It may be what the letter says, but it does not make any sense. Apparently Linda Kantaras is saying in this letter when she was with Michael, Michael was a man, but now that Sherry is with Michael, Michael is a woman.

It's a bunch of nonsense. I don't know where counsel is going to go with it, but I don't think it should be something that Dr. Dies should be cross-examined on.

MS. WHEELER: Well, Judge, it's in his stuff.

THE COURT: It's in his notes.

MS. WHEELER: It's in his notes.

THE COURT: The reference to this very letter?

MS. WHEELER: Obviously Michael gave it to him because it's a copy of a letter to Michael.

THE COURT: When she was viewing Michael, she saw him as a man?

MS. WHEELER: "I am a woman who looked at you and saw a man, period. I don't know if that's, but why would you leave me for a woman who wants to have you as a woman but not in the public's eye.

Michael, you have no one to blame but yourself and now Sherry for telling Denise. I told you not to tell Sherry, but your sexual need to be satisfied had to be done.

So at any cost you got what I could and would never do for you, that was be a woman with a woman which was you."

BY MS. WHEELER:

Q. Now, Dr. Dies, if you could just read that, isn't that patently clear that Linda and Michael never had sex because she wouldn't be with a woman on woman?

A. I can't quite go there and I'll explain why. I don't know what is being referred to in terms of specific sexual behavior. Suppose, for example, it's referring to oral sex.

Q. Well, let me ask – let's just stop right there. Did you ask Linda about that letter?

A. No, I did not.

Q. Because once you read those words, you got what you wanted, woman on woman, did you ask Linda, what did you mean by that? Isn't that kind of disturbing?

A. No, I did not.

Q. Because once you read those words, you got what you wanted, woman on woman, did you ask Linda, what did you mean by that? Isn't that kind of disturbing?

Woman on woman. In the public's eyes you're a man and in my eyes you're a man, but behind closed doors you're a woman and I'm not going to be woman on woman and now you got what you wanted.

You can't tell us that that doesn't mean Linda didn't have sex with Michael?

A. I can't get to that. Again, I'm trying to qualify what do you mean –

Q. Right. And you didn't ask Linda either, did you?

A. No, I didn't ask.

Q. You didn't see that as a problem, once again?

A. You're not allowing me to answer the full question. You asked me about what is sex. That doesn't mean they weren't intimate and passionate with each other. They may not have had oral sex, for example. They may have had sex only one way, but not the another way. So I can't get into that from what you're saying, Counselor.

Q. They may have had, but earlier in your testimony you said that one of the problems the children witnessed, and let me quote you, is lack of intimacy.

What did that mean, Dr. Dies? You said that today.

A. Well, I certainly didn't refer to what refers to what goes on in bedroom, I referred –

Q. No, I didn't say that, but you said the children noticed lack of intimacy. Did you know that these parties slept in separate bedrooms because Linda refused to have sex with her husband?

A. I know that Michael slept on the couch.

Q. Well, they slept in separate beds, I apologize. It's late. I didn't mean to insinuate there are more bedrooms than there are. But they didn't sleep together?

A. I don't know if that is true for the history of the marriage. I know it is true more recently from what I hear and there are various reasons to explain that. I suspect it was the excuse, but I also suspect it related to hours and so on.

So there are a variety of things, but I really can't get to where you are with that conclusion because I don't know and did not ask what was the nature of their sexual sharing? Was there oral sex going on? Was there passionate kissing going on? If there was oral sex, who performed what on whom?

I just don't have that information.

Q. And you just didn't think that was important?

A. No, I did not.

Q. Even though Michael's gender dysphoric you just didn't think that was important?

A. I didn't think that was important even if Michael was heterosexual.

MS. WHEELER: Okay. I have nothing further, Judge. Well, that's actually my point, Dr. Dies, but I have nothing further, Judge.

(TR 1124-36)

This concluded the re-cross examination of Dr. Dies by Claudia Jean Wheeler, Esquire.

The Court directed further questions at Dr. Dies regarding the possible interpretations to be placed on the letter written by Linda to Michael, as follows:

THE COURT: One little interesting twist here on this sex and that letter. It would appear, from what she is saying, that Linda had always respected him as a man sexually in their relationship and she refused to alter that and become a woman in their relationship.

A. I'm not sure that I understand that, Your Honor. That Linda refused to become a woman?

THE COURT: In the relationship as long as she was with Michael. And what she is saying is that Michael is regressing from being male to female because that's the way Sherry sees him, not as a male as Linda saw him. Sherry only sees the female in Michael which I think she's saying in that letter.

A. Well, I think she's saying that's my opinion.

THE COURT: Pardon?

A. I think what Linda is saying in that letter is that her opinion is that's what's being perceived.

THE COURT: That's right.

A. But that's certainly not the understanding I have from both Sherry and Michael.

THE COURT: All right.

MS. DOERING: Your Honor, if I could just –

THE COURT: Maybe so, but the thing is what Linda is saying and we'll find out when she's on the stand is that she's always respected him and his male quality.

A. That's my understanding.

THE COURT: Yeah.

A. That's a statement in that letter and in virtually all of the instances when Linda talks about Michael she uses a male pronoun as a man, as a he and so on until the separation, until Sherry when suddenly the definition of Michael converts from man to woman.

And at that point she uses the labeling that I've talked about throughout my report.

THE COURT: When Michael reverts to a woman with Sherry?

A. No, Michael didn't make that reversion. It's Linda's image of Michael that changed.

THE COURT: That's her belief? Okay. That is what I wanted to establish.

A. It's Linda's reconceptualizaiton of Michael no longer seeing him as a man, He forms a relationship with Sherry and now that's viewed as an inappropriate lesbian relationship. Linda says in a number of different places she never saw her relationship with Michael as a lesbian relationship.

THE COURT: Uh-huh. In fact, she refused to make it that.

A. Well, Your Honor, I'm not sure of that because, again, I don't know specifically what happened in the bedroom. I mean, I don't know what kind of intimacy transpired there. There could have been an intimate sexual relationship that had the ingredients of any kind of sexual relationship in terms of mutual masturbation, in terms of oral sex. I just don't know that, Your Honor.

THE COURT: Well –

A. I didn't deem that relevant.

THE COURT: Well, are we going to make an exhibit out of this letter? Is that a letter from Linda to Michael?

MS. WHEELER: That would be fine with me.

THE COURT: What are we talking about? We've been discussing it and how to interpret it. We're going to have to give it to Linda –

MS. WHEELER: Why don't we get a copy of it so we could show it to her on her direct. That would be a good idea.

THE COURT: So I guess we might as well make an exhibit out of it. Where does it come from? Whose file?

MS. WHEELER: Dr. Dies and Collin.

A. Well, it came via Michael to me and the copy you're now getting was the copy apparently Michael gave to his attorney. Mine is stuck away somewhere in this mess.

THE COURT: We might as well make an exhibit out of it.

MR. VAUSE: We'll admit it as Petitioner's Exhibit Number 6.

(TR 1139-43)

## FINDINGS OF FACT

## DR. ROBERT R. DIES (Continuation) #4

Dr. Robert Dies was recalled to the stand and asked to continue with his observations resulting from two home visits with the parents. The first visit was in November with Michael and the two children at the home of Michael's parents. In the course of that evaluation they went into a bedroom, sat on the floor. The purpose of the visit is to watch the interaction of the children with Michael, and vice versa, and essentially evaluate the quality of the interaction, the nature of the bonding.

Mathew talked about miniature racing cars that he and Michael worked on together. Matthew was very proud of his trophies that he had won. Irina, on the other hand was working on something with Michael's assistance, making a "backpack" for one of the dolls and how mutually engaging it was for the two of them. He watched for non-verbal spontaneous interaction, for example, Irina "would go toward Michael sit on his lap and put her arm around him." Matthew was "more reserved like father/son stuff" – you don't hug when you're that age (12 years) but I sensed there was a real bond, there was some closeness." I had "very little sense that there was substantial tension."

They talked about Sherry, Michael's significant other, whom they didn't know very well. The visit went "pretty well."

The visit to the home of Linda and the two children was significantly different. Linda and Irina met him at the living room door and they "talked for just a few moments." Before he got there, apparently Linda and Matthew had a "major confrontation." Matthew threw a "bit of a fit" and was asleep in his mother's bedroom. He went into the bedroom, woke up Matthew and they chatted for 15 minutes. He was

very upset and had argued with his mother over his being required to get up early for her to go to work. He shifted the issue, so they talked about Matthew's discomfort of being around Sherry and Michael – he had a sense that Sherry was being "pushed too quickly." It was difficult for him, since Sherry had three daughters, and there was Irina. That's a lot of women for a 12 year old boy – he felt he was the "odd person out."

Dr. Dies returned to the living room with Linda and Irina, Matthew followed within minutes and they engaged in a very "reasonable conversation – it went quite well." "I was impressed with the children being able to express their feelings" but the visit was less positive because of the tension in the air.

Dr. Dies was asked about another major confrontation between Matthew and his mother, and he reported what he learned about that, as follows:

> A. Yes. There was a brief period of time. Once again, Mathew and his mother got into a major confrontation. I never got all the details of that, but it was some disagreement I think about going skating.
>
> And I think Mathew, for whatever reason, got himself in trouble so his mother was essentially trying to discipline him and he apparently rebelled in response to that. Mathew is inclined to be a little rebellious so that escalated disproportionally.
>
> And he was making some outlandish comments, apparently, one of which was that I'm going to kill myself. And he allegedly said, according to Linda, and I'm going to kill you and Irina as well.
>
> When I talked to Mathew subsequently he denied the latter comments. He clearly stated that he said, Yes, I did say I was going to kill myself. He denied that he would do that, so he was making this kind of outlandish statement for effect, but he denied the statements about killing his mother and sister.

I independently interviewed Irina about that. She said she heard the first comment, the suicidal comment, but did not hear the other comments. That's not to say they weren't made, but she did not hear them and Mathew denied them.

But based on that, Linda was very concerned about the safety issues and that would be understandable, if those were the words you heard. So based on that –

Q. Who was the person that alleged that Mathew made threats to kill –

A. His mother. His mother made that. Now, whether or not that really happened is difficult for me to sort out with confidence. Mathew denied it. Irina did not hear it.

But in either case because of the level of tension that was in the home Linda shared with me her concerns about safety and made a judgment that he probably should stay in his father's home.

Mathew subsequently went to his father's home and as they talked about it I think the original plan would be that he would be there for a couple of weeks.

And Mathew put it kind of cavalierly, I'm going to go check it out and see what it's like, essentially kind of downplaying the issue. I don't know exactly how many days he stayed, but within several days he was back with his mother.

But at that point Mathew was saying, I want to go live with dad. He wasn't sure how long. He said a couple of weeks, but he clearly wanted to try it on for size.

Q. And, according to your report, at page nine this occurred on January 16th of 2001?

A. Yes.

(TR 703-05)

Dr. Dies met with the children on January 17, 2001, and both children now denied the homicidal comments, and Mathew said his Dad's a pretty neat dude and he restated his goal to stay with his father again for a couple of weeks. Mathew remarked spontaneously that his mother said bad things about Michael, his father was Mathew's words. The following is what Mathew reported to Dr. Dies that his mother had said about Michael and Sherry as follows:

> For example, and I'll put this in quotes, "bastard." As well as about Sherry namely that she is a – it begins with a B and he would not say the word. And that she's a lesbian and a slut. That's when I asked Matthew the meaning of that word and he did not know the meaning of that word.
>
> Q. Did you have an opportunity to speak to Irina during that session?
>
> A. I did.
>
> Q. And –
>
> A. I'm looking at my comments here. Brief session. She commented that she is often, quotes, not allowed to talk to dad. I don't know why she won't let me.
>
> Q. When she said to me, who is she referring to?
>
> A. Her mother.

(TR 706-07)

Dr. Dies referred to Dr. Boone's notes concerning the eight sessions he had with Linda and Michael and the children. These notes were used by Dr. Dies in preparing his final report in April to the court.

The children in the sessions verbalized their desire to live with their mother. Mathew said his father embarrassed him how he acts. When asked what his mother thinks of his father, Mathew replied, "she hates his living guts." (TR 708)

Dr. Boone's written impressions of Michael was that he was more emotionally stable but may have a history of being emotionally controlling of Linda. Linda is a chronically depressed, independent, manipulative woman who is intentionally angry at Michael for his perceived abandonment of her. And her anger is to the level that "she's willing to circumvent court orders to sabotage his visitation and relationship with the children." That is a direct quote from Dr. Boone's notes.

Dr. Dies was asked about his session with the children on April 27, 2001, and he after his session with the children he escorted them to his office waiting room where Linda was and they all sat down for a brief exchange. Mathew brought up his sex education class in school and what he was learning about gender differences in general. Linda, at that point, Dr. Dies said "quickly jumped in to reinforce the notion that Michael was, in her words, 'living a lie" and that he cannot be regarded as a 'man.'" (TR 711) When Dr. Dies was asked what effect would that kind of statement have on the children and he testified:

> A. Well, I just see that as being consistent with the pervasive alienation of the children and their father, of the children from their father, the denigration of their father, using very derogatory concepts, and really setting him up as essentially deviant and sick, a word which has been used in the past.

(TR 711)

Dr. Dies was asked in his Report of April 28, 2001, what was your opinion as to who should be the primary residential parent? He replied:

BEST INTEREST

A. Based on the considerable volume of evidence from multiple sources which I independently confirmed, and using the major criteria from the Florida Statutes, my considered opinion is that Michael Kantaras would be the more appropriate parent for these children using the criterion of the best interest of the children.

CHILDREN PREFER MOTHER

Obviously that was a very difficult decision to make in light of the children's consistent statement that they would rather live with their mother, but I had to weigh a number of very important factors: One, I had to weigh the age of the children. I had to weigh the history of the alienation that had transpired over time and what role that would play in formulating that opinion.

ALIENATION

I had to consider the dynamics of alienation going on and what would that do to influence children to make a choice between their parents. And is that a genuine choice or is that a defensive choice, that is, stating they would rather live with their mother.

CHILDREN AMBIVALENT

And I ultimately came down on the side of it being not as much a true alignment with their mother, although they certainly love their mother, but rather a kind of easier decision to make given the accumulated history than to clearly say we want to live with our dad or even to talk about we want to live with both, which they've never stated either.

CONCLUSION

But I was also swayed by hints from the children, comments from the therapists that there were times when Mathew would say, I would like to live with my dad, he's a pretty neat dude or the children mellowing considerably from their initial positive

> carrying through a period of intense animosity toward their father, working in therapy, bringing back their level of bonding with their father so that it was real clear that – where they started, which is loving their father, getting close to their father was where they eventually ended up, but they were still struggling with the message that they were consistently getting about – the alienation kind of messages.
>
> So based on all of that, I came down on the side of Mr. Kantaras. Actually, I came down on the side, in my opinion, in the best interest of the children, which is the better way of formulating it.

(TR 710-13)

Dr. Dies' Report was received in evidence as Petitioner's Exhibit No. 4.

Dr. Dies prepared an update to his Final April 2002 Report based on letters sent to the parents, each, on October 29, 2001, requesting they supply him with supplemental information of their choice with a return date by December 3, 2001.

Michael Kantaras supplied a sizeable folder full of commentary but Linda Kantaras did not respond. So, he sent another letter to her on December 10 requesting a meeting with her and the children.

After receiving Michael Kantaras' material, Dr. Dies set a meeting with Michael and Sherry on January 3, 2002. He next met with the children, Irina and Mathew on January 9, 2002. Thereafter, Dr. Dies phoned Linda and they agreed to meet on January 14, 2002. It was to be an individual session. On that date, Linda called and cancelled the meeting. So they set another meeting the next day, the 15th, with Linda and the children. That was his final session. (TR 714-17)

Linda advised Dr. Dies at this session that in recent months she had become more cooperative in the overall process. She said she was more obedient to the law and said

"The Lord is leading me to be obedient and cited a segment of the Bible, Romans 13:1 ("Let every sole be subject unto the higher powers. For there is no power, but by God: the powers that be are ordained of God"). (TR 726) She advised she has broken up with her boyfriend James. She attributed that to the notion – as long as she married it's wrong to have a significant other.

Dr. Dies reports that the religious attitude of Linda presents a new aspect for Michael's perspective, as follows:

> Michael's perspective is, as best I understand it, that religion is now being used to further alienate the children from him. By saying, for example, he does not walk with the Lord, that he's a sinner and that he needs to repent. That last sentence is almost a quote that Matthew provided in therapy to Dr. Boone.
>
> So the children have a sense that Michael is now framed within a religious orientation of doing something which is essentially not walking with the Lord.

(TR 728)

He concluded, however, that the last session on January 15th went well, fairly productive but a "little bit controlled, stilted."

Dr. Dies summarized the notes of Dr. Boone regarding his eight sessions from May through December of 2001 with the Kantaras family, and particularly the children, as follows:

> He expressed, he, Dr. Boone, expressed considerable concern about Mathew's adjustment. Over the course of time Dr. Boone has come up with various diagnostic labels to kind of explain what's going on with Mathew.
>
> Initially he saw Mathew as having an adjustment disorder because of the turmoil related to the divorce, but as time has unfolded and Matthew's angry oppositional attitude has been more manifest he has changed his label to an

oppositional defiant disorder, a youngster who has difficulty controlling his anger and is really a tough kid to work with.

And it's clear that both parents have a significant responsibility in focusing on that issue with Matthew, and that's respective of Dr. Boone.

As I combed through the notes Dr. Boone also said that Irina is a much more compliant, non-troublesome or troubled kid. His comments are generally very positive, but he records and I'll quote this, Both reported the desire to reside with their mother. Irina states, I would miss her way too much if I lived with dad.

However, continuing the quote, They deny anything particularly negative about residing with their father. In the last session notes I got, which were less than a month ago, December 28th, Dr. Boone wrote this comment, quotes, Irina also expresses a desire to reside with her father. I'm more free with him. I'm more comfortable with my dad because she, meaning her mother, is more strict.

Q. And to clarify, this was December 28th, which is less than a month ago?

A. That's correct.

Q. Irina stated that she wanted to live with her father?

A. That's correct.

Q. Okay.

A. The other thing that I pulled out of the session notes were the children's most negative comments about their respective parents. Mathew reported he didn't like Sherry. She's taking my dad over my mom.

Both children confirm that their mother calls Mr. Kantaras a her. And Mathew said his mother screamed at "he," and this is the quote that I read before, Your Honor, that Michael needed to repent as he's a lesbian and still a woman. Mathew says that's mother's comment directed toward Michael.

> And then in the December meeting a month ago Dr. Boone also wrote, For the first time Irina related to me her fear of saying anything negative about her mother because she feared her mother's angry reaction.
>
> She states that her mother could get angry, quotes, "Even if she relates to her favorable information about her father."
>
> And then finally, in the sessions where Dr. Boone kind of summarizes his essential diagnostic impressions what I tried to pull out of that were the negative comments he made about both parents other than the – what was going on in the sessions like the anger and so on he says in one session note, June 20th, of last year, available data raises concerns with borderline personality disorder with Mrs. Kantaras. And that's where we left off my testimony about personality disorder.
>
> Another quote, Mrs. Kantaras, danger noted of possible "parental alienation syndrome." The kind of thing we talked before when I was testifying.
>
> Then his perspective on the family in numerous sessions he writes the following, Family dysfunction secondary to ongoing divorce and child custody dispute.
>
> That's essentially the essence of those therapy notes.

(TR 734-37)

Based on the supplemental information he had gathered since the report of April 2001, Dr. Dies was asked if it changed his mind regarding his recommendation that Michael Kantaras should be the primary residential parent, and he said: "My opinion has not changed. I still believe based on all of the evidence accumulated over two-and-a-half

years that the evidence much more substantially comes down on behalf of the children being placed with their father. (TR 739)

However, he adds that the parents should be actively involved in these children's lives. In the notes of Dr. Boone covering 16 sessions with the family, he feels are consistent with his own recommendation. He notes that Dr. Boone refers to Linda Kantaras as suffering a borderline personality disorder, consistent with angry, impulsive actions – that she is not crazy – he never says that – but he does express considerable concern about her. "And, he puts that, at times, in terms of his concern that she will essentially manipulate the system and interfere with their father." That view is consistent with that of Dr. Shelef. (TR 740) Between the two parents, Michael is more stable and has wonderful parenting skills.

Dr. Dies' Updated Report was received in evidence as Petitioner's Exhibit No. 5.

In regard to Matthew, Dr. Dies was asked if Michael was able to "bond" with his son. The reply was "Yes, without a doubt." (TR 746) Examples are when they go fishing together, boating, work on model cars, skating, swimming, four-wheeling, dirt bikes together – those kind of things. They are traditional male things. Dr. Shelef reported during the most stressful confrontations of the children with Michael after their awareness of his transsexuality that at the conclusion of her sessions she heard Matthew say to his father "I love you" at least six times, six different occasions. (TR 748) Dr. Dies stated:

"So I don't think there's any question that Matthew loves Michael and certainly the opposite is true and I call that bonding. And I think the same is true for Irina." (TR 748)

Should the court be called upon to rule that Michael has no legal right to maintain his relationships with his children, what would be the consequence? Dr. Dies answered, as follows:

A. What damage would it do?

Q. What damage would it do to the children?

A. I think it would be devastating. The children clearly love their father. That bond has been there for years. There was a serious rupture in that during the period of when I started seeing them, probably most serious starting July of '99, escalated to November or December, and then as therapy kicked in that very negative outlook of the children toward their father subsided quite precipitously and so that at this point in time it is a very close affiliation between the children and Michael.

There are still some questions, obviously. So at this point in time, if Michael were denied any kind of access to the children or vice-versa I just think it would be a gross disservice to the children and to Michael and to Linda, to the family.

Q. Who is the better parent?

A. Who is the better parent? Based on my accumulated information by judgment is that Michael is the better parent.

Q. Is that supported by any other professionals who've been involved in the case?

A. In reviewing the therapy notes and specific comments to that effect, both Dr. Shelef and Dr. Boone made explicit statements of that nature.

Q. Such as?

A. This is a slight paraphrase, I think, but excellent parenting skills is a verbatim quote. I think that comes from Dr. Shelef.

Q. Describing who?

A. Describing Michael. And the other comments of Michael being a more stable, compassionate, caring kind of parent and I think both therapists have picked up on that and commented throughout their therapy notes on that sort of thing.

Q. And, briefly, why do you yourself say that Michael would be the better parent?

A. Well, I say that significantly because of those therapists' comments, but also in terms of what I have witnessed, and my concerns about the long-standing alienation that has gone on.

That troubles me deeply that the children have been confronted with that and it's cost them, I think valuable time with their father. It's caused considerable turmoil within the family system. I think it's been very hurtful to them.

And I think when I look at that first criterion from the Florida Statutes and the 10th one which have to do with the frequency and quality of the interactions between parent and child that there's been some considerable assault on both the frequency and quality of the relationship by virtue of the kind of blaming, name calling, derogatory comments that had been leveled against Michael. I have not experienced Michael doing that directed toward Linda.

And so when I look at that as one aspect of parenting that is wanting the other parent to be actively involved, and not just saying the words, but following through on that, I think that's really an important issue.

So when I compare the parents on that dimension there's no question in my mind that Michael best represents that parent who can foster the continuing relationship between their mother and the children.

(TR 750-53)

This concluded the testimony of Dr. Dies.

## MEDICAL HISTORY OF TRANSSEXUALISM

Tracing the development of "transsexualism" in the law is a task that requires legal research, starting with England. The first case to encounter the issue in marital law was the case of Corbett v. Corbett, 2 All ER 33 (1970). This decision rendered by Judge Ormrod laid the foundation for judicial thinking in Western society.

The issue of transsexual persons clamors for notoriety the world over and it enters squarely into this case of Kantaras v. Kantaras. All the legal factors in this divorce case centers around one question, what is transsexualism?

Before we delve into the medical definition or meaning of transsexualism, it is best to begin a historical perspective of where this "ism" entered into our society's lexicon.

In the book, "The Transsexual Empire," by Janice G. Raymond (1994) she states:

> "The word transsexualism did not become part of the English language until the early 1950's. It was invented as a medical term by Dr. D. O. Caudiwell, who used it to classify a girl whom he described as obsessively wanting to be a boy. He called her condition psychopathia transsexualis. Several years later, in 1953
> Dr. Harry Benjamin used the English word 'transsexualism' in a lecture before the New York Academy of Medicine. Before 1967, the Index Medicus did not list it as a subject heading. Prior to this, it was subsumed under such categories as transvestism and sex deviation. Before the new exploitation of the famed Christine Jorgenson case in 1953, most people had never heard the word nor of the state of being the word signified. Christine, formerly George Jorgenson, was transsexed in Denmark in 1952 by a team of Danish physicians headed by Dr. Christian Hamberger. Their findings were published a year after the operation in the Journal of American Medical Association."

> "However, the first book to relate a probable case of "transsexualism" in a popular-scientific style and content was Niels Hoyer's, "Man Into Woman" (1933). The first physician to perform transsexual surgery was German F.Z. Abraham who in 1931 reported the first case of sex-conversion surgery. At the time Jorgenson was transsexed, there were few places where one could go to obtain such surgery. Casablanca, Istanbul, and countries such as Denmark, Germany, and Switzerland, were the most frequent locations. None in the United States."
>
> "Raymond said, in the late 1950's, Dr. Harry Benjamin of New York, funded by grants from the Erickson Educational Foundation, began treating transsexuals and publicizing his research, hoping for professional and public understanding of what he titled 'The Transsexual Phenomenon.'" In 1964, he founded the Harry Benjamin Foundation and brought together professionals from many specialties to do systematic research on transsexualism.
>
> In 1967, Johns Hopkins Gender Identity Clinic was opened in Baltimore, Maryland. When Johns Hopkins lent its professional reputation to research and transsexual operations there follows today an estimated thirty such hospitals, among them, the university hospitals of Minnesota, Stanford, and Northwestern, Arkansas, Michigan, Kentucky, Virginia, and Texas.

This description of the development in the Univrsity Medical schools confirms the testimony of Dr. Bockting and Dr. Cole about transsexual research.

There is no reason to believe transsexualsim is an isolated problem in view of all the medical and scientific research taking place at these institutions. Recently, there was announced the opening of a gender identity clinic in Tampa, Florida.

The Johns Hopkins clinic served as the model for the other clinics as testified to by Dr. Bockting. It developed the team approach of psychologists, psychiatrists, plastic surgeons, gynecologists, urologists, and endocrinologists working together. The team devised methods of evaluating pre-operative transsexuals to judge their candidacy for

surgery the team operates selectively only on those individuals who meet the criteria. It continues to renew criteria, mainly to determine whether surgery is warranted. Medical science continues to refine its methods of surgical treatment and attempts to do systematic post-operative follow-ups. Dr. John Money, Professor of Medical Psychology and Pediatrics at Johns Hopkins Hospital, has been the foremost publicist of the transsexual phenomenon. (Id. at 22)

Janice Raymond stated that over the years when transsexualism emerged,

> "Normatively different sexual and gender behavior was pretty much encapsulated under the headings, lesbian, homosexual, transvestism, and transsexualism. Today, things are more complex and a plethora of terms such as 'transgendered,' 're-gendered,' 'gender blending,' 'gender bending,' 'gender fucking,' and 'transhomosexuality,' have been added to the lexicon of so called gender dissonant behavior."
>
> "The issue of transsexualism has been largely superceded by debates over transgenderism or what has been called "sexuality newest cutting edge.' " The term, transgender covers pre-operative and postoperative transsexuals, transvestites, drag queens, cross dressers, gays and lesbians, bi-sexuals, and straights who exhibit any kind of dress and/or behavior interpreted as "transgressing gender roles." (Id. Introduction, Chap. XXV, 1994)

"The term 'trans-sexual' refers to a person who is said to believe firmly, in spite of all physical and genetic evidence to the contrary, that he (or she) is inherently of the opposite sex. The transsexual has a fixed or apparently unalterable belief that he (or she) is one sex 'trapped' in the body of the other."

Drs. Miilton Edgerton, Norman Knorr and James Cllison, the interdisciplineary team at the Johns Hopkins Gender Identity Clinic defined transsexualism, as follows:

> "The term 'transsexualism' has now been widely accepted in the medical literature as designating that psychiatric

> syndrome [gender identity dysphoria] which is characterized by the individual's attempt to deny and change his (or her) biological sex and to this achieve and permanently maintain the opposite gender identification."

Janice Raymond stated that the Hopkins definition 'psychiatric syndrome' does not refer to any psychotic causation theory. One might ask: "Is any patient who seeks castration by surgery, by definition psychotic?" We do not find this to be the case, the doctors said."

"Rather, the words psychiatric syndrome probably indicates that the authors do not consider transsexualism to be of biological origin. In popular terms, transsexualism has come to mean a condition of feeling trapped in the body of the wrong sex. This inevitably raises the question, is it biologically possible to convert a person surgically to the opposite sex? Is it possible to change sex- that is, to transsex? In order to answer this question, it is first of all necessary to discuss various meanings of the word "sex" – a word that Drs. John Money and Gertrude J. Williams, in Traumatic Abuse and Neglect of Children at Home of Johns Hopkins University Press (1980) p. 412) say has both a "dismaying multiplicity" and "ambiguity" of meanings." (Id. at 6)

Dr. John Money says there are "Six Sexes" he has distinguished. There are various definitional levels of the word "sex" that are helpful in assessing whether it is biologically possible to cross-sex:

> "1. *Chromosomal Sex*. This sex determines biological maleness or femaleness, contrary to popular opinion that anatomical sex is determinative of sex. Normal males have a chromosomal pattern (XY) and normal females have a pattern (XX), but anomalies do occur and constellations such as XXY or XXYY appear in the chromosomes. The pattern of sex chromosomes is present and unchangeable in every body cell, including blood cell. Chromosomal sex

can, however, conflict with anatomical sex, especially after transsexual surgery.

2. *Anatomical or Morphoiogical Sex*. This kind of sex includes what are referred to as primary and secondary sex characteristics. The primary dimensions of anatomical sex are the testes in the male and the ovaries in the female. Secondary anatomical sex characters include the penis, scrotum, prostate, hair distribution, and a deeper voice in the male; and the clitoris, vulva, uterus, vagina, breasts, a wide pelvis, female voice, and hair distribution in the female. In the case of transsexualism, it is anatomical sex that is altered through hormonal and surgical procedures.

3. *Genital or Gonadal Sex*. This kind of sex is the collective term for the testes in the male or the ovaries in the female.

4. *Legal Sex – Genital Sex*. Genital sex becomes the legal sex although this is not actually defined in the codes. It is in this area that errors of sex do occur and not too infrequently. By merely determining sex on the basis of genital sex, the obstetrician or midwife may be deceived. Biological anomalies, such as various hermaphroditic constellations, may escape them. Consequently the legal sex designated at birth is wrong, and complications often present themselves at a future time.

5. *Endocrine or Hormonal Sex*. This is determined by androgen in the male and estrogen in the female. Besides the sex glands, the pituitary or adrenal glands also supply hormones essential for both sexes. Endocrine sex is also mixed to various extents. Testes, as well as male adrenals, produce certain amounts of estrogen. Likewise, various amounts of androgen can be found in the ovaries and in the adrenals of women. To a certain extent, therefore, females and males are "hormonally intersexed." Consequently, hormonal products can be used to feminize a "male or masculinize a woman." Hormonal treatments are preliminary measures used to alter the sex of a transsexual before the actual operation is undertaken.

6. *Psychological Sex*. Much of the literature uses this terminology to designate attitudes, traits, characteristics, and behavior that are said to accompany biological maleness or femaleness.

Janice Raymond makes the following observation about Psychological Sex:

> "I would prefer the term psychosocial sex to indicate the all important factor that such attitudes, traits, characteristics, and behavior are socially influenced. Dr. Robert Stoller uses the term gender to distinguish this kind of sex from biological sex. He differentiates between sex and gender in the following way:"
>
> Dictionaries stress that the major connotation of sex is biological as for example, the phrases *sexual relations* or the *mate sex*. In agreement with this, the word sex, in this work will refer to the male or female sex and the component biological parts that determine whether one is male or female; the word *sexual* will have connotations of anatomy and physiology. This obviously leaves tremendous areas of behavior, feelings, thoughts, and fantasies that are related to the sexes and yet do not have primarily biological connotations, it is for some of these psychological phenomena that the term *gender* will be used: one can speak of the male sex or the female sex, but one can also talk about masculinity and femininity and not necessarily be implying anything about anatomy or physiology. Thus while sex and *gender* seem to common sense to be practically synonymous, and in everyday life to be inextricably bound together, one purpose of this study will be to confirm the fact that the two realms (sex and gender) are not at all inevitably bound in anything like a one-to-one relationship, but each may go in its quite independent way." (Emphasis added.)

Janice Raymond says "the most striking example of sex and gender going in opposite directions is the transsexual. Transsexuals reject the gender that the culture bias assigned to them and gravitate toward the gender assigned to the opposite sex. The transsexual literature stresses how confirmed the transsexual is in the gender identity of the opposite sex. In the true transsexual there is no question of or ambivalence about the gender preference, for the identification has been completed from some time at the point when they appear before the physician requesting sex reassignment."

In the book, "Man & Woman, Boy & Girl" by Drs. John Money and Anke Ehrhardt, these authors make a further distinction between gender identity and gender role which Janice Raymond quotes, as follows:

> "Gender Identity: The sameness, unity, and persistence of one's individuality as male, female, or ambivalent, in greater or lesser degree, especially as it is experienced in self-awareness and behavior; gender identity is the private experience of gender role, and gender role is the public expression of gender identity.
>
> Gender Role: Everything that a person says and does, to indicate to others or to the self the degree that one is either male, or female, or ambivalent; it includes but is not restricted to sexual arousal and response; gender role is the public expression of gender identity, and gender identity is the private experience of gender role.
>
> Thus, they would distinguish between the psychological and sociocultural, or between private and public manifestations of gender.
>
> In contrast to gender identification in the medical world, the legal world has no psychological sex – it is all traditional biological sex." (Emphasis added.)

This will become apparent when we review the case decision in the area of transsexualism. The law itself is in legal transition and some jurisdictions reflect the medical advances that have taken place in diagnosing "Gender Identity Dysphoria" and medicines remedial solutions for this sexual phenomenon. Some jurisdictions prefer to remain in their 19th Century understanding of binary sex, that saw female and male as distinct, immutable and opposite. Sex is purely biological.

What does this delineation of the six various kinds of sex say about the binary sex position? Janice Raymond states:

> "The most significant fact is that it is biologically impossible to change *chromosome* sex. If chromosome sex

> is taken to be the fundamental basis for maleness and femaleness, the male who undergoes sex conversion surgery is *not* female." This would be true in the reverse, female to male.
>
> "Anatomically, transsexualism does take place, but anatomical changes also happen in what is commonly termed plastic surgery. Transsexualism most intrinsically affects *genital* or *gonadal* sex. For example, it is possible surgically to remove a woman's ovaries, and it is also possible to construct an artificial vagina in a man whose penis and testes have been removed. The question then becomes how much value we would give to this kind of alteration in terms of changing the totality of a person's sex. Dr. Georges Burou, a Casablancan physician who has operated on over 700 American men, expressed the superficiality of sex-conversion surgery in these words: "I don't change men into women. I transform male genitals into genitals that have a female aspect. All the rest is in the patient's mind." Moreover, the change in genital sex does not make reproduction possible. Maybe with the development of various forms of reproductive technology, this will be feasible in the future, but as yet, a change in genital sex is not accompanied by reproductive capacity."

There is a major difference between surgical intervention and hormonal intervention. Janice Raymond states:

> "*Endocrine* or *hormonal* sex is the most susceptible to alteration. Change here, for the transsexual, occurs without any surgical intervention. Hormonal treatment for men and women is the threshold of the transsexual odyssey. These treatments have certain anatomical effects resulting, for example, in breast development for men or redistribution of body hair for both women and men. But this reality requires constant hormonal treatments." (Emphasis added.)

In law, transsexualism does legally occur. It is legally possible to change sex. However, the whole area of *legal* sex has been one of contention for the transsexual who wishes to have sex-conversion surgery validated. Since all else is legal, then why is there no legal approval of the end result – a sexually transsexed person.

"The use of 'gender identity dysphoria' as a substitute for transsexual means by use of "dysphoria" it emphasizes the person's difficulty in establishing an adequate gender identification. Transsexualism is not restricted to, persons who request sex-conversion surgery,. There are those who are pre-operative and those who are post-operative." Both of these classes are distinct and separately identified.

The transsexual phenomenon is not of recent origin despite the fact modern day medical science has responded to offer treatment, hormonally, psychologically, and surgically.

Dr. Richard Green, Director of the Gender Identity Research and Treatment Clinic HCLA School of Medicine, Los Angeles, California, wrote in Medical Aspects of Human Sexuality (October 1969), about the history of ancient transsexualism as follows:

> "A male's compelling desire to live as a female, or a female to live as a male, is not new to our culture or our time. Hippocrates described a group of *Scythian* men: 'They not only follow women's occupations, but show feminine inclination and behave as women. The natives ascribe the cause to a *deity*.' Philo, a philosopher of ancient Alexandria, wrote of another group of males: "Expending every possible care on their outward adornment, they are not ashamed even to employ every device to change artificially their nature as men into women…. Some of them---craving a complete transformation into a women have amputated their generative members."
>
> Centuries later, France's ambassador to Spain under Louis XIV wrote, "I thought of myself (dressed as a woman) really and truly a woman. I have heard someone near me whisper, 'There is a pretty woman.' I have felt a pleasure so great that it is beyond all comparison. Ambition, riches, even love cannot equal it."
>
> Later, in America, *Westermarck* describing American Indian tribes wrote: "In nearly every part of the continent there seem to have been, since ancient times, men dressing themselves in the clothes and performing the functions of

> women…'*Berdache*' was the term for those males who behaved like women. For those Mohave Indian boys who were to live as women, there was an initiation rite during the tenth or eleventh year of life. The initiates insisted that their genitalia be called by the terms, which describe female anatomy. Similarly, Sir James Trazer wrote in The Golden Bough: There is a custom widely spread among savages in accordance with which some men dress as women and act as women throughout their life. Often they are dedicated and trained to their vocation from childhood."

(Id. at 96)

This history would indicate that early cultures had cross dressers, transvestites, homosexuals, and transsexuals among their people.

Dr. Green in his publication slated the question "Can one change sex?" He answered:

> "Whether one can change sex depends on the definition of sex. Drs. Money and Hamson have cited at least six criteria of sex: chromosomal, gonadal, external reproductive, internal reproductive, hormonal and psychological. The male who considers himself to be a "woman" has "changed sex" by one criterion, (psychologically). Sex change surgery, the plastic reconstruction of the external genitalia, changes sex by another criterion and, in the case of the female, removal of the internal reproductive system "changes sex" by yet another. With replacement gonadal hormone therapy, still another critrion of sex may be changed. However, gonadally, after sex-reassignment surgery (which involves castration) the patient is neuter. And chromosomally, the person is still the same (chromosomal) sex."

(Id. at 97)

Drs. Green and Money hardly seem to support the notion that sex is determined at birth and cannot be changed: sex is changed by surgery anatomically and hormonally. The six divisions of sex are all changeable and are not unalterable, or forever fixed by

nature, except chromosomes, which are in every cell of the human body. However, even chromosomal sex is not reliable and is not perfect at birth, as Dr. Green observes:

> "Patient investigation should include chromosomal study as there have been patients with an extra X sex chromosome (Klinefelter syndrome) who have presented with a behavioral picture identical to "transsexualism." Whether the chromosomal and behavioral anomaly are causally related or coincidental needs further study with more case material. The fact that the seemed X chromosome, usually associated with femaleness and femininity, may also be associated with "feminine gender orientation" in a phenotypic male is intriguing."

This observation by Dr. Green would indicate that the chromosome cluster has an extra X (XY) could be an explanation for the transsexual male to female (M to F) as well, an extra Y (XX) explains the female to male (F to M).

Janice Raymond stated sex reassignment surgery and related treatment was not available in the United States until a few years ago, and American transsexuals had to undergo surgery in Casablanca, North Africa, Mexico or the Nordic countries in Europe. In the last few years, American University hospitals have begun "investigative programs" in which sex reassignment surgery (SRS) is performed on carefully selected, extensively preoperatively evaluated patients, with provisions made for post-reassignment assessment.

In the Corbett case the respondent April Ashley had her sex reassignment surgery done in Casablanca and the medical experts concluded in that case her results were "artfully female."

As is noted above, there are a substantial number of outstanding University hospitals and clinics devoted to treatment for transsexuals in the United States. This

surgery is certainly not "back alley quack surgery" being performed on disturbed persons suffering from a sex jinx.

Dr. Richard Green describes the sex change procedures, as follows:

> "For the patient, the desperately desired medical procedure is that which removes the insignia of the undesired sex, genital removal in the male, mastectomy and possibly phallus construction in the female:
>
> MALES – For males surgery consists of removal of the testes, hollowing out the penis leaving only the skin, constructing a canal between the base of the penis and the anus, invaginating the penile skin so that it lines the new canal, relocating the urethral stump to a position just above the newly constructed canal, and reshaping the scrotal skin to appear as labia. Simulation of the female genital appearance can be quite accurate.
>
> FEMALES – For females, sex-reassignment surgery entails mastectomy, hysterectomy, and ovariectomy. In more ambitious procedures it includes construction of a phallus, possibly through multiple tube-within – tube skin grafts so that a urethral canal exists in a phallus-shaped structure, perhaps with the implantation of an inflexible splint, and the simulation of a scrotum through skin grafting from the nearby thigh, with implantation of artificial testes. At the present stage of surgical progress functional and cosmetic simulation of female genitalia is more easily achieved than is simulation of male genitalia. Vaginal closure and loss of genital sensation and orgasm are common postoperative problems in the male-to-female operation.

When considering the magnitude of the surgical procedures there is, concomitant to that the hormonal procedures that are massively secondary sex changing inducements.

Dr. Green graphically described the totality of the treatments for transsexualism that takes months if not years to accomplish. Certainly, the question must be asked is all this horrendous medical intervention into the human body really necessary just to treat a mental health problem?

Dr. Green answers that very question, as follows:

> "Much of the essence of the justification of sex change surgery in carefully selected cases rests on the issue of alternative forms of treatment. Sex-change surgery has been attacked as symptomatic rather than addressing itself to the underlying psychological problem which should be treated with psychotherapy and has been called "collaboration with the patient's psychosis. It is the view of persona experienced in the study of transsexualism, be they psychoanalyst or behavioral therapist, as well as, those who have reviewed the world literature in search of psychotherapeutic success in reversing the gender identity of transsexuals, it is concluded that at the present time, transsexualism is untreatable by any form of psychotherapy. One surgeon who has been active in innovating a program of sex-reassignment surgery has succinctly stated: *If* the mind cannot be made to fit the body, then the body must be changed to fit the mind."
>
> It is an unfortunate fact that much of modern medical treatment is symptomatically oriented rather than directed at the *underlying* basic *defect* (consider the treatment of cancer, and rheumatoid arthritis). As to whether transsexuals are psychotic and surgeons who recommend sex-reassignment are collaborating with the psychosis, on clinical interviewing and psychologic testing, the great majority of transsexuals studied have not appeared psychotic by the standard diagnostic criteria. While some schizophrenics have delusions of sex-change or confusion of gender identity, it is spurious logic to conclude that persons who want to change sex are schizophrenic as has been suggested by some.
>
> While the number of transsexuals may be comparatively small with respect to persons suffering from other maladies, there are at least two reasons for paying serious attention to this phenomenon. The person who wants to change sex bears considerable theoretic as well as practical significance. If we are to understand the normal emergence of such a basic personality characteristic as masculinity and femininity we must understand extreme deviations from that norm. And, if we are to fulfill our ethical commitment to be of help to those who suffer we must not neglect the person who desperately desires a change of sex." (Emphasis added.)

This sobering assessment of the high risks involved in transsexed surgery emphasizes it is no panacea for those who suffer true identity dysphoria. The problem is now worldwide as reported in the Medical Journal "The Lancet," Vol 341, April 24, 1993, by Dr. Arthur Rogers, who states: " Twenty-one years after Sweden became the first European state to adopt legislation on transsexualism, wide national differences persist on the issue of 'gender rights.' To some extent, the differences reflect the enigma of whether the profound conviction of belonging to the opposite sex has physical or psychological causes. Dr. Rogers continued:

> In the absence of any serious challenge to the view that gender reassignment is a worthwhile and beneficial intervention in carefully screened cases, the three-day conference (on transsexualism) organized by the Council of Europe, the International Commission on Civil Status, and the Free University, tended to concentrate on legal implications. Only in rare cases have medical practitioners faced criminal prosecution arising from sex change operations."
>
> "In 1990, a French doctor who operated on a male to female patient barely two months after seeing him for the first time, received a six month jail sentence. Disappointed by the results of the surgery, the patient committed suicide. Around Europe there is a general agreement on the need for a real-life test of 'cross living' as a member of the desired sex for up to two years before any surgery is begun."

It is truly interesting, how Europe has responded to transsexuals seeking the civil rights of marriage. Dr. Rogers comments there is a lack of uniformity, even so, among Europeans as follows:

> "…[T]he ramifications in civil rights are bewildering and largely untested. Logically, the ability of a transsexual in some states to have a birth certificate altered should lead to entitlement to marriage in the new gender identity, the approach adopted in the Netherlands. But, recognition of

> these marriages in the other states is not assured. Even on the relatively simple issue of changing a forename on a birth certificate…[has] the most unbelievable disorder that reigns at national levels. Four states, Germany, Italy, the Netherlands, and Turkey have followed Sweden's lead in legislating on sex reassignment."

The issue that prompts these European states to conflict is over the "appearance" of same sex marriage if one of the marriage partners has sex reassignment after marriage. Turkey decided, in such a situation, the marriage is automatically dissolved. Italy rejected that approach, but made it grounds for divorce.

This World Conference did discuss the basic question: "Should sex continue to be determined at birth by a cursory examination of the newborn's external genitalia? Dr. Rogers asks, Why the hurry? Why not delay matters rather like confirmation of religious belief?" He states:

"While civil registration based on the appearance of the external genitalia might be an expedient practice doing justice to the vast majority of citizens, it should be recognized that it hinged on only one of the criteria of one's sex. Civil registration has to take place within days of birth, yet the demonstratable sex differences in the brain become manifest only between the age of 3 to 4 years."

Dr. Rogers refers to Professor Louis Gooren endocrinologist at the host Universal Hospital, who attended the conference is described as the world's only "professor of transsexulaism." The professor speculated that further research into postnatal differentiation might shed light on transexualism, given that no currently available brain scan technology could help in this area. He pointed to research on, admittedly, a very limited number of subjects- three of male to female transsexual's post mortem (in whom) brains show morphological differences in comparison with nontranssexual brains. In

addition testing of brain function of transsexuals provided evidence of a "cross-sex" difference in their brains. The implications of this scientific insight that sexual differentiation of the brain occurs "after birth" was that assignment of a child to the male or female sex on the basis of external genitalia was "an act of faith." (Id. at 1086)

The argument that recording the sex of a newborn child based on appearance of external genitalia is an historical fact, does not make it so. Nature seems to announce actual sex at puberty when body changes definitely take place.

It is a common sight in delivery rooms at hospitals for the birth attendant to announce "He's a boy" "She's a girl" which starts the gender role modeling through "blue" booties or "pink" booties in the bassinet. Those booties may set the stage for a life time of gender role development pressed by the parents. While, all along, the child's sex might be ambiguous, and only discoverable years later. Making the birth certificate an "iron clad" official document and an immutable designation of sex, is not consonant with current medical knowledge.

With this introduction to transsexualism, preceding the litany of court decisions on the subject, enables one to analyze the case decisions and see the pitfalls some offer. There is a breach in judicial thinking. One view entertains the position that transsexualism is so "far out" only the Legislature can think through the problem. The other judicial position merely relies on medical science to answer the question: Does sex reassignment surgery and hormonal treatment effectuate a change in sex?

There follows now an exposition of case law that demonstrates both positions.

## LEGAL HISTORY OF TRANSSEXUALISM

## ENGLISH JURISPRUDENCE

The case of, Corbett v. Corbett, 2 All ER 33 (1970), (otherwise known as "Ashley") was the "watershed" decision in England that influenced the British Empire on transexualism and its impact on the marriage law and all common law jurisdictions in Western society. Judge Ormrod wrote the decision after hearing extensive testimony from medical experts. He sat in the Probate, Divorce and Admiralty Division of the Court. His opinion is almost X-rated in its sexual detail. The reader has to be prepared. However, all the transsexual cases share that sexual detail by necessity because of medical and psychological detail no matter where the jurisdiction. The Corbett case is so profound and pervasive that it has divided the judiciary of the world, wherever, transexualism presents itself as a societal issue.

This Court will review all the salient court decisions that have followed Corbett and point out the unyielding division in thinking.

This Kantaras v. Kantaras case is inextricably caught up in these case decisions. Since this case is one of first impression in Florida, meaning there is no precedent decision that binds this court to any prior ruling, I intend to discuss collateral source matter where I think appropriate.

The primary issue being faced by all this judicial thinking is what is a man? And what is a woman?

The facts of the Corbett case and its reasoning on these questions are as follows:

On September 10, 1963 the parties went through a ceremony of marriage in Gibraltar. At that time, Petitioner Arthur Cameron Corbett knew that the Respondent,

April Ashley, had been registered at birth as of the "male" sex and had in 1960 undergone a sex-change operation consisting of the removal of the testicles and most of the scrotum and the formation of an artificial vagina in front of the anus, and had since then lived as a woman." 14 days after the marriage ceremony Petitioner filed for a declaration that the marriage was null and void because Respondent was of the male sex and for non-consummation. Respondent answered that she was a female asking also for a decree of nullity on the ground Petitioner suffered incapacity or for his willful refusal to consummate the marriage. She alleged she could consummate and did not refuse to do so. Respondent amended her pleadings alleging Petitioner was "estopped" from alleging that the marriage was void and of no effect.

Judge Ormrod found that April Ashley admitted for many years she had been regarded as a male but had undergone an operation for the construction of a vagina before the marriage and that Petitioner was aware of all the material facts before the ceremony. She alleged that the Petitioner had achieved full penetration on several occasions but withdrew after a very short time without ejaculation, either because he was incapable of ejaculation, or because he was unwilling to do so. He became "hysterical".

Judge Ormrod stated, "the primary issue in the case was the "validity" of the marriage, which depends on the <u>true</u> sex of April Ashley. The secondary issue was the incapacity of the parties, or their respective willingness or unwillingness to consummate the marriage, if there was a marriage to consummate.

An unusually large number of doctors gave evidence in the case, no less than 9 in all, including two Medical Inspectors to the court. Each side called three leading medical experts to deal with various aspects of anatomical and psychological sexual abnormality.

The relevant facts are that Respondent was born April 29, 1935 in Liverpool and registered at birth as a "boy" – as George Jamieson, and raised as a boy. At 16 years, in 1951, he joined the Merchant Navy. During a sea voyage he was put ashore at San Francisco and was admitted to a hospital for an overdose of tablets. He subsequently returned to England and became a patient at Armskirk Hospital. At age 17, he was referred to the "psychiatric" department of the Walton Hospital, Liverpool. The medical records of that hospital, as testified to by Dr. Vaillant revealed no abnormalities other than he presented a "womanish appearance and had little bodily or facial hair" Dr. Vaillant testified he had no doubt Respondent was a male. The hospital records revealed several therapeutic interviews with the Respondent, during the course of which he expressed an "intense desire" to be a "woman," which he said he experienced since childhood. He admitted to homosexual experiences on board ship. A letter dated June 5, 1953, from an assistant to Dr. Vaillant, written to the Respondent's own doctor said:

> "This boy is a constitutional homosexual who says he wants to be a woman. He has had numerous homosexual experiences and his homosexuality is at the root of his depression. On examination apart from his womanish appearance, there was no abnormal finding."

Thereafter, Respondent went to London and worked in the hotel trade. In 1956 he moved to the south of France where he met and became part of a well-known troupe of male/female impersonators who performed at the "Carousel" nightclub in Paris. During this time, Respondent was taking the female sex hormone "estrogen", regularly to encourage the development of breasts and of a feminine type of physique. At this period, he was known as "Toni April." After four years at the Carousel, on May 11, 1960 at

Casablanca, Dr. Burou performed a sex change operation on Respondent which Judge Ormrod found consisted of the following:

> "The amputation of the testicles and most of the scrotum, and the construction of a so called 'artificial vagina' by making an opening in front of the anus and turning in the skin of the penis after removing the muscle and other tissue from it, to form a pouch or cavity occupying approximately the position of the vagina in a female, that is, between the bladder and the rectum. Parts of the scrotum were used to produce an approximation in appearance to female external genitalia".

Under questioning Respondent testified, "I haven't the foggiest idea of the size of my penis and had no idea of the testicles." She simply refused to answer whether she had had ejaculations or ever had an erection and wept a little in court. There was no evidence Respondent's genitals were abnormal.

Judge Ormrod made an interesting observation about April Ashley's refusal to answer questions about her male sexual aptitude, as follows: "<u>In so far as credibility is concerned, I do not think that it would be right to hold that these particular answers reflect adversely on the Respondent's credit generally, because the evidence of the psychiatrist's is that persons who suffer from these intense desires to belong to the opposite sex, often exhibit a profound emotional reaction when asked about the genitalia which they so much dislike</u>." (Emphasis added.)

After the sex-change operation Respondent returned to London as "April Ashley" dressing and living as a female. She had sexual relations with at least one man using the artificial cavity quite successfully. Six months after the operation she met the Petitioner Arthur Cameron Corbett in November, 1960. He was age 40, married and had four children, and he was unhappy sexually. Petitioner frankly testified he had sexual

relations with a large number of women both before his first marriage, during the marriage and after it was dissolved in 1962. He admitted to sexual deviations, i.e., from a comparatively early age he experienced the desire to dress in female clothes and had done so in the presence of his wife a few times. But from 1948 onwards his interest in transvestism increased and he became associated with other transvestites in London. This led to homosexual behavior with numerous men and his interest in sexual deviations of all kinds but stopped short of anal intercourse. He testified he heard of Toni April as a female impersonator at the Carousel, which he described as the Mecca of every female impersonator in the world. Through an American transvestite, "Louise", he met Respondent on November 19, 1960 for lunch at the Caprice restaurant. He was aware April Ashley, had been a man and had undergone a sex-change operation. He testified, her appearance "when he first saw her he could not believe it, he was mesmerized by her. This was so much more than I could ever hope to be. The reality was far greater than my fantasy." (Emphasis added.) He acted out with his fantasy for the next three years or more, but April Ashley was largely passive throughout the relationship. However, she did disclose to him a detailed account of the sex-change operation and he unfolded his history, as to who he was.

*He had originally introduced himself to her under an assumed name but soon disclosed his real identity. His original motive in seeking an introduction to Respondent was essentially transvestite in character, but quite soon he developed for her the interest of a man for a woman. He said that she looked like a woman, dressed like a woman and acted like a woman.*

For the next three years they did not engage in sex, but only kissing and mild petting and at no time did Respondent permit Petitioner to handle her naked breasts or body. Petitioner wrote affectionate letters to Respondent (to which she replied) alleging he sought marriage and described the pleasure which he felt thinking of her as the future "Lady Rowallan." The court observed:

> "As further indication of the unreality of his feeling for the Respondent, it is common ground that he introduced her to his wife and family and quite frequently took her to his house or on outings with them."

*The Court further observed: "Listening to each party describing this strange relationship, my personal impression was that it had little or nothing in common with any heterosexual relationship which I could recall hearing about in a fairly extensive experience of this court."*

By September, 1961, Petitioner separated from his wife. Petitioner next helped Respondent legally change her name to "April Ashley" but attempts to change her birth certificate failed. She did get a woman's insurance card from the Ministry of National Insurance. She next became a successful female model until the press got hold of her story.

Respondent moved to Spain, bought a villa and nightclub, called "Jacaranda at Marbella." Respondent in December 1961 followed her to Spain stayed at the villa but they did not sleep together even though she was largely supported by him. Petitioner's wife obtained a divorce in June 1962. Thereafter, Petitioner repeatedly pressed Respondent to marry him. She refused at first, then relented on September 10, 1963. A lawyer in Gibralter succeeded in getting a special license to marry for them without giving any legal advice as to the validity of the marriage. Sexual contact after the

marriage was postponed because she claimed she had "abscesses" in her vagina. He stayed for the next three to four nights at the Club and she stayed at the villa. She next went to London on October 4, 1963 and he stayed about a week with her in a London flat. She testified at this time they slept together and on several occasions "he succeeded in penetrating her fully but immediately gave up, crying 'I can't, I can't', and withdrew without ejaculating and then burst into tears".

They had been together no more than 14 days since the marriage. On December 11, 1963 Respondent wrote Petitioner a letter that the marriage was off and she would do nothing about getting an annulment. On February 16, 1966, Respondent filed for support from the court and on May 18, 1967 he filed his counter petition for dissolution.

Judge Ormrod turning from the history of the case next reviewed the medical evidence and the report of the Court's medical Inspectors as follows:

> "Mr. Leslie Williams and Miss Josephine Barnes reported, we, the undersigned, examined the sexual organs of April Corbett (otherwise Ashley) the Respondent. We find that the breasts are developed though the nipples are masculine type. The voice is rather low pitched. There are almost no penile remains and there is a normal placed urethral orifice. The vagina is of ample size to admit a normal and erect penis. The walls are skin covered and moist. There is no impediment on 'her part' to sexual intercourse. Rectal examination does not reveal any uterus or ovaries or testicles. There is no scar on the thigh indicating where a skin graft might have been taken. We strongly suggest that an attempt be made to obtain from Dr. Burou, Casablanca, a report on what exactly was done at the operation. (Dr. Burou refused to cooperate) We also strongly suggest that an investigation into 'her' chromosomal sex be carried out by some expert, May 22, 1968."

A Supplemental Medical Report was filed with the court that stated, April Corbett, the Respondent, was examined at 44 Wimpole Street, London, on May 22, 1968, by Miss Josephine Barnes and Leslie Williams and they stated:

> "April Corbett had had an operation for the construction of an artificial vagina and the surgical result was remarkably good. It may be noted that the normal vagina is lined by skin which is moistened by mycoid secretions from the cervix uteri. The artificial vagina in this case also appeared to be lined with skin and it was moist presumably due to the presence of sweat glands in the skin used to line the artificial vagina. The suggestion in the first report that a chromosome test should be done was because the result of such a test would be one means of making our factual information about the case "more complete."

The Court made the observations, "The suggested investigation into the Respondent's chromosomal sex refers to a method of examining the structure of the individual body cells for evidence of male or female characteristics." The investigation was carried out by Professor F.T.G. Hayhoe of Cambridge, who reported on 31st October 1968 that all the cells which he examined were of the "male type."

The Court proceeded to summarize the vast medical expert testimony given in this unusual case. He listed the names of all the experts and their qualifications and summarized:

> "There was general agreement among all the doctors on the basic principles and the fundamental scientific facts. Anomalies of sex may be divided into two broad divisions, those cases which are primarily psychological in character, and those in which there are developmental abnormalities in the anatomy of the reproductive system (including the external genitalia). Two kinds of psychological abnormality are recognized, the transvestite and the transsexual. The transvestite is an individual (nearly, if not always a man) who has an intense desire to dress up in the clothes of the opposite sex. This is intermittent in character and is not accompanied by a corresponding urge to live as

> or pass as a member of the opposite sex at all times. Transvestite males are usually heterosexual, often married, and have no wish to cease to play the male role in sexual activity.

The Court described the nature of a transsexual as follows:

> The transsexual, on the other hand, has an extremely powerful urge to become a member of the opposite sex to the fullest extent which is possible. They give a history, dating back to early childhood, of seeing themselves as members of the opposite sex which persists in spite of their being brought up normally in their own sex. This goes on until they come to think of themselves as females imprisoned in male bodies, or vice versa, and leads to intense resentment of, and dislike for, their own sexual organs which constantly remind them of their biological sex. They are said to be 'selective historians', tending to stress events which fit in with their ideas and to suppress those which do not. Some transsexual men live, dress and work regularly as females and pass more or less unnoticed. They become adept at make-up and knowledgeable about using oestrogen, the female sex hormone, to promote the development of female-like breasts, and at dealing with such masculine attributes as facial and pubic hair. As a result of the publicity which has been given from time to time to so-called sex-change operations, many of them go to extreme lengths to importune doctors to perform such operations on them. The difficulties under which these people inevitably live result in various psychological conditions such as extreme anxiety and obsessional states. They do not appear to respond favourably to any known form of psychological treatment and, consequently, some serious-minded and responsible doctors are inclining to the view that such operations may provide the only way of relieving the psychological distress. Dr. Randell has recommended surgical treatment in about 35 cases, mostly restricted to castration and amputation of the penis, but in a few carefully selected cases he and Professor Dewhurst and the plastic surgeon who is working with them have undertaken vagino-plasty as well, that is the construction of a so-called artificial vagina. The purpose of these operations is, of course, to help to relieve the patient's symptoms and to assist in the management of their disorder; it is not to change their patient's sex, and, in fact,

they require their patients before operation to sign a form of consent which is in these terms.:

> 'I . . . of. . . do consent to undergo the removal of the male genital organs and fashioning of an artificial vagina as explained to me by . . . (surgeon). I understand it will not alter my male sex and that it is being done to prevent deterioration in my mental health.' (Signature of Patient)' (Emphasis added.)

The Court further observed there was disagreement about the efficacy of the transsexual operations and said: Professor Roth is doubtful about the therapeutic efficacy of these procedures and has only recommended one of his patients for operation.

The Court concentrated on the medical evidence of Respondent's transexualism as follows:

> "It is clear from the account which I have given of the Respondent's history that it accords very closely with this description of a male transsexual. Dr. Randell considered that the Respondent is properly classified as a male homosexual transsexualist. Professor Dewhurst agreed with this diagnosis and said the description 'a castrated male' would be correct. Dr. Armstrong agreed that the evidence contained in the Walton Hospital records was typical of a male transsexual, but he considered that there was also evidence that the Respondent was not a physically normal male. He said that the Respondent was an example of the condition called inter-sex, a medical concept meaning something between intermediate and indeterminate sex, and should be 'assigned' to the female sex, mainly on account of the psychological abnormality of transsexualism. Professor Roth also thought that the Respondent was a case of transsexualism with some physical contributory factor. He was prepared to regard the case as one of inter-sex, and thought that the Respondent might be classified as a woman 'socially'. He would not recommend that the Respondent should attempt to live in society as a "male." Both he and Dr. Randell had been successful in asking the Ministry of Labour to register some of their male transsexual patients as female for

> national insurance purposes. Insofar as there are any material differences in the evidence of Dr. Randell, Dr. Armstrong and Professor Roth, Judge Ormrod said, "I was less impressed by Dr. Armstrong's evidence than by that of the other two doctors, both of whom were exceptionally good witnesses. Of the latter two, I am inclined to prefer the evidence of Dr. Randell because I do not think that the facts of this case, when critically examined, support the assumptions which Professor Roth had been asked to make as the basis of his evidence."

The legal conclusion of the Court was that it is: "clear from the account which I have given of the Respondent's history that it accords very closely with the description of a male transsexual."

A summation of the doctor's testimony shows:

> (1) Dr. Randell considered that the Respondent is properly classified as a male homosexual transsexualist.
>
> (2) Professor Dewhurst agreed with this diagnosis and said the description "a castrated male" would be correct.
>
> (3) Dr. Armstrong, who agreed that the evidence contained in the Walton Hospital records was typical of a male transsexual, he considered that there was also evidence that Respondent was "not a physically normal male" but was an example of inter-sex, a medical concept meaning something between intermediate and indeterminate sex and "should be assigned to the "female sex" mainly on account of the psychological abnormality of the transsexualism.
>
> (4) Professor Roth agreed it was a case of "inter-sex" and thought Respondent might be classified as a "woman socially" and should not live in society as a male.

Interestingly, the Court outright rejected the view of Dr. Armstrong saying "I was less impressed by Dr. Armstrong's evidence and with respect to Professor Roth, I do not think that the facts of this case when critically examined, support the assumptions which

Professor Roth had been asked to make as the basis of his evidence." And "I am inclined to prefer the evidence of Dr. Randell."

After all this transsexual medical evidence, by far more than would appear in a normal case, Judge Ormrod did not appear to want to favor any expert medical opinions that classified Respondent as a woman.

> There was considerable discussion in the trial about the aetiology or causation of transsexualism, which both Dr. Randell and Professor Roth regarded as a psychological disorder arising from birth. The alternative view is that there may be an organic basis for transsexualism. Experimental animal research on aetiology was too theoretical for the Court which said "these theories have nothing to contribute to the solution of the present case, and: On this part of the evidence my conclusion is that the Respondent is correctly described as a male transsexual possibly with some comparatively minor physical abnormality."

(Id. at 44)

The Court said it must deal with the anatomical and physiological anomalies of the sex organs which the Court thought had marginal significance in the case. The Court outlined the four or five criteria for assessing the sexual condition of an individual. These are:

(i) Chromosomal factors;

(ii) Gonadal factors (i.e., presence or absence of testes or ovaries);

(iii) Genital factors (including internal sex organs);

(iv) Psychological factors; and

(v) Hormonal factors or secondary sexual characteristics (such as distribution of hair, breast development, physique etc which are thought to

reflect the balance between the male and female sex hormones in the body).

The court stated:

> "It is important to note that these criteria have been evolved by doctors for the purpose of systematizing medical knowledge, and assisting in the difficult task of deciding the best way of managing the unfortunate patients who suffer, either physically or psychologically, from sexual abnormalities. As Professor Dewhurst observed 'We do not determine sex in medicine we determine the sex in which it is best for the individual to live.' These five criteria are of course, relevant to, but do not necessarily decide, the legal basis of sex determination."

A dissertation on the meaning of hermaphrodite, inter-sex and chromosomal sex, was prepared by Judge Ormrod in his opinion which is excellent. But as he stated, it does not necessarily decide the legal basis of sex determination. It is very complex medical information that is included here to give the reader a knowledge of the degree of analysis Judge Ormrod reached in arriving at his decision. He stated the following:

> "The hermaphrodite has been known since earliest times as an individual who has some of the sexual characteristics of both sexes. In more recent times the true hermaphrodite has been distinguished from the pseudo-hermaphrodite. The true hermaphrodite has both a testis and an ovary and some of the other physical characteristics of both sexes. The pseudo-hermaphrodite has either testes or ovaries, and other sexual organs which do not correspond with the gonads which are present. Still more recently, much more knowledge has been obtained about these cases by the development of techniques which enable the structure of the nucleus of the individual cells of the body to be observed under the microscope. Using these techniques, it is possible to see the individual chromosomes in the nucleus. These are the structures on which the genes are carried which, in turn, are the mechanism by which hereditary characteristic are transmitted from parents to offspring. The normal individual has 23 pairs of chromosomes in his ordinary body cells, one of each pair

> being derived from each parent or a total of 46. One additional pair is known to determine the sex of normal individuals. The normal female has a pair which is described as XX; the normal male a pair which is described as XY. The Y chromosomes can be distinguished quite clearly from the X. In the male, the X chromosome is derived from the mother and the Y from the father. In the female one X chromosome is derived from the father and one from the mother. All the ova of a female carry an X chromosome but the male produces two populations of spermatozoa, one of which carries the Y, and the other the X chromosome. Fusion of a Y spermatozoa with an ovum produces an embryo with XY chromosomes which, under normal conditions, develops into a male child; fusion of an ovum with an X spermatozoa produces an XX embryo, which becomes a female child. Various errors can occur at this stage which lead to the production of individuals with abnormal chromosome constitutions, such as XXY and XO (meaning a single X only). In these two cases, the individuals will show marked abnormalities in the development of their reproductive organs. The XXY patient will become an under-masculinished male with small, undeveloped testes and some breasts enlargement. The abnormality will become apparent at puberty when the male secondary sex characteristics, such as facial hair and male physique, will not develop in the normal way. The XO individual has the external appearance of a female, a vagina and uterus but no active ovarian tissue. Without treatment the vagina and uterus remain infantile in type and none of the normal changes at puberty occur. Administration of oestrogen, however, produces many of these changes. The individual of course remains sterile.

The Court proceeded to describe the sexual patterns, "The Y chromosome is, therefore, normally associated with the development of testicular tissue in the embryo, the second X chromosome with the development of ovarian tissue. This is, however, by no means the whole story. Whether or not a normal male or female child develops depends on what may be loosely called the maintenance of the correct chemical balance in the embryo. The process may be illustrated by two examples.

"The first is called the 'adreno-genital syndrome', in which the chromosomal constitution is XX but the external genitalia appear to be male. Gross enlargement of the clitoris produces a phallus which may be mistaken for a penis, and fusion the appearance of a scrotum, but no testicles are present in it. This may lead to a diagnosis of "undescended testicles" in a male, but further investigation reveals that the individual has normal ovaries, a normal uterus and vagina and no actual male organs. This condition is caused by the exposure of the embryo at a critical phase of its development to the effect of masculinising or androgenising substances either from the mother or from some abnormality in the foetus itself. The individual is, in fact, a fertile female and surgical removal of the abnormal external genitalia will enable her to live and function as a normal woman."

"In the second example, the external genitalia appear to be female but the chromosomal constitution is XY. Testes are present, usually in the abdomen. In the extreme case called the "testicular feminisation syndrome," the individual appears to be more or less normal female with well-formed breasts and female external genitalia but with an abnormally short vagina, ending blindly, no cervix and no uterus."

In another type, the "testicular failure syndrome," the appearance of the external genitalia may be more doubtful, with a phallic organ which could be either a small penis or an enlarged clitoris and a short vagina. It seems that in these cases the embryonic sexual organs fail to respond normally to the male hormone, testosterone, which is produced by the foetal testis."

The court drew the following conclusions:

> "All the medical witnesses accept these examples as properly described cases of "inter-sex." In each there are

> discrepancies between the first three criteria for sex assessment, i.e., the chromosomal sex and the gonadal sex do not correspond with the genital condition of the patient. But there is a difference of opinion whether cases in which the chromosomal, the gonadal and the genital sex are congruent, but "psychological" or hormonal factors are abnormal, and should be classified as cases of inter-sex." (Emphasis added.)

After this detailed analysis of the sexual factors shown and the abnormalities that happen in chromosomal sex, gonadal sex and genital sex, the court concluded the doctors agreed they were all examples of "inter-sex" if there is incongruity of the three sexes. There is a difference of opinion if they are all congruent except when the psychological or hormonal factors are abnormal. Does that change the classification to inter-sex? The Court summarized the medical opinions as follows:

> "(1) Dr. Randell said that, in terms of sex determination, he would not give much weight to such psychological factors as transsexualism if the chromosomes, the gonads and the genitalia were all of one sex.
>
> (2) Dr. Armstrong and Professor Roth, on the other hand, would classify transsexuals as "inter-sex".
>
> (3) Professor Mills, an endocrinologist, takes the view that patients in whom the balance between male and female hormones is abnormal should be regarded as "inter-sex". Dr. Mills testified Respondent was probably a case of partial testicular failure, in the sense that though born a male the process of androgenisation at and after puberty did not proceed in the normal way. She may be a case of Klinefelter's Syndrome, a disorder in which a degree of feminisation takes place about the time of puberty in hitherto, apparently, normal males. The diagonistic signs are atrophied or small testicles some spontaneous development of the breast, a female pattern of pubic hair and very little facial hair.

(Id. at 46)

It is obvious the facts of this case seem to place Ashley in the inter-sex classification or Klinefelter's Syndrome. However, the Court said there was no evidence of Respondent's having small testicles. Although Respondent testified she had a spontaneous breast development at age 18 the Court said "I am unable to accept her statement that this was spontaneous but rather brought on by continuous use of oestrogen in Paris for four years." The fact the Walton Hospital records recorded "little body or facial hair" which supported Dr. Mills opinion, was rejected by the Court saying "In my judgment, it would not be safe to draw any inferences from the absence of facial hair in an individual who had been closely associated with experienced female impersonators for a number of years.

The Court ignored the fact that the hospital records proceeded the Paris excursion by several years. She entered Walton Hospital, psychiatric department on January 1953 at age 17 and the records reflected a "womanish appearance and had little bodily and facial hair". She went to France in 1956 and on May 11, 1960, Respondent underwent the sex reassignment surgery by Dr. Buron at Casablanca.

Professor Mills referred to two urine tests performed on Respondent at the trial, the results of which, indicated that the hormonal balance in Respondent was strongly female in character. The other test was at the University College Hospital laboratory which gave a distinctly different result. The Court concluded little significance can be attached to the tests, particularly in a "forensic" as apposed to a clinical situation.

The Court then pronounced its conclusions:

> In my judgment, therefore, the factual basis for the Klinefelter syndrome or any other hormonal disorder has not been established, although the Respondent may have been a partially under-developed male at the time of the

operation. It follows that it has not been established that the Respondent should be classified as a case of inter-sex on the basis of hormonal abnormality.

My conclusions of fact on this part of the case can be summarised, therefore, as follows. The Respondent has been shown to have XY chromosomes and, therefore, to be of male chromosomal sex; to have had testicles prior to the operation and, therefore, to be of male gonadal sex; to have had male external genitalia without any evidence of internal or external female sex organs and, therefore, to be of male genital sex; and psychologically to be a transsexual. The evidence does not establish that she is a case of Klinefelter's syndrome or some similar condition of partial testicular failure, although the possibility of some abnormality in androgenisation at puberty cannot be excluded. Socially, by which I mean the manner in which the Respondent is living in the Community, she is living as, and passing as, a woman more or less successfully. Her outward appearance, at first sight, was convincingly feminine, but on closer and longer examination in the witness box it was much less so. The voice, manner, gestures and attitude became increasingly reminiscent of the accomplished female impersonator. The evidence of the medical inspectors, and of the other doctors who had an opportunity during the trial of examining the Respondent clinically, is that the body, in its post-operative condition, looks more like a female than a male as a result of very skilful surgery. Professor Dewhurst, after this examination, put his opinion in these words- 'the "pastiche" of feminity was convincing'. That, in my judgment, is an accurate description of the Respondent. It is common ground between all the medical witnesses that the biological sexual constitution of an individual is fixed at birth (at the latest), and cannot be changed, either by the natural development of organs of the opposite sex, or by medical or surgical means. The Respondent's operation, therefore, cannot affect her true sex. The only cases where the term 'change of sex' is appropriate are those in which a mistake as to sex is made at birth and subsequently revealed by further medical investigation."

With respect to the legal pleadings and state of facts, counsel for the Petitioner, Arthur Cameron Corbett, submitted that it had been established that the Respondent,

April Ashley Corbett, was a male and that, accordingly, the so-called marriage must be "void" and of no effect.

Counsel for the Respondent, however, contended that the Respondent should be classified, medically, as a case of "inter-sex," and that, since the law knew only two sexes, male and female, she must be 'assigned' to one or the other, which, in her case, must be female, and that she should be regarded for all purposes as a woman. He submitted further that 'assignment' was a matter for the individual and his doctor, and that "the law ought to accept it as determining her sex."

Ormrod said, the word 'assign', although it is used by doctors in this context, *is* apt to mislead since, in fact, it means no more than that the doctors decide the gender, rather than the sex, in which such patients can best be managed and advised accordingly.

It was also suggested to the Court that it was illogical to treat the Respondent as a woman for many social purposes, such as nursing her in a female ward in a hospital, or be allowed national insurance as a woman, and not to regard her as a woman for the purpose of marriage. Judge Ormrod observed that these submissions are very far-reaching and would lead to some surprising results in practice but, before examining them in detail, he stated: "I must consider the problems of law which arise in this case on a broader basis," as follows:

> It appears to be the first occasion on which a court in England has been called on to decide the sex of an individual and, consequently, there is no authority which is directly in point. This absence of authority is, at first sight, surprising, but is explained, I think, by two fairly recent events, the development of the technique of the operation for vagino-plasty, and its application to the treatment of male transsexuals; and the decision of the Court of Appeal in *S v S (otherwise W) (No 2),* in which it was held that a woman, suffering from a congenital defect of the vagina,

> was not incapable of consummating her marriage because the length of the vagina could be increased surgically so as to permit full penetration. There are passages in the judgment which seem to go so far as holding that an individual, born without a vagina at all, could be rendered capable of consummating a marriage by the construction of an entirely artificial one. But for this decision, the Respondent would have had no defense to the prayer for a decree of nullity on the ground of incapacity. Until this decision, all matrimonial cases arising out of developmental abnormalities of the reproductive system could be dealt with as cases of incapacity, and, therefore, it has not been necessary to call in question the true sex of the Respondents, assuming that it had occurred to any pleader to raise this issue. Now that it has been raised, this case is unlikely to be the last in which the courts will be called on to investigate and decide it. I must, therefore, approach the matter as one of principle." (Emphasis added.)

It is interesting to note that while April Ashley was legally declared a "male" by the Court, a troubling visible inconsistency obviously, still existed because in Court she was a woman from all appearances. Anyone observing her in Court to be a man might have been puzzled. Even the Judge had to down play her "feminity." He said, "her outward appearance at first sight was convincingly feminine. But on closer and longer examination in the witness box, it was much less so. The voice, manner, gestures and attitude became increasing reminiscent of the accomplished female impersonator." In other words, he concluded, a good actress. What about the court's own medical examiners – what did they report? The examiners for the court and the other medical doctors who examined Ashley clinically during the trial said: "That the body, in its postoperative condition, looks more like a female than a male as a result of very skillful surgery." Professor Dewhurst after his examination put his opinion in these words – "the pastiche of feminity was convincing." Even the Court had to admit "That, in my judgment, is an accurate description of the Respondent." The Court also admitted

Respondent passed as a woman socially more or less successfully. (Id. at .47)

A close study of the facts of this case and the medical testimony seems to indicate the Court gave no credibility to any medical opinion that favored classifying Respondent as "inter-sexed" – not clearly one sex or another, or suffering the Klinefelter syndrome. Respondent may have been a partially under-developed male at the time of the sexual reassignment surgery. Respondent from early pre-puberty thru puberty was at conflict with his assigned gender to the degree he attempted suicide (overdose of pills on ship) and that he was transferred by the Merchant Navy to a psychiatric ward in the Walton hospital.

April Ashley, literally, ended up in "limbo." She found herself in an immutable irreversible physiological sexual state where she could not return to being a man and could not be accepted legally in society as a woman. Her employment would be limited to only female employment. In the eyes of this English Court, Respondent became a legal outcast from her true sex, whether a male or a female.

The Court said, Respondent was chromosomally XY male; born with testicles of the male gonadal sex, and had a penis, the male external genitalia and no evidence of internal or external female sex organs.

The Court, however, pronounced Respondent to be psychologically "transsexual." This eventually led Respondent to seek medical surgery to alleviate the mental disorder and, otherwise, to be a woman socially, except in one category, marriage.

The Court said this was not illogical. He said his decision was the first in England where the court has been called upon to decide the sex of an individual with no authority on point. The introduction of vagino-plasty in the treatment of male

transsexuals created the novel issue. The Court referred to the other case of a woman born without a vagina, was rendered capable of consummating a marriage "by the construction of an entirely artificial" vagina. That, the Court explained was a case of incapacity not dealing with the "true sex" of an individual. The Court explained in civil matters between parties they can contract to treat a person as a man or woman as they choose, as well as, Government programs might treat a person as a woman or man, i.e., National Insurance, for policy reasons. However, where a marriage enters the picture a different set of rules apply. He quite simply explained since marriage is a relationship between man and woman and this case turns on whether Respondent is or is not a "woman" so the question becomes what is meant by the word "woman" in the context of marriage? Emphatically, the Court states: "I am not concerned to determine the legal sex of the Respondent at large." (Id. at 48) The issue is narrowed precisely to the following:

> "Having regard to the essentially heterosexual character of the relationship which is called marriage. The criteria must, in my judgment be biological, for even the most extreme degree of transsexualism in a male or the most severe hormonal imbalance which can exist in a person with male chromosomes, male gonads and male genitalia cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage." (Emphasis added.)

As profound and brilliant as this decision of Judge Ormrod obviously is, he never completely answers the question, what is the essential role of a woman in a marriage? He never mentions child bearing.

Postulating about future cases that may come before the Courts he simply states: "The law should adopt the first three of the doctor's criteria, i.e., the chromosomal, gonadal and genital tests and if all three are "congruent," determine the sex for the

purpose of marriage accordingly, and ignore any operative intervention. Difficulties will occur when all three are not congruent, where the courts are to be most influenced and should give the greater weight to the "genital" criteria than to the other two. He conceded only in cases of physical "inter-sex" must the surgical procedure of a sex change operation be left for decision by the Courts.

Judge Ormrod concluded:

"The Respondent is not a woman for the purposes of "marriage" but is a biological male and has been so since birth. It follows that the so called marriage of 10th September 1963 is void, *ab initio*." (Id. at 49)

Basically, Respondent can walk out of Court with this decision under her arm declaring her a "man" and contract a new marriage with a woman. This heterosexual relationship would have all the "outward" appearances of a female-to-female marriage. Ashley being a male without the penis component could not consummate a marriage, which in turn, could be declared by the Court for lack of consummation a voidable marriage.

Judge Ormrod held the invocation of "sex reassignment surgery" is the basis for the rise in litigation over the issue of transexualism. It is the construct of an "artificial" vagina for male transsexuals that is the problem. Does that make a woman out of a man? He down plays the significance of what the doctors claim that they have created a "natural" vagina. "Vagino-plasty is done only to relieve a psychological distress to assist in the management of a mental disorder."

Judge Ormrod declared reassignment surgery does not change the true sex. Marriage has everything to do with sex and not gender. It must not be treated as another

form of National Insurance.

On the question of consummation of the marriage by Petitioner and Respondent the Court rejected the excuse offered by Ashley that her "artificial vagina" was abscessed which was in his view "unbelievable" because she never went to see her doctor. Respondent testified Petitioner did penetrate her once or twice but there was no ejaculation. Instead, Petitioner exclaimed "I can't, I can't, cried, and became hysterical."

Judge Ormrod reached the conclusion there was no consummation of the marriage. Because of Respondent's refusal to perform. He stated it was really incapacity, more than willful refusal on the part of Respondent in sex copulation, as follows:

"I would, if necessary, be prepared to hold that the Respondent was physically incapable of consummating a marriage because I do not think that sexual intercourse, using the completely "artificial cavity" constructed by Dr. Buron can possibly be described as ordinary and complete intercourse or as "vera copula" of the natural sort of coitus. In my judgment, it is the reverse of ordinary, and in no sense "natural." When such a cavity has been constructed in a male, the difference between sexual intercourse using it and anal or intra-crual intercourse is in my judgment to be measured in centimeters." This is certainly not a very flattering comparison.

On the remaining issue of Petitioner being estopped to deny the validity of the marriage, the Court said that the doctrine of estopel was not applicable.

Judge Ormrod concluded: There is a limit, the "mischief" is that, by over-refining and/or defining the limits of "normal" one may in the end produce a situation in which consummation may come to mean something altogether different from normal sexual

intercourse." (Id. at 50)

In essence, he said, the sex assigned at birth and recorded on the birth certificate is the true sex of an individual and not the "assigned" sex medically correlated to mental problems developed later in life.

The Corbett case being the first in a series of cases around the world to consider transsexualism came under critical review in jurisdiction after jurisdiction in foreign countries. For this reason, a review of foreign jurisdictions taking up this subject of transsexualism in marriage is very enlightening. These cases literally "weave" in and out threw American case law and cannot be ignored.

**End of Corbett**

Considering the facts of this Corbett case and comparing them to the facts of this Kantaras case, Michael Kantaras was born a normal female without any sexual abnormalities, except psychologically, that is, his gender identity was male. Judge Ormrod would declare Michael Kantaras to be still female, her true sex at birth, female, as shown by a birth certificate.

How, then, does one reach the opposite conclusion – that Michael is male?

The following cases will take up that issue.

## FOREIGN JURISDICTIONS

A recent case relevant to this transsexual issue cites American jurisprudence but arises in New Zealand. The case of Attorney General vs. Otahuhu Family Court (High Court Wellington) 1 NZLR 603 (1994) poses the question in the following fashion:

> The Attorney General applies on behalf of the Registrar of Births, Deaths and Marriages for a declaration as to whether two persons of the same sex genetically determined may by the law of New Zealand enter into a valid marriage where one of the parties to the proposed marriage has adopted the sex opposite to that of the proposed marriage partner through sexual reassignment by means of surgery or hormone administration or both or by any other medical means.

The issue is a pure question of law. There is no statement of facts. Judge Ellis wrote the opinion for the High Court. His analysis of the Corbett case is highly significant. The Court had to decide what the definition of a "man" and a "woman" was for the purposes of marriage. For a definition of marriage Judge Ellis quoted Judge, Wilde (later Lord Penzance), in the case of Hyde v. Hyde, 73 ALL ER Rep 175 (1866) as follows:

> I conceive that marriage, as understood in Christiandom, may for this purpose be defined as the voluntary union "for life of one man and one woman, to the exclusion of all others."

In determining the essential role of a man and a woman in marriage this opinion by Judge Ellis departs from the traditional judicial thinking as reflected in some cases in American jurisprudence. In marriage the ability to procreate or to have sexual intercourse are not essential, which is contrary to the Corbett principle. His reasoning is that the law of New Zealand has changed to recognize a shift away from sexual activity and more emphasis was being placed on psychological and social aspects of sex,

sometimes referred to as "gender issues." The ability to procreate or to have sexual intercourse are not essential. It is this departure from Corbett that makes this case reflective of two divisions of thinking both in America and around the world. No two cases exist in juxtaposition to the issue of transsexualism and marriage more than this Otahuhu case and the Corbett case.

Vivienne Ullrick, filed an Amicus Curiae brief as a friend of the court in this case, and Judge Ellis quoted extensively in his opinion (with some slight amendments) from this brief and incorporated it into his judgment.

While conceding he relied on Mr. Pike's penetrating submissions for the opposite view of the government, the result was he accepted the "thrust of her (Vivienne Ullrick's) submissions and this judgment will be much shorter as a result."

Judge Ellis observed the New Zealand Marriage Act (1955) does not refer to "man" and "woman" or "husband" and "wife." (This is true in the history of the marriage law of Florida, since it was a territory (1832) until 1977 (§ 741.01, Fla. Stat.). It is under the schedule of forbidden degrees in the New Zealand law that "a man may not marry his…" and "a woman may not marry her . . ." and there is only incidental reference to "wife" and "husband" in the Act. It is implicit in the Act that marriage is the union of one man and one woman.

Before the relatively recent "revelations of science," Judge Ellis said "if there was doubt about the sex of one of the parties it would have been settled by physical inspection. Such has been the case from time immemorial. The obvious manifestations of breasts and genitalia including a woman's vagina would have been considered

conclusive." Chromosomes were first discovered in 1873 (and so named in 1888) "from which time our knowledge of reproduction has increased enormously."

By the 1970's the advance of science made it possible to consider a person's sex or gender to be considered in a variety of ways which gave the Corbett decision of Judge Ormrod a significant advantage, Judge Ellis said, in setting out the sex factors, as follows: (a) chromosomal, (b) gonadal (testes and ovaries) including internal and external sex organs, (c) hormonal or secondary sexual characteristics (such as the distribution of hair, breast development, physique and voice), and (d) psychological.

The facts of the Corbett case were analyzed by Judge Ellis who said, Judge Ormrod was determining a petition by a husband to declare the marriage to his wife conducted some eight years previously to be null and void on the basis the wife was a "male," she had before the marriage adopted the female sex and undergone sexual reassignment by all available medical means.

The factual findings of Corbett were stated by Judge Ellis in essential part as follows:

> The respondent, April Ashley, was shown to have XY chromosomes and therefore to be of male chromosomal sex; to have had testicles prior to the operation and, therefore, to be of male gonadal sex; to have had male external genitalia without any evidence of internal or external female sex organs and, therefore, to be of male genital sex; and psychologically to be a transsexual. There was no evidence she was a case of Klinefelter's syndrome or some similar condition of partial testicular failure. The findings did not exclude some abnormality or androgenisation at puberty. She was living and passing as a "woman" and outward appearance at first sight was feminine "but on closer and longer examination in the witness box it was less so. The voice, manner, gestures and attitudes were reminiscent of the accomplished female impersonator. The medical inspectors for the court and

> other doctors who examined respondent clinically testified her body post-operatively looks more like a female than a male, as a result of very skillful surgery. "The pastiche of feminity was convincing." Judge Ormrod concluded emphatically that all the medical experts believe "that the biological sexual constitution of an individual is fixed at birth and" cannot be changed "either by the natural development of organs of the opposite sex or by medical or surgical means. It was stated, "The respondent's operation cannot affect her true sex."

Judge Ellis set forth Judge Ormand's conclusions of law, as follows:

> "The question then becomes, what is meant by the word "woman" in the contest of a marriage, and I am not concerned to determine the "legal sex" of the respondent at large. Having regard to the essentially hetero-sexual character of the relationship which is called marriage, the criteria must, in my judgment, be biological, for even the most extreme degree of transsexualism in a male or the most severe hormonal imbalance which can exist in a person with male chromosomes, male gonads and male genitalia cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage. In other words, the law should adopt in the first place, the first three of the doctors' criteria, i.e., the chromosomal, gonadal and genital tests, and if all three are congruent, determine the sex for the purpose of marriage accordingly, and ignore any operative intervention. The real difficulties, of course will occur if these three criteria are not congruent. This question does not arise in the present case and I must not anticipate, but it would seem to me to follow from what I have said that the greater weight would probably be given to the genital criteria than to the other two. This problem and, in particular, the question of the effect of surgical operations in such cases of physical inter-sex, must be left until it comes for decision. My conclusion, therefore, is that the respondent is not a woman for the purposes of marriage but is a biological male and has been so since birth. It follows that the so-called marriage of September 10, 1963, is void." (Emphasis added.)

Judge Ellis said, it can be seen the conclusions speak of the essential role of woman in marriage but fails to disclose what that means. Judge Ormrod is very firm that

the courts should ignore "any operative intervention" that might change the sex. Judge Ellis said, "This is a surprising announcement that invites arbitrariness." The congruity doctrine advanced has a large flaw. What if they are incongruent, then what?

Judge Ellis passes judgment on the Corbett decision as follows:

> "The judgment as a whole is a comprehensive analysis of the evidence and the sexual and social significance of the problem. It has been and must be accorded great respect, but it has been the subject of criticisms which in my view are difficult, indeed impossible, to answer satisfactorily. They are directed to the essential role of a man and a woman in marriage. It has to be conceded that the ability to procreate is not essential, nor is the ability to have sexual intercourse. Neither the common law nor ecclesiastical law ever required the first. On the other hand, it used to be the case that a marriage which had not been consummated was voidable. That is not longer the law. In my view the law of New Zealand has changed to recognize a shift away from sexual activity and more emphasis being placed on psychological and social aspects of sex, sometimes referred to as gender issues.
>
> This shift has been recognized by jurisdictions outside England and the approach of Ormrod J in Corbett's case has not always been accepted. In our own Family Court in M v. M and in the Appellate Division of the Superior Court of New Jersey in MT v. JT, 355 A 2d 204 (1976) Judges have held that post-operative transsexual male to female persons have been able to marry, or more precisely that their marriages to a male husband were not void. Added to these is the powerful majority decision of the New South Wales Court of Appeal in R v. Harris, (1988) 17 NSWLR 158, a criminal case where the sex of the alleged offender was at issue. I find the reasoning in these three cases to be compelling, and I find myself unable to accept the decision in Corbett's case as governing the outcome of the present application.

The American case in New Jersey, MT v. JT, 355 A 2d 204 (1976) will be reviewed hereafter. Judge Ellis made it clear and it was important to emphasize that the

decision sought is to resolve the capacity to marry, not to resolve questions that arise in criminal law or the law of succession.

The court emphasized the human impact court decisions were having on transsexuals at large, by observing :

> "Some persons have a compelling desire to be recognized and be able to behave as persons of the opposite sex. If society allows such persons to undergo therapy and surgery in order to fulfill that desire, then it ought also to allow such persons to function as fully as possible in their reassigned sex, and this must include the capacity to marry. Where two persons present themselves as having the apparent genitals of a man or a woman, they should not have to establish that each can function sexually.
>
> Once a transsexual has undergone surgery, he or she is no longer able to operate in his or her original sex. A male to female transsexual will have had the penis and testes removed, and have had a vagina – like cavity constructed, and – possibly breast implants, and can never appear unclothed as a male, or enter into a sexual relationship as a male, or procreate. A female to male transsexual will have had the uterus and ovaries and breasts removed, have a beard growth, a deeper voice, and possibly a constructed penis and can no longer appear unclothed as a woman, or enter into a sexual relationship as a woman, or procreate. There is no social advantage in the law not recognizing the validity of the marriage of a transsexual in the sex of reassignment. It would merely confirm the factual reality.
>
> If the law insists that genetic sex is the predeterminant for entry into a valid marriage, then a male to female transsexual can contract a valid marriage with a woman and a female to male transsexual can contract a valid marriage with a man. To all outward appearances, such would be same sex marriage.
>
> I can see no socially adverse effects from allowing such transsexuals to marry in their adopted sex, I cannot see any harm to others, children in particular, that is not properly proscribed and manageable in accordance with the existing framework of the law. I refer for example to my decision on a proposed adoption by two women of the child of one

> of them: Re T (High Court, Wellington, AP 55/89, 10 April 1992), where the best interests of the child were determinative. In this I find myself of the same persuasion as the Court of Appeal of New Jersey in MT v. JT and the majority of the Court of Criminal Appeal of New South Wales in Harris. Further, I find myself of the same view as Judge Aubin in M v. M, the case that prompted this application.
>
> I therefore make a declaration that for the purposes of s. 23 of the Marriage Act 1955 where a person has undergone surgical and medical procedures that have effectively given that person the physical conformation of a person of a specified sex, there is no lawful impediment to that person marrying as a person of that sex." (Emphasis added.)

Judge Ellis reduces the complex issue of transsexualism to its simplest terms in the following fashion:

> a) "Sex", has both a biological and social meaning. When used in its social sense, it encompasses the idea of gender, which takes in psychological and social factors. Self-identification and the perception of others in society are relevant to the concept of gender.
>
> b) The issue is not whether persons of the same gender may marry each other. It is accepted that marriage as the law now stands means marriage between two persons of opposite male and female gender.
>
> c) The issue is whether a transsexual "may be regarded for the purpose of marriage as being a person of his or her reassigned sex?"

Of course, sex of reassignment or designated sex is not genetic sex. It is important to understand the difference. Genetic sex is provided by Mother Nature where the option is removed to chose one sex over the other. Designated sex is medically and scientifically provided at the option of the beneficiary. The next logical question is how close must designated sex mimic nature's choice of genetic sex. Judge Ellis's opinion poses the question very succinctly, as follows:

> "There is also a subsidiary issue as to what degree of conformity with which the reassigned sex is required for the purpose of marriage. Is the transsexual required to be capable of sexual intercourse in the gender role of reassignment, or merely have the physical genital appearance of that sex role?"

Judge Ellis is putting the issue in its most blunt form. Is a medically constructed "vagina" the equivalent of a genetic vagina? Judge Ormrod refered to the former as "artificial," in a sense inferior, to the genetic brand. Regardless, "is it all in the eye of the beholder?" The medical literature supports the nongenetic product being just as good "performance wise," with respect to the degree of sensation, moisture, and orgasm, as the genetic. In some cases, it might be superior if the genetic sex organs are ambiguous, abnormal or marginally functionable.

On the other hand, while Judge Ellis analysis pertains to the M to F transsexual who comformably fits well within the normative standard of heterosexual sex, the question at issue is, does it apply reciprocally to the F to M transsexual?

Referring to the testimony in our Kantaras case, of Drs. Bockting, Huang, and Cole, all testified the male penis is simply not duplicable by medical science. A constructed penis fails in the category of sensation, erection, ejaculation and orgasm. It can be made to urinate, but only with difficulty. An artificial penis poses major problems, such as huge medical costs, risks of infection and necrosis of the penis to the degree it can fall off piece by piece. The latter consequence causes surgeons to discourage the candidate even "thinking" about it.

Judge Ellis' opinion recites the medical evidence introduced in his case through an affidavit of Professor Tony Taylor, who broke down all the medical factors of sex, as follows:

> "The gender of a person is determined by an analysis of factors that include chromosomal, gonadal, genital, hormonal plus psychological and social factors. The latter are not measurable qualities. Whereas, all the others are determined biologically from conception. The chromosomal factors are unlike the others because of being immutable. What is important is that the others allow medical intervention, namely gonadal and genital factors by surgery. The hormonal factors are also determined biologically but "can be influenced" by the ingestion of hormones (needle injection) from outside the body.
>
> Chromosomal sex deals with every cell in the body. It is measured by the presence of the one pair of chromosomes which determine sex in normal individuals. The normal female has a pair which is described as "XX" and the normal male a pair which are described as "XY."
>
> Gonadal factors are related both to the external and internal sex organs, that is normally the penis and testes in the male; and the uterus, vagina and clitoris in the female.
>
> So far, all these factors are beyond the choice of the normal individuals and are typical of heterosexually defined persons.
>
> Hormonal factors are related mainly to the secondary sexual characteristics which are seen socially, that is distribution of hair about the body, breast development, body fat and its distribution, and the physique, which reflect the balance between the male and female sex hormones in the body. There is a scientific debate and research being advanced on whether differing hormones produce different characteristics in the male and female brain and its respective sizes which in turn affect behavior. (Emphasis added.)

The three biological factors chromosomal, gonadal, and genital sex, Judge Ormrod said should always be the test of sex but primarily the genitals. Judge Ellis replies:

> "This does not mean that they (the biologicals) alone should necessarily be determinative of sexual identity. The

> psychological and social factors may be far more important to a person's intrinsic sense of self."

It is the sense of self or sexual identity in the transsexual, that is thought to be a mental problem which medically classifies the transsexual as not normal. A transsexual at birth, normally meets all the standards of genetic biological sex. Not all persons are perfect, biologically, however, and, unfortunately, some may be classified as "abnormal" by medical science who, in turn, are subject to medical treatment.

Abnormalities make categorical determination of sexual identity ambiguous. In such an instance "the psychological" and "social" is accepted by the medical and scientific community when dealing with persons who have chromosomal, gonadal, genital or hormonal abnormalities. Medical science responds. The usual treatment in such cases is to assist the person surgically or hormonally to consolidate the sex into which they are most psychologically and socially adjusted. Judge Ellis explains in detail the biologically abnormal, as follows:

> "The reference here is to cases of what is known as inter-sex. For example some persons have abnormal chromosome constitution so that the person rather than having XX or XY chromosomes has XO, XXY, XXX, XYY for example. The XXY combination is known as Klinefelter's Syndrome and is physically a male, and a person with XO chromosomes (deleted genetic material – Turner's Syndrome) is perceived as a female. If the original ovum or sperm is itself chromosomally abnormal at the time of conception, all the cells of the offspring will repeat the error. If the error occurs during one of the early cell divisions after conception, only a portion of the final body cells will be abnormal, and chromosomally mosaic.
>
> The gonad normally passes through an ambiguous stage when it is capable of being influenced in its development by external factors such as temperature and hormonal levels in the environment. It is possible therefore for a male gonad to develop the structure of an ovary or for a female

> gonad to develop in such a way that it resembles a testis. It is thus possible at the gonadal level to have an organ contrary to the chromosomal sex, an organ of mixed type, or, as in the case of Turner's Syndrome, no organ at all.
>
> These abnormalities can give rise to hermaphroditism. The true hermaphrodite has both ovarian and testicular tissue and persons in this position are usually sterile. The pseudo hermaphrodite has a gonad of only one sex type, but features of the internal or external genitalia of the opposite sex. The female pseudo hermaphrodite in its extreme form has ovaries inside the abdomen but labia that have fused to produce an empty scrotum, and an enlarged clitoris that resembles a penis. The male pseudo hermaphrodite has testes but genitalia that are characteristic of the female. In the mildest form the genital tissue from the right and left does not fuse, and results in urine emerging at the base of the penis rather than at its tip. In other forms the scrotum may be split in half and in some cases a small vagina is formed. The extreme version of male pseudo hermaphroditism in which no male structures develop but only internal and external genitalia of a female type persist is called testicular feminisation. To outward appearance such people seem perfectly normal females with normal labia, a rather short vagina and vestigial uterus. They develop breasts at puberty and would never be regarded as men. Yet the gonads in their abdomen are testes and all the cells of their body are chromosomally male."

Judge Ellis comments on how these "so called" abnormals face life as follows:

> "Depending on the degree of abnormality in such cases such persons may sometimes be brought up and marry in one sex without ever realizing that their sexual identity was ambiguous. They may need no surgical intervention in order to be able to live in their sex of "adoption" but may not be able to have children. In other cases the person will need some surgical intervention in order to be able to present an "outward appearance" consistent with one sex or the other. In those cases, if the surgical intervention does not occur until the person is older, then the deciding factor in choosing the sex in which the person will operate is usually the sex into which that person has been socialized up to that point in time, and to "change" the sex of a person at a later stage in their life will make it incredibly difficult

> for that person to adjust psychologically and socially." (Emphasis added.)

Judge Ellis reaches the view that:

> "This evidence supports the view that the psychological and social factors which go to make up a person's gender identity are very powerful, so powerful that where there is physical ambiguity they may override the chromosomal fact."

Judge Ellis proceeds to compare the Corbett case as follows:

> "Against this background Ormrod J in Corbett v. Corbett held that a post-operative male to female transsexual could not marry as a woman, on the ground that if all three of the chromosomal, gonadal and genital tests were congruent that should determine the sex of a person for the purpose of marriage and any operative intervention should be ignored. This decision effectively ignored the psychological factors which Ormrod J included as relevant for assessing the sexual condition of an individual, and does not take into account any social factors which he did not address in his judgment.
>
> Ormond, J. commented that the criteria for determining the sexual condition of an individual have been evolved by doctors for the purposes of systematizing medical knowledge and assisting in the difficult task of deciding the best way of managing the unfortunate patients who suffer, either physically or psychologically, from sexual abnormalities. He quoted (at p. 100) Professor Dewhurst as saying:
>
> '. . . we do not determine sex – in medicine we determine the sex in which it is best for the individual to live.'
>
> Ormrod J also commented that a real problem arose if chromosomal, gonadal and genital criteria were not congruent. He commented that that question did not arise in the Corbett case but he said at p. 106: "it would seem to me to follow from what I have said that the greater weight would probably be given to the genital criteria than to the other two."

Judge Ellis concentrated on the transsexual as follows:

"If psychological and social factors are to be given equal weight with the more physical attributes, then the determination of the sexual condition of an individual where that individual has undergone a sex change operation, is not so simply decided. In such a case the genitals give the appearance of the other sex (i.e., contrary to chromosomal sex) albeit with the assistance of surgery, and therefore the genital criteria would indicate that the person should be categorized as having the sex akin to his or her reconstructed genitalia.

If in cases of "inter-sex" the psychological factors should be determinative of the sex to be assigned to that individual, surely the same reasoning should be used in the case of a post-transsexual. The evidence before the Court is that the psychological desire to be able to function in the opposite sex to the sex the person was born into is absolutely compelling in the case of a transsexual. Once a transsexual person has undergone hormone treatment and surgical intervention in order to make his or her genitals congruent with the sex of choice, it is difficult to understand how that person should be treated differently from a person who has a physical sexual abnormality such as pseudo hermaphroditism. If the social and psychological factors are ignored then a situation can be arrived at as in the Australian case of In the Marriage of C and D (1979) 35 FLR 340 where the Court relied on the physical criteria to such an extent that it ruled that a person who was a pseudo hermaphrodite but who had been functioning as a man was not in fact sufficiently male to be able to marry. This ruling was made in respect of a marriage of some 14 years' duration where there were two children of that marriage (one adopted and one fathered by another man) and the couple had held themselves out as a married couple for all this period of time even though the marriage had not been physically consummated. The effect of the ruling by the Court was not only to discount the marriage relationship which had subsisted for all that time, but also to render the man unable to marry at all. He had adopted a male role in society and had been operated upon so that his genitals gave a completely male appearance. This case has been criticized as not even being consistent with the principles laid down in Corbett v. Corbett as there was in fact no congruence between chromosomal, gonadal and genital sex as this was a case of pseudo hermaphroditism. Nevertheless the case does illustrate the difficulty of

> relying solely on the physical factors and disregarding the social and psychological factors which are highly relevant.
>
> It must be remembered that in these situations the Court is making a decision which is relevant only after surgery has been performed and the individual has adopted a reassigned sexual identity in every way possible. Even if the Court regards this process as not the most appropriate way of dealing with the condition, if the new sexual status of the individual is not recognized, that person remains in a legal and social limbo as he or she has not acquired legal status as a member of the chosen sex but in every other way must operate socially and psychologically as a person of that chosen sex. (Emphasis added.)

Judge Ellis analyzes the Corbett definition of marriage as "a relationship which depends on sex and not on gender," and divides the Corbett categories as follows:

> "RELATIONSHIP
>
> (1) The main argument which has been advanced for not allowing post-operative transsexuals to marry is that marriage is a relationship between a man and a woman and if one partner prior to a sex change operation was the same sex as the other partner, marriage is not a possibility for that couple.
>
> WOMAN
>
> (2) Ormrod J said that he must determine what was meant by the word "woman" in the context of a marriage and that he was not concerned to determine the "legal sex" of the respondent at large. He contrasted marriage with recognition of assigned sex for national insurance purposes and for other social situations. He stated that the submission that the respondent had been assigned to the female sex and that this assignment ought to be legally recognized and enable the respondent to marry as a female was confusing sex with gender. Ormrod J held that marriage is a relationship which depends on sex and not on gender. Ormrod J makes this statement baldly and does not attempt to argue or justify that interpretation.

INTERCOURSE

(3) Ormrod J held that the capacity for natural heterosexual intercourse is an essential element of marriage. He also conceded that there were other characteristics such as companionship and mutual support which are important but that the characteristic that distinguishes marriage from other relationships can only be met by two persons of opposite sex. He held that the respondent as a post-operative male to female transsexual was not "naturally capable of performing the essential role of a woman in marriage". That statement, of course, begs the question of what is the essential role of a woman in marriage.

NURTURING

(4) The capacity for nurturing, support, and companionship is not dependent on the sex or gender of a person.

CAPACITY

(5) A capacity for vaginal sexual intercourse may be seen as important. The evidence before the Court is that reconstructive surgery has for a long time been able to construct a vagina-like cavity which is lubricated and of adequate size to accommodate a penis. There are other limited circumstances in which reconstructive surgery has enabled a woman to achieve heterosexual intercourse which would not otherwise have been possible for her without such intervention either because of a congenital abnormality or because of injury. It has never been suggested that merely by some injury or abnormality of her vagina a woman ceases to be a woman.

ABSENCE OF GONADS

(6) Neither can the absence of a uterus or ovaries be used to disqualify a person from the role of a woman in marriage because there are many women who have had radical hysterectomies (i.e., removal of uterus and ovaries) who still continue to function as wives.

CHILDREN

(7) Neither can the fact that a post-operative transsexual is not able to bear children be a disqualifying factor. There are many women who for whatever reason are infertile including all those women who are post-menopausal. This does not prevent them from entering valid marriages.

CONSUMMATION

(8) A valid marriage in New Zealand law does not require that sexual intercourse takes place. There is now no legal means of ending a marriage for non-consummation. Prior to the passing of the Family Proceedings Act 1980 a person could obtain a decree of nullity in respect of a marriage which was not consummated, but non-consummation did not render a marriage void but only voidable. The marriage was at its inception still regarded as a valid subsisting marriage and the fact of non-consummation merely empowered one or other of the spouses to take steps to have it brought to an end. A decree of nullity of a voidable marriage did not alter the previous status of the parties. They were still regarded in law as having been husband and wife before the decree was made absolute. There are also marriages where although they have been consummated initially, sexual intercourse has ceased to play a part in the marriage. This may be because of impotence or disinclination but the fact of lack of sexual intercourse in a marriage does not terminate the marriage and therefore cannot be regarded as an essential requisite of a valid marriage.

VICTIMIZATION

(9) It has been suggested that if there is no legal impediment to a post – operative transsexual being able to enter into a marriage, then it is possible the other partner will not be told the history of the transsexual party to the marriage and could enter into the marriage not knowing that the partner was a transsexual. As a reason for not giving a legal endorsement to transsexual marriage, this argument does not stand up to close scrutiny. Whatever the legal position, it is possible that a transsexual could go through a marriage ceremony without informing the other

> partner of his or her history. If the law does not recognize the marriage of a transsexual in his or her sex of assignment, then the other partner has been deceived into arranging his or her affairs in the expectation that he or she has a valid marriage when that is not in fact the case. If the marriage is legally recognized, then the other partner has been deceived about an aspect of the history of the partner.
>
> The criteria for a valid marriage are very basic and limited and there are many ways that one partner can deceive the other and not have grounds to avoid the marriage. A potential marriage partner can lie about his or her fertility, state of health, social position, financial circumstances, or whether he or she is HIV. The only remedy under New Zealand law once such a deception is discovered is to live apart and obtain a dissolution of the marriage after living apart for two years or more. If the marriage of a post-operative transsexual were to be recognized as legally valid, then his or her marriage partner would have the same remedy available.

Judge Ellis reaches his conclusions, as follows:

> (a) Therefore it is submitted that in order to be capable of marriage two persons must present themselves as having what appear to be the genitals of a man and a woman but not necessarily have to prove that each can function sexually.
>
> (b) A major factor in marriage is that socially each partner is able to hold him or herself out as a person married to a member of the opposite sex. If the complete physical appearance of the partners is of persons of the opposite sex then it is difficult to argue that just because the appearance of one partner can be attributable in part to surgical intervention, that that person should be disqualified from being an appropriate legal marriage partner for the other.
>
> (c) Neither is it appropriate in New Zealand today for the Christian concept of marriage to have an overriding sway over the legal situation. In New Zealand there is a separation between church and state. There is no official state religion. New Zealand is home to persons who profess many faiths other than Christianity. Ceremonies of marriage include the possibility of a completely secular

> ceremony either at a registry office or by a marriage celebrant.

The court recognized there is a distinction between the preoperative transsexual and the post-operative. Each requires separate consideration, as follows:

> (1) The proposal is that post-operative transsexuals be recognized as being of their chosen sex for the purpose of marriage. In part the argument has been that psychological and social factors ought to be given equivalent weight with the physical factors including chromosomal, gonadal and genital factors. There is a group of people who identify themselves as transsexuals, and who socially and psychologically operate in the sex of their choice (differing from the sex into which they were born) but who have not yet had surgical intervention. In these cases the question must be asked why it is necessary that a transsexual should have to go through a risky surgical procedure before he or she can be eligible to marry as a person of his or her chosen sex. Such procedures will no doubt also be expensive.
>
> (2) This is particularly difficult in the case of female to male transsexuals. Hormone administration will produce secondary sexual characteristics, such as facial hair and a deeper voice. The breasts may be removed and a radical hysterectomy performed, but the construction of any kind of artificial penis involves difficult plastic surgery and requires the use of tissues from other parts of the body which means the surgery is more complicated and intrusive. Some female to male transsexuals will therefore choose not to undertake a phalloplasty.
>
> (3) There is clearly a continuum which begins with the person who suffers from gender dysphoria (a state of mental unease or discomfort) but who has not chose to cross-dress on a regular basis and has embarked on no programme of hormonal modification or surgery, through to the person who has embarked on hormone therapy and perhaps had some more minor surgical intervention such as removal of gonads, through to the person who undergoes complete reconstructive surgery.

Judge Ellis discusses the F to M dilemma, involving no penis:

> (4) It may not be possible to draw the line so rigidly with a female to male transsexual. If the social and psychological factors are met and the person has undergone hormone therapy to produce the secondary male sexual characteristics of body hair and deeper voice, and the person has had a mastectomy and radical hysterectomy, that may be sufficient to establish his identity as a male for most purposes but not necessarily marriage. (B v. B, 355 NYS 2d 712 (1974)).

Is a non-functional penis a minimum for F to M?

> (5) It is acknowledged that a marriage requires persons of the opposite sex and that this may require a genital appearance which is consistent with a person of the opposite sex to the marriage partner. In the case of a male to female transsexual, this requires a constructed vagina; and in the case of a female to male transsexual, this requires a penis. It is submitted that neither constructed organ needs to be fully sexually functional for the purposes of a valid marriage. There are many forms of sexual expression possible without penetrative sexual intercourse.

Does the marriage law call for a higher standard?

> (6) It may be that for other legal purposes, a transsexual who has not had reconstructive surgery or only minimal surgical intervention (such as removal of the testes) could be classified in his or her chosen sex for certain purposes such as the employment law, criminal law and the law of inheritance.

Judge Ellis decides that homosexual marriage is not at issue:

> (7) It is argued that to allow a transsexual to marry in his or her assigned sex is to allow homosexual marriage. It is submitted that this is not the case. The whole premise of the argument with respect to transsexuals is that the transsexual should be acknowledged as belonging to the "chosen" sex. If a male to female transsexual marries, she marries as a woman and not as a man. That relationship should then not be classified as a homosexual relationship but as a relationship between two persons of opposite sex/gender. (Emphasis added.)

This line of reasoning applies equally to "female to male" transsexed persons.

With respect to the nature of marriage, Judge Ellis said "marriage is a private contract between two individuals without the potential for disadvantaging other persons not party to that contract." He further states:

> (a) Marriage is still upheld by society as a valuable and desirable institution. In its present form it depends on a contract between a man and a woman.
>
> (b) If the structure of present society is such that some persons have a compelling desire to be recognized and be able to behave as persons of the opposite sex, and society allows such persons to undergo therapy and surgery in order to achieve that state, then society ought also to allow such persons to function as fully as possible in their reassigned sex, and this must include the capacity to marry.

Judge Ellis once again turns to his fellow jurists, namely Judge Aubin, who summarized the issue arising in his Court, as follows:

> "Are biological factors always to be given primacy, or can they be displaced by the cumulative effect of other considerations culminating in reassignment surgery? Is a post-operative male to female transsexual a pseudo-woman, a pastiche, an imitation, not a woman at all really but still a man, or has this person become for marriage purposes, someone with whom and for whom sexual intercourse as the woman is both possible and meaningful?
>
> Judge Aubin answers his own question:
>
> . . . ultimately the question has to be answered whether this applicant, Mrs. M, was a woman on 9 September 1977 [the date of the marriage] or whether she was a man, or whether she occupied some kind of sexual twilight zone. She was born male, and her chromosomal structure has not changed. Is that the end of it? Those measures she has taken to transform herself into a woman, are they no more than some ultimately futile attempt to change her from an anguished Mr. Hyde into a well-adjusted Mrs. Jekyll, producing some kind of hermaphroditic mutant unable to enter into a valid marriage with a man, or indeed a woman."

Judge Aubin refers to the Corbett case and says:

"At the end of the day, however, the luxury of the absence of any considered and binding New Zealand decision is not lightly to be cast away and my inclination to uphold the marriage must to my mind prevail over the arguments for caution, pertinent as they are.

No purpose would be served by recasting and then repeating those passages which have been already set out in this decision and which are critical of Corbett, or which pointed to the need to be able to accommodate change. I find the judgment of Mrs. Justice Mathews in Harris to be cogent and compelling, and in my view, in a given case, matrimonial as well as criminal, it is possible to conclude as a matter of evidence, that the genetic starting point, the immutable biological factors, will not be determinative. Why should they be? Accepting that it cannot be a question to be decided merely upon sympathetic or compassionate grounds, nevertheless a consideration of the evidence may lead to the finding that the cumulative effect of the changes that have occurred is to have brought about a change of sex in real sense, albeit that the chromosomal structure is perforce unchanged and the sexual organs are the work of man and not of any deity.

. . .

Doubtless the reality is that there is no simple medical test for the determining of which side of the sexual line a particular person falls, at least if it be allowed that the chromosome structure will not always be conclusive; to make it so has the virtue of certainty, but surely at the risk of over simplification. A medical definition would not necessarily prevail in any case. It is idle to speculate about evidence that is not before the Court. In so far as these proceedings come down in the end of the definition of a "woman", there is no medical evidence in the case which is persuasive against the view that genetic considerations can be displaced by events occurring in the course of the person's life that cumulatively take that person out of the sexual category in which he or she was born through a state of limbo and into the haven of the opposite sex."

In applying this view to the facts of the case before him, Judge Aubin said:

> "This was a relationship which stood the test of time to the extent of some 12-and-a-half years. Mr. M was fully aware of his partner's background and accepting of her as a marriage partner in a heterosexual relationship, accepting of her as a woman, just as the applicant perceived herself to be of that sex; I doubt that either of them would have thought in terms of such words as "pastiche" or "imitation", with the slightly derogatory overtones which such terms convey. These are subjective considerations which cannot in themselves determine the issue, but they are a part of the complex and difficult picture with which the Court is faced. The applicant's core identity, to adopt the words of the Judge at first instance in the Cogley case, is that of a woman; her body has been brought into harmony with her psychological sex. Differing views are inevitable and legitimate, but in the end, in the absence of any binding authority which requires me to accept biological structure as decisive, and indeed any medical evidence that it ought to be, I incline to the view that however elusive the definition of "woman" may be, the applicant came within it for the purposes of and at the time of the ceremony of marriage on 9 September 1977.
>
> There will be a declaration that the marriage was and remains a valid one.

Judge Ellis turned outside the English, to the American system and the Appellate Division of the Superior Court of New Jersey, MT v. JT, 355 A. 2d 204 (1976), where the three judges held that as a "post-operative transsexual," the plaintiff was able to marry and that her marriage was valid. The facts of that case were stated by Judge Ellis:

> "[W]here the three Judges held that as a post-operative transsexual, the plaintiff was able to marry and that her marriage was valid. The wife had filed an application for support and maintenance, but the husband defended that application on the basis that the wife was a male and that their marriage was void. The wife was a male to female transsexual who had married over a year after her final surgical operation. Her husband was aware of the surgery, as he had known her and lived with her prior to that

> surgery, and had subsequently married her. The trial Judge determined that the plaintiff was a female, that the defendant was her husband and there had been no fraud, and ordered the defendant to pay the plaintiff support.

Judge Ellis made note of the historic view of marriage was challenged, as follows:

> On appeal, the Court first found that the historic assumption of the application of common law and statutory strictures relating to marriages was that only persons who can become "man and wife" have the capacity to enter marriage.

The statutory definition of marriage was considered, as follows:

> The Judge stated that a legislative intent that would sanction a marriage between persons of the same sex could not be fathomed from a full reading of the statutes, and that therefore the issue before the Court was whether the marriage between a male and a post-operative transsexual who had surgically changed her external sexual anatomy from male to female was to be regarded as a lawful marriage between a man and a woman. The Court referred to the English case of Corbett v. Corbett, and disagreed with the conclusion reached in that case. Judge Handler said at p. 209:

Judge Ellis had set forth his own disagreement with the findings in Corbett, and now turns to the American Court on the same point of law, as follows:

> "Our departure from the Corbett thesis is not a matter of semantics. It stems from a fundamentally different understanding of what is meant by "sex" for marital purposes. The English court apparently felt that sex and gender were disparate phenomena. In a given case, there may, of course, be such a difference. A pre-operative transsexual is an example of that kind of disharmony, and most experts would be satisfied that the individual should be classified according to biological criteria. The evidence and authority which we have examined, however, showed that a person's sex or sexuality embraces an individual's gender, that is, one's self-image, the deep psychological or emotional sense of sexual identity or character. Indeed, it has been observed that the "psychological sex of an

> individual," while not serviceable for all purposes, is "practical, realistic and human" . . .
>
> The English court believed, we feel incorrectly, that an anatomical change of genitalia in the case of a transsexual cannot "affect her true sex." Its conclusion was rooted in the premises that "true sex" was required to be ascertained even for marital purposes by biological criteria. In the case of a transsexual following surgery, however, according to the expert testimony presented here, the dual tests of anatomy and gender are more significant. On this evidential demonstration, therefore, we are impelled to the conclusion that for marital purposes, if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche, or psychological sex, then identity by sex must be governed by the congruence of these standards."

Judge Ellis made the conclusion of M.T. a major part of his decision, as follows:

> Judge Handler said:
>
> "If such sex reassignment surgery is successful and the postoperative transsexual is, by virtue of medical treatment, thereby possessed of full capacity to function sexually as a male or female, as the case may be, we perceive no legal barrier, cognizable social taboo, or reason grounded in public policy to prevent that person's identification at least for purposes of marriage to the sex finally indicated.
>
> In this case the transsexual's gender and genitalia are no longer discordant; they have been harmonized through medical treatment. Plaintiff has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled sexual attributes of gender and anatomy. Consequently, the plaintiff should be considered a member of the female sex for marital purposes. It follows that such an individual would have the capacity to enter into a valid marriage relationship with a person of the opposite sex and did do so here. In so ruling we do no more than give legal effect to a fait accompli, based upon medical judgment and action which are irreversible. Such recognition will promote the individual's quest for inner peace and personal happiness, while in no

way disserving any societal interest, principle of public order or precept of morality."

Judge Ellis concludes his exhaustive opinion on the issue that it is not contrary to "public policy" to recognize as valid the marriage of post-operative transsexuals in the sex of reassignment, as follows:

> 1. The proposition is that it is not contrary to public policy to recognize as valid the marriage of post-operative transsexuals in the sex of reassignment.
>
> 2. The evidence is that the phenomenon of transsexualism is relatively rare. The individuals who experience this condition suffer a great deal of anguish which can be relieved by adopting the alternative gender. Modern endocrinology techniques and surgery can be used to consolidate that person physically in the alternate sex. In order to function socially in that alternate sex, the change needs to be legally recognized so that the person is not humiliated and embarrassed by being required to produce documents which show his or her sex as contrary to his or her appearance. As the transsexual behaves and socializes in his or her "new" sex, he or she may also wish to enter sexual relationships and marriage in that gender. Such a marriage is a private contract between the parties, and will not affect the rights and responsibilities of others in society.
>
> A post-operative transsexual is always sterile:
>
> 3. Once a transsexual has undergone surgery, he or she is no longer able to operate as a person of his or her original sex. A male to female transsexual will have had his penis and testes removed, and have had a vagina-like cavity constructed, and possibly breast implants. She can never appear unclothed as a male, or enter into a sexual relationship as a male, or procreate. A female to male transsexual will have had her uterus and ovaries and breasts removed, have a beard growth, a deeper voice, and possibly a constructed penis. He can no longer appear unclothed as a woman, or enter into a sexual

> relationship as a woman, or procreate. There is no social advantage in the law not recognizing the validity of the marriage of a transsexual in the sex of reassignment. It would merely confirm the factual reality.

It would be anomalous if the law forced a homosexual marriage:

4. If the law insists that genetic sex is the pre-determinant for entry into a valid marriage, then a male to female transsexual can contract a valid marriage with a woman. To all outward appearances, such "marriages" would be homosexual marriages. The marriage could not be consummated. The only way of ending such a marriage would be by way of dissolution proceedings after the parties had lived apart for two years.

5. A post-operative transsexual cannot procreate, so there can be no natural children from the union whose welfare could be affected. If either partner has children from a previous relationship, then the provisions of the Guardianship Act 1968 and the Children, Young Persons and Their Families Act 1989 will ensure their welfare.

6. Transsexuals exist in our society. Many will not undergo surgery. Even fewer will ever want to marry. Allowing those few who qualify to marry will not impact greatly on society, but it will provide relief and recognition for the few individuals affected.

The judicial approach to transsexualism and marriage in England and New Zealand divided the court systems in those nations. In America, in addition to New Jersey, the courts of Ohio, Texas and Kansas have moved away from M.T. v. J.T. and follow the Corbett court.

## TRANSSEXUALISM IN THE ORIENT

The impact of the Corbett decision was felt in the orient, besides New Zealand and Australia because transsexuals in marriage was an issue faced in Singapore. Transsexualism is a world-wide issue.

In the International Journal of Law, Policy and the Family, Vol. 12, (1998), discusses "The Test of Sex for Marriage in Singapore."

Prior to the Singapore Women's Charter (Amendment Act) 1996, there was no express requirement in the Women's Charter that parties to a marriage must be of different sexes. In the case of Lim Ying v. Hiok Kian Ming Erie, 1 SLR 184 (1992), the petitioner, Lim Ying, discovered after the marriage that she had married a transsexual who had been born a female and had subsequently undergone a sex change operation. The petitioner alleged that her consent to the marriage had not been obtained freely since she would not have married the respondent if she had known that the person she married was not born a man. Further, consummation had failed due to the inability of the respondent to achieve sexual intercourse. The petitioner argued that because the respondent was biologically a female, there cannot be a valid marriage. The respondent did not defend the petition. The High Court granted a decree of nullity declaring that the marriage was void *ab initio* for the reason the parties were of the same sex. There was no express requirement, however, in the Women's Charter that parties must be of different sexes:

> "The court found that this requirement existed "implicitly" in the statutory definition of monogamous marriage, which is referred to in the preamble to the Women's Charter. Since a monogamous marriage is a voluntary union of one man and one woman, persons of the same sex could not marry.

His Honor, Commissioner K.S. Rajah, reviewed the case law in various jurisdictions and chose to follow Corbett, and he said:

> It is desirable in the interest of certainty and consistency for the word "man" under the Charter to be given the ordinary meaning that is in contradistinction to woman. A person biologically a female with an artificial penis, after surgery and psychologically a male, must, for purposes of contracting a monogamous marriage of one man and one woman, under the Charter be as a "woman".

(Id. at 194)

The International Journal observed:

> As Corbett was decided in 1971, it has been suggested that the law has been changed in view of the Matrimonial Causes Act 1973. This statute now provides that parties in a marriage must be "male" and "female." Since the terms "male" and female" are used instead of "man" and "woman," it may be argued that reference is now made to a person's gender which embraces the psychological sex (the sex to which the person feels he belongs).

(Id. 164)

The journal also referred to the case of M.T. v. J.T. in New Jersey for the proposition:

> The test in New Jersey is to determine sex at the time of marriage and not at the time of birth; such a test gives recognition to the present psychological sex of the individual and the present state of his psychological sexual condition after reassignment surgery. Id, at 165.

Singapore decided ultimately not to go the route of the Corbett decision. Parliament changed the law in the matrimonial Causes Act 1973, which now uses the terms male and female. The amended (section 12) of the 1997 version of the Women's Charter provides that:

(1) A marriage solemnized in Singapore or elsewhere between persons who, at the date of the marriage, are not respectively "male" and "female" shall be void.
(2) . . .
(3) For the purposes of this section –
    (a) the sex of any party to a marriage as stated at the time of the marriage in his or her identity card issued under the National Registration Act shall be prima facie evidence of the sex of the party; and
    (b) a person who has undergone a sex re-assignment procedure shall be identified as being of the sex to which the person has been re-assigned.

This legislative enactment is, on its face, startling, because it reverses the Lim Ying decision that upheld and applied Judge Ormrod's decision.

There still remains a lingering question in the Lim Ying case of whether or not a transsexual can perform intercourse in marriage?

In the Lim Ying case, while overruled by parliament, nothing was mentioned in the law about capacity of a transsexual to perform sexually in marriage. That left open the decision of the Court on the petitioner's allegation that her husband, a transsexual, was incapable of erection due to the fact his penis was artificial. There could be no erecto and intromissio the court said. Applying the reasoning of the Corbett decision and quoting Judge Ormrod about the constructed vagina being incapable of natural consummation, the Singapore judge decided consummation through means of an "artificial" penis cannot be accomplished. It can never amount to ordinary and natural intercourse. Even if insertion (intromission) is accomplished, ejaculation can never happen.

The International Law Journal responds to this issue, as follows:

> By rejecting the test of sex in the main decision in Corbett, (section 12) has accorded transsexuals the ability to marry but does not go further to change the alternative decision in Corbett to give them full capacity to carry out the functions of a valid marriage. As the law stands, any marriage contracted by a transsexual is necessarily a voidable one at its inception. Further, the gender-discriminating aspects of the roles of husband and wife must also be considered. If a transsexual can enter into a marriage, he or she must be given the recognition that he or she has full capacity to perform the role of a husband "or wife in that marriage". The transsexual should be recognized to be able to provide the consortium that the law expects of him or her. It is hoped that with the rejection of Corbett's main decision in section 12, the courts in Singapore will also reject its alternative decision." (id at 171)

What this author, Debbie S. L. Ong, is implying, is once the legislature has opened the door to marriage for transsexuals with their designated sex the fact that intercourse may not be exactly the same as for non-transsexuals, that should not be the basis for disallowing marriage. The argument of artificial verses natural sex, is a distinction without merit. The author concludes:

> The new test contained in (the amended) section 12 of the Women's Charter is welcomed. It rejects the traditional English test in Corbett and thus, avoids all the "criticism of the case. It gives legal recognition to the psychological sex of the person, provided that the person undergoes surgical treatment to bring his (her) bodily characteristics to conform with the psychological sex. It . . . adopts a more humane treatment of persons caught in the unfortunate position of belonging possibly to two different sexes or, put in another way, belonging to neither sex." (id at 169)

If intercourse in marriage can only be achieved using natural sex organs then construction of an artificial vagina for women who suffer from vaginal astresia, (so they can perform sexual intercourse), could result in their not being allowed to marry. It is imperative that the law look beyond such absurd results.

Another foreign jurisdiction that had to decide, if it was going to follow the Corbett case, was New South Wales in the Criminal Appeals Court, in the case of Lee Harris and Phillis McGuiness, 35 A Crim.R. 146 (1988). While this case did not involve transsexual marriage the Corbett principal was a major issue. This case involved Harris born a male who had undergone full sexual reassignment surgery and McGuiness, also born a male and who had developed some female attributes through hormone treatment. They were arrested for an offense of a male seeking to procure or attempting to commit an act of indecency.

Both of them had made sexual approaches to men from the Vice Squad. The court had to decide whether they were "male persons" under the Crimes Act. Judge Mathews said:

> With the greatest respect to Ormrod, J., this conclusion (that biological constitution is fixed at birth) seems to flow not so much from the medical evidence which was given in the case as from his Lordship's own finding that certain biological features should be determinant of a person's sex.. . . . The real question is whether the law should permit other factors to override the chromosomal test in the case of a post-operative transsexual.

* * *

The Court said:

> "[S]exual offenses . . . frequently involve the use of external genitalia. How can the law sensibly ignore the state of those genitalia at the time of the alleged offense, simply because they were artificially created or were not the same as at birth." Ibid, 179.

The Criminal Appeals Court held that Harris' conviction could not stand since he had undergone sex reassignment surgery (thus a female) but McGuiness, who had not undergone such surgery, remained a "male person," under the Crimes Act. Should

the law treat a transsexual in a criminal court differently than in the Family Court? The Judge in this case expressed the hope that the test of sexual identity would also apply to marriage.

It is necessary now to review the American decisions, namely in Texas and Kansas where the courts have written definitive opinions on transsexual marriage. These decisions are cogent and express the deep division of thinking about marriage and sex.

## TEXAS LAW

In the state of Texas, the case of Littleton v. Prange, was before the Court of Appeals of Texas, Fourth District, San Antonio, 9 S.W.3d 223 (1999) (Tex. App. Lexis 7974). Appellant, Christie Lee Littleton, individually and as Next Heir of Jonathan Mark Littleton was suing Dr. Mark Prange, appellee, for medical malpractice as the surviving wife.

Christie Lee was a transsexual, born a male. She had sex reassignment surgery. She married Jonathon Mark Littleton and they lived together for several years until his death.

She filed a medical malpractice suit under the Texas Wrongful Death statute as a "surviving spouse." (Tex. Civ. Proc. & Rem. Code Ann §. 71.004, 71.021 (Vernon 1977)). Dr. Mark Prange, filed for summary judgment in the trial court, alleging that appellant was not a legal beneficiary under the statute, asserting she was a "man" and could not be the "surviving spouse" of another man.

Texas law does not permit marriages between persons of the "same sex." As a matter of law it was argued, appellant's marriage was invalid. She could not bring a cause of action as the surviving spouse of another male. The trial court agreed and granted summary judgment. Under the Texas wrongful death and survival statute, a claimant must be the decedent's surviving spouse.

In an appeal from the summary judgment, the appeals court must determine whether the movant has shown that there are no genuine issues of material fact and that the movant, Dr. Prange, is entitled to judgment as a matter of law. The appellate court opinion was rendered by Phil Hardberger, Chief Justice. There was a concurring opinion

by Karen Angelini, Justice, and a dissenting opinion by Alma L. Lopez, Justice. This was a case of first impression in Texas.

Justice Hardberger began his opinion with the following statement:

> This case involves the most basic of questions. "When is a man, a man" and when is a "woman a woman"? Every schoolchild, even of tender years, is confident he or she can tell the difference, especially if the person is wearing no clothes. These are observations that each of us makes early in life and, in most cases, continue to have more than a passing interest in for the rest of our lives. It is one of the more pleasant mysteries.
>
> The deeper philosophical (and now legal) question is: can a physician change the gender of a person with a scalpel, drugs and counseling, or is a person's gender immutably fixed by our Creator at birth? The answer to that question has definite legal implications that present themselves in this case involving a person named Christie Lee Littleton.

(Id. at 224)

The parties entered into a stipulation with respect to the facts, which are essentially as follows:

> Christie is a transsexual. She was born in San Antonio in 1952, a physically healthy male, and named after her father, Lee Cavazos. At birth, she was named Lee Cavazos, Jr. (Throughout this opinion Christie will be referred to as "She." This is for grammatical simplicity's sake, and out of respect for the litigant, who wishes to be called "Christie," and referred to as "she." It has no legal implications.)
>
> At birth, Christie had the normal male genitalia: penis, scrotum and testicles. Problems with her sexual identity developed early though. Christie testified that she considered herself female from the time she was three or four years old, the contrary physical evidence notwithstanding. Her distressed parents took her to a physician, who prescribed male hormones. These were taken, but were ineffective. Christie sought successfully to be excused from sports and physical education because of

> her embarrassment over changing clothes in front of the other boys.
>
> By the time she was 17 years old, Christie was searching for a physician who would perform sex reassignment surgery. At 23 she enrolled in a program at the University of Texas Health Science Center that would lead to a sex reassignment operation. For four years Christie underwent psychological and psychiatric treatment by a number of physicians, some of whom testified in this case.

(Id. at 224)

On August 31, 1977, Christie's name was legally changed to Christie Lee Cavazos. Under doctor's supervision, Christie began receiving various treatments and female hormones. The medical facts disclosed the following:

> Between November of 1979 and February of 1980, Christie underwent three surgical procedures, which culminated in a complete sex reassignment. Christie's penis, scrotum and testicles were surgically removed, and a vagina and labia were constructed. Christie additionally underwent breast construction surgery.
>
> Dr. Donald Greer, a board certified plastic surgeon, served as a member of the gender dysphoria team at UTHSC in San Antonio, Texas during the time in question. Dr. Paul Mohl, a board certified psychiatrist, also served as a member of the same gender dysphoria team. Both participated in the evaluation and treatment of Christie. The gender dysphoria team was a multi-disciplinary team that met regularly to interview and care for transsexual patients.
>
> The parties stipulated that Dr. Greer and Dr. Mohl would testify that their background, training, education and experience is consistent with that reflected in their curriculum vitas, which were attached to their respective affidavits in Christie's response to the motions for summary judgment. In addition, Dr. Greer and Dr. Mohl would testify that the definition of a transsexual is someone whose physical anatomy does not correspond to their sense of being or their sense of gender, and that medical science has not been able to identify the exact cause of this

> condition, but it is in medical probability a combination of neuro-biological, genetic and neonatal environmental factors. Dr. Greer and Dr. Mohl would further testify that in arriving at a diagnosis of transsexualism in Christie, the program at UTHSC was guided by the guidelines established by the Johns Hopkins Group and that, based on these guidelines, Christie was diagnosed psychologically and phychiatrically as a genuine male to female transsexual. Dr. Greer and Dr. Mohl also would testify that true male to female transsexuals are, in their opinion, psychologically and psychiatrically female before and after the sex reassignment surgery, and that Christie is a true male to female transsexual.
>
> On or about November 5, 1979, Dr. Greer served as a principal member of the surgical team that performed the sex reassignment surgery on Christie. In Dr. Greer's opinion, the anatomical and genital features of Christie, following that surgery, are such that she has the capacity to function sexually as a female. Both Dr. Greer and Dr. Mohl would testify that, in their opinions, following the successful completion of Christie's participation in the UTHSC's gender dysphoria program, Christie is medically a woman.

(Id. at 224)

Christie married Jonathon Mark Littleton in Kentucky in a marriage ceremony in 1989 and they lived together until his death in 1996, or seven years. In addition to the stipulation of facts, Christie attached an affidavit to her response to the motion for summary judgment, which stated that Jonathan was fully aware of her background and that she had undergone sex reassignment surgery.

The legal issue posed by the appeals court was:

> "Can there be a valid marriage between a man and a person born as a man, but surgically altered to have the physical characteristics of a woman?"

Justice Hardberger said, The underlying statutory law of Texas and Kentucky, was that marriages between persons of the same sex are not permitted. The appellee, in

the trial court had the burden to prove Christie is not a surviving spouse. Recasting the issue, the appellate court asked "Is Christie a man or a woman?"

The appeals court said, "if Christie is a woman, she may bring this action. If Christie is a man, she may not." (Id. at 225)

Justice Hardberger surveyed all the pertinent case law, and observed the following:

> Christie is medically termed a transsexual, a term not often heard on the streets of Texas, nor in its courtrooms. If we look at other states or even other countries to see how they treat marriages of transsexuals, we get little help. Only a handful of other states, or foreign countries, have even considered the case of the transsexual. The opposition to same-sex marriages, on the other hand, is very wide spread. Only one state has ever ruled in favor of same-sex marriage: Hawaii, in the case of Baehr v. Lewin, 74 Haw. 530, 852 P.2d 44 (Haw. 1993). All other cases soundly reject the concept of same-sex marriages. *See, e.g.,* Dean v. District of Columbia, 653 A.2d 307 (D.C. 1995); Jones v. Callahan, 501 S.W.2d 588 (Ky.1973); Baker v. Nelson, 291 Minn. 310, 191 N.W.2d 185 (Minn. 1971), *aff'd* 409 U.S. 810, 34 L.Ed.2d 65, 93 S.Ct. 37 (1972); Singer v. Hara, 11 Wash.App. 247, 522 P.2d 1187 (Wash.Ct.App. 1974). Congress has even passed the Defense of Marriage Act (DOMA), just in case a state decides to recognize same-sex marriages.
>
> DOMA defines marriage for federal purposes as a "legal union between one man and one woman," and provides that no state "shall be required to give effect to any public act, record, or judicial proceeding of any other state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State…or a right or claim arising from such relationship." Defense of Marriage Act, Pub. L. No. 104-109, s. 2(a), 110 Stat. 2419 (1996) (codified as amended at 28 U.S.C.A. s 1738C (West Supp. 1997). So even if one state were to recognize same-sex marriages it would not need to be recognized by any other state, and probably would not be. Marriage is tightly defined in the United States: "a legal union between one man and one woman." *See id.* s. 3(a).

A review of the Hawaiian case the Court makes reference to, Baehr v. Lewin does not seem to clearly approve same sex marriage but rather the Supreme Court of Hawaii "remanded" the case to the trial court to reconsider if there is a violation of the Hawaiian and federal Constitutions because of the state's denial of the right to marry by same sex couples. The trial court had ruled there was no violation, but after remand found there was a violation. The case was eventually dismissed because a referendum in the mean time, showed that the people of Hawaii voted against same-sex marriages. Likewise, the case of Dean v. District of Columbia was an appeals court remand to the trial court to decide if there was a constitutional violation of same sex marriage rights.

Both cases ultimately ended adversely to same sex marriages. The other cases cited do reject the concept that same-sex is within the marriage statutes and clearly favor opposite sex persons.

The Congressional Act, called DOMA provides no state shall be "required to give effect" to another state's permission to have same-sex marriages. This is the law of Florida, Section 741.212 (Fla. Stat. 2002), which provides: "Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States or any other jurisdiction, either domestic or foreign, or any other place or location . . . are not recognized for any purpose in this state."

Justice Hardberger refers to the "Public antipathy toward same-sex marriages," which the case of Dean v. District of Columbia, supra, so aptly demonstrates. But, he goes on to state:

> Public antipathy toward same-sex marriages notwithstanding, the question remains: is a transsexual still the same sex after a sex-reassignment operation as before

> the operation? A transsexual, such as Christie, does not consider herself a homosexual because she does not consider herself a man. Her self-identity, from childhood, has been as a woman. Since her various operations, she does not have the outward physical characteristics of a man either. Through the intervention of surgery and drugs, Christie appears to be a woman. In her mind, she has corrected her physical features to line up with her true gender.
>
> "Although transgenderism is often conflated with homosexuality, the characteristic, which defines transgenderism, is not sexual orientation, but sexual identity. Transgenderism describes people who experience a separation between their gender and their biological/anatomical sex." Mary Coombs, *Sexual Dis-Orientation: Transgendered People and Same-Sex Marriage,* 8 UCLA WOMEN'S L.J. 219, 237 (1998).

(Id. at 225)

Justice Hardberger emphasized the "public antipathy" toward homosexuals, but he suggested that Christie might be reclassified from a transsexual to a homosexual? This places her squarely in the path of legal rejection.

It is understood and recognized in case decisions that transsexuals, medically, are not homosexuals. The challenge by this opinion is that Christie "does not consider herself a homosexual," which in the court's eyes may be wrong, "because she does not consider herself a man." If the Court declares her a man, despite what she thinks – she is a homosexual in marriage. The medical experts did not think Christie was a man. Drs. Greer and Nohl testified Christie had the functional capacity, sexually, of a female, postoperatively, and she was psychiatrically and psychologically a "female" before and after sex reassignment surgery and hormonal treatments.

The Court observed "transgenderism," is an over-all classification encompassing, cross dressers, transvestites, inter-sexuals, bi-sexuals, homosexuals, transsexuals, and hormophrodites.

The court said that, "although transsexualism is often conflated with homosexuality, the characteristic, which defines transsexualism, is not sexual orientation, but sexual identity. Transsexualism describes people who experience a separation between their gender and their biological/anatomical sex.

The court proceeds to make distinctions between the sexual classes mentioned above, as follows:

> Nor should a transsexual be confused with a transvestite, who is simply a man who attains some sexual satisfaction from wearing women's clothes. Christie does not consider herself a man wearing women's clothes; she considers herself a woman wearing women's clothes. She has been surgically and chemically altered to be a woman. She has officially changed her name and her birth certificate to reflect her new status. But the question remains whether the law will take note of these changes and treat her as if she had been born a female. To answer this question, we consider the law of those jurisdictions who have previously decided it.

(Id. at 226)

Justice Hardberger turned to the English case of Corbett v. Corbett and stated:

> The English case of *Corbett v. Corbett*, 2 All E.R. 33 (P.1970), appears to be the first case to consider the issue, and is routinely cited in later cases, including those cases from the United States. April Ashley, like Christie Littleton, was born a male, and like Christie, had undergone a sex-reassignment operation. April later married Arthur Corbett. Arthur subsequently asked for a nullification of the marriage based upon the fact that April was a man, and the marriage had never been consummated. April resisted the nullification of her marriage, asserting that the reason the marriage had not been consummated was the fault of

> her husband, not her. *Id.* at 34-35, 39. She said she was ready, willing, and able to consummate the marriage.
>
> Arthur testified that he was "mesmerized" by April upon meeting her, and he dated her for three years before their marriage. He said that she "looked like a woman, dressed like a woman and acted like a woman." Arthur and April eventually married, but they were never successful in having sexual relations. Id. at 39. Several doctors testified in the case, as they did in the current case. (See Id. at 41.)
>
> Based upon the doctors' testimony, the Corbett court came up with four criteria for assessing the sexual identity of an individual. These are:
>
> (1) Chromosomal factors;
>
> (2) Gonadal factors (i.e., presence or absence of testes or ovaries);
>
> (3) Genital factors (including internal sex organs); and
>
> (4) Psychological factors.

(Id at 44.)

Following Judge Ormrod's chromosomes analysis, the court restated Judge Ormrod's decision that medical intervention cannot change sex, as follows:

> Chromosomes are the structures on which the genes are carried which, in turn, are the mechanism by which hereditary characteristics are transmitted from parents to off-spring. *See id.* at 44. An individual normally has 23 pairs of chromosomes in his or her body cells; one of each pair being derived from each parent. *See id.* The English court stated that "The biological sexual constitution of an individual is fixed at birth (at the latest), and cannot be changed, either by the natural development of organs of the opposite sex, or by medical or surgical means. The respondent's operation, therefore, cannot affect her true sex." *Id.* at 47. The court then reasoned that since marriage is essentially a relationship between man and woman, the validity of the marriage depends on whether April is, or is not, a woman. *Id.* at 48. The court held that the criteria for answering this question must be biological

> and, having so held, found that April, a transsexual, "is not a woman for the purposes of marriage but is a biological male and has been so since birth," and, therefore, the marriage between Arthur and April was void. *Id.* at 48-49. The court specifically rejected the contention that individuals could "assign" their own sex by their own volition, or by means of an operation. *Id.* at 49. In short, once a man, always a man. (Emphasis added.)

Justice Hardberger did not take note of the fact, mentioned in other cases, that while Ormrod, J. mentioned that "psychological" factors were integral to sex, he failed to take that into consideration and made sex wholly biological and fixed at birth on the birth certificate.

There is no doubt the Corbett case had a profound influence on Justice Hardberger.

Referring to another American case to buttress the view that marriage is and always has been a contract between a man and a woman, is Anonymous v. Anonymous, 67 Misc.2d 982, 325 N.Y.S.2d 499 (NY Sup.Ct. 1971). The Court referred to this case as involving a transsexual, but fact wise it barely makes that classification. It involved an Army man who married another man by fraud.

Justice Hardberger referred to the case of M.T. v. J.T., 140 N.J. Super. 77, 355 A.2d 204, 205 (1976) as the "only United States case to uphold the validity of a transsexual marriage."

The facts of that case were reviewed. "The case involved a transsexual wife who brought an action for marital support growing out of her two years of marriage. The husband interposed a defense that his wife was male and their marriage was void. Therefore, he had no legal obligation of support. The wife testified she was born a male, but she always considered herself a female and dated men all her life. After she met her

husband to be, they decided that she would have an operation so she could 'be physically a woman.'" Justice Hardberger stated this case held, as follows:

> "In 1971, M.T. had an operation where her male organs were removed and a vagina was constructed. J.T. paid for the operation, and the couple were married the next year. M.T. and J.T. lived as husband and wife and had sexual intercourse. J.T. supported M.T. for over two years; however, in 1974, J.T. left the home, and his support of M.T. ceased. Id. The lawsuit for maintenance and support followed."

Justice Hardberger set forth the medical testimony in the case, as follows:

> The doctor who had performed the sex-reassignment operation testified. M.T., 355 A.2d at 205-06. He described a transsexual as a person who has "a great discrepancy between the physical and genital anatomy and the person's sense of self-identity as a male or as a female." M.T., 355 A.2d at 305. The doctor defined gender identity as "a sense, a total sense of self as being masculine or female; it pervades one's entire concept of one's place in life, of one's place in society and in point of fact the actual facts of the anatomy are really secondary." Id. The doctor said that after the operation his patient had no uterus or cervix, but her vagina had a "good cosmetic appearance" and was "the same as a normal female vagina after a hysterectomy." M.T., 355 A.2d at 206.

The conclusions of the trial court were set forth by Justice Hardberger, as follows:

> The trial court, in ruling for M.T. by finding the marriage valid, stated:
>
> It is the opinion of the Court that if the psychological choice of a person is medically sound, not a mere whim, and irreversible sex reassignment surgery has been performed, society has no right to prohibit the transsexual from leading a normal life. Are we to look upon this person as an exhibit in a circus side show? What harm has said person done to society? The entire area of transsexualism is repugnant to the nature of many persons within our society. However, this should not govern the legal acceptance of a fact. M.T., 355 A.2d at 207.

The New Jersey Appeals Court reached the following legal conclusion:

> If such sex reassignment surgery is successful and the postoperative transsexual is, by virtue of medical treatment, thereby possessed of the full capacity to function sexually as male or female, as the case may be, we perceive no legal barrier, cognizable social taboo, or reason grounded in public policy to prevent the persons' identification at least for purposes of marriage to the sex finally indicated. M.T., 355 A.2d at 210-11.

Justice Hardberger next referred to the state of Ohio, the last state to consider this issue, In re Ladrach, 32 Ohio Misc.2d 6, 513 N.E.2d 828 (Ohio Probate Ct. 1987). Ladrach was a declaratory judgment action brought to determine whether a male who became a post-operative female was permitted to marry a male. The Ohio court decided she was not permitted to marry.

Justice Hardberger, said of this case, the following:

> Like Christie, Elaine Ladrach started life as a male. Ladrach, 513 N.E.2d at 830. Eventually, she had the transsexual operation which removed the penis, scrotum and testes and constructed a vagina. Id. The doctor who performed the operation testified that Elaine now had a "normal female external genitalia." Id. He admitted, however, that it would be "highly unlikely" that a chromosomal test would show Elaine to be a female. Id. The court cited a New York Academy of Medicine study of transsexuals that concluded: "…male to female transsexuals are still chromosomally males while ostensibly females." Ladrach, 513 N.E.2d at 831. The court stated that a person's sex is determined at birth by an anatomical examination by the birth attendant, which was done at Elaine's birth. Ladrach, 513 N.E.2d at 832. No allegation had been made that Elaine's birth attendance was in error. Id. The court reasoned that the determination of a person's sex and marital status are legal issues, and, as such, the court must look to the statutes to determine whether the marriage was permissible. Id. The court concluded:
>
> This court is charged with the responsibility of interpreting the statutes of this state and judicial interpretations of these

> statutes. Since the case at bar is apparently one of first impression in Ohio, it is this court's opinion that the legislature should change the statutes, if it is to be the public policy of the state of Ohio to issue marriage licenses to post-operative transsexuals. (Emphasis added.)
>
> Id. The court denied the marriage license application. Id.

Justice Hardberger concluded that if appellant Christie is to be allowed the status of surviving wife, it was a statutory matter (the same as the Ladrach holding) and that it should be addressed by the Texas legislature and not the court. He stated it wasn't the function of the judiciary to fashion any guidelines on transsexuals:

> As previously noted, this is a case of first impression in Texas. It involves important matters of public policy for the state of Texas. The involvement of juries in the judicial process provides an important voice of the community, but we do not ask a jury to answer questions without appropriate instructions or guidelines. In fact, cases are reversed when juries have not been provided proper instructions.
>
> In our system of government it is for the legislature, should it choose to do so, to determine what guidelines should govern the recognition of marriages involving transsexuals. The need for legislative guidelines is particularly important in this case, where the claim being asserted is statutorily-based. The statute defines who may bring the cause of action: a surviving spouse, and if the legislature intends to recognize transsexuals as surviving spouses, the statute needs to address the guidelines by which such recognition is governed. When or whether the legislature will choose to address this issue is not within the judiciary's control.
>
> It would be intellectually impossible for this court to write a protocol for when transsexuals would be recognized as having successfully changed their sex. Littleton has suggested we do so, perhaps using the surgical removal of the male genitalia as the test. As was pointed out by Littleton's counsel, "amputation is a pretty important step." Indeed it is. But this court has no authority to fashion a new law on transsexuals, or anything else. We cannot make law when no law exists: we can only interpret the

> written word of our sister branch of government, the legislature. Our responsibility in this case is to determine whether, in the absence of legislatively-established guidelines, a jury can be called upon to decide the legality of such marriages. We hold they cannot. In the absence of any guidelines, it would be improper to launch a jury forth on these untested and unknown waters.
>
> There are no significant facts that need to be decided. The parties have supplied them for us. We find the case, at this stage, presents a pure question of law and must be decided by this court.

Since the case was presented on agreed facts, the court thus found it was a pure question of law that must be decided. The court stated its conclusions, as follows:

> "Based on the facts of this case, and the law and studies of previous cases, we conclude:
>
> (1) Medical science recognizes that there are individuals whose sexual self-identity is in conflict with their biological and anatomical sex. Such people are termed transsexuals.
>
> (2) A transsexual is not a homosexual in the traditional sense of the word, in that transsexuals believe and feel they are members of the opposite sex. Nor is a transsexual a transvestite. Transsexuals do not believe they are dressing in the opposite sex's clothes. They believe they are dressing in their own sex's clothes.
>
> (3) Christie Littleton is a transsexual.
>
> (4) Through surgery and hormones, a transsexual male can be made to look like a woman, including female genitalia and breasts. Transsexual medical treatment, however, does not create the internal sexual organs of a woman (except for the vaginal canal). There is no womb, cervix or ovaries in the post-operative transsexual female.
>
> (5) The male chromosomes do not change with either hormonal treatment or sex reassignment surgery. Biologically a post-operative female transsexual is still a male.

> (6) The evidence fully supports that Christie Littleton, born male, wants and believes herself to be a woman. She has made every conceivable effort to make herself a female, including a surgery that would make most males pale and perspire to contemplate.
>
> (7) Some physicians would consider Christie a female; other physicians would consider her still a male. Her female anatomy, however, is all man-made. The body that Christie inhabits is a male body in all aspects other than what the physicians have supplied." (Emphasis added.)

The court held as a matter of law, that Christie Littleton is a male. As a male she cannot be married to another male. The marriage to Jonathan Littleton was invalid and she cannot bring an action as a surviving spouse.

A dissenting opinion by Justice Alma L. Lopez, stated there were genuine issues of material fact raised by appellant and the case should have been remanded back to the trial court Justice Lopez said, the majority has determined that there are no significant facts that need to be determined and concluded that Christie is a male as a matter of law. Despite this conclusion, there is no law to serve as the basis of this conclusion. The absence of controlling law precludes a judgment as a matter of law in this case. Justice Lopez said, "Notably, neither federal nor state law defines how a person's gender is to be determined. . . . In this case, however, the majority relies on the absence of statutory law to conclude that this case presents a pure question of law that must be decided by this court rather than to allow this case to proceed to trial, that is, whether Christie is male or female. Justice Lopez went on to state:

> On its surface, the question of whether a person is male or female seems simple enough. Complicated with the issues of surgical alteration, sexual identity, and same-sex marriage, the answer is not so simple. To answer the question, the majority *assumes* that gender is accurately determined at birth. Consider the basis for such a

> determination. Traditionally, an attending physician or mid-wife determines a newborn's gender at birth after a visual inspection of the newborn's genitalia. If the child has a penis, scrotum, and testicles, the attendant declares the child to be male. If the child does not have a penis, scrotum, and testicles, the attendance declares the child to be female. This declaration is then memorialized by a certificate of birth, without an examination of the child's chromosomes or an inquiry about how the child feels about its sexual identity. Despite this simplistic approach, the traditional method of determining gender does not always result in an accurate record of gender.

Justice Lopez emphasized that appellee Prange never met his burden of proof to establish the sex of Christie except to rely upon Christie's birth certificate to show a male at birth. The majority avoided the fact the birth certificate was amended by the trial court to reflect her change of gender to female. The amended birth certificate replaced the original birth certificate as a matter of law, so the Court's majority based its decision on a nullified document.

To all of this, Justice Alma L. Lopez said,

> (unless substituted instrument is set aside, the instrument for which it is substituted is no longer considered part of the pleading), *rev'd on other grounds*, 920 S.W.2d 285 (Tex. 1996). Under this authority, an amended instrument changes the original and is substituted for the original. Although a birth certificate is not a legal pleading, the document is an official state document. Amendment of the state document is certainly analogous to an amended legal pleading. In this case, Christie's amended birth certificate replaced her original birth certificate. In effect, the amended birth certificate nullified the original birth certificate. As a result, summary judgment was issued based on a nullified document. How then can the majority conclude that Christie is a male? If Christie's evidence that she was female was satisfactory enough for the trial court to issue an order to amend her original birth certificate to change both her name and her gender, why is it not satisfactory enough to raise a genuine question of material fact on a motion for summary judgment?

On the issue of this matter being one for the Legislature, Justice Lopez stated:

> Granted the issue raised by this case are best addressed by the legislature. In the absence of law addressing those issue, however, this court is bound to rely on the standard of review and the evidence presented by the parties. Here, the stipulated evidence alone raises a genuine question about whether Christie is Jonathon's surviving spouse. Every case need not be precedential. In this case, the court is required to determine as a matter of law whether Christie is Jonathon's surviving spouse, not to speculate on the legalities of public policies not yet addressed by our legislature. Under a focused review of this case, a birth certificate reflecting the birth of a male child named Lee Cavazos does *not* prove that Christie Littleton is not the surviving spouse of Jonathan Littleton. Having failed to prove that Christie was not Jonathon's surviving spouse, Dr. Prange was not entitled to summary judgment. Because Christie's summary judgment evidence raises a genuine question of material fact about whether she is the surviving spouse of Jonathon Littleton, I respectfully dissent. (Emphasis added.)

This case stands for the proposition that a person's sex is a question of law and not fact – a medical fact. That the law can divorce itself from fact, is not sound. Justice Hardberger simply refused to follow the medical testimony, except to say it was divided.

As Justice Lopez points out a Birth Certificate is an historic document that presumes to record the sexual anatomy of a new born. It is not conclusive. There is a rebuttable presumption it is correct. The majority came down on the side that the document is a substitute for having to prove by medical testimony that Christie Littleton is male. The Amended Certificate placed that in doubt and there remained a material issue of fact.

The concurring opinion of Justice Karen Angelini, is most interesting because she prefers to rely on the absence of any Legislative guidance. And, in such absence, the

Court is charged with the duty to express the "pure issues of law and public policy," as follows:

> I concur in the judgment. Given the complete absence of any legislative guidelines for determining whether Texas law will recognize a marriage between a male-to-female transsexual and a male, this court is charged with making that determination. This case involves no disputed fact issues for a jury to decide, but presents this court with pure issues of law and public policy.
>
> In his opinion, Chief Justice Hardberger has concluded, based on an analysis of other cases considering this issue, that Texas law will not recognize Christie Lee Littleton's marriage to John Mark Littleton. In doing so, Chief Justice Hardberger notes his agreement with the *Ladrach* decision, which indicates that this is a matter best left to the legislature. He further notes, in accordance with the *Corbett* case, that because we lack statutory guidance at this time, we must instead be guided by biological factors such as chromosomes, gonads, and genitalia at birth. According to Chief Justice Hardberger, such biological considerations are preferable to psychological factors as tools for making the decision we must make. In this case, I must agree.
>
> I note, whoever, that "real difficulties . . . will occur if these three criteria [chromosomal, gonadal and genital tests] are not congruent." *Corbett v. Corbett*, 2 All E.R. 33, 48 (P.1970). We must recognize the fact that, even when biological factors are considered, there are those individuals whose sex may be ambiguous. *See* Julie A. Greenberg, *Defining Male and Female: Intersexuality and the Collision Between Law and Biology*, 41 ARIZ. L. REV. 265 (1999). Having recognized this fact, I express no opinion as to how the law would view such individuals with regard to marriage. We are, however, not presented with such a case at this time. *See Corbett*, 2 All E.R. at 48-49. The stipulated evidence in the case that is before us establishes that Christie Lee Littleton was born Lee Edward Cavazos, Jr., a male. Her doctors described her as a true transsexual, which is "someone whose physical anatomy does not correspond to their sense of being or their sense of gender. . . ." Thus, in the case of Christie Lee Littleton, it appears that all biological and physical factors were

> congruent and were consistent with those of a typical male at birth. The only pre-operative distinction between Christie Lee Littleton and a typical male was her psychological sense of being a female. Under these facts, I agree that Texas law will not recognize her marriage to a male.

In summary, the Littleton case has the Court recognizing the medical legitimacy of transsexualism based on medical science. Where it disagrees with medical science is where it claims it can transsex a male into a female. Judge Hardberger states "through surgery and hormones, a transsexual male can be made to "look like" a woman. That is the departure point. He does not accept that female genitalia and breasts alone constitute a reconstituted female. He wants the male reconstruct to provide a "womb, cervix and ovaries." Anything short of that is a male "look alike." He also wants the chromosomes to change from XY to XX. Anything short of these changes is just "make believe." There is no doubt Judge Hardberger is a "doubting Thomas" where medical claims are concerned. He has no trouble accepting a Legislative enactment to "believe" but short of that, Christie Lee Littleton remains a male.

## FLORIDA CASE LAW

We do not have any presidential Florida cases on point, however, it is important that we acknowledge a Florida Administrative Decision dealing with a transsexual in a workplace dispute. While this does not involve marriage, it sheds a light on transsexuals and the discrimination against transsexuals emanating from persons in governmental authority. This is the case of Belinda Joelle Smith v. City of Jacksonville Correctional Institution (Case No. 88-5451, October 2, 1991). This was before the Division of Administrative Hearings, State of Florida. The issue in this case is whether the petitioner Smith has been subjected to unlawful employment discrimination in violation of Chapter 760 (Florida Statutes).

The facts disclosed on January 17, 1986, Petitioner, Belinda Joelle Smith (fka) William H. Smith, filed a charge of discrimination based on sex and handicap against Respondent, City of Jacksonville/Jacksonville Correctional Institution. The Florida Commission on Human Relations filed a determination of "No cause/No Jurisdiction" as to Smith's charges of discrimination. On October 18, 1988, Smith filed a Petition for Relief which was forwarded to the Division of Administrative Hearings.

The Administrative Hearing Officer, Diane Cleavinger, made Findings of Fact:

> From 1972-1985, Petitioner was employed by the City of Jacksonville at the Jacksonville Correctional Institution.
>
> The Jacksonville Correctional Institution was and is the City's facility for confinement of offenders sentenced to nonstate prison incarceration usually lasting less than a year. The facility housed approximately three hundred (300) male and one (100) female inmates. Most inmates were assigned to work crews, either in or outside the institution. The Institution also provided training and educational programs. The City is an "employer" with in

> the meaning of Sections 760.02 and 760.10, Florida Statutes.
>
> During the entire time, Petitioner was employed at the Institution, Petitioner functioned as a male and was known as William H. Smith. Petitioner is an "individual" within the meaning of Section 760.10, Florida Statutes.

The Hearing Officer stated:

> "The majority of people in this world are of the opinion that humankind is divided into males and females. That viewpoint is incorrect. Put simply, there is a certain percentage of humankind that are a mixture of male and female characteristics."

Obviously, Officer Cleavenger, did not hesitate to say that the binary division of the sexes into male and female by the majority of people "is incorrect."

> "Sometimes the mixture consists of physical characteristics and sometimes the mixture consists of opposing physical, i.e. sexual, characteristics and mental, i.e. gender, characteristics. Transsexuality is the term of common parlance for the condition known to mental health professionals as gender dysphoria. Transsexuals essentially believe themselves to be opposite in gender to their anatomic characteristics and to have been born in the wrong body. Gender dysphoria is a persistent sense of discomfort and inappropriateness about one's anatomic sex accompanied by a persistent wish to be rid of one's genitals and to live as a member of the other sex."

The decision distinguishes homosexuals and transvestites from transsexuals, where the former are essentially satisfied with their anatomic sex, as follows:

> Transsexualism is often misunderstood by lay people. It is not homosexuality and it is not transvestism. Both homosexuals and transvestites are comfortable with the gender dictated by their physical bodies. A transsexual differs markedly from persons with homosexual or transvestite traits. Transsexualism is quite literally having the physical form of one sex and the mental form of the opposite sex.

> Little is understood of how such halflings result. This lack of insight into the phenomena is in part due to psychology's very poor understanding of how personality and self concepts are developed in human beings and how those traits interact with sexual orientation or sexual preference. However, it can be deduced that transsexualism is a result of a very fundamental or combination of fundamental physical and mental attributes. The desire of the transsexual to live and be recognized as the opposite sex begins at a young age. The desire is nonvolitional. The person so afflicted will progressively take steps to live in the opposite sex role on a full-time basis, often resulting in hormonal treatment and surgery to make the anatomy fit the mental form. The unaltered transsexual is a tormented person, beset with fundamental conflict and persistent rejection of self. Depending on the symptoms, transsexualism can result in a handicap. Petitioner, Belinda Joelle Smith, is a transsexual. In Petitioner's case, Petitioner physically had the male form but mentally was a female.

The early childhood developmental aspects of transsexualism showed in Petitioner's life, through puberty and into the extremes of adulthood, as follows:

> Petitioner grew up in a career Navy family. Her father was a chief petty officer. The family moved frequently because her father was often transferred from place to place.
>
> Ms. Smith first began to realize that she was a transsexual when she was around four years old. Her earliest specific memory is of a fight with her sister over who would be the mommy in playing house. Smith thereafter continued to have feelings of femininity. In growing up, she felt uncomfortable with boys and was more comfortable with girls. She cross-dressed in female clothes when home alone. All during her youth she experienced considerable personal confusion.
>
> Around age eleven, she read a magazine article about transsexuality and discovered that there was a scientific basis for the feelings she was experiencing as a male child. The article discussed surgical gender reassignment. At that time, Petitioner realized that gender reassignment was what she needed and wanted. She dressed in her sister's clothes

and went to her mother to explain her new awareness. When she approached her parents about what she had discovered about herself, the reaction was one of moral indignation and she was told never to talk about it again. There was some discussion about sending her to a psychiatrist. But nothing was done. Thereafter, she kept her transsexualism hidden to the best of her ability. However, the struggle to unify the physical and mental aspects of her character was tremendous. Additionally, the struggle to maintain the outward appearance of a normal male was tremendous.

Upon discharge of Smith's father from the Navy, the family settled in Liberal, Missouri, a rural farm community. Petitioner attended high school in Liberal, graduating in 1966. While in high school she felt guilty about her transsexual feelings and attempted to deny them by excelling at traditionally male endeavors. She competed actively in sports, lettering in basketball, baseball, and track. She felt constantly conflicted.

Petitioner began to date a girl while in high school. Petitioner told the girl of Petitioner's transsexuality, and she permitted Petitioner to cross-dress with her. Upon graduation, they married. However, the marriage lasted less than a year. Smith could function sexually only as long as she imagined herself as female and her partner as male. Petitioner's transsexuality was the reason for the breakup of the marriage.

Petitioner commenced college, but had to withdraw because her father died. She then enlisted in the Navy to support herself and to contribute to the support of her family. She remained in the Navy for three and a half (3 ½) years, serving as a machinist mate on a destroyer.

While in the Navy, Smith consulted a Navy psychiatrist about her transsexuality. The psychiatrist diagnosed her as transsexual and explained that she might eventually have to get sexual reassignment to achieve any real sense of adjustment. Smith was retained by the Navy despite the psychiatrist's diagnosis because she was not homosexual. Smith accordingly served out her full enlistment in the Navy and in 1970 or 1971 was honorably discharged.

> Around the time she was leaving the Navy, Smith reconciled with her wife. Upon Petitioner's discharge from the Navy, the couple settled in Jacksonville. During the marriage, Smith lived entirely as a male with episodes of cross-dressing. A son was born to the marriage.
>
> In 1972, Petitioner began working for the correctional authority in Jacksonville. During the time she was employed by the City, the Institution was overcrowded and understaffed.
>
> She began with the City as an entry level corrections officer. She was attracted to corrections work because, "It seemed like something that might help other people. You could serve the public and maybe help rehabilitate somebody, redirect their lives."

Petitioner began her correctional officer duties as a male and quickly rose through the ranks due to exceptional talent and high scoring on written tests. She was a floor officer and the youngest officer ever to be put in charge of road crews. She became a provisional sergeant by administrative appointment six (6) months before taking the sergeants written exam, and promoted over officers of much greater seniority. After becoming sergeant she was promoted to Watch Commander, an administrative position in charge of internal operations, doing evaluations, reports, assignments, leave schedules, inspections and participated in disciplinary boards. She supervised approximately thirty-five (35) employees. Petitioner was next appointed to permanent lieutenant. After nine (9) years in an unhappy marriage, he and his wife, separated and divorced with the mother getting custody of their son. She was unable to control the boy and Petitioner took custody until the son was sixteen (16) years old. Petitioner lived full time as a male all this time.

Officer Cleavenger stated the eventual change that took place in Petitioner William H. Smith, as follows:

> With the passage of years and the enforced male living, Smith found it increasingly difficult to deny her femaleness. She felt intense stress and internal conflict. She began to drink heavily. She developed a severe bleeding ulcer. Both of these problems progressively worsened. She began to undergo a major depression and to consider suicide. Clearly, by 1984 or 1985, Petitioner was experiencing impairment of at least two significant life functions, i.e. health and life. The impairment was directly due to her handicap of transsexualism. The impairment of those life functions causes Petitioner's handicap to fall within the definition of handicap developed under Chapter 760, Florida Statutes.
>
> By July, 1985, Smith was feeling greater and greater stress. On July 8, while on vacation, she went out in the middle of the night to a very private, unpopulated, nearby beach wearing a woman's wig, makeup, a woman's burgundy French-cut bikini bathing suit with false breasts, a pink ladies' beach coat, and pink ladies' sandals. She was dressed this way as a manifestation of her transsexuality. While out, Smith had a flat tire. A passing patrolman stopped to help with the tire. Initially, Petitioner identified herself as Barbara Joe Smith. The officer who stopped to assist Smith ran Smith's tag and discovered that Smith's true name was William, not Barbara Joe. The officer filed a general offense report of the encounter with the City.
>
> Once the report was filed, copies of this report were immediately circulated throughout the jail in sufficient quantity to "paper the walls." Smith became aware of the publication of the events of July 8, 1985. Smith did not participate or promote the circulation of the offense report and it was only the City's actions which caused the incident to become public.

The administrative steps that were taken in the ultimate disposition of the transsexualism in the corrections department, was as follows:

> The next time Smith was to report to work after her encounter with the police officer, Smith was experiencing problems with her bleeding ulcer and called in sick. By that time Smith's encounter with the patrol officer had reached her superiors and Smith was summoned for a conference with the Director of Corrections and the

> Director of Police Services. On July 12, 1985, while still on sick leave, Petitioner at then-Director and now Sheriff, James McMillan's request visited McMillan's office to discuss the July 8 incident. The Directors wanted Smith's explanation of the incident. Smith explained that she was transsexual and that the event had been a manifestation of her transsexuality. The Directors asked Smith if she would be willing to accept counseling, but Smith explained to them that counseling would not "cure" her and that the only effective treatment would be sexual reassignment. Smith told McMillan that she was going to go ahead and pursue a sex change operation and would live as a female, including dressing as a female, for one year prior to the operation. The Directors thereupon decided that Smith could not be retained and the City's course of action would be to terminate her. They tried to persuade Smith to resign. The City's testimony is that Smith in fact agreed to resign because of concerns about the way other people would react to her. Smith denies agreeing to resign. She was, however, sympathetic to the reaction of her coworkers and in that vain indicated she would be agreeable to resigning if certain conditions could be met. These conditions were not met. Whatever may have been the perceptions of the parties, it is clear that Petitioner ultimately refused to resign, and she resisted termination. Smith's eventual termination can only be considered involuntary since she sought to remain employed and was denied the right to do so.

On July 19, 1985, the Sheriff notified Smith of a "Notice of Proposed Immediate Suspension without pay with a dismissal to follow", and she was charged, for the first time in her career "of conduct unbecoming an officer."

The City conceded that Smith's conduct of transsexuality involved no illegality, immorality, or homosexuality.

The Hearing Officer found, "This was the same transsexual person who had rendered exemplary service for fourteen (14) years. The inmates were not aware of Smith's transsexualism. Petitioner could have continued to perform in her job as a

woman, following sex reassignment, since male and female uniforms were alike. The Hearing Officer made the following findings:

> Smith ultimately was accepted into a gender reassignment program. As part of that program, she was required to live as a female for a two (2) year adjustment and demonstration period. She successfully accomplished the adjustment. In 1990, she underwent her gender reassignment surgery. Since then, she has been living entirely as a female and has been judicially determined to be a female.
>
> Since the gender reassignment surgery, Petitioner is now doing well. She feels much more at peace with herself and much happier than when she was a male. She has quit drinking altogether and no longer suffers from stomach ulcers. She no longer thinks about suicide. She had received acceptance by her brothers and sisters, and also by her son. She is working successfully as a salesperson for a retail tile company.

The Hearing Officer concluded that based upon the plain meaning of "handicap" in Section 760.02, Florida Statutes (1989), and the medical evidence presented, an individual with "gender dysphoria" is within the coverage of the Human rights Act of 1977. "Apart from actual handicap, Smith was handicapped because of the attitude with which she was confronted by her employer. The city's main line of defense for terminating smith is that an "absence of transsexuality" was the bona fide occupational qualification for her position. The record is barren of any attempt to accommodate smith. The final Order reinstating petitioner, awarded Smith substantial back pay, attorney fees and costs, dated October 2, 1991.

## CONSTITUTIONAL ISSUE

On a collateral point of law, the Supreme Court of Vermont in the case of Stan Baker v. State of Vermont, 744 A2d 864 (Vt. 1999), considered the "constitutional" right of marriage as it applies to homosexuals and the Court arrived at a decision unlike any other case in transgender law. The striking similarity of how the courts approach "same sex" marriage and transsexuals in marriage has a bearing in this case. The line of reasoning and the importance of constitutional application of the law applies equally to the Kantaras case.

The Supreme court, speaking through Chief Justice Amestoy, stated the question in that case, as follows:

> "May the State of Vermont exclude same sex couples from the benefits and protection that its law provide to opposite-sex married couples? That is the fundamental question we address in this appeal, a question that the Court well knows arouses deeply-felt religious, moral, and political beliefs. Our constitutional responsibility to consider the legal merits of issues properly before us provides no exception for the controversial case. The issue before the Court, moreover, does not turn on the religious or moral debate over intimate same-sex relationships, but rather on the statutory and constitutional basis for the exclusion of same-sex couples from the secular benefits and protections offered married couples. (Emphasis added)

(Id. at 867)

May not this same question be raised as to transsexuals denied the civil benefits of the marriage law?

That question by Justice Amestoy is equally applicable to the issue before this Court, in that, transsexuals are not being accorded the fundamental and constitutional

right to marry on the basis that while not being homosexual, but being legally cast in the role of homosexuals in their married state.

The Vermont Supreme Court was applying a unique Common Benefits Clause of the Vermont Constitution, which reads in pertinent part:

> That government is, or ought to be instituted for the common benefit, protection, and security of the people, nation or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community.

Florida does not have an equivalent Common Benefits Clause in its Constitution.

The facts of this Baker case are that Plaintiffs are three same-sex couples who lived together in committed relationships for periods ranging from four to twenty-five years. Two of the couples have raised children together. Each couple applied to the clerk for a marriage license, of the Towns of Milton, Shelburne and the City of South Burlington. All three couples were refused a marriage license, and each filed suit seeking a declaratory judgment that refusal to issue the license, violated the marriage statutes and the Vermont Constitution. The State of Vermont intervened in the suit. The trial court dismissed the lawsuits ruling that the marriage statute did not permit same-sex marriage and the marriage statute in doing so was constitutional because the statute rationally furthered the state's interest in "promoting the link between procreation and child rearing."

The Supreme Court addressed the marriage statute issue first, as follows:

> Plaintiffs initially contend the trial court erred in concluding that the marriage statutes render them ineligible for a marriage license. It is axiomatic that the principal objective of statutory construction is to discern the legislative intent. See *Merkel v. Nationwide Ins. Co.*, 166 Vt. 311, 314, 693 A.2d 706, 707 (1997). While we may

> explore a variety of sources to discern that intent, it is also a truism of statutory interpretation that where a statute is unambiguous we rely on the plain and ordinary meaning of the words chosen. See *In re P.S.*, 167 Vt. 63, 70, 702 A.2d 98, 102 (1997). "[W]e rely on the plain meaning of the words because we presume they reflect the Legislature's intent." *Braun v. Board of Dental Examiners,* 167 Vt. 110, 116, 702 (A.2d 124, 127 (1997).
>
> Vermont's marriage statutes are set forth in chapter 1 of Title 15, entitled "Marriage," which defines the requirements and eligibility for entering into a marriage, and chapter 105 of Title 18, entitled "Marriage Records and Licenses," which prescribes the forms and procedures for obtaining a license and solemnizing a marriage. Although it is not necessarily the only possible definition, there is no doubt that the plain and ordinary meaning of "marriage" is the union of one man and one woman as husband and wife. See Webster's New International Dictionary 1506 (2d ed. 1955) (marriage consists of state of "being united to a person . . . of the opposite sex as husband or wife"); Black's Law Dictionary 986 (7th ed. 1999) (marriage is "[t]he legal union of a man and woman as husband and wife"). This understanding of the term is well rooted in Vermont common law. . . . The legislative understanding is also reflected in the enabling statute governing the issuance of marriage licenses, which provides, in part, that the license "shall be issued by the clerk of the town where either the bride or groom resides." 18 V.S.A. § 5131(a). "Bride" and "groom" are gender-specific terms. See Webster's *supra*, at 334 (bride defined as "a woman newly married, or about to be married"; bridegroom defined as "a man newly married, or about to be married").
>
> Further evidence of a legislative assumption that marriage consists of a union of opposite genders may be found in the consanguinity statutes, which expressly prohibit a man from marrying certain female relatives, see 15 V.S.A. § 1, and a woman from marrying certain male relatives, see *id.* § 2.

The Vermont Supreme Court, like most courts while interpreting a marriage statute, seeks the Legislative intent through the "words" chosen in the statute, and if unambiguous they rely on the "plain and ordinary meaning" of the words chosen. Once

again, the Vermont Supreme Court turns to Webster's Dictionary to define such words as man and woman, husband and wife. That invariably leads to a biological, non-medical definition, not consistent with modern medical science.

While transsexualism was not the issue before the Supreme Court, but homosexuality was still and all, the same approach to statutory construction is applied to transsexuals. In other words it is a typical pattern of construction repeatedly applied in the courts. Where transsexuals are concerned, this method of construction leads to the rejection of medical science in the name of the Legislature.

The Supreme court proceeded to state:

> These statutes, read as a whole, reflect the common understanding that marriage under Vermont law consists of a union between a man and a woman. Plaintiffs essentially concede this fact. They argue, nevertheless, that the underlying purpose of marriage is to protect and encourage the union of committed couples and that, absent an explicit legislative prohibition, the statutes should be interpreted broadly to include committed same-sex couples. Plaintiffs rely principally on our decision in *In re B.L.V.B.*, 160 Vt. 368, 369, 628 A.2d 1271, 1272 (1993). There, we held that a woman who was co-parenting the two children of her same-sex partner could adopt the children without terminating the natural mother's parental rights. Although the statute provided generally that an adoption deprived the natural parents of their legal rights, it contained an exception where the adoption was by the "spouse" of the natural parent. See *id.* at 370, 628 A.2d at 1273 (citing 15 V.S.A. § 448). Technically, therefore, the exception was inapplicable. We concluded, however, that the purpose of the law was not to restrict the exception to legally married couples, but to safeguard the child, and that to apply the literal language of the statute in these circumstances would defeat the statutory purpose and "reach an absurd result." *Id.* at 371, 628 A.2d at 1273. Although the Legislature had undoubtedly not even considered same-sex unions when the law was enacted in 1945, our interpretation was consistent with its "general intent and spirit." *Id.* at 373, 628 A.2d at 1274.

The Supreme Court disposed of the *B.L.V.B.* case having control over the interpretation of the marriage statute, as follows:

> Contrary to plaintiffs' claim, *B.L.V.B.* does not control our conclusion here. We are not dealing in this case with a narrow statutory exception requiring a broader reading than its literal words would permit in order to avoid a result plainly at odds with the legislative purpose. Unlike *B.L.VBD.*, it is far from clear that limiting marriage to opposite-sex couples violates the Legislature's "intent and spirit." Rather, the evidence demonstrates a clear legislative assumption that marriage under our statutory scheme consists of a union between a man and a woman. Accordingly, we reject plaintiffs' claim that they were entitled to a license under the statutory scheme governing marriage.

The plaintiffs turned, alternatively, to the Vermont Constitution and its Common Benefits Clause arguing that ultimately and regardless of the construction of the marriage statute their constitutional rights were being violated and they are being singled out for denial of a broad array of legal benefits and protections incident to the marital relation. These benefits are substantial and the Supreme Court referred to them as:

> "[I]ncluding access to a spouse's medical, life, and disability insurance, hospital visitation and other medical decisionmaking privileges, spousal support, intestate succession, homestead protections, and many other statutory protections. They claim the trial court erred in upholding the law on the basis that it reasonably served the State's interest in promoting the "link between procreation and child rearing." They argue that the large number of married couples without children, and the increasing incidence of same-sex couples without children, and the increasing incidence of same-sex couples with children, undermines the State's rationale. They note that Vermont law affirmatively guarantees the right to adopt and raise children regardless of the sex of the parents, see 15A V:S.A. § 1-102, and challenge the logic of a legislative scheme that recognizes the rights of same-sex partners as

> parents, yet denies them—and their children—the same security as spouses.

The Supreme Court made it clear the Vermont Constitution was being applied, as well as, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Common Benefits Clause of Vermont's Constitution preceded the 14th Amendment by 100 years. The 14th Amendment supplements the state constitution. The Court ruled that "although our decisions over the decades have routinely invoked the rhetoric of "suspect" class favored by the federal courts, the Common Benefits Clause requires a "more stringent reasonableness inquiry" than was generally associated with rational basis review under the federal constitution. (Id. at 871)

The Court observed the federal courts apply a rigidity of thinking to the federal constitution whereas Vermont is willing to depart from such thinking, as follows:

> Thus, "labels aside," Vermont case law has consistently demanded in practice that statutory exclusions from publicly-conferred benefits and protections must be "premised on an appropriate and overriding public interest." *Ludlow*, 141 Vt. At 268, 448 A.2d at 795. The rigid categories utilized by the federal courts under the Fourteenth Amendment find no support in our early case law and, while routinely cited, are often effectively ignored in our more recent decisions. As discussed more fully below, these decisions are consistent with the test and history of the Common Benefits Clause which, similarly, yield no rigid categories or formulas of analysis. The balancing approach utilized in *Ludlow* and implicit in our recent decisions reflects the language, history, and values at the core of the Common Benefits Clause.

The Court stated in applying the constitutional protections it would use "reasoned judgment." The state's counter argument was as follows:

> The State contends, further, that the Legislature could reasonably believe that sanctioning same-sex unions "would diminish society's perception of the link between

procreation and child rearing . . . [and] advance the notion that fathers or mothers . . . are mere surplusage to the functions of procreation and child rearing." The State argues that since same-sex couples cannot conceive a child on their own, state-sanctioned same-sex unions "could be seen by the Legislature to separate further the connection between procreation and parental responsibilities for raising children." Hence, the Legislature is justified, the State concludes, "in using the marriage statutes to send a public message that procreation and child rearing are intertwined."

Do these concerns represent valid public interests that are reasonably furthered by the exclusion of same-sex couples from the benefits and protections that flow from the marital relation? It is beyond dispute that the State has a legitimate and long-standing interest in promoting a permanent commitment between couples for the security of their children. It is equally undeniable that the State's interest has been advanced by extending formal public sanction and protection to the union, or marriage, of those couples considered capable of having children, i.e., men and women. And there is no doubt that the overwhelming majority of births today continue to result from natural conception between one man and one woman. See J. Robertson, *Assisted Reproductive Technology and the Famiily,* 47 Hastings L.J. 911, 911-12 (1996) (noting the number of births resulting from assisted-reproductive technology, which remain small compared to overall number of births).

It is equally undisputed that many *opposite*-sex couples marry for reasons unrelated to procreation, that some of these couples never intend to have children, and that others are incapable of having children. Therefore, if the purpose of the statutory exclusion of same-sex couples is to "further[] the link between procreation and child rearing," it is significantly under-inclusive. The law extends the benefits and protections of marriage to many persons with no logical connection to the stated governmental goal.

Furthermore, while accurate statistics are difficult to obtain, there is no dispute that a significant number of children today are actually being raised by same-sex parents, and that increasing numbers of children are being conceived by such parents through a variety of assisted-reproductive techniques. See D. Flaks, et al., *Lesbians Choosing*

> *Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 Dev. Psychol, 105, 105 (1995) (citing estimates that between 1.5 and 5 million lesbian mothers resided with their children in United States between 1989 and 1990, and that thousands of lesbian mothers have chosen motherhood through donor insemination or adoption); G.Green & F. Bozett, *Lesbian Mothers and Gay Fathers*, in Homosexuality: Research Implications for Public Policy 197, 198 (J. Gonsiorek et al. eds., 1991) (estimating that numbers of children of either gay fathers or lesbian mothers range between six and fourteen million).

The court concluded:

> Therefore, to the extent that the state's purpose in licensing civil marriage was, and is, to legitimize children and provide for their security, the statutes plainly exclude many same-sex couples who are no different from opposite-sex couples with respect to these objectives. If anything, the exclusion of same-sex couples from the legal protections incident to marriage exposes *their* children to the precise risks that the State argues the marriage laws are designed to secure against. In short, the marital exclusion treats persons who are *similarly* situated for the purposes of the law, *differently.*

The holding of the Court, was:

> We hold only that plaintiffs are entitled under Chapter I, Article 7, of the Vermont Constitution to obtain the same benefits and protections afforded by Vermont law to married opposite-sex couples. (Emphasis added.)

The Supreme Court suspended the application of the trial court's ruling while the Vermont legislature was given time to formulate appropriate "partnership" legislation granting to same-sex couples the benefits of marriage status. The Legislature did exactly that and passed a law granting homseexuals the benefits of marriage as partners. The 14th Amendment to the United States Constitution was applied and no reason exists why such should not apply equally to transsexuals in Vermont.

## KANSAS

## THE APPEALS COURT

A most surprising development in American law concerning transsexualism has been the case of In the Matter of the Estate of Marshall J. Gardiner, Deceased, 29 Kan.App. 2d 92, 22P, 3rd 1086 (2001). This case highlights a systemic divergence in the judicial thinking about transsexual law in America. It is unique. The Kansas Court of Appeals took a medically significant approach to transsexual marriage, whereas, the Kansas Supreme Court took an entirely different approach on the law. The opinionstotally disagree.

The facts are after the father died intestate, the son, Joseph M. Gardiner, III (Joe), petitioned for letters of administration, naming himself as sole heir and claiming that the marriage between his father and his wife who was a post-operative male to female transsexual was void.

The Leavenworth District Court, Judge Gunnar A. Sundly granted summary judgment for Joe and against the transsexual wife, who appealed.

The Court of Appeals, 29 Kan.App.2d 92, 22 P.3rd 1086, reversed the trial court and remanded the case back for additional medical testimony with instructions.

In the Court of Appeals, before Judges Gernon PJ; Knudson, and Beier, J.J., Judge Gernon speaking for the court, stated the appeal to that Court was from the summary judgment of the trial judge in favor of Joseph M. Gardner, III (Joe) finding the marriage between Joe's father, Marshall G. Gardner and his spouse, J'Noel Gardner to be "void" under Kansas law and denying partial summary judgment to J'Noel.

The Appeals court acknowledged several "amicus curiae" briefs filed by interested groups who were unconnected to the case, but it did demonstrate the public concern. In this regard, the court stated:

> "We note that this is the type of case in which the courts are required not only to weigh the legal issues but also to weigh the overlapping and sometimes conflicting positions of the parties and various interested groups. We acknowledge the several briefs filed by each side and the *amicus* curiae briefs filed by the Gender Public Advocacy Coalition/American Civil Liberties Union of Kansas and Western Missouri and The Thomas More Center for Law & Justice. Each has been helpful.
>
> Some cases lend themselves to precise definitions, categories, and classifications. On occasion, issues or individuals come before a court which do not fit into a bilateral set of classifications. Questions of this nature highlight the tension which sometimes exists between the legal system, on the one hand, and the medical and scientific communities, on the other. And to those concerns those whose focus is ethics, religion, lifestyle, or human rights, and the significance of a single decision is amplified. We recognize that this may be such a case.
>
> We concur with the observation made by the Supreme Court of Vermont when it wrote:
>
> "It is not the courts that have engendered the diverse composition of today's families. It is the advancement of reproductive technologies and society's recognition of alternative lifestyles that have produced families in which a biological, and therefore a legal, connection is no longer the sole organizing principle." In re B.L.V.B., 160 Vt. 368, 376, 628 (A.2d 1271 (1993)."

Joe contended that J'Noel was previously known as "Jay N. Ball" and was born a man. He argued that despite surgery, a name change, and other steps taken by her to change sex, she remains a man under Kansas law relating to the issuance of a marriage

license. Under statute, KSA 2000 Supp. 23-101, marriage between persons of the same sex is prohibited.

J'Noel argued she is a biological female and she is not prohibited from marrying a biological male, such as, Marshall.

There were other issues raised between the parties, such as, waiver, estoppel, and a pre-marital agreement and fraud. None of them were relevant to the main issue of "transsexualism." J'Noel asserted Marshall knew about the sex reassignment surgery she had undergone before the marriage.

Both parties sought summary judgment. Joe on the ground of invalidity of the marriage and J'Noel that she was legally a female and was a female at the time of the marriage to Marshall. Marshall died intestate on August 12, 1999. He was a resident of Leavenworth County, Kansas.

J'Noel argued full faith and credit had to be given a Wisconsin court order changing her sex to female on her birth certificate and the new certificate.

The trial court granted Joe summary judgment holding the marriage between J'Noel and Marshall void under KSA 2000 Supp. 23-101, and that J'Noel is not Marshall's surviving spouse or entitled to share in the estate under intestate succession.

Turning to the more intimate facts of the case, J'Noel was born in Green Bay, Wisconsin, and J'Noel's original birth certificate shows that J'Noel was born a male. After sex reassignment surgery, J'Noel had her birth certificate amended under Wisconsin statutes to say she was female. J'Noel argued that the order drafted by a Wisconsin court directing the Department of Health and Social Services in Wisconsin to prepare a new birth record must be given full faith and credit in Kansas. Marshall was a

businessman and widower when he met J. Noel, who was a teacher at Park College with a Ph.D. in finance. She and Marshall were intelligent and possessed real world experience. There was no evidence Marshall was incompetent. Marshall was a business man in northeast Kansas who had accumulated some wealth. He had one son, Joe, from whom he was estranged. Marshall's wife had died some time before he met J'Noel.

The Court related the following facts:

> "J'Noel met Marshall while on the faculty at Park College in May 1998. Marshall was a donor to the school. After the third or fourth date, J'Noel testified that Marshall brought up marriage. J'Noel wanted to get to know Marshall better, so they went to Utah for a trip. When asked about when they became sexually intimate, J'Noel testified that on this trip, Marshall had an orgasm. J'Noel stated that sometime in July 1998, Marshall was told about J'Noel's prior history as a male. The two were married in Kansas on September 25, 1998.
>
> There is no evidence in the record to support Joe's suggestion that Marshall did not know about J'Noel's sex reassignment. It had been completed years before Marshall and J'Noel met. Nor is there any evidence that Marshall and J'Noel were not compatible.
>
> Both parties agree that J'Noel has gender dysphoria or is a transsexual. J'Noel agrees that she was born with male genitalia. In a deposition, J'Noel testified that she was born with a "birth defect"—a penis and testicles. J'Noel stated that she thought something was "wrong" even prepuberty and that she viewed herself as a girl but had a penis and testicles.
>
> J'Noel's journey from perceiving herself as one sex to the sex her brain suggests she was, deserves to be detailed. In 1991 and 1992, J'Noel began electrolysis and then thermolysis to remove body hair on the face, neck, and chest. J'Noel was married at the time and was married for 5 years. Also, beginning in 1992, J'Noel began taking hormones, and, in 1993, she had a tracheal shave. A tracheal shave is surgery to the throat to change the voice. All the while, J'Noel was receiving therapy and counseling.

> In February 1994, J'Noel had a bilateral orchiectomy to remove the testicles. J'Noel also had a forehead/eyebrow lift at this time and rhinoplasty. Rhinoplasty refers to plastic surgery to alter one's nose. In July 1994, J'Noel consulted with a psychiatrist, who opined that there were no signs of thought disorder or major effective disorder, that J'Noel fully understood the nature of the process of transsexual change, and that her life history was consistent with a diagnosis of transsexualism. The psychiatrist recommended to J'Noel that total sex reassignment was the next appropriate step in her treatment."

The court described in vivid detail the sex reassignment surgery that J'Noel underwent, as part of her medical treatment or solution for the diagnosis of gender identity dysphoria (GID), as follows:

> "In August 1994, J'Noel underwent further sex reassignment surgery. In this surgery, Eugene Schrang, M.D., J'Noel's doctor, essentially cut and inverted the penis, using part of the skin to form a female vagina, labia, and clitoris. Dr. Schrang, in a letter dated October 1994, stated that J'Noel has a "fully functional vagina" and should be considered "a functioning, anatomical female." In 1995, J'Noel also had cheek implants. J'Noel continues to take hormone replacements.
>
> Regardless of whether one agrees with the concept of sex reassignment, one must be impressed with the resolve of, and have compassion for, any human being who undergoes such a demanding set of procedures.
>
> After the surgery in 1994, J'Noel petitioned the Circuit Court of Outagamie County, Wisconsin, for a new birth certificate which would reflect her new name as J'Noel Ball and sex as female. The court issued a report ordering the state registrar to make these changes and issue a new birth certificate. A new birth certificate was issued on September 26, 1994. The birth certificate indicated the child's name as J'Noel Ball and sex as female.

After the reassignment surgery was completed, J'Noel proceeded to change her gender identity on her driver's license, passport, health documents and her records at two universities to reflect her new sex designation.

Before meeting Marshall, J'Noel was married to S.P., a female. J'Noel and S.P. met and began living together in 1980, while J'Noel was in college. They married in 1988. J'Noel testified she and S.P. engaged in heterosexual relations during their relationship. J'Noel believed she was capable of fathering children, and the couple used birth control so S.P. would not become pregnant. J'Noel and S.P. divorced in May 1994.

On the legal merits of her claim to a valid marriage, J.Noel argued that the marriage statute, KSA 2000 Supp. 23-101, was intended by the legislature to only prohibit "homosexual" marriages and her marriage to Marshall was not such a marriage.

KSA 2000 Supp. 23-101 states:

> "The marriage contract is to be considered in law as a civil contract *between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void.* The consent of the parties is essential. The marriage ceremony may be regarded either as a civil ceremony or as a religious sacrament, but the marriage relation shall only be entered into, maintained or abrogated as provided by law." (Emphasis added.)

For purposes of marriage under Kansas law, the trial court found that J'Noel was born and remains a male. Since the statute requires that a marriage must be between two parties of the opposite sex, the court found that the marriage between J'Noel and Marshall was void because both individuals were males.

There is no dispute that the legislature meant to void any marriage between members of the same sex.

> "The question here is whether J'Noel should have been considered a female under Kansas law at the time the marriage license was issued. Subparts to that question are the criteria used to determine sex and the timing of the determination. Stated another way: Is this marriage, between a post-operative male-to-female transsexual and a male, prohibited under Kansas law?
>
> The interpretation of a statute is a question of law for which appellate review is unlimited. Rose & Nelson v. Frank, 25 Kan. App. 2d 22, 24, 956 P.2d 729, rev. denied 265 Kan. 886 (1998) .
>
> The amendment to 23-101 limiting marriage to two parties of the opposite sex began its legislative history in 1975. The minutes of the Senate Committee on Judiciary for January 21, 1976, state that the amendment would "affirm the traditional view of marriage." The proposed amendment was finally enacted in 1980.
>
> K.S.A. 23-101 was again amended in 1996, when language was added, stating: "All other marriages are declared to be contrary to the public policy of this state and are void." This sentence was inserted immediately after the sentence limiting marriage to two parties of the opposite sex.
>
> In 1996, K.S.A. 23-115 was amended, with language added stating: "It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman."
>
> The legislative history contains discussions about gays and lesbians, but nowhere is there any testimony that specifically states that marriage should be prohibited by two parties if one is a post-operative male-to-female or female-to-male transsexual. Thus, the question remains: Was J'Noel a female at the time the license was issued for the purpose of the statute?"

The Court of Appeals answered its own question by turning to the medical field for an explanation of what is "transsexualism," as follows:

> "It is perhaps well to pause and attempt to define what a transsexual is by stating what a transsexual is not. A transsexual is not a homosexual. A homosexual is one who

> prefers the same sex for sexual contact. Nor is a transsexual a transvestite. A transvestite is one who remains one sex but gains pleasure from dressing like the other sex. A transsexual is one who experiences himself or herself as being of the opposite sex, despite having some biological characteristics of one sex, or one whose sex has been changed externally by surgery and hormones. A transsexual might be a homosexual or a transvestite also, but one does not define the other."

Judge Gernon took particular note of the progression of medical science over the past 30 years, especially since the Corbett decision rendered back in the 1970's. He stated:

> "The scientific literature relating to studies of transsexuals is limited both in scope and history. Serious inquiry is limited to approximately the last 30 years. To state that we know everything about this issue is wrong. To state that we know more and more every year about this complex issue is more accurate. This case has the benefit of some research which preceding cases on this issue did not."

Recent advances in medical research lends credence to the fact that gender identity dysphoria has a biological ideology and it is not a product of somebody's whim or wish to experiment running around in the opposite sex role, the Court stated:

> "A recent study that autopsied the brains of transsexuals and others supports a conclusion that there is a scientific basis for J'Noel's assertion that she was born with a condition—specifically that she had a penis and testicles, which was evidence that she was male, but in most other senses of the word, she was female. The same science which allows us to map the genome and explore our DNA requires us to recognize these discoveries in all aspects of our lives, including the legal ramifications. We can no longer be permitted to conclude who is male or who is female by the amount of facial hair one has or the size of one's feet.
>
> A study in the respected medical journal, The Journal of Clinical Endocrinology & Metabolism, analyzed the brains

> of homosexual males, heterosexual males, heterosexual females, and male-to-female transsexuals. It concluded:
>
> "Regardless of sexual orientation, men had almost twice as many somatostatin neurons as women. The number of neurons in . . . male-to-female transsexuals was similar to that of the females. . . . In contrast, the neuron number of female-to-male transsexual was found to be in the male range. . . . The present findings of somatostatin neuronal sex differences in the BSTc (a part of the brain) and its sex reversal in the transsexual brain and genitals may go into opposite directions and point to a neurobiological basis of gender identity disorder." Kruijver, Zhou, Pool, Hofman, Gooren, and Swabb, *Male-to-Female Transsexuals Have Female Neuron Numbers in a Limbic Nucleus,* 85 The Journal of Clinical Endocrinology & Metabolism 2034 (2000)."

Judge Gernon opined that "we would be remiss if we did not recognize and mention other medical and scientific information which underscores the complexity of these issues and requires our intro-spection." In other words to open the mind of the judiciary in contrast to Judge Hardberger's view that the Deity settled the issue. Similarly, Judge Ormrod's view that the chromosomes settle the argument. Judge Gernon replies:

> "If one concludes that chromosomes are all that matter and that a person born with "male" chromosomes is and evermore shall be male, then one must confront every situation which does not conform with such a rigid framework of thought. There are situations of ambiguity in which certain individuals have chromosomes that differ from the typical pattern. The questions which must be asked, if not answered, are: "Are these people male or female?" and, "Should they be allowed to get married?"

In order to emphasize that in medical science sex is rather all embracing, Judge Gernon turns to Professor Julie A. Greenberg, writing in the Summer 1999 issue of the Arizona Law Review, states: "Medical experts recognize that many factors contribute to

the determination of an individual's sex." According to medical professionals, the typical criteria of sex include:

### *A. Eight Sex Criteria*

> 1. Genetic or chromosomal sex—XY or XX;
> 2. Gonadal sex (reproductive sex glands)—testes or ovaries;
> 3. Internal morphologic sex (determined after three months gestation)—seminal vesicles/prostate or vagina/uterus/fallopian tubes;
> 4. External morphologic sex (genitalia)—penis/scrotum or clitoris/labia;
> 5. Hormonal sex—androgens or estrogens;
> 6. Phenotypic sex (secondary sexual features)—facial and chest hair or breasts;
> 7. Assigned sex and gender of rearing; and
> 8. Sexual identity.
>
> "For most people, these factors are all congruent, and one's status as a man or woman is uncontroversial. For intersexuals, some of these factors may be incongruent, or an ambiguity within a factor may exist.
>
> "The assumption is that there are two separate roads, one leading from XY chromosomes at conception to manhood, the other from XX chromosomes at conception to womanhood. The fact is that there are not two roads, but one road with a number of forks that turn in the male or female direction. Most of us turn in the same direction at each fork."
>
> "The bodies of the millions of intersexed people have taken a combination of male and female forks and have followed the road less traveled. These individuals have noncongruent sexual attributes. For these individuals, the law must determine which of the eight sexual factors will determine their sex and whether any one factor should be dispositive for all legal purposes.

Professor Greenberg explains the complex nature of "sexual differentiation" or the normal path of sexual development for males and females after conception, as follows:

"Because the law has typically looked to biology and the medical community for guidance in determining how an individual's sex should be legally established, the complex nature of sexual differentiation must be understood. . . .

### *B. Sexual Differentiation—The Typical Path*

"During the first seven weeks after conception, all human embryos are sexually undifferentiated. At seven weeks, the embryonic reproductive system consists of a pair of gonads that can grow into either ovaries (female) or testes (male). Two primordial duct systems also exist at this stage. The female ducts are called Mullerian ducts and develop into the uterus, fallopian tubes and the upper part of the vagina if the fetus follows a female path. The male ducts are called Wolffian ducts and are the precursors of the seminal vesicles, vas deferens and epididymis.

"At eight weeks, the fetus typically begins to follow one sex path. If the fetus has one X and one Y chromosome (46XY), it will start down the male path. At eight weeks, a 'master switch' on the Y chromosome, called the testis-determining factor, signals the embryonic gonads to form into testes. The testes begin to produce male hormones. These male hormones prompt the gonads and genitalia to develop male features. Additionally, the testes produce a substance called Mullerian inhibiting factor that causes the female Mullerian ducts to atrophy and be absorbed by the body, so that a female reproductive system is not created.

"Because the typical female fetus is 46 XX and does not have a Y chromosome, the master switch that leads to the development of male organs is not turned on. The fetus continues on what is considered the default path and in the thirteenth week the gonads start to transform into ovaries. Because no testes exist to produce male hormones, the remainder of the sexual system develops along a female path. During this time, the Wolffian (male) ducts shrivel up. In other words, unless the body is triggered by hormonal production to follow the male path, the fetus will normally develop as a female. Therefore, although chromosomes generally control the hormones that are produced, it is actually the hormones that directly affect sexual development."

Professor Greenberg presents an exhaustive study of intersexuals, the path less followed and all the known ambiguities within the eight typical sex criteria.

There are also ambiguities "among" the eight criteria.

### *C. Sexual differentiation—The Path Less Followed*

> "Two circumstances may lead to an intersexual condition: (1) failure to meet the typical criteria within any one factor; or (2) one or more factors may be incongruent with the other factors.
>
> 1. *Ambiguity Within a Factor*
>
> a. Chromosomal Ambiguity—Certain individuals have chromosomes that differ from the typical pattern of either XY or XX. Doctors have discovered people with a variety of combinations including: XXX, XXY, XXXY, XYY, XYYY, XYYYY, and XO.
>
> b. Gonadal Ambiguity—Some intersexuals do not have typical ovaries or testes. instead, they have 'streak' gonads that do not appear to function as either ovaries or testes. Still others have ovotestes, a combination of both male and female gonads. Still others have one ovary and one testis.
>
> c. External Morphologic Sex—Some individuals' external genitalia are neither clearly male or nor clearly female. In addition, some women have clitoral hypertrophy, a clitoris that is larger than the typical clitoris, may more closely resemble a penis, and is sometimes accompanied by an internal vagina.
>
> d. Internal Morphologic Sex—Some individuals have incomplete internal sex organs or a complete absence of an internal sex organ. In addition, some individuals are born with a combination of male and female internal organs.
>
> e. Hormonal Sex—The male hormones are referred to as androgens. The female hormones are estrogen and progesterone. Although they are referred to as male and female hormones, all human sex hormones are shared by men and women. Typically, men and women have hormones of each type, but the levels of production and reception of each hormone are highly variable among all

individuals. Different medical disorders further influence levels of hormone production and/or reception.

f. Phenotypic Sex—Individuals may have a variety of combinations of incongruent phenotypic characteristics. In other words, an individual may have characteristics that are typically associated with a male (heavy facial hair) and characteristics that are typically associated with a female (developed breasts).

g. Assigned Sex/Gender of Rearing—Although it occurs rarely, some parents have raised their child as a gender other than the sex that was assigned by the medical attendant at birth. In addition, some circumstances, doctors have recommended that a child be raised as the sex different from the one assigned at birth.

h. Sexual Identity—Sexual identity refers to how individuals would identify themselves; gender identity refers to how society would identify an individual. Some individuals do not consider themselves to be either male or female; they identify themselves as a third sex.

2. *Ambiguity Among Factors*

Some individuals have an incongruence among the eight factors due to a sexual differentiation disorder. In other words, some factors may be clearly male, some may be clearly female, and others may be a mixture of male and female. Incongruity among factors can result from a number of disorders and circumstances including:

a. Chromosomal sex disorders;

b. Gonadal sex disorders;

c. Internal organ anomalies;

d. External organ anomalies;

e. Hormonal disorders;

f. Gender identity disorders; and

g. Surgical creation of an intersexed condition.

These conditions are described in detail below . . . .

**Chromosomal Sex Disorders**:

Professor Greenberg fully details the Chromosomal Sex Disorders, such as Klinefelter Syndrome; Turner Syndrome; Sevyer Syndrome; Persistent Mullerian Duct Syndrome; an Internal Organ Anomaly, an External Organ Anomaly, such as, various forms of hermaphroditism. She also discusses Hormonal Disorders. All of these disorders are ignored if the "Birth Certificate" approach to sex identification is the law. All these categories must be squeezed into two classes, male or female, in the legal approach to marriage.

This aspect of the law review article makes it abundantly clear that all members of the human species develop through a complex chemical maze and while the vast majority are spared the consequence of taking the "wrong fork" in the path of development, no one has a guarantee of perfection. The difficulty with following the Corbett principle that sex is fixed by the chromosomes and ultimately by the genitals, is demonstrated to be very questionable. Professor Green states:

> *Congenital Adrenal Hyperplasia (CAH)*
>
> Some individuals with XX chromosomes, ovaries, and other female internal structures have a more masculinized external appearance and/or demeanor due to an abundance of androgen production inutero. Typical of this category is 21-Hydroxylase Deficiency Congenital Adrenal Hyperplasia ('CAH'). It occurs in approximately one out of 5000 to 15,000 births.
>
> Both the chromosomes and gonads of CAH individuals are indistinguishable from unaffected females. The genitals, however, may be ambiguous and may more closely resemble male genitalia.

> Some CAH individuals have been identified as males at birth and are reared as boys despite the presence of XX chromosomes and ovaries. In other cases, the masculinization of prenatal life is interrupted at birth, and the child is surgically and hormonally treated and reared as a girl. These girls often have characteristics that are popularly stereotyped as masculine. In addition, many CAH individuals identify themselves as lesbians.
>
> *Progestin-Induced Virilization*
>
> Similar to CAH is Progestin-Induced Virilization ('PIV'), which results from an abundance of male hormones in an otherwise normal XX female. PIV is caused by exposure in-utero to progestin that has been taken by the mother during pregnancy. Like individuals with CAH, PIV women will frequently have clitoral hypertrophy. In all other respects, however, they have completely female gonads.

Under the heading of "Gender Identity Disorder," the professor has this to say:

***D. Gender Identity Disorder***

> "Some individuals may be seemingly harmonious in all of the first six factors, but do not identify themselves with the sex associated with these factors. These individuals may be said to have gender dysphoria or gender identity disorder ('GID'). Often these individuals are called transsexuals. Science has yet to definitely isolate a biological common denominator that causes these individuals to feel transgendered. A recent study, however, has determined that a section of the brain area that is essential for sexual behavior is larger in men than in women and that the brain structure of genetically male transsexuals is more similar to female brains than to male brains. Some transgendered individuals choose to undergo hormonal treatment and/or surgery so that their bodies comport with their sexual identity while other transsexuals do not choose to undergo such treatment. "Transsexualism" is not necessarily related to sexual orientation. Some transsexuals identify themselves as gays or lesbians while others identify themselves as heterosexuals. In other words, a male-to-female transsexual who has undergone surgery to acquire female genitalia may still prefer to have sex with another female, and a female-to-male transsexual may still prefer to have sex with another male.

Professor Green mentions the surgical creation of an intersexed condition, as follows:

> "In addition to cases in which intersexed individuals may be assigned a sex that does not comport with their own sexual identity, some persons have had their sexual features altered either accidentally or purposefully. For instance, some individuals have had their penises removed at a young age because they were mistakenly identified as females and the penis was considered an oversized clitoris that required reduction. Although these cases are rare, they are illustrative of the complex nature of sexual identity.

The conclusions reached by Professor Greenberg, are as follows:

> These studies and other reports about intersexuals have forced the medical and psychiatric communities to question their long-held beliefs about sex and sexual identity. Just as current scientific studies have caused the scientific communities to question their beliefs about sex and sexual identity, the legal community must question its long-held assumptions about the legal definitions of sex, gender, male, and female." Greenberg, *Defining Male and Female: Intersexuality and the Collision Between Law and Biology,* 41 Ariz. L.Rev. 265, 278-92 (1992). (Emphasis added.)

Judge Gernon stated since this was a case of first impression in Kansas, a discussion of transsexualism law in America and a foreign nation was considered helpful. The court said, the cases generally fall into three categories: (1) cases dealing with amendment of identification records, usually Birth Certificate name and/or sex changes; (2) cases dealing with discrimination, most pointedly in the work place; and (3) cases dealing with marriage between a transsexual and a non-transsexual. One additional case (4) deals with transsexuals and competition in sporting events.

The Court said the first case in America to deal with transsexualism involved a petition for a change of sex on a Birth Certificate. In Matter of Anonymous v. Weiner, 50 Misc.2d 380, 270 N.Y.S.2d 319 (1966), the court reviewed that case, as follows:

***Birth Certificate***

> "[A] post-operative transsexual who had assumed the name and role of a female applied to the Bureau of Vital Statistics in the New York City Health Department for a new birth certificate. The Bureau requested guidance from the Board of Health, who, in turn, called on a committee on public health of the New York Academy of Medicine to investigate the issue and make recommendations. The group called on to assist included gynecologists, endocrinologists, cytogeneticists, psychiatrists, and a lawyer.
>
> The committee, after a detailed analysis and taking into account that at the time 10 states permitted such a change, concluded that male-to- female transsexuals are "still chromosomally males while ostensibly females." 50 Misc.2d at 382, 270 N.Y.S.2d 319. Further, it was concluded that "it is questionable whether laws and records such as the birth certificate should be changed and thereby used as a means to help psychologically ill persons in their social adaption." 50 Misc.2d at 382, 270 N.Y.S.2d 319. Therefore, the committee found that it was opposed to a change on birth certificates in transsexualism cases.
>
> The transsexual's application in *Weiner* was denied. In a resolution passed by the Board of Health, it was stated that " 'an individual born one sex cannot be changed for the reasons proposed by the request which was made to us. Sex can be changed where there is an error, of course, but not when there is a later attempt to change psychological orientation of the patient and including such surgery as goes with it.' " 50 Misc.2d at 383, 270 N.Y.S.2d 319.
>
> In examining this issue, the New York appellate court looked at the New York City Health Code provisions. The code provided for a change in birth certificate only if the Commissioner of Public Health was satisfied that the evidence shows true facts and that an error was made at the time of preparing and filing of the certificate. 50 Misc.2d at

> 383, 270 N.Y.S.2d 319. The court found that based on the code provision, the Board did not act arbitrarily, capriciously, or in an otherwise illegal manner. The decision of the Board to deny the transsexual's request was affirmed. 50 Misc.2d at 385, 270 N.Y.S.2d 319. By upholding the Board, the court then, indirectly, adopted the Academy's position.
>
> However, a civil court in New York, in 1968 and then again in 1970, granted an application for a change of name to a post-operative transsexual. *Matter of Anonymous,* 57 Misc.2d 813, 293 N.Y.S.2d 834 (1968); *Matter of Anonymous,* 64 Misc.2d 309, 314 N.Y.S.2d 668 (1970). In the 1968 case of *Anonymous,* a male-to-female transsexual petitioned the court to order the Bureau of Vital Statistics of the Department of Health of the City of New York to change his birth certificate to reflect a name and sex change. Based on New York law, the civil court lacked jurisdiction to change the sex on the birth certificate. 57 Misc.2d at 813-14, 293 N.Y.S.2d 834. Even so, the court still criticized the findings of the Academy.
>
> The court noted that all male organs had been removed and that the petitioner could no longer have sex as a male. The court stated that where, with or without medical intervention, the psychological sex and the anatomical sex are "harmonized," then the social sex or gender of the individual should conform to the harmonized status of the individual, and if such conformity requires a change in statistical information, the changes should be made. 57 Misc.2d at 816, 293 N.Y.S.2d 834."

What is interesting is that in 1966 New York authorities said that male-to-female transsexuals are "still chromosomally males while ostensibly females." This reflects the same opinion of Judge Ormrod in the Corbett case. The "closed door" approach to changing a birth certificate "as a means to help psychologically ill persons in their social adaption," shows a very unsympathetic response from government officials. However, the Judge in case of Matter of Anonymous did recognize the significance of having

psychological sex and the anatomical sex harmonized and, if achieved, the government officials should be compliant.

Judge Gernon next considered the Hartin case, as follows:

> "Later, in *Mtr. of Hartin v. Dir. of Bur. of Recs.*, 75 Misc.2d 229, 232, 347 N.Y.S.2d 515 (1973), the appellate court reaffirmed the decision in *Weiner.* We can conclude that as of the filing date of *Hartin,* New York was stating that its birth records should reflect the sex of an individual as determined at birth.
>
> The court in *Hartin* noted in the decision that the Board minutes revealed that the Board was of the opinion that "surgery for the transsexual is an experimental form of psychotherapy by which mutilating surgery is conducted on a person with the intent of setting his mind at ease, and that nonetheless, does not change the body cells governing sexuality." 75 Misc.2d at 232, 347 N.Y.S.2d 515. One of the Board members was quoted as saying: " 'I would think that it would be unsound, if, in fact, there were encouragement to the broader use of this means of resolving a person's unhappy mental state.' " 75 Misc.2d at 232, 347 N.Y.S.2d 515. See also *Anonymous v. Mellon,* 91 Misc.2d 375, 380, 398 N.Y.S.2d 99 (1977) (court again refused to grant a change of sex designation)."

This Hartin case is significant, in that, it shows the "hostility" at the government level and how the Board thinks it has the privilege to pass judgment on the success or appropriateness of the medical intervention where transsexuals are concerned.

***Foreign Case***

The foreign jurisdiction Judge Gernon made reference to was England and the Corbett case.

Since we have extensively reviewed that case heretofore, it will not be necessary to recount that case, except to observe that Judge Gernon said: "The unusual facts and the lack of a relationship in *Corbett* make it of questionable precedential value here. We

recognize that it may have been the "first time" a court addressed these issues in the context of marriage." The Court analyzed that case, as follows:

> "The next case, often cited, but perhaps colored by the fact that the parties lived together only 14 days of their 3-month marriage, is *Corbett v. Corbett*, 2 All E.R. 33 (1970), an English opinion dealing with transsexualism. One of the parties was a male-to-female transsexual and former female impersonator named April Ashley, who married Arthur Corbett. Arthur was a homosexual and transvestite "prone to all kinds of sexual fantasies and practices." 2 All. E.R. at 38. An English court in the probate, divorce, and admiralty division ruled that a marriage between a post-operative male-to-female transsexual and a male was void. 2 All. E.R. at 50.
>
> After the surgery, the respondent had her passport changed to reflect a female name. The respondent also had insurance papers changed to reflect her sex as female. An attempt to change the respondent's birth certificate failed.
>
> In *Corbett*, some dispute existed as to whether the respondent was "intersexed," which was described then as a medical concept meaning "something between intermediate and indeterminate sex." 2 All E.R. at 43. The court rejected this notion, finding enough evidence to support the view that the respondent was born a male. 2 All E.R. at 43.
>
> The court found that biological sex is determined at birth and cannot be changed by natural or surgical means. The respondent's operation, the court stated, cannot affect the true sex. The only cases where the term "change of sex" is appropriate, the court opined, is when there has been a mistake as to sex at birth that is subsequently revealed in a medical examination. 2 All E.R. at 47.
>
> In dealing with the argument that it is illogical for the court to treat the respondent as a male while other paperwork may have been changed to say differently, the court declared: "Marriage is a relationship which depends on sex and not on gender." 2 All E.R. at 49. The court distinguished marriage from other social situations. 2 All E.R. at 49. Sex is clearly an essential determinant of the relationship in marriage, the court stated, as it is recognized

> as the union between a man and a woman. The court established a three-part test in determining what is a person's sex for purposes of the law, stated:
>
> "Having regard to the essentially heterosexual character of the relationship which is called marriage, the criteria must . . . be biological, for even the most extreme degree of transsexualism in a male or the most severe hormonal imbalance which can exist in a person with male chromosomes, male gonads and male genitalia cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage. In other words, the law should adopt in the first place . . . the chromosomal, gonadal, and genital tests, and if all three are congruent, determine the sex for the purpose of marriage accordingly, and ignore any operative intervention." 2 All E.R. at 48.
>
> The unusual facts and the lack of a relationship in *Corbett* make it of questionable precedential value here. We recognize that it may have been the first time a court addressed these issues in the context of marriage."

Judge Gernon took particular interest in Darnell v. Lloyd, 395 F.Supp. 1210 (D.Conn. 1975), where the petitioner, born a male, had a sex change operation and later requested the Commissioner of Health to change the sex on his birth certificate from male to female. The Commissioner refused to make the change. The petitioner sued to have the court order the change.

> "The Court denied summary judgment to the Commissioner on the basis the Commissioner had not met his burden of proof of showing that the state had some "substantial" state interest in the Commissioner's policy of refusing to change a birth certificate to reflect current sexual status unless that was also the status at birth. The Connecticut court found that a heightened level of "scrutiny" exists because the court felt that the "fundamental right to marry" could be implicated by the Commissioner's decision. The court held that the Commissioner of Health had not met his burden of proof --- it indicated that the exact anatomical condition of the petitioner at birth was unclear. as were all of the details of

> the operation and present circumstances. 395 F.Supp. at 1213.

In most of the cases this "fundamental right to marry" is not advanced where transsexuals are concerned. Any implication of constitutionality being at issue, requires the state to be subject to a "heightened level of scrutiny by the courts. That is important. The difficulty, is that the issue in Darnel was a birth certificate modification. Not a marriage application. So a fundamental right to marry was irrelevant.

The Appeals Court admitted that Corbett, Hardin or Darnell were of no weighty significance but that the case of M.T. v. J.T., 140 N.J.Super 77, 355 A.2d 204, cert. denied, 71 N.J. 345 (1976), does deserve greater attention. This comports to the New Zealand case and Judge Ellis' ruling. The Court stated:

***M.T. Decision***

> In *M.T.,* a husband and wife were divorcing, and the issue was support and maintenance. The husband argued that he should not have to pay support to his wife because she was a male, making the marriage void. The issue before the court, similar to that before this court, was whether the marriage of a post- operative male-to-female transsexual and a male was a lawful marriage between a man and a woman. The court found that it was a valid marriage. 140 N.J.Super. at 90, 355 A.2d 204.
>
> In affirming the lower court's decision, the court noted the English court's previous decision in *Corbett.* 140 N.J.Super. at 85-86, 355 A.2d 204. The court rejected the reasoning of *Corbett,* though, finding that "for marital purposes if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence of these standards." 140 N.J.Super. at 87, 355 A.2d 204. Since the court found that the wife's gender and genitalia were no longer "discordant" and had been harmonized by medical treatment, the court held that the wife was a female at the time of her marriage and that

> her husband, then, was obligated to support her. 140 N.J.Super. at 89-90, 355 A.2d 204.

Judge Gernon distinguished M.T. from prior cases by saying:

> The importance of the holding in *M.T.* is that it replaces the biological sex test with dual tests of anatomy and gender, where "for marital purposes if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence of these standards." 140 N.J.Super. at 87, 355 A.2d 204. In *M.T.*, the husband was arguing that he did not owe any support because his wife was a man. However, in the record, it was stated that the wife had a sex reassignment operation after meeting the husband. Her husband paid for the operation. The husband later deserted the wife and then tried to get out of paying support to someone he had been living with since 1964 and had been married to for over 2 years.

The *M.T.* Appeals Court further stated:

> "In this case the transsexual's gender and genitalia are no longer discordant; they have been harmonized through medical treatment. Plaintiff has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled sexual attributes of gender and anatomy. Consequently, plaintiff should be considered a member of the female sex for marital purposes. It follows that such an individual would have the capacity to enter into a valid marriage relationship with a person of the opposite sex and did so here. In so ruling we do no more than give legal effect to a *fait accompli,* based upon medical judgment and action which are irreversible. Such recognition will promote the individual's quest for inner peace and personal happiness, while in no way disserving any societal interest, principle of public order or precept of morality." 140 N.J.Super. at 89-90, 355 A.2d 204.

Judge Gernon next turned to Oregon where the Supreme Court of that state reversed the Court of Appeal's of Oregon that held a transsexual who sought to change the name and sex on a birth certificate should be allowed. The Oregon Supreme Court

reversed the appeals court and stated, no such authority existed to permit such a change. Judge Gernon stated:

> In 1977, the Oregon Supreme Court was faced with the issue of whether a birth certificate of a transsexual should be changed to reflect a different name and sex. *K. v. Health Division,* 277 Or. 371, 560 P.2d 1070 (1977). In *K.,* the court first looked to the statutes regarding birth certificate changes. The court found limited circumstances existed under the law for birth certificate amendments. The amendments, further, only dealt with name changes and only in the case of adoption or if a parent name changes. 277 Or. at 374-75, 560 P.2d 1070.
>
> Despite the Court of Appeals finding that the birth certificate could be amended, the Oregon Supreme Court held that no such authority existed in Oregon to change the birth certificate to reflect a change in sex or name in this instance. 277 Or. at 374-76, 560 P.2d 1070. The court stated that "it has not been demonstrated, by legislative history or otherwise, that it would be 'at variance with the apparent policy' of either the legislature or the State Board of Health to deny the issuance of a 'new birth certificate' to a transsexual." 277 Or. at 375, 560 P.2d 1070. The court further stated:
>
> "In our opinion, it is at least equally, if not more reasonable, to assume that in enacting these statutes it was the intent of the legislature of Oregon that a 'birth certificate' is an historical record of the facts as they existed at the time of birth, subject to the specific exceptions provided by statute." 277 Or. at 375, 560 P.2d 1070.
>
> In so finding, the Supreme Court declared that "it is not for this court to decide which view is preferable. On the contrary, we hold that this is a matter of public policy to be decided by the Oregon legislature."

It is apparent that the issues involving a birth certificate alteration to reflect a change of sex and name by a transsexual post operative, is not the same as applying for a marriage license. The fact that an altered birth certificate may facilitate obtaining a

driver's license, passports, health insurance, employment and other gender privileges does not necessarily facilitate obtaining a marriage license.

***Sports***

The Court of Appeals referred to the case of Richards v. U.S. Tennis Assn., 93 Misc.2d 713, 400 N.Y.S.2d 267 (1977), where an attempt was made to block "a male to female" transsexual from playing until after she passed a sex-chromatin test. Renee Richards challenged the test requirement and the court agreed the test was grossly unfair, discriminatory, inequitable and violated Richards' rights under the New York Human Rights Law. The court did not strike down the test, as such, but said it should not be the "sole" criterion upon which a sex determination is made.

***Work Place-Federal Law***

Judge Gernon gave considerable study to workplace discrimination involving a transsexual airline pilot. Once again, Federal Courts like some state courts, view transsexualism as a matter exclusively for the legislature or, in this case, Congress, should set the parameters. The case was reviewed as follows:

> "In 1984, the United States Court of Appeals, Seventh Circuit, analyzed an issue concerning transsexualism and workplace discrimination.. In *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir.1984), *cert. denied* 471 U.S. 1017, 105 S.Ct. 2023, 85 L.Ed.2d 304 (1985), a post-operative male-to-female transsexual who was a pilot for Eastern Airlines was fired in 1981, shortly after sex reassignment surgery. The transsexual sued the airline, alleging that the employer violated Title VII by discharging her from her position as a pilot. A federal district court agreed with the transsexual, finding discrimination against this person as both a female and a transsexual, and the airline appealed. 742 F.2d at 1082.
>
> The Seventh Circuit court of Appeals disagreed with the U.S. district court. The Appeals court stated that while it

> does not condone discrimination in any form, it must hold that Title VII does not protect transsexuals. 742 F.2d at 1084. First, the court stated: "It is a maxim of statutory construction that, unless otherwise defined, words should be given their ordinary, common meaning." 742 F.2d at 1085. The court explained that the words of Title VII do not outlaw discrimination against a person who has a sexual identity disorder. It noted that the law clearly prohibits discrimination against women because they are women or men because they are men; it does not protect a person born with a male body who believes himself to be female or a person born with a female body who believes herself to be male. 742 F.2d at 1085. (Emphasis added.)
>
> After noting that nothing was said in the legislative history about transsexuals, the court stated that it appears clear that Congress did not intend the legislation to apply to anything other than "the traditional concept of sex." 742 F.2d at 1085. Had Congress intended it to apply, surely it would have said so, the court explained. 742 F.2d at 1085. Thus, the court declined to expand the definition of "sex" as used in Title VII beyond its "common and traditional interpretation," stating: "We agree with the Eighth and Ninth Circuits that if the term 'sex' as it is used in Title VII is to mean more than biological male or biological female, the new definition must come from Congress." 742 F.2d at 1087. See *Sommers v. Budget Marketing, Inc.*, 667 F.2d 748, 750 (8th Cir.1982); *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 662-63 (9th Cir.1977)."

The Ulane decision appears to reflect a very limited understanding of transsexualism if all its supposed to be, is "a person born with a male body who 'believes' himself to be a female." Is it only a belief system the Court thinks is involved?

The federal court in effect applied the same reasoning found in Littleton in Texas because it deferred from defining sex in any broad or "new age" definition but preferred the "common and traditional interpretation" and if sex "is to mean more than biological male or biological female, a new definition must come from Congress." (742 F.2d at 1087). The legislative history before the Court revealed a total absence of any reference

to transsexualism. The Court reached the conclusion such "silence" is to be interpreted – by the court – to mean transsexuals are to be excluded from the benefit of Title VII. There was no reference to any medical expert testimony on transsexualism.

Judge Gernon turned to the state of Ohio to find another case he said was "precisely" the same as the Gardiner case, as follows:

> "The two most recent decisions in the United States in the area of transsexualism have dealt with the precise issue before this court, that is, whether two individuals, biologically and legally of the same sex at birth, may contract to marry each other.
>
> In 1987, a probate court in Ohio addressed the question in the case of *In re Ladrach,* 32 Ohio Misc.2d 6, 513 N.E.2d 828 (1987). In *Ladrach,* a post- operative male-to-female transsexual and the transsexual's fiance, a biological male, applied for a marriage license. The application indicated that the transsexual had been married two times before to spouses of the female gender and that both marriages had ended in divorce.
>
> After reading the application, the clerk at the license bureau called a judge who reviewed the application. The judge also reviewed a signed letter by a physician indicating that the transsexual had undergone sex reassignment surgery. After reviewing the marriage statute in Ohio, the judge concluded that the application must be denied. Later, the transsexual also filed a petition to have the sex corrected on the transsexual's birth certificate to state "Girl" instead of "Boy." This application was dismissed, and the transsexual filed a complaint for declaratory judgment to have the birth certificate changed and the marriage license issued.
>
> The Ohio Probate Court found that the birth certificate, based on Ohio law, should not be changed. The court stated that its statute is a "correction" type statute, which permits a court to correct errors such as spelling of names, dates, race and sex, if in fact there was an error. 32 Ohio Misc.2d at 8, 513 N.E.2d 828. Since there was no error in the designation of the transsexual as a boy, the application, the court stated, must be dismissed as to the birth certificate change. 32 Ohio Misc.2d at 8, 513 N.E.2d 828.

> The court concluded, after a review of prior case law, law review articles, and the posthearing brief of the applicant, that no authority existed in Ohio for the issuance of a marriage license to a post-operative male-to- female transsexual and a male person. 32 Ohio Misc.2d at 10, 513 N.E.2d 828. If it is to be the public policy of the state of Ohio to issue marriage license in such cases, the court stated, "it is this court's opinion that the legislature should change the statutes." 32 Ohio Misc.2d at 10, 513 N.E.2d 828.

The remaining case Judge Gernon considered was the Texas Court of Appeals case of Littleton v. Prange, supra. We have reviewed this case in depth and there is no need to review it again, however, it is interesting to observe the portions of Judge Hardberger's opinion that are excerpted by Judge Gernon:

> "Christie Littleton was suing under the wrongful death statute in Texas as the surviving spouse of Jonathan Littleton who died in 1996 and she brought a malpractice suit against Dr. Prange who argued Christie was a male and not a spouse of a male."

Judge Gernon stated about the Texas case:

> "After a review of the case law, the court concluded that Christie was a male as a matter of law. 9 S.W.3d at 231. The court noted that this was an issue of first impression in Texas. 9 S.W.3d at 230. In line with previous cases, the court stated: "[I]t is for the legislature, should it choose to do so, to determine what guidelines should govern the recognition of marriages involving transsexuals.... It would be intellectually impossible for this court to write a protocol for when transsexuals would be recognized as having successfully changed their sex." 9 S.W.3d at 230.
>
> While Christie argued that amputation was " 'a pretty important step,' " the court, while agreeing, explained that it had "no authority to fashion a new law on transsexuals, or anything else. We cannot make law when no law exists: we can only interpret the written word of our sister branch of government, the legislature." 9 S.W.3d at 230.

> Thus, the court found that even though surgery and hormones can make a transsexual male look like a woman, including female genitalia, and in Christie's case, even breasts, transsexual medicine does not create the internal sex organs of a woman (except for a man-made vaginal canal). There is no womb, cervix, or ovaries in the post-operative transsexual female. The chromosomes do not change. Biologically, the post-operative female is still a male. 9 S.W.3d at 230. Even though some doctors would consider Christie a female and some a male, the court concluded: "Her female anatomy, however, is all man-made. The body that Christie inhabits is a male body in all aspects other than what the physicians have supplied." 9 S.W.3d at 231. A petition for a writ of certiorari of the Littleton holding was denied by the United States Supreme Court on Oct. 2, 2000."

The final conclusion of the Kansas Court of Appeals on this case, was as follows:

> "This court rejects the reasoning of the majority in the *Littleton* case as a rigid and simplistic approach to issues that are far more complex than addressed in that opinion.
>
> We conclude that a trial court must consider and decide whether an individual was male or female at the time the individual's marriage license was issued and the individual was married, not simply what the individual's chromosomes were or were not at the moment of birth
>
> The court may use chromosome makeup as one factor, but not the exclusive factor, in arriving at a decision.
>
> Aside from chromosomes, we adopt the criteria set forth by Professor Greenberg. On remand, the trial court is directed to consider factors in addition to chromosome makeup, including: gonadal sex, internal morphologic sex, external morphologic sex, hormonal sex, phenotypic sex, assigned sex and gender of rearing, and sexual identity. The listed criteria we adopt as significant in resolving the case before us should not preclude the consideration of other criteria as science advances.
>
> Affidavits of physicians are but one piece of evidence to be considered when reaching a conclusion.

> This court looks with favor on the reasoning and the language of *M.T. v. J.T.,* 140 N.J.Super. 77, 355 A.2d 204, *cert. denied* 71 N.J. 345, 364 A.2d 1076 (1976).
>
> Lastly, the Appeals Court said, we note the conclusion of William Reiner, M.D., a researcher at The Johns Hopkins Hospital:
>
> "In the end it is only the children themselves who can and must identify who and what they are. It is for us as clinicians and researchers to listen and to learn. Clinical decisions must ultimately be based not on anatomical predictions, nor on the 'correctness' of sexual function, for this is neither a question of morality nor of social consequence, but on that path most appropriate to the likeliest psychosexual developmental pattern of the child. In other words, the organ that appears to be critical to psychosexual development and adaptation is not the external genitalia, but the brain." Reiner, *To Be Male or Female--That is the Question,* 151 Arch Pediatr. Adolesc. Med. 225 (1997).

Judge Gernon concluded:

> This matter is reversed and remanded for a full hearing, with the opportunity for each side to present evidence on at least the factors enumerated in the Greenberg article and with directions to consider the conclusions of this court and the legal and scientific research we rely upon."

Thus, the Kansas Court of Appeals having reversed and remanded the case back to the trial court to take additional medical testimony on sex being more than just chromosomes and whether J'Noel was male or female at the time the marriage license was issued, never came to pass. This is a rather anomalous result. No further medical evidence was allowed because Joe petitionws for review to the Kansas Supreme Court. They granted the appeal. Justice Allegrucci spoke for the Supreme Court . The Supreme Court overruled Judge Gernon, and the Kansas Court of Aoppeals decision emphatically.

It is interesting to note that April Ashley in the English case, Christie Littleton in

Texas case, and J'Noel in Kansas, are all male-to-female transsexuals and the facts of all these cases are similar. All of them had a female constructed vagina, labia and clitoris. The doctors described all three in their testimony as "functional" females and with J'Noel her doctor, Dr. Schrang, testified she was a functioning anatomical "female."

The Appeals Court decision was arrived at based on a thorough review of all transsexual cases. The appeals court's reasoning appears circumspect, sound and respectful of medical science

Despite such a thorough decision, the Kansas Supreme Court overruled the Appeals Court and, instead, agreed with and incorporated into its own opinion, the Texas Court of Appeals decision in Littleton. This is surprising. The clash of judicial thinking is here centered in one case.

The Appeals Court "rejected" the reasoning of the majority in the Littleton case as "rigid" and "simplistic." The issues are far more complex than addressed in that opinion. However, the Kansas Supreme Court embraced the Littleton opinion and was in "lock step" with its reasoning.

This represents an incredible divergence of judicial thinking – and obviously – both Courts cannot be correct.

It might be said this clash of opinions goes beyond the borders of Kansas.

The Supreme Court preferred Texas rationale and the Court of Appeals preferred New Jersey and New York rationale, which prompted a close study of the case of M.T. v. J.T., 140 N.J.Super 77, 355 A.2d 204, cert. denied 71 N.J. 345 (1976).

What exactly did prompt the Supreme Court to overrule the Kansas Court of Appeals? It said: "We disagree with the decision reached by the Court of Appeals [because].we view the issue in this appeal to be one of "law" and not "fact." (Id. at 14) Is it possible the Supreme Court is saying the facts, (medical facts) are not relevant? That the law excludes consideration of the medical facts? It all narrows down, the Supreme Court, states: The resolution of this issue involves the interpretation of KSA 2001 Supp. 23-101. [and] the interpretation of a statute is a question of law, and this court has unlimited appellate review." (Id. at 14). However, The Appeals Court did exactly that –

"interpret" the Kansas marriage statute – and found it was "silent" on the subject of transsexualism. Both courts rely on the same legislative history but reach different conclusions.

The Court of Appeals recited the legislative history of KSA 2001 Supp. 23-101 and the Supreme Court quoted that legislative history likewise:

> "The amendment to 23-101 limiting marriage to two parties of the opposite sex began its legislative history in 1975. The minutes of the Senate Committee on Judiciary for January 21, 1976 state that the amendment would 'affirm the traditional view of marriage.'

The proposed amendment was finally enacted in 1980. KSA 23-101 was amended in 1996 when language was added, stating:

> "All other marriages are declared to be contrary to the public policy of this state and are void." This sentence was inserted immediately following the sentence limiting marriages to "two parties of the opposite sex."

KSA 2000 Supp. 23-101 states:

> "The marriage contract is to be considered in law as a civil contract between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void. The consent of the parties is essential. The marriage ceremony may be regarded either as a civil ceremony or as a religious sacrament, but the marriage relation shall only be entered into, maintained or abrogated as provided by law. (Emphasis added.)

K.S.A. 23-115 was amended in 1996, by stating: "It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman." (22 P.2d 1086)

After referring to the above statutory amendments, the Supreme Court even quoted the Court of Appeals, as follows: "The legislative history contains discussions

about gays and lesbians, but nowhere is there any testimony that specifically states that marriage should be prohibited by two parties if one is a post-operative male to female or female to male transsexual. Thus, "the question remains" said the Court of Appeals: "Was J'Noel a female at the time the license was issued for the purpose of the statute?" (22 P.3d 1086)

The Supreme Court strongly challenged that question, by saying: "We do not agree that the question remains!"

The Supreme Court utilized the very silence in the legislative history about transsexualism as a positive statement by the legislature barring transsexuals from any consideration, whatsoever, from being qualified to have a license to marry in Kansas.

The Supreme Court stated:

> "We view the legislative silence to indicate that transsexuals are not included. If the legislature intended to include transsexuals, it could have been a simple matter to have done so. We apply the rules of statutory construction to ascertain the legislative intent as expressed in the statute. We do not read into a statute something that does not come within the wording of the statute." (case citation)

The Supreme Court appears to discount the legislative body to express itself clearly, without having the judiciary supply what is missing.

The legislative history shows the legislature was concerned with "homosexuality." The legislators were discussing gays and lesbians at the time of enactment, not those who are transsexual. That is patently clear. The Legislative intent was directed at "same sex" or homosexual marriage.

It is just as reasonable to conclude the "silence" of the Kansas legislature was simply based on no one making a political issue out of transsexuals.

The Supreme Court explains just how it fills in the missing legislative expression or intent against transsexuals by saying "The fundamental role of statutory construction is that the intent of the legislature governs, the "courts are not limited to consideration of the language used in the statute, but may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested. Words in common usage are to be given their natural and ordinary meaning."

This presumably explains the total authority of the court to fill in the absence of any reference to transsexuals in the statute. The legislative intent is to the effect, the "traditional" view of marriage is desired and all other marriages are declared to be contrary to the public policy of this state and are "void." Where does the Supreme court find a definition of "traditional marriage?" It looks to Webster's Dictionary.

The Appeals Court made note of other pertinent statutory law that Kansas allows individuals to change the "sex designation" on their birth certificates "with a medical certificate substantiating that a physiological or anatomical change occurred." KAR 28-17-20(b)(1)(A)(1). K.S.A. 2000 Supp. 65-2416(a) states that a birth certificate is only, "prima facie evidence" of the facts therein stated.

Kansas does not require "proof of one's sex" to obtain a marriage license. K.S.A. 2000 Supp. 23-106. The Kansas Supreme Court has previously stated that the public policy relating to marriage is to "foster and protect it" to make it a permanent and public institution, to encourage the parties to live together and prevent separation. Ranney v. Ranney, 219 Kan. 428, 431, 548 P2d 734 (1976).

The Supreme Court, after reviewing all the cases cited in the Appeals Court opinion, stated that J'Noel had submitted a "supplemental brief" to the Court to bring to its attention a decision of the Family Court of Australia at Sydney, dated Oct. 12, 2001. In re Kevin, (Fam CA 1074 (File No. SY8136 of 1999.)) In that case, applicants, Kevin and Jennifer, sought a declaration of the validity of their marriage. (There is a great similarity in the facts of the Kevin case to the facts of Kantaras.) The Supreme Court reviewed that case, as follows:

> "Kevin (f.k.a. Kimberley) is a female-to-male transsexual. His birth certificate recorded his sex as "female," but Kevin always considered himself to be a male. Kevin met Jennifer in October 1996. He told her of "his transsexual predicament." They began living together in February 1997 and agreed to marry. In November 1977, Kevin had breast reduction surgery, and in September 1998 he had "a total hysterectomy with bilateral oophorectomy." Slip op. at 8. Kevin has elected not to undergo further surgery involving construction of a penis or testes. Due to hormone treatments, Kevin's voice has deepened and he has coarse hair growth on his face, chest, legs, and stomach. In October 1998, Kevin was issued a new birth certificate showing his sex as "male," and he and Jennifer were married.
>
> Jennifer became pregnant through in vitro fertilization with donated sperm and gave birth in November 1999. The couple plans to have another child in this way. Kevin's history of transsexuality was made known to the infertility clinic where he and Jennifer applied for treatment, and after full consideration by a team of scientists, physicians, and nurses " 'it was decided that Kevin and Jennifer be consider a heterosexual couple with infertility consequent to absent sperm production.' " Slip op. at 10.
>
> Two psychiatrists examined Kevin. Both concluded that Kevin is and always has been psychologically male. One wrote that he believed Kevin's " 'brain sex or mental sex is male,' " and then stated his agreement with the opinion of Milton Diamond, an American professor of anatomy and reproductive biology, " 'that further research will confirm

> the present evidence that brain sex or mental sex is a reality which would explain the persistence of a gender identity in the face of or contrary to external influences.' " Slip op. at 11
>
> The record in the Australian case was richly and comprehensively developed, in sharp contrast with the record in the case before us. In In re Kevin, the court had the benefit of the testimony of many people who were colleagues, friends, and family of Jennifer and Kevin, as well as volumes of medical and scientific evidence. (This is similar to the testimony taken in Kantaras.)

The Supreme Court compared Kevin's findings of fact to those of the trial court in Gardiner, as follows:

> "Here, the district court's conclusion of law, based on its findings of fact, was that "J'Noel is a male." In other words, the district court concluded as a matter of law that J'Noel is a male and granted summary judgment on that basis."

The Supreme Court then set forth the questionable findings of fact of the trial court as follows:

> "The district court stated that it had considered conflicting medical opinions on whether J'Noel was male or female. This is not the sort of factual dispute that would preclude summary judgment because what the district court actually took into account was the medical experts' opinions on the ultimate question. The district court did not take into account the factors on which the scientific experts based their opinions on the ultimate question. The district court relied entirely on the Texas court's opinion in *Littleton* for the "facts" on which it based its conclusion of law. There were no expert witnesses or medical testimony as to whether J'Noel was a male or female. The only medical evidence was the medical report as to the reassignment surgery attached to J'Noel's memorandum in support of her motion for partial summary judgment. There was included a "To Whom It May Concern" notarized letter signed by Dr. Schrang in which the doctor wrote: "She should now be considered a functioning, anatomical female." (Emphasis added.)

The Supreme Court next reviewed the court of Appeals findings, as follows:

> "The Court of Appeals found deficiency in the district court's entry of summary judgment. Supplying some of what the district court omitted, the Court of Appeals included in its opinion a review of some scientific literature. As courts typically do, the Court of Appeals also turned to a law journal article that reported on scientific matters relevant to legal issues. The Court of Appeals quoted extensively from Greenberg, *Defining Male and Female: Intersexuality and the Collision between Law and Biology,* 41 Ariz. L.Rev. 265, 278-92 (1992). 29 Kan.App.2d at 101-09, 22 P.3d 1086. Professor Greenberg's thesis is that sexual identification is not simply a matter of anatomy, as demonstrated by a number of intersex conditions—chromosomal sex disorders, gonadal sex disorders, internal organ anomalies, external organ anomalies, hormonal disorders, gender identity disorder, and unintentioned amputation."

The Supreme Court draws the "divergence" of judicial rulings and the presumed reasons therefore, as follows:

> Thus, the essential difference between the line of cases, including *Corbett* and *Littleton*, that would invalidate the Gardiner marriage and the line of cases, including *M.T.* and *In re Kevin*, that would validate it is that the former treats a person's sex as a matter of law and the latter treats a person's sex as a matter of fact. In *Littleton*, the thread running throughout the majority's opinion was that a person's gender was immutably fixed by our Creator at birth. 9 S.w.3d at 224. Summing up its view of Christie's mission to be accepted as a male, the court stated: "There are some things we cannot will into being. They just are." 9 S.W.3d at 231. *Corbett* was approvingly described by the Texas majority as holding, "once a man, always a man." 9 S.W.3d at 227. The Texas court decided that there was nothing for a jury to decide, and "[t]here are no significant facts that need to be decided." 9 S.W.3d at 230. Because "Christie was created and born a male," the Texas court "h[e]ld, *as a matter of law*, that Christie Littleton is a male." (Emphasis added.) 9 S.W.3d at 231.

The Supreme Court observed:

"In contrast, the Australian court stated:

"It will be necessary to identify whether particular propositions in the reasoning are statements of fact or of law. I take it to be a question of law what criteria should be applied in determining whether a person is a man or a woman for the purpose of the law of marriage, and a question of fact whether the criteria exist in a particular case." *In re Kevin*, slip op. at 17. (Emphasis added.)

The Australian court's analytical approach echoes that of our Court of Appeals. Indeed, *Gardiner* is cited and discussed by the Australian court. Slip op. at 44-45, 51-52.

The Supreme Court states how it disagrees with the Court of Appeals, as follows:

The Court of Appeals rejected the district court's sex-at-birth-answers-the- question rationale in part, at least, because the Court of Appeals opined that there are a number of factors that make sexual identification at birth less than certain. In chromosomal sex disorders, the chromosomal pattern does not fit into the XX and XY binary system. Among the chromosomal sex disorders described by Greenberg are Klinefelter Syndrome, which affects approximately 1 in 500 to 1,000 babies identified at birth as males based on the appearance of external genitalia, in which multiple X chromosomes may become manifest in puberty with breast development. Turner Syndrome affects babies identified at birth as females, who in fact typically have only one X chromosome. As a result, a person with Turner Syndrome will have female appearing genitalia but may have unformed and nonfunctioning gonads. What the district court said about J'Noel, that "[t]here is no womb, cervix or ovaries," also could be true for a person with Turner Syndrome who had been identified as a female at birth. Other anomalies and conditions that could not be accounted for in the district court's approach are discussed in the Court of Appeals' quotation of Greenberg at 29 Kan.App.2d at 103-07, 22 P.3d 1086. However, this is not the issue that is before this court in this appeal. (Emphasis added.)

The district court concluded as a matter of law that J'Noel was a male because she had been identified on the basis of

her external genitalia at birth as a male. The Court of Appeals held that other criteria should be applied in determining whether J'Noel is a man or a woman for the purpose of the law of marriage and remanded in order for the district court to apply the criteria to the facts of this case. In this case of first impression, the Court of Appeals adopted the criteria set forth by Professor Greenberg in addition to chromosomes: "gonadal sex, internal morphologic sex, external morphologic sex, hormonal sex, phenotypic sex, assigned sex and gender of rearing, and sexual identity," as well as other criteria that may emerge with scientific advances. 29 Kan.App.2d at 127, 22 P.3d 1086.

The Supreme Court concentrates on M.T. v. J.T. and analyzes that ruling as follows:

> "The harmonizing of psychological and anatomical sex was the touchstone for the New Jersey court. It also was the touchstone for the Australian court. The New Jersey court reasoned that a person who has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled psychological sexual attributes should be considered a member of the reassigned sex for marital purposes:
>
> "In this case the transsexual's gender and genitalia are no longer discordant; they have been harmonized through medical treatment. Plaintiff has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled sexual attributes of gender and anatomy. Consequently, plaintiff should be considered a member of the female sex for marital purposes. It follows that such an individual would have the capacity to enter into a valid marriage relationship with a person of the opposite sex and did do so here. In so ruling we do no more than give legal effect to a *fair accompli*, based upon medical judgment and action which are irreversible." *M.T.*, 140 N.J.Super. at 89-90, 355 A.2d 204. (Emphasis added.)
>
> The Australian court, too, concluded that the law should treat post-operative transsexuals as members of their reassigned sex. Critical to the court's determination was successful reassignment surgery. (Emphasis added.)

The Kansas Supreme Court's thinking is finally demonstrated by the following passage from its opinion:

> "When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. *In re Marriage of Killman*, 264 Kan. 33, 42-43, 955 P.2d 1228 (1998).
>
> The words "sex," "male," and "female" are words in common usage and understood by the general population. Black's Law Dictionary, 1375 (6th ed. 1999) defines "sex" as "[t]he sum of the peculiarities of structure and function that distinguish a male from a female organism; the character of being male or female." Webster's New Twentieth Century Dictionary (2nd ed. 1970) states the initial definition of sex as "either of the two divisions of organisms distinguished as male or female; males or females (especially men or women) collectively." "Male" is defined as "designating or of the sex that fertilizes the ovum and begets offspring: opposed to *female*." "Female" is defined as "designating or of the sex that produces ova and bears offspring: opposed to *male*." [Emphasis added.] According to Black's Law Dictionary, 972 (6th ed. 1999) a marriage "is the legal status, condition, or relation of one man and one woman united in law for life, or until divorced, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex."

The reliance on Black's Dictionary or Webster's, shows only biological sex is considered and there is no reference to psychological sex or the relevance of gender identity. The medical or scientific evidence that sex is of the mind (between the ears) and not just between the legs, is ignored. This is made abundantly clear by Justice Allegrucci, as follows:

> The words "sex," "male," and "female" <u>in everyday understanding do not encompass transsexuals. The plain, ordinary meaning of "persons of the opposite sex" contemplates a biological man and a biological woman and</u>

> not persons who are experiencing gender dysphoria. A male-to-female post-operative transsexual does not fit the definition of a female. The male organs have been removed, but the ability to produce ova and bear offspring" does not and never did exist. There is no womb, cervix, or ovaries, nor is there any change in his chromosomes. As the *Littleton* court noted, the transsexual still "inhabits . . . a male body in all aspects other than what the physicians have supplied." 9 S.W.3d at 231. J'Noel does not fit the common meaning of female." (Emphasis added.)

The Supreme Court concludes by stating its interpretation of the law is supported by statutory law and its history, as follows:

> "That interpretation of K.S.A. 2001 Supp. 23-101 is supported by the legislative history of the statute. That legislative history is set out in the Court of Appeals decision:
>
> "The amendment to 23-101 limiting marriage to two parties of the opposite sex began its legislative history in 1975. The minutes of the Senate Committee on Judiciary for January 21, 1976, state that the amendment would 'affirm the traditional view of marriage.' The proposed amendment was finally enacted in 1980.
>
> "K.S.A. 23-101 was again amended in 1996, when language was added, stating: 'All other marriages are declared to be contrary to the public policy of this state and are void.' This sentence was inserted immediately after the sentence limiting marriage to two parties of the opposite sex.
>
> "In 1996, K.S.A. 23-115 was amended, with language added stating: 'It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman.' " 29 Kan.App.2d at 99, 22 P.3d 1086.

The Supreme Court feels this statutory language is a mandate to close the door on anything but "traditional" marriage and questioning the legislative content is not for the Court, as follows:

> We do not agree that the question remains. We view the legislative silence to indicate that transsexuals are not included. If the legislature intended to include transsexuals, it could have been a simple matter to have done so. We apply the rules of statutory construction to ascertain the legislative intent as expressed in the statute. We do not read into a statute something that does not come within the wording of the statute. *Joe Self Chevrolet, Inc. v. Board of Sedgwick County Comm'rs,* 247 Kan. 625, 633, 802 P.2d 1231 (1990)." (Emphasis added.)

**10. Summary**

A male-to-female post-operative transsexual does not fit Webster's definition of a female. The male organs have been removed, but the ability to "produce ova and bear offspring" does not and never did exist. There is no "womb, cervix, or ovaries," nor is there any change in his chromosomes (XY). All reference to psychological sex or gender identity is totally ignored. Medical science would simply state the most important part of the sex equation has been left out. If one deals only with the anatomic sex, then it's easy to let Webster decide if there is any question that remains.

As the Littleton court noted, the transsexual still "inhabits - - - a male body in all aspects other than what the physicians have supplied (9 S.W.3d at 231). J. Noel does not fit the common meaning of female.

The irony of this case is that the Court of Appeals never rendered a final decision, other than to remand the case to the trial court. The trial judge had concluded as a matter of law that J'Noel was a male merely because she had been identified on the basis of her external genitalia at birth as a "male."

The Court of Appeals held that other medical criteria should be applied in determining whether J'Noel is a man or a woman for the purpose of the law of marriage and remanded the case to the trial judge to apply Professor Greenberg's recitation of all

the medical factors that should be taken into consideration in deciding if J'Noel is a woman. The Supreme Court stopped any further consideration, because as a matter of law "transsexuals" do not come within the words "sex," "male" and "female" and cannot be persons of the opposite sex through post reassignment surgery merely because they are "experiencing" "gender dysphoria." This is an outright "rejection" of the medical validity of gender identity dysphoria (GID) and any medical intervention to alleviate the dysphoria. This presumably, is the mandate of the Kansas legislature.

The Supreme Court was cognizant that it was pursuing one side of a divided judiciary when it said: "Thus, the essential difference between the line of cases, including Corbett and Littleton and the line of cases, including M.T., Attorney General v. Otahuh and In re Kevin, that would validate it, is that, the former treats a person's sex as a matter of law and the latter treats a person's sex as a matter of fact." The Supreme Court does n ot say, "medical fact."

The Appeals Court of New Jersey, likewise, views the issue of the judicial split of opinion, as follows:

> "Against the backdrop of the evidence in the present record we must disagree with the conclusion reached in Corbett (and impliedly with the Kansas Supreme Court) that for purposes of marriage sex is somehow irrevocably cast at the moment of birth, and that for adjudging the capacity to enter marriage, sex in its biological sense should be the exclusive standard. On this score, the case has not escaped critical review. (Comment, supra, 56 Cornell Law Review at 1003-1007; Note, "Transsexuals in Limbo" 31 Md. L. Rev. 236, 244 (1971).
>
> "Our departure from the Corbett thesis is not a matter of semantics. It stems from a fundamentally different understanding of what is meant by "sex" for marital purposes. The English Court apparently felt that sex and gender were disparate phenomena.

In a given case there may, of course, be such a difference. A pre-operative transsexual is an example of that kind of disharmony, and most experts would be satisfied that the individual should be classified according to biological criteria. The evidence and authority which we have examined, however, show that a person's sex or sexuality embraces an individual's gender, that is, one's self-image, the deep psychological or emotional sense of sexual identity and character. Indeed, it has been observed that the "psychological" sex of an individual, while not serviceable for all purposes, is practical, realistic and human. (cf. In re Anonymous, 57 Misc. 2d 813, 293 NYS2d 834, 837 (Civ. Ct. 1968)."

"The English court, believed we feel incorrectly, that an anatomical change of genitalia, in the case of a transsexual cannot "affect her true sex." It's conclusion was rooted in the premise that "true sex" was required to be ascertained even for marital purposes by biological criteria. In the case of a transsexual following surgery, however, according to the expert testimony presented here, the dual tests of anatomy and gender are more significant. On this evidential demonstration, therefore, we are impelled to the conclusion that for marital purposes if the anatomical or genital factors of a genuine transsexual are made to conform to the person's gender, psyche, or psychological sex, then identity by sex must be governed by the congruence of these standards." (Id. at 209)

This difference of legal opinion runs deeper, as is explained by the following:

"Implicit in the reasoning underpinning our determination, is the tacit but valid assumption of the lower court and the experts upon whom reliance was placed that for purposes of marriage under the circumstances of this case, it is the sexual capacity of the individual which must be scrutinized. Sexual capacity or sexuality in this frame of reference requires the coalescence of both the physical ability and the psychological and emotional orientation to engage in sexual intercourse as either a male or a female." (Id. at 210)

There is no mention in this decision about sexual intercourse leading to offspring or pro-creation. The New Jersey Court did not countenance the idea that transsexuals belong in a middle ground between the sexes, a "no man's land." The court adopted the application of a simple formula which could and should be the test of gender, as follows:

> "(1) Where there is disharmony between psychological sex and the anatomical sex, the social sex or gender of the individual will be determined by the anatomical sex;
>
> (2) Where, however, with or without medical intervention, the psychological sex and the anatomical sex are harmonized, then the social sex or gender of the individual should be made to conform to the harmonized status of the individual and, if such conformity requires changes of the statistical nature, then such changes should be made. Of course, such changes should be made only in those cases where physiological orientation is complete." [293 N.Y.S. 2d at 837] (Id. at 210)

In conclusion, the New Jersey Court's simple formula keeps the marriage door open for transsexuals. Post-operative transsexuals who are legitimately diagnosed and who finally achieve recognition of their gender change in society, do no harm to society. It is not right that society should do harm to them because nature selected them to be different. In other words, the New York Administrative Board's finding in Hartin that sex reassignment is an experimental form of psycho-therapy, mutilating surgery, that nevertheless does not change the body cells governing sexuality is displaced with medical/legal reality.

The New Jersey Court summarized the law and insofar as it's decision breaks from the pseudo theology of Littleton and Gardiner, it can be said to be iconoclastic.

The Supreme Court of Kansas cited the case of Kevin and Jennifer vs. Attorney General for the Commonwealth of Australia at Sydney and quoted from it but

surprisingly, does not pursue that case in depth because of being aware that Kevin is diametrically opposed to the reasoning and ruling being made by Justice Allegrucci in Gardiner.

This is incredible. It is issential that Kevin not be given a mere "citation" but studied for what it represents in the law.

It is one of the most important cases on transsexualism to come on the scene of foreign jurisprudence.

## AUSTRALIAN LAW

The case of Kevin and Jennifer, Applicants, vs. Attorney General for the Commonwealth, Respondent, in the Family Court of Australia, at Sydney, dated October 12, 2001, (File No. Sy 8136 of 1999), the decision by Justice Chrisholm, concerned an application for "declaration of validity" of marriage between a woman and a female to male, post-operative transsexual. That is the exact issue being raised in this Kantaras case.

The issue was narrowed down to the specific question: whether a person's sex must be determined solely by reference to genitals, chromosomes, and gonads at the time of birth? And, further, whether other matters, psychological sex and gender identity, may be taken into account?

The applicants went through marriage ceremony on August 21, 1999. The primary issue was whether the husband was a "man" at the date of marriage since he was a post-operative female to male (F to M) transsexual.

The Attorney General of Australia intervened in the case and submitted that the husband was not a "man" for the purposes of the Australian law of marriage, consonant with the case of Corbett v. Corbett (otherwise Ashley).

The cases of Littleton v. Prange in Texas and The Estate of Marshall Gardiner, in Kansas are referred to by the court. The court took serious issue with Corbett. Justice Allegrucci cited this Kevin case but did not give the ruling of the Family Court on this critical issue much consideration.

Justice Chrisholm wrote a 97 page opinion taking utmost care to address every issue of transsexualism and marriage.

The Marriage Act of 1961 was agreed by the parties to require a valid marriage that must be between a man and a woman. The court relied on the definition of marriage by Lord Penzance in Hyde v. Hyde (1866) (cited by Judge Ellis in the New Zealand case) to the effect: "I conceive that marriage, as understood in Christendom, may --- be defined as the voluntary union for life of one man and one woman, to the exclusion of all others." The court said, "marriage" is not expressly defined in the Marriage Act or the Family Law Act, 1975, but other sections of the enactments confirm the definition. The Marriage Act, section 113, provides for a declaration as to the validity of a marriage.

The opinion of Justice Chrisholm is divided into sections. It begins with facts about Kevin's birth, adolescence and adulthood as a transsexual. The history compares favorable to that of Michael Kantaras.

Kevin was identified at birth as a "girl," named "Kimberley." The Court said:

> "However, for as long as he could remember, he perceived himself to be male. Despite pressure to dress and behave as a girl, he wore boys' clothes whenever he could, refused to play with girls' toys, had many attributes of a boy, and saw himself as a boy, while growing up. He described his adolescence, and the feminisation of his body, as a "time of pain and dread." He was harassed at times at school because of his male attitude and appearance and early adult years he kept most of his thoughts to himself and felt extremely alienated from people.
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> From 1994 he generally presented as a male, wearing trousers and shirts to work. In mid 1995 he saw an article about sex reassignment treatment, and he had feelings of relief and excitement upon learning of other people like him, and of how they had "discovered the medical means to express their true sex as men." He embarked on hormone treatment in October 1995. This led to coarse hair growth on his face, chest, legs and stomach, and a deeper voice. In November 1997 he had surgery to reduce his breasts to male size. In September 1998 he had further surgery: a total hysterectomy with bilateral oophorectomy. The

> surgery constituted 'sexual reassignment surgery' within the meaning of Section 32A of the Birth Deaths and Marriages Registration Act 1995 (NSW). As a result, his body was no longer able to function as that of a female, particularly for the purposes of reproduction and sexual intercourse."

The Court described the marriage between Kevin and Jennifer and how the couple used artificial insemination to produce a family since Kevin was neuter:

> "The parties met in 1996, and Kevin told Jennifer of his transsexual predicament. She perceived him as a man, and supported his desire 'to bring his body into harmony with his mind.' They started living together in February 1997 and agreed to marry. In May 1997, Kevin changed his given name from Kimberley to Kevin. In September 1997 the couple applied successfully to an IVF program and Jennifer became pregnant by an anonymous sperm donor. The expert team concluded that Kevin 'should be considered male biologically and culturally' and that the parties should 'be considered a heterosexual couple with infertility consequent to absent sperm production.
>
> In March 1998 Jennifer changed her family name to Kevin's. In October 1998 Kevin obtained a new Birth Certificate on which his sex was shown as male. Jennifer gave birth to a male child in November 1999. In August, having disclosed the relevant medical history to the marriage celebrant, they were married and a marriage certificate was issued."

The Court made an interesting observation about the gender role Kevin was displaying, which is similar to the "life experience" of Michael Kantaras. The court said:

> "At the date of the marriage Kevin's male secondary sexual characteristics were such that he would have been subject to ridicule if he haf attempted to appear in public dressed as a woman; he could not have entered a women's toilet; and he was eligible to receive an Australian passport showing his changed name and stating his sex as male. He has been treated as a man for a variety of legal and social purposes, including his employer, Medicare, the Tax Office and other

> public authorities, banks, and clubs. Evidence from numerous family, friends and work colleagues testified to his acceptance as a man and to the acceptance of him as a husband and father. Psychiatric examination of Kevin revealed, in summary, that there was no evidence of psychosis or delusional disorder; that Kevin 'presented as an intelligent, emotionally warm man who would be accepted socially as completely masculine'; that his 'brain sex or mental sex' was male; and that he 'is psychologically male and that this has been the situation all his life.'"

These facts show a parallel living experience these two transsexual female to male (F to M) persons have lived since birth, Kevin and Michael. Even Kevin worked in a bakery.

The Issues and Arguments of the parties was set forth, in very similar fashion to the legal positions set forth in the briefs of Michael and Linda Kantaras in this case.

The applicants tendered "expert medical" evidence from a number of specialists about the nature of transsexualism. They submitted that "brain sex" was an important or even defining aspect of a person's sexual identity.

The Attorney General submitted that the evidence did not permit such conclusions to be drawn, that Kevin was a "woman" when he married and the application should be dismissed. The applicants argued that the word "man" should be given its ordinary "contemporary" meaning. The Attorney General submitted "man" should be given its meaning as of the date of the Marriage Act of 1961, and as formulated in the Corbett decision. The husband "at birth" had chromosomes, genitalia and gonads of a female and for the purposes of the law of marriage, he must be treated as a woman "notwithstanding any facts relating to his psychology or role in society, and notwithstanding that he had undergone sex reassignment measures, including hormone treatment and surgery."

The applicants replied that some regard should be properly had for other matters that those indicated in Corbett, including:

> "psychological aspects or 'brain sex', the person's role in society, and the consequences of medical reassignment. Having regard to these matters, including the ordinary contemporary meaning of 'man,' Kevin should be held to have been a man at the date of his marriage."

These arguments of the Attorney General and Kevin reflect a difference in the meaning of "man" into having a "traditional" meaning and the other, the ordinary "contemporary" meaning. Presumably Corbett stands for the traditional meaning. Does the Court accept such a distinction that "man" can have two meanings?

The court did recognize that distinguished medical experts submitted affidavits and reports to the court. The Attorney General did not submit any contrary "medical" experts or resort to cross-examination. Thus, it appears there was limited testimony, other than, the written submittals, all of which the court summarized in exhaustive detail. The court referred to legal developments in foreign nations, too.

The court, at the beginning of its opinion, declared Kevin's marriage valid, then set forth its conclusions of law, as follows:

> 1. For the purpose of ascertaining the validity of a marriage under Australian law, the question whether a person is a man or a woman is to be determined as of the date of the marriage.
>
> 2. There is no rule or presumption that the question whether a person is a man or a woman for the purpose of marriage law is to be determined by reference to circumstances at the time of birth. Anything to the contrary in *Corbett v. Corbett (otherwise Ashley)* [1971] P.83 does not represent Australian law.

3. Unless the context requires a different interpretation, the words "man" and "woman" when used in legislation have their ordinary contemporary meaning according to Australian usage. That meaning includes post-operative transsexuals as men or women in accordance with their sexual reassignment.

*R v Harris and McGuiness* (1988) 17 NSWLR 158; *Secretary, Department of Social Security v SRA* (1993) 118 ALR 467, are followed.

4. The context of marriage law, and in particular the rule that the parties to a valid marriage must be a man and a woman, does not require any departure from ordinary current meaning according to Australian usage of the word "man."

5. There may be circumstances in which a person who at birth had female gonads, chromosomes and genitals, may nevertheless be a man at the date of his marriage. In this respect, the decision in *Corbett v. Corbett (otherwise Ashley)* [1971] P. 83 does not represent Australian law.

6. In the present case, the husband at birth had female chromosomes, gonads and genitals, but was a man for the purpose of the law of marriage at the time of his marriage, having regard to all the circumstances, and in particular the following:-

   (a) He had always perceived himself to be a male;
   (b) He was perceived by those who knew him to have had male characteristics since he was a young child;
   (c) Prior to the marriage he went through a full process of transsexual re-assignment, involving hormone treatment and irreversible surgery, conducted by appropriately qualified medical practitioners;
   (d) At the time of the marriage, in appearance, characteristics and behaviour he was

> perceived as a man, and accepted as a man, by his family, friends and work colleagues;
>
> (e) He as accepted as a man for a variety of social and legal purposes, including name, and admission to an IVF program, and in relation to such events occurring after the marriage, there was evidence that his characteristics at the relevant times were no different from his characteristics at the time of the marriage;
>
> (f) His marriage as a man was accepted, in full knowledge of his circumstances, by his family, friends and work colleagues.
>
> 7. For these reasons, the application succeeds, and there will be a declaration of the validity of the applicants' marriage. (Emphasis added.)

Justice Chrisholm found, significantly, that there is no law or rule, that whether a person is a man or a woman for purposes of marriage, is to be determined "at the time of birth." Corbett, to the contrary not withstanding.

The reasoning in Texas and Kansas is to make the birth certificate definitive of sex at marriage.

The Australian Court does not hesitate to come down on the side of the argument that "man" is understood in accordance with "ordinary current meaning" according to Australian usage of the word "man." The court gave R.V. Harris and SRA as citation of authority to support that conclusion. There is, uniquely, no reference to any dictionary definition of man or woman that American courts are so prone to cite for definitions. Despite the fact some one is born female may, nevertheless, not hinder that person being a man at the date of his marriage, that is, providing all the necessary steps leading to sex reassignment are followed.

The court makes no mention of Kevin's sexual organs or his ability to perform sexual intercourse heterosexually in marriage. Or, that his sexual propensities are heterosexual.

The court, gave an overall assessment of what is meant by transsexualism as follows:

> Kevin is a person of a kind often referred to in the literature as a transsexual. It is useful to distinguish this term from other concepts with which it is sometimes confused. In this judgment I will generally use "transsexual" to mean a person who has some or all of the physical or biological characteristics of one sex, but who experiences himself or herself as being of the opposite sex, and has undergone hormonal and surgical treatments to change some of the physical characteristics in order to conform more closely to the opposite sex.

Justice Chrisholm addresses the fact the word transsexual can be misleading and he states:

> The word poses some problems. The word "transsexual" may suggest a sexual transition, a passing from one sex to the other. <u>While that may reflect the physical changes associated with surgery or hormone treatment, it does not convey the fact that transsexuals say that they have always experienced themselves as belonging to the other sex, before</u> as well as <u>after the hormone or surgical procedures</u>.
>
> A transsexual is not the same as a homosexual. A homosexual is one who is attracted sexually to members of the same sex. <u>Similarly a transsexual is not the same as transvestite</u>. A transvestite is someone who dresses in the clothes of the other sex. A transsexual might or might not be a homosexual.

An important distinction between gender and so-called "true sex" referred to by Judge Ormrod in <u>Corbett</u>, is analyzed:

> Next, I should say something about the use of the terms "sex" and "gender". The words are used in various ways.

> Their usage depends in part of what the speaker understands to be the nature of sexual identification. Thus, as will be seen, Ormrod J in *Corbett* drew a sharp distinction between the two. However this distinction presupposed that there was a fundamental difference between a person's sense of self, which he treated as a matter of psychology, and the person's "true sex" which he treated as equivalent to three biological characteristics, namely chromosomes, genitals and gonads (where they are concordant). As will be seen, today medical experts think it likely that a transsexual's sense of self derives from a (biological) characteristic of the brain. In this judgment I will use "sex" as a way of referring to a person as a man or a woman: a man's sex is male and a woman's is female. I will also treat the adjectives "male" and "female" in the same way.
>
> Others would argue that a departure from the two-sex approach is unlikely. As Douglas Smith put it in a seminal article:-
>
> *The cultural, religious and moral assumptions that man can be divided into two clearly identifiable and distinct sexes quite naturally became embedded in the law despite its inaccuracy. . . The modern approach considers human sex to be a continuum ranging from the nonexistent "pure" female to "pure" male. . .*
>
> *It is probably impractical for the law to abandon the two-sex assumption. The law must deal with social practicalities, not medical niceties, and most people are clearly male or clearly female. . .*

The Court said its ruling does not apply to pre-operative transsexuals. The court said, "There is no direct evidence about the state of Kevin's body after birth but on available evidence," I find that at birth his genitalia and gonads were female and he had and continues to have female (XX) chromosomes."

The Court related facts of sex-reassignment surgery about Kevin that is identical to Michael Kantaras' surgery even to where a "Dr. Ho" performed chest surgery and Dr.

Huang performed chest surgery on Michael presumably both of "Chinese" descent. The Court stated:

> Kevin embarked on hormone treatment in October 1995. This led to coarse hair growth on his face, chest, legs and stomach, and a deeper voice. His body was already muscular from sport and lifting weights, but it became more so. He later saw Dr. Anne Conway, an andrologist at the Concord Repatriation General Hospital. Dr. Conway reports that it is likely that he has had a testosterone level in the adult male range since 1995 and certainly since 1997 when he started treatment at her Department.
>
> In November 1997 Dr. Laurence Ho, a plastic surgeon, carried out breast surgery as part of Kevin's gender reassignment program, reducing them to "suitable male size" by liposuction. Dr. Ho says that Kevin was "very pleased with the result."
>
> In September 1998 he had further surgery: Dr. Anne Pike, whose report is also in evidence, performed a total hysterectomy with bilateral oophorectomy.
>
> As a result, Kevin's body was no longer able to function as that of a female, particularly for the purposes of reproduction and sexual intercourse. Dr. Haertsch, a plastic surgeon, has provided evidence that the surgery Kevin has undergone "is sexual reassignment surgery" within the meaning of Section 32A of the Birth Deaths and Marriages Registration Act 1995 (NSW).

Kevin made the identical decision about phalloplasty that Michael made:

> He has elected not to have further surgery involving the construction of a penis or testes. Such surgery is complex and expensive, and has risks of complications and failure.
>
> The Attorney-General has not sought to argue that the sex reassignment surgery was in any way incomplete or unsuccessful.

Linda Kantaras has argued that Michael's sex reassignment surgery was incomplete on the basis he did not take what she calls the third step and have a neopenis. Even the children have advanced that idea.

> Kevin met his wife Jennifer in October 1996. He told her of his transsexual predicament. Jennifer considered that he looked, sounded and acted like a man. She perceived him as a man, although he told her he had been born with a female body. Jennifer interacted with Kevin as a man and observed that others did the same. She supported him in his desire "to bring his body into harmony with his mind." It was "obvious" to her that he was a man. They started living together in February 1997 and agreed to marry.

It is interesting to note the similarity of Jennifer's attitude about perceiving Kevin as a man, which is essentially the same thing Linda said of Michael at the beginning of her marriage. Both spouses gave birth by artificial insemination during marriage.

Kevin changed his name, legally, from "Kimberley" to "Kevin" and had his Birth Certificate changed to reflect his sex as "male." Michael Kantaras took the same legal steps. Kevin and Jennifer proceeded to be formally married, stating in their application for marriage "there was no legal impediment to the proposed marriage." This same legal requirement Michael and Linda both signed in their application for a marriage license in Florida.

The Attorney-General disputed the validity of Kevin's certificate of marriage. At the date of Kevin's marriage, the court found, his male "secondary" sexual characteristics were such that he could not appear in public dressed as a woman – he was accepted by all concerned as a man.

Justice Chrisholm referred to the psychiatric experts who examined Kevin, as follows:

> "Professor McConaghy wrote that he believed Kevin's "brain sex or mental sex is male." He then refers to Professor Milton Diamond, and writes "I agree with his opinion that further research will confirm the present evidence that brain sex or mental sex is a reality which would explain the persistence of a gender identity in the face of or contrary to external influences."
>
> Kevin was also examined by Dr. Cornelis Greenway, who is a consultant psychiatrist of considerable experience and a Fellow of the Royal Australian and New Zealand College of Psychiatrists since 1981. He has had a good deal of experience of patients with gender identity difficulties and this interest and involvement has been present through much of his clinical work. He saw Kevin on the 9th May 2000. Dr. Greenway said that on examination, "there was no evidence of psychosis or any evidence of organic deficit." He noted that Kevin presented his history "in a very matter-of-fact way and does not come across as histrionic." Under the heading "Opinion", Dr. Greenway wrote:-
>
> *After considering the history as given by Kevin, and Kevin's presentation on interview there is no doubt in my mind that Kevin is psychologically male and that this has been the situation all his life. There is also no doubt that as far as Kevin is concerned he is a male and has always been a male. From the history provided by him ,there is little doubt that people that know him consider him as a male and relate to him as a male. This certainly appears to have been the case on the 21st August 1999 when he got married.*
>
> *I do not believe that Kevin's perception of himself, as a male is a result of a psychosis, nor of a delusional disorder. I do not believe that he is suffering from a body dysmorphic syndrome.*

There were 39 witnesses, 23 who are family, friends, and 16 work colleagues. The court set forth all the statements of those witnesses which cumulatively confirmed that Kevin was accepted and he presented himself as male. The court in summary said, "It shows him as a person, not an object of anatomical curiosity but a human being living a life, as we do among others, as a part of society." (Id. at 21)

Justice Chrisholm, more than any other court, analyzed Corbett v. Corbett recognizing that it was the "lynch-pin" of the Attorney-General's legal opposition to the validity of marriage for Kevin.

The court stated:

> 70. According to the decision in *Corbett*, whether Kevin is a man depends on whether he was a male at the time of birth, this being determined by a three-point biological test, involving his gonads, genitals and chromosomes. On this test, Kevin would be legally a woman for the purpose of marriage law, having been born with female gonads, genitals and chromosomes. Nothing that happened since his birth would be taken into account, and thus all the evidence just set out would be completely irrelevant. If *Corbett* represents the present law in Australia, the Attorney-General is right and the application must fail.
>
> 71. The decision of Ormrod J in *Corbett* has been treated as the starting point for analysis in many later decisions. However since at least 1982 the common law of Australia had developed to the stage where English decisions were no more than a guide to the common law in Australia, and thus the decision in *Corbett* is useful only to the degree of the persuasiveness of its reasoning.

Justice Chrisholm digested the Corbett decision in a fashion not seen in any other case:

> 72. I have come to the conclusion that its reasoning is not persuasive. Because of the complexity of the reasoning and because the decision is the lynch-pin of the respondent's case, I will need to explain my conclusions with some care. I have benefited greatly from the voluminous literature on the case. The commentators are commonly critical about the consequences of the decision. There has also been "sustained criticism" of certain passages, especially one referring to the "essential role" of a woman in marriage. A more recent theme is that the decision, even if correct or defensible at the time, needs

> reconsideration in the light of medical knowledge, and legal and social changes, since 1970. These are important matters, and will be considered. However I will mainly focus on the reasoning itself, which I consider to be flawed.

Justice Chrisholm pursued his statement that Judge Ormrod reasoning in Corbett was flawed, as follows:

> 73. It will be necessary to identify whether particular propositions in the reasoning are statements of fact or of law. I take it to be a question of law what criteria should be applied in determining whether a person is a man or a woman for the purposes of the law of marriage, and a question of fact whether the criteria exist in a particular case. (It is this paragraph that Justice Allegrucci quoted in his opinion.)

This statement of law, that the law should determine "what criteria to apply and it is a question of fact whether the criteria exists in a particular case prompted examination of the Corbett decision. It explains Justice Chrisholm's reasoning, about the falsity of "true sex."

The court reviewed Judge Ormrod's findings that April Ashley had (XY) chromosomes; or male chromosomal sex; had testicles of male gonadal sex; male external genitalia and was without any evidence of internal or external female sex organs. At most, April was psychologically a "transsexual."

Justice Chrisholm quoted Judge Ormrod as follows:

> 76. Socially, Ormrod J said, by which he meant the manner in which she was living in the community, "she is living as, and passing as a woman, more or less successfully". However on closer examination, he said, the feminine appearance became less convincing. Ormrod J then continued:

*It is common ground between all the medical witnesses that the biological sexual constitution of an individual is fixed at birth (at the latest), and cannot be changed, either by the natural development of organs of the opposite sex, or by medical or surgical means. The respondent's operation, therefore, cannot affect her true sex.*

77. In my view this is a key passage. Earlier, Ormrod J had stated that the validity of the marriage depended on the "true sex" of the respondent. Taking the passage in context, I believe the argument is as follows: -

    1. The biological sexual constitution of all individuals is fixed at birth and cannot be changed (major premise)
    2. Ms. Ashley's biological sexual constitution at birth was male (minor premise).
    3. Therefore Ms. Ashley's biological sexual constitution remains male (conclusion).
    4. Therefore, Ms. Ashley's true sex is male.
    5. The validity of the marriage depends on Ms. Ashley's "true sex".
    6. Therefore, the other party being a man, the marriage is invalid.

78. As suggested by the words in brackets, the first three statements have an impeccable classical logic. But the only basis for Step 4 appears to be that Ms. Ashley's "biological sexual constitution" is treated as equivalent to her "true sex". This apparently subtle shift in terminology is significant. The key issue was whether social and psychological matters were relevant in determining whether April Ashley was a man or a woman. To treat biological sexual constitution as equivalent to true sex excludes these matters, but does so by way of definition: no reason is given for excluding them.

79. Step 5, apparently a statement of law, involves a similar problem. Elsewhere in the judgment, Ormrod J said, correctly, that the most accurate statement of the question was whether Ms. Ashley was a woman. The asserted legal proposition, that "true sex" is the test for the validity of marriage, is true only if "true sex" is the

sole criterion of determining whether a person is a man or a woman. The judgment thus again exploits a subtle shift in terminology which gives the impression that an argument has been made, when in fact the proposition to be established is merely *assumed*.

80. The reasoning becomes more transparent if the term "true sex" is omitted and the legal principle is stated more accurately in terms of whether a person is a man or a woman. Thus clarified, the argument to this point in the judgment is this:-

    1. The biological sexual constitution of all individuals is fixed at birth and cannot be changed (major premise).
    2. Ms. Ashley's biological sexual constitution at birth was male (minor premise).
    3. Therefore Ms Ashley's biological sexual constitution remained male (conclusion).
    4. ***Whether a person is a man or a woman depends solely on the person's biological sexual constitution.***
    5. Since Ms. Ashley's biological sexual constitution was male, she was a man.
    6. Therefore, the other party being a man, the marriage is invalid.

81. It is now possible to distinguish statements of fact from statements of law. Step 1 is a statement of fact, based on Ormrod J's understanding of the evidence. Such statements are general rather than specific, but I do not think such statements can properly be treated as equivalent to propositions of law. It may be appropriate for judges in later cases to assume they are true in the absence of any specific reason to dissent from them. However, where evidence is given on the general factual issue, in my view the court must consider the evidence and determine the issue as one of fact.

82. Step 2 is of course a finding of fact about the individual April Ashley on the evidence in *Corbett*, and has no wide significance. Step 3 is the logical conclusion of Step 1 and Step 2, as steps 5 and 6 are logical application of the definition of marriage to the conclusions reached in steps 1-4.

> 83. It is now clear that Step 4, which I have highlighted, is the critical step. It is the kernel of the judgment, the fundamental conclusion that congruent biological factors exclusively determine whether a person is a man or a woman. What kind of proposition is it? It purports to be a statement of law, setting out the criteria to be applied in determining whether a person is a man or a woman.
>
> 84. What is remarkable about this proposition is that nothing has been said to support it. No relevant principle or policy is advanced. No authorities are cited to show, for example, that it is consistent with other legal principles. This lack of any supporting argument has been obscured by a definitional slight of hand, using the term "true sex". The use of this language creates the false impression that social and psychological matters have been *shown* to be irrelevant. In truth, they have simply been *assumed* to be irrelevant. To this point in the judgment, therefore, the assertion that the legal criteria for determining whether a person is a man or a woman for the purpose of marriage is the person's "biological sexual constitution" is quite unsupported.

Finally, Justice Chrisholm was very critical of the Ormrodian phrase that a male transsexual "cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage," and that his whole premise is biological. The court said:

> 87. On the other hand, Ormrod J said,
>
> *Sex is clearly an essential determinant in the relationship called marriage because it is and always has been recognized as the union of man and woman.*
>
> 88. There are two propositions here. The first is that marriage is the union of man and woman. This is so. The second is that sex is an essential determinant in that relationship. This is true, however, if "sex" refers simply to a person's identity as a man or a woman.

> Ormrod J, however, uses it to mean biological sex. Here again, in my view, the judgment treats a person's (biological) sex as equivalent to the person's status as a man or a woman, without any reasons having yet been advanced for disregarding psychological and social factors.
>
> 89. To this point in the reasoning, then, "true sex", "sex", and "biological sexual constitution" are treated by Ormrod J as equivalent to each other; and each is treated as the sole criterion for being a man or a woman. The key issue was whether matters other than biology should be taken into account in determining if a person is a man or a woman. Ormrod J says no. But he does so not by providing reasons, but by *defining the issues in terms that exclude matters other than biology*. The issue has been side-stepped.

Justice chrisholm observed Corbett seems to focus on the "mechanics" of genital sexual activity. The performance of sex is a by-product of marriage not its essential purpose, Justice Chrisholm said. He continued to subdivide the Corbett decision into parts and more criticism:

> 94. The case exhibits a remarkable focus on the mechanics of genital sexual activity. Perhaps the tone was set by the way the case was presented. Counsel for the petitioner argued in the following terms:-
>
> *The petitioner's case is that the respondent was and is a castrated male who has a passage in the form of an artificial vagina constructed for him but who has not and never has had ovaries or a uterus. It is not a case of a woman with a rudimentary vagina where the passage can be enlarged so as to permit full penetration as envisaged in SY v. SY* (orse.W*) [1963] P 37, because the vagina of the respondent in the present case is not even in the natural position and it is arguable whether it resembles a natural vagina. . .*
>
> 95. Given that marriage is a social and legal institution which includes people who are infertile or by reason of illness or otherwise are unable to engage in genital penetrative intercourse, it seems to me odd, rather than

> self-evidence, to treat capacity for genital intercourse as "the essential" role of a woman (or a man) in marriage.

Finally, the fundamental conclusion to be drawn from Corbett is that congruent biological factors exclusively determine whether a person is a man or a woman is, purely, a personal decision of Judge Ormrod and there was "no relevant principle or policy advanced to support it."

Actually, Judge Ormrod gave scant recognition to psychological sex in his opinion and was really expressing himself probably as a "physician," not just as a jurist, and that anything outside biological certainty can't be trusted. He was possibly telling his own medical community no matter how far out they push their beliefs in a medical revisionism of sex, the law will not yield where marriage is concerned. He openly expressed contempt and ridicule for artificial or constructed sex organs, mainly April Ashley's vagina, which he said was no different than April Ashley's own male anus.

Justice Chrisholm accuses Judge Ormrod of obscuring his thinking "by a definitional slight of hand, "using the term 'true sex' as a substitute for biological sex and by use of this slight of hand created a 'false impression that social and psychological matters have been shown to be irrelevant.'" Justice Chrisholm drives home his own argument, that psychological matters are "assumed" to be irrelevant by Judge Ormrod, but that they are, by medical fact, relevant.

One should consider that in 1970 the medical community was divided between the surgeons and endocrinologists and the psychiatrists, the latter insisting they could resolve transsexualism's problems through "talking" to the brain and not using the surgical method of conforming the anatomic sex to the brain. Unfortunately, the

psychiatric model failed miserably and medical science has moved ahead while the law, though is falling behind. Justice Chrisholm is giving a rational basis for moving the judiciary into the twenty first century.

Justice Chrisholm uses the word "essentialist" for traditionalists and he has this to say about them:

> 106. It is possible, however, that *Corbett* and cases that follow it depend to some extent on what I can only call, adopting Kennedy's term, an "essentialist" view of sexual identity. Although no argument was addressed to me in such terms, in my view this possibility may help to explain some aspects of the way the law has developed.
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> 109. The situation presents a question to the individual, and to various social systems, as well as to the law, namely how that person's identity should be defined and managed. In other words, the task of the law is not to search for some mysterious entity, the person's "true sex", but to give an answer to a practical human problem; as one of the witnesses in *Corbett* put it, "to determine the sex in which it is best for the individual to live".

It almost seems that Justice Chrisholm believes the "essentialist view" of sexual identity is itself some metaphysical concept. The traditionalist, of course, view themselves entirely differently and Judge Hardberger warned against the law following some new age theories of sex. This school of thought views itself as "normal," he stated:

> "We recognize that there are many fine metaphysical arguments lurking about here involving desire and being, the essence of life and the power of mind over physics. But courts are wise not to wander too far into the misty fields of sociological philosophy. Matters of the heart do not always fit neatly within the narrowly defined parameters of statutes, or even existing social mores. Such matters though are beyond this court's consideration. Our mandate is, - - - to interpret the statutes of the state and prior judicial

> decisions. This mandate is deceptively simplistic in this case (Littleton v. Prange), supra.

Justice Chrisholm acknowledged that the Attorney-General warned that Corbett represents the "starting point" and that the court should depart from it only cautiously, and that such a departure would be in danger of constituting "impermissible law reform." In America that is called "judicial legislation." Justice Chrisholm still insisted he did not find Corbett's reasoning persuasive. He referred to a Swiss case called In re Leber, and said:

> 113. In a decision of conspicuous humanity, the Court granted the application. It wrote: -
> *This inclines us to attribute to the psychic element, in the determination of sex, an importance at least equal to that of the physical element. . . It is not only the body which determines the sex of the individual, it is also the mind. When there is a discord between body and mind, one must see which of these two elements predominates. Leber, being neither a perfect man or a perfect woman, must be placed in the category of human beings which he most resembles. In the unanimous opinion of doctors and experts he is nearest, as a whole, to a woman. . .*
>
> 114. The sentence I have underlined (above) stands in stark contrast to the essentialist approach that seems to underlie *Corbett*. The Court went on to consider the consequences of the decision both for the applicant and society:-
>
> *In granting him the civil status of a woman we are satisfying the most profound desire of his being while consolidating his psychic and moral equilibrium; at the same time we are facilitating his social adaptation by permitting him to lead a more normal type of life than heretofore. The personal interest which urges him to ask for a change of civic status is thus not opposed to the interests of public order and morality – quite the contrary.*

Jusstice Chrisholm finally reached the conclusion of what is the task of the Courts, as follows:

> 119. Whatever view one takes about the merits of the arguments, it is clear that in these cases the courts are responding to what I think is the real challenge. It is the difficult task of identifying legal criteria for assigning people to one sex or the other, having regard to justice and the interests of the individual and society, rather than seeking to discover some entity that is the person's "true sex", a task which seems to have preoccupied Ormrod J. (Emphasis added.)

The Attorney-General pursued the argument reiterated in Littleton v. Prange and The Estate of Marshal J. Gardiner, that is, that the Legislature in using the words "man" and "woman" intended their ordinary "traditional" meaning in the Marriage Act of 1961. Any later, "contemporary" meaning was not evident to the legislature in 1961. The Court replied, it was extremely unlikely also, that the legislature had "transsexuals" in mind in 1961 or that they were adopting the Corbett principle since that case came entirely a decade later.

Justice Chrisholm stated:

> "There is no suggestion in the authorities that the right approach is to ignore current medical knowledge and base the decision on what the legislature might have thought the words meant at the time (1961)."

This line of reasoning may be said to apply as well, to the Florida Marriage Statute of 1970.

Even Corbett, at least, relied on medical testimony rather than some "dictionary" meaning of the words man/woman, or male/female. The meaning of "contemporary" to the Court is that man and woman or male and female "was to be determined according to

their ordinary meaning drawn from contemporary dictionaries plus medical evidence." (para 133). The court stated:

> 133. Further, so far as I am aware all the authorities cited din argument on the meaning of the words in various contexts approached the matter by reference to the contemporary meaning of the words, typically attending to whatever medical evidence was available. This is quite explicit in the Australian authorities on the meaning of "man" and "woman". Thus in *SRA*, in particular, where the issue arose in connection with social security law, the majority of the Full Court of the Federal Court held that the meaning of woman and female was to be determined according to their ordinary meaning, and relied on contemporary dictionaries and medical evidence.
>
> * * *
>
> 136. I agree with Ms. Wallbank that in the present context the word "man" should be given its ordinary contemporary meaning. In determining that meaning, it is relevant to have regard to many things that were the subject of evidence and submissions. They include the context of the legislation, the body of case law on the meaning of "man" and similar words, the purpose of the legislation, and the current legal, social and medical environment. These matters are considered in the course of the judgment. I believe that this approach is in accordance with common sense, principles of statutory interpretation, and with all or virtually all of the authorities in which the issue of sexual identity has arisen. As Professor Gooren and a colleague put it:-
> *There should be no escape for medical and legal authorities that these definitions ought to be corrected and updated when new information becomes available, particularly when our outdated definitions bring suffering to some of our fellow human beings.*

The court quoted Chief Judge Street in a concurring opinion who wrote in the case of Harris and McGuinness, (referred to earlier in this opinion), that, "as a more

compassionate, tolerant attitude to the problem of human sexuality emerges amongst the civilized nations of the world, the founding of that decision on clinical factors present at birth has come under increasing criticism." And Corbett signals the need for greater flexibility in the law to enable it to come to grips with current reality freed from bondage to displaced historical circumstances."

Chief Justice Blake's opinion, in the SRA case that studied the standard dictionary definitions of man and woman, was quoted as follows:

> 21. *Whatever may once have been the case, the English language does not now condemn post-operative male-to-female transsexuals to be described as being of the sex they profoundly believe they do not belong to and the external genitalia of which, as a result of irreversible surgery, they no longer have. Where through medical intervention a person born with the external genital features of a male has lost those features and has assumed, speaking generally, the external genital features of a woman and has the psychological sex of a woman, so that the genital features and the psychological sex are in harmony, that person may be said, according to ordinary English usage today, to have undergone a sex change. The operation that brought about the change in external genital features would be referred to as a sex change operation.*
>
> 22. *The limitations on the capacity of medical science to change the physical characteristics of a person's sex are, in a broad sense, a matter of general knowledge in that it is generally understood that some things cannot be changed and that, for example, a person who has undergone a sex change operation will not be able to conceive and bear children. It is well known too that a person's male chromosomes cannot change to those characteristic of a female. Yet expressions such as "sex change" and "sex change operation" are in common use and their meaning is clearly understood. The expressions appear in modern dictionaries. . . In the writings of experts, expressions such as "sex conversion" and "sex reassignment*

> *surgery" are ordinarily used, rather than the "sex change" and "sex change operation" of the lay person but the point is the same.*
>
> 23. *This usage reflects in my view, not only the significant incidence of sex reassignment surgery but a growing awareness in the community of the position of transsexuals and, most importantly, a perception that a male-to-female transsexual who has had a "sex change operation" or a "sex change" may appropriately be described in ordinary English as female. That is to say, the person may properly be described by the word appropriate to the person's psychological sex and to external genital features which are now in conformity with the person's psychological sex. This is particularly the case where, as here, a choice has to be made between two categories, neither of which is qualified – a choice between describing a person as, simply, either male or female.*
>
> 24. *Accordingly, I consider that whilst a pre-operative male-to-female transsexual cannot come within the category of eligibility for a wife's pension under the Act, the respondent in this case would have come within that category had she successfully undergone the surgery that has been recommended for her.*

Justice Chrisholm stated unless the context of a special piece of legislation indicates reasons for a different approach, words like "man" and "woman" in legislation will be treated as "ordinary" words, and will normally be taken to refer to the reassigned sex of post operative transsexuals. This means any devotion to any old standard dictionary definition has no place in defining those words currently. However, the Attorney-General argued the specific text of the Marriage Act does call for a departure from the ordinary meaning of the words, if ordinary does not apply to its text.

Justice Chrisholm recognized that in the United States there are decisions that deny recognition of a change of sex, either following Corbett or independently reaching

the same conclusion, and those cases are Littleton v. Prange; Estate of Marshal J. Gardiner and Re Ladrach. The cases that depart from Corbett are the Court of Appeals in Gardiner and M.T. v. J.T., supra. The court recognized Corbett is also rejected in New Zealand, citing Attorney-General v. Ottahuh Family Court, supra.

Justice Chrisholm traced the development of the law in Europe and said although there was no common approach there is a growing tendency to recognize a transsexual person's acquired gender. England is being isolated.

The nations who have legislated that persons are allowed to marry in the acquired gender or they have "case decisions" allowing it, are: Austria, Denmark, Belgium, France, Germany, Italy, The Netherlands, Portugal, some provinces in Canada, Alberta (but not Ontario), and Singapore. (Id. at 52) Gender Reassignment is now recognized in fourteen nations.

Justice Chrisholm next reviewed the decisions of the European Court of Human Rights, particularly those dealing with Article 8 which protects a person's right to "respect for his family life" and Article 12 which provides "that men and women have the right to marry and to found a family according to the national laws governing the exercise of this right." The Justice quoted a dissenting opinion of Judge Martens in Cossey v. United Kingdom (1990) (13 EHRR 557, 586), which he says expresses his own opinion, as follows:

> 198. In a forceful and well-known dissent, Judge Martens said:-
>
> *If a transsexual is to achieve any degree of well-being, two conditions must be fulfilled:*

*1. by means of hormone treatment and gender reassignment surgery his (outward) physical sex must be brought into harmony with his psychological sex;*

*2. the new sexual identity which he has thus acquired must be recognized not only socially but also legally . . .*

*This urge for full recognition is part of the transsexual's plight. That explains why so many transsexuals, after having suffered the medical ordeals they have to endure, still muster the courage to start and keep up the often long and humiliating fight for a new legal identity.*

199. Judge Martens had some hard words for the United Kingdom and the *Corbett* decision:-

*. . . the judgment of the High Court in the case of Corbett v. Corbett, well illustrates this tendency: using terms which scarcely veil his distaste and basing himself on a reasoning which has been severely criticized by various legal writers, the learned Judge simply refused to attach any legal relevance to reassignment surgery.*

200. He spoke of the plight of transsexuals under UK law:-

*Sexual identity is not only a fundamental aspect of everyone's personality but, through the ubiquity of the sexual dichotomy, also an important societal fact. For post-operative transsexuals sexual identity has, understandably, a very special and sensitive importance because they acquired theirs deliberately, at a high cost in mental and bodily suffering. To be condemned to live, as far as that identity is concerned, in opposition to and thus "outlawed" by their country's legal system must therefore cause permanent and acute personal distress to post-operative transsexuals in the United Kingdom.*

It is reasonably clear that in recent times the overall trend in judicial decisions on the European continent reflect a tendency to accept for legal purposes, including

marriage, that post-operative transsexuals should be treated as members of the sex to which they have been assigned. Justice Chrisholm said, "when seen against this international context, the approach in Corbett (also Christie v. Prange and Gardiner) is increasingly out of step with developments in other countries." (Id. at 56)

Justice Chrisholm devotes a considerable portion of his opinion on the medical testimony presented to the court, such as that of Professor Louis Gooren, M.D., Ph.D, a specialist in Endocrinology of international repute; Professor Milton Diamond, Ph.D. of Anatomy and Reproductive Biology, School of Medicine, University of Hawaii; Professor William Walters, M.B., B.S., MRCOG, Ph.D., Reproductive Medicine University of New Castle; Dr. Jan Walker, M.B., B.S., FRACP, Endocrinology, University of New South Wales, and Professor Greenberg as quoted by the Kansas Court of Appeals in Gardiner.

The Court quoted extensively from Professor Greenberg's presentation, (much of which has also been adopted in this opinion).

Justice Chrisholm selected certain aspects from Professor Greenberg's evidence that stated transsexuals are "born that way" and no medical evidence about clinical treatment of transsexuals at birth, can be present, because "the problem is not known at that time." Relevant developments in the brain occur during a period following birth. The court refers to this as "brain sex". It was stated there is a comparison between sex reassignment given to children shortly after birth who are found to be "intersexed" and adult persons, transsexuals, who are afflicted with this disorder being medically rehabilitated by sex reassignment. Because of the irreversible nature of the surgery

postponement of the decision nowadays is the normal procedure. Transsexuals are not intersexed, however.

At one time, the medical view was that chromosomes were the decisive factor in sexual development, but the Court found "this view is not tenable today." (Id. at 61) As Dr. Walker puts it "the karyotype serves as a marker for a person's sex rather than the unique determinant of it." Dr. Walker also stated "brain development in utero has a critical role in determining post-natal patterns of behavior" Professor Gooren states: that in human subjects with gender identity problems the sexual differentiation of their brains has not followed the pattern predicted by their earlier steps in the sexual differentiation process (such as chromosomes, gonad, genitalia) but has followed a pattern typical of the opposite sex in the final stage of that differentiation process." The brain expresses itself through one's self perception or gender identity and gender role as perceived by others.

Justice Chrisholm referred to scientific research of the brain, post mortem, of somatostation neuronal sex differences in the "BSTC" part of the brain showing that male to female transsexuals are similar to that of females, and female to male transsexuals were found to be in the male range. This can be considered, Professor Gooren said, "that this can be considered as substantiating the concept that transsexuals have a sexual brain development contrary to other sex characteristics, such as the nature of their chromosomes, gonads and genitalia." It was summarized from the medical literature and experience of transsexuals themselves, "in their reflections, transsexuals have no options: there is only one way out of their deadlock the body must follow the mind." (Id. at 70, para. 268)

However, Justice Chrisholm concluded that he couldn't assume brain sex was exclusively the cause of transsexualism or that the law can rely on that as the distinguishing biological basis of transsexualism.

## MARRIAGE LAW

The Attorney-General posed the issue that the character of marriage as a "social institution" and its historic basis of being connected to "procreation" can not be ignored. He said:

> As the Australian courts have observed, the law's and society's acceptance of a person's sex in the context of marriage involves special considerations. These considerations are different to those relevant to determining a person's gender identity in other contexts such as social security and criminal law. Marriage in Australia is a social institution having its origins in ancient Christian law and is intrinsically connected with procreation. These origins cannot be ignored in interpreting the Marriage Act. Given these origins, the genotype of the person, and the genital and gonadal features of the parties to a marriage are legally significant.

Justice Chrisholm answered that the Attorney-General's thesis advances: (1) that marriage is a social institution having its origins in ancient Christian law (this was advanced by Judge Hardberger in Littleton v. Prange, and (2) that it is intrinsically connected with procreation. The answer given by Justice Chrisholm, was: that no submission was made citing any particular "theological" or "doctrinal" Christian law that supported the point. He further answered, as follows:

> 284. There is another problem with the argument. If, as I have held, the question is to find the current meaning of an ordinary word, "man," I do not see any reason why resort should be had to ancient law rather than contemporary understandings. There is a separation

> of church and state in this country, and there is no basis for determining the legal question by reference to any particular set of religious beliefs. No doubt the definition of marriage has its origin in Christian beliefs, and this may have been part of the history that resulted in marriage being defined as between a man and a woman. But I do not see how resort to ancient Christian law or beliefs can assist in determining the meaning of the word "man" for the purpose of the law of marriage in the year 2001.
>
> 285. The second special consideration suggested by Mr. Burmester is that marriage is "intrinsically connected with procreation." The meaning of this phrase was not developed in argument. If it means that the validity of marriage depends on some physical capacity for procreation, it is wrong. Marriages are perfectly valid where one or both parties are infertile, but the couple bring up children born through some form of artificial insemination, or acquired by adoption. Thus the fact that Kevin is infertile is irrelevant. Similarly, in Australian law there is no basis for invalidating a marriage on the ground of incapacity to consummate the marriage, or indeed on any ground relating to the sexual conduct of the parties. (Emphasis added.)

Marriage being designed for children, does not equate to how those children are brought into existence, and in Kevin's case he and his wife had artificial insemination.

In the face of the argument that the court was on a course that involved a "giant leap" and a "radical step" to change the standard Corbett judicial approach to marriage, the identical argument of Judge Hardberger and Justice Allegrucci, that any law reform is more suited to the legislature and that the judiciary should not engage in such activity. Justice Chrisholm replied to that standard argument as follows:

> 294. Whether granting the present application is a radical step, or an impermissible exercise in law reform, depends, I think on the legal basis for doing so. It might well be radical to state the law purely in terms of an individual's right to choose, or, perhaps, in

> terms of characteristics of the brain that cannot yet be measured. But it seems to me quite orthodox, rather than radical, to apply to marriage the ordinary meaning of the terms "man" and "woman", as set out in the Australian authorities and thereby ensure that the law of marriage is not out of alignment with other laws and social practices, and the most informed medical practice. That ordinary meaning would not include a woman who simply announced that she was a man, or anything of the sort. It includes only individuals who are post-operative transsexuals. Whatever might be said about wider statements, I see nothing radical in saying that the words "man" and "woman" should be given their ordinary contemporary meaning in the context of the law of marriage, and that contemporary meaning should be taken to incorporate transsexual people who have successfully completed the personal, social, medical and surgical processes of gender reassignment. (Emphasis added.)

Finally, the court summarized its legal position as a decision of first impression, as follows:

> 310. There is no existing Australian authority on the question of determining the sex of a transsexual person for the purpose of the law of marriage. I have not accepted Mr. Burmester's submission that *Corbett* represents a persuasive decision or an appropriate starting point. Instead, the orthodox approach, I think, is to start with the ordinary meaning of "man" and "woman" and to then to consider whether there are reasons for giving those terms some special meaning in the context of the law of marriage.
>
> 311. Australian authorities hold that the ordinary contemporary meaning of the word "man" includes a post-operative transsexual such as Kevin. In particular, in *SRA*, Lockhart stated the law in unequivocal terms:-
>
> *In my opinion a woman or a female, as those terms are generally understood in Australia today, includes a person who, following surgery, has*

*harmonized psychological and anatomical sex. A male-to-female transsexual, following reassignment surgery, is a woman and a female. A female-to-male transsexual, following such surgery, is a man and a male.*

312. I have found on the balance of probabilities that Kevin's sense of being a man is based on some biological characteristics of his brain. My conclusion in this case does not depend on this factual finding. However the finding, and more generally the understanding that the medical evidence provides, tend to reinforce the conclusion that the law, like medicine, should treat words such as "man" and "woman" as referring to the re-assigned sex of post-operative transsexuals.

313. I have already referred to the response of many countries to the issues posed by transsexualism. I have also referred to the approach taken by medical authorities to the treatment of people with gender identification issues. It is obvious that current medical theory and practice is to support people like Kevin in assigning, or re-assigning their sex in accordance with their deeply-felt sense of themselves as men or women. I have quoted the long line of distinguished medical practitioners whose evidence makes it quite clear that if the law were to insist on Kevin being treated as a woman, it would be contrary to the most informed and authoritative medical practice.

314. In my view, a survey of legal responses to the situation of transsexuals shows a number of clear themes.

315. Those courts that have followed *Corbett* or otherwise reached similar conclusions generally exhibit what I have called an "essentialist" view: they are unable to accept the sex reassignment because they take the view that there is some essential and unalterable quality that is maleness or femaleness. This view is characterized by absolute and unsupported assertions that a person's sex is fixed unalterably at birth, that no amount of surgery or other medical intervention can make any

> difference, and that the person's self perception and role in society are equally irrelevant. In my view however this is not a helpful approach. The evidence does not support the existence of such an essence or entity, and this approach distracts attention from the fundamental task of the law. That task, in a legal and social context that divides all human beings into male and female, is to assign individuals to one category or the other, including individuals whose characteristics are not uniformly those of one or other sex.
>
> 316. If one considers those courts and legal institutions that have correctly identified that task, there is a remarkable consensus, namely that the law should treat post-operative transsexuals as members of their re-assigned sex. This conclusion has been reached by the vast majority of expert and distinguished commentators. It has been the basis of many social arrangements. It has been systematically embraced and acted upon by the medical profession. (Emphasis added.)

This concluded Justice Chrisholm's decision which this court believes correctly states the law in modern society's approach to transsexualism.

## MICHAEL KANTARAS LEGAL POSITION

Michel Kantars through his attorneys Collin Vause and Karen M. Doering, filed a trial brief and Reply brief for Petitioner.

Michael argues that Linda wants the Court to interpret the Florida Statute, section 741.212, and define the term "marriage," to mean a legal union between one man and one woman, and that transsexuals are to be excluded from being allowed to marry in Florida. On its face, the legislative language is totally silent with respect to transsexuals. The Legislature indeed did intend not to recognize gay or lesbian, marriage. That has nothing to do with transsexuals.

The law of Florida is not being changed in the sense of one man and one woman being required under the marriage statute.

The question to be resolved is what is man and what is woman. That is where the medical community comes to the aid of the Court. Michael contends he is a man meeting heterosexual requirements both physically and psychologically. He entered into a marriage with a heterosexual woman and they followed all the licensing and ritual requirements that the law requires to have a valid marriage. He may be a transsexual man as an additional feature of his heterosexual makeup, but nevertheless, medical science declares him to be a man.

The law has no basis in medical fact to reclassify what science declares. There is no authority given the Courts to practice medicine. And, least of all, the subjective bias of a judge is not to be disguised as legislative intent.

Michael argues in his brief the marriage statute should be read to uphold rather than nullify, existing marriages.

The marriage statute of Florida abhors having children born out of wedlock, and accommodates marriage between pregnant women and their man partner.

The constancy of marriage and the support of children is boldly expressed in the law to the degree the social security number of the applicants must be given in order to trace down errant fathers for non support. (Sec. 741.0405(2), (3)(a)(b))

Since the courts are prone to use dictionaries rather than medical science to define sex, it is interesting to observe that Linda's dictionary definition she chose classified as female or male on the basis of their respective reproductive organs and functions.

Michael, in turn, has selected a definition from the same dictionary (American Heritage) that is much broader and more encompassing that states:

> "The condition or character of being female or male; the physiological, functional, and psychological differences that distinguish the female and male."

It would be apparent Michael comes within this definition, the one ignored by Linda.

Once again, in the opinion of this Court, the battle of the dictionaries is not an adequate substitute for medical knowledge.

Insofar as Linda relies on the procreative character of marriage she herself dispensed with the procreative male penis. She accepted artificial insemination to create Irina. Others may resort to the same procreative process that makes the male partner or husband irrelevant. Any sperm donor can be substituted. Does the marriage invalidate itself in consequence? Where in the law does it state how the act of procreation must be performed in marriage?

Michael stresses what Linda ignored, the resultant loss of legitimacy for the children and that the cases in Texas and Kansas did not involve children or even had the benefit of expert medical testimony. The judges naively and erroneously supposed that a person's gender is based on immutable chromosomes.

Medical science factors into sex, chromosomal sex, hormonal sex, gonadal sex, genital sex and gender identity.

The New Jersey case of M.T. v. J.T., *supra*, is argued to be far more humane and rational of how to determine a transsexual person's legal gender for purposes of marriage.

Finally, Michael states Linda is in error when she contends the Court has no authority to make a custody determination if the marriage of the parties is not valid.

In support of that position, Michael's brief cites Barger v. Barger, 166 So.2d 433 (1964), that holds that even if a marriage is void ab initio, the trial court has the same jurisdiction and authority that it would have under the dissolution statute.

## LINDA KANTARAS LEGAL POSITION

Linda Kantaras, through her attorney, Claudia Jean Wheeler, Esquire, filed a post-trial legal brief, she argues that Michael Kantaras is seeking custody of the children, Mathew and Irina, but to be eligible in such legal endeavor, Michael must establish his claim through the dissolution of marriage statute, Section 61.13, Florida Statutes 2000.

Michael's claim rests entirely on the legal validity of his marriage to Linda. She claims Michael's marriage to her is not valid under Florida law. She cites Section 741.211, Florida Statutes, for that proposition. This statute holds that the marriage of persons of the "same sex" entered into in other states or jurisdictions are not recognized for any purpose in Florida.

The question is: Is this statute relevant to this case because it is directed exclusively at "homosexuals." Does that statute have any relevancy to transsexuals?

Michael is not a homosexual. He is medically and legally identified as a male transsexual.

Michael is seeking the legal validity of his marriage under Section 741.04, Florida Statutes.

Linda Kantaras argues that when the Florida legislature identified the class of persons who can marry, they meant "one man" and "one woman," not "one post-operative transsexual man" and "one woman."

She argues the trial court should not add transsexuals to the class of persons who are eligible. The statute is unambiguous and is not subject to judicial construction, and although the statute does not define "man and woman" the Court can ascertain the plain and ordinary meaning by referring to a Dictionary. Accordingly, Linda turns to the

American Heritage Dictionary of the English language (4th Ed. 2000). It defines "man" as "an adult male human" and in turn, defines "male" as a member of the sex that beget young by fertilizing ova. In turn, the Dictionary defines "sex" as the property or quality by which organisms are classified as female or male on the basis of their reproductive organs and functions. Linda asserts that based on the American Heritage Dictionary that clearly Michael cannot be classified as a "male" in its plain and ordinary meaning because Michael does not possess, nor did he ever possess, the reproductive organs to beget young by fertilizing ova.

This Justice confronts medical science by asking "can a physician change the gender of a person with a scalpel, drugs and counseling, or is a person's gender immutably fixed by our creator at birth?"

If you want to define "sex" says Justice Hardberger you merely ask a school child, because "Every schoolchild, even of tender years, is confident he or she can tell the difference, especially if the person is wearing no clothes.

Linda relied on this approach during the trial when she testified that when Michael had no clothes on and was naked she only saw a woman.

Justice Hardberger warns the judiciary, reminiscent of Judge Ormrod of England to totally disregard the intervention of medical science and just rely on the genitals, like the schoolchildren, to determine sex.

Justice Hardberger said:

> We recognize that there are many fine metaphysical arguments lurking about here involving desire and being, the essence of life and the power of mind over physics. But the courts are wise not to wander too far into the misty fields of sociological philosophy. Our mandate is to interpret the statutes of the state.

Consider this view, in the light of medical advances in the genome project, the DNA, and stem-cell research. Similarly, transsexual medicine has gotten beyond the sensational magazine exploitation of inverts, nature's freaks, homosexuals, and sudden metamorphosis of man to woman, and hermaphroditism. A transsexual, is suffering a life shattering experience that prompts many to go into depression and to commit suicide rather than to continue in this gender conflict for life. In other words, it is not a matter of choice, it is achieved maximally at birth.

Linda's brief relied on Corbett v. Corbett, 2 All E.R. 33, 1970 WL 29661 (P. 1970) which this Court's opinion has already extensively reviewed.

Linda also relies on the Supreme Court of Kansas and its holding in In re the Matter of the Estate of Marshall E. Gardiner, 42 P.3d 120 (Kan. 2002). The Kansas Supreme Court case has already been reviewed in this Court's opinion, where it was observed Justice Allegrucci literally followed the reasoning of Justice Hardberger and overruled Judge Gernon of the Kansas Court of Appeals who said "if one concludes that chromosomes are all that matter and that a person born with male chromosomes is and evermore shall be male, then one must confront every situation which does not conform with such a rigid framework of thought." A marriage contract is a civil contract between two parties who are of the opposite sex and all other marriages are contrary to public policy and are void, in Kansas. That is equally true in Florida.

Linda's brief addressed the only decision in the United States to directly disagree with the reasoning applied in the Texas and Kansas courts, namely the New Jersey Court of Appeals in M.T. v. J.T., 355 A.2d 204 (NJ App. 1976).

This case Linda claims is distinguished from the Texas and Kansas cases on the ground "the pertinent New Jersey statutes relating to marriage "did not contain any explicit reference to a requirement that marriage must be between a man and woman."

This statutory absence of the requirement of man and woman in marriage in the New Jersey law was considered by the New Jersey Court who said, as follows:

> "It accepted – and it was not disputed – as a fundamental premise in this case that a lawful marriage requires the performance of a ceremonial marriage of two persons of the opposite sex, a male and a female."

(Id. at 84)

The statutory approach, therefore, was the same as in Texas and Kansas.

Linda's brief correctly stated that the New Jersey court reached a different conclusion than the other two states. New Jersey held where a transsexual was born with physical characteristics of a male but successful sex reassignment surgery harmonized her gender and genitalia so that she became physically and psychologically unified and fully capable of sexual activity as a woman, the transsexual became a member of the female sex for marital purposes." That result, according to Linda means, "the Courts should not attempt to write a protocol for when transsexuals should be recognized as having successfully changed their sex."

Linda makes no reference to all the expert medical testimony in this case. Michael is a man based on medical expert testimony after completing the Harry Benjamin International Gender Dysphoria Association standards.

Linda did not call a single medical expert to testify. Not a single lay witness knew of Michael's sex change or suspected him of being a woman even though they had close frequent contact with Michael over the years and always considered Michael a man

and still do. Linda was the only contender in court to argue or state otherwise. She accepted Michael as a man for 9 to 10 years of married life and bragged to her girlfriends about how she and Michael were "sexual soul mates" who became as "one," and how she performed sex on Michael.

It is obvious that Linda presented Michael as a man when it was to her advantage. He has supported her and the children for 10 years working as a man. She has enjoyed the fruits of his labor as a man. Now, in anger over her best friend "Sherry Noodwang, becoming the object of his affection, she has turned on both Sherry and Michael declaring them, to friends and children, to be lesbians.

She states, "It simply does not matter whether doctors who practice in the field of sex-reassignment consider Michael a male." In other words, just ignore all the medical testimony from experts who have a national reputation in transsexual medicine.

Lastly, Linda argues that Michael could not be recognized under New Jersey law because Michael, having a vagina still means "Michael's sex reassignment surgery did not harmonize Michael's gender and genitalia."

It is true Michael still has a vagina. The fact is the clitoris in the vagina has enlarged and elongated to form a small penis. The tissue that composes the penis is biologically the same tissue in the clitoris. Michael testified his penis does erect, sufficient to penetrate and that he has orgasms. This was the natural result of hormonal therapy – and not a constructed phallus. The medical experts covered this subject at trial and declared Michael to be physically and psychologically male.

In regard to the issue of custody under Chapter 61 of the Florida Statutes, she claims he has no status equivalent to a biological parent, the marriage is invalid and

Michael has no standing to seek custody of or visitation with a child. He lacks any standing as "defacto" parent under the case of Music v. Raehford, 654 So.2d 1234 (Fla. 1st DCA 1995) because he has no statutory rights as a non-parent. She, accordingly, extends her "sympathy" to Michael.

Linda, makes no mention of the legal fall out of her arguments on her children, if the marriage is declared invalid or, the consequent adoption of Mathew. Linda had the child out of wedlock. This leaves Mathew's legitimacy in question. This applies equally to Irina – a stigma neither child can remove for a life time as a possible consequence of their mother's legal position.

When Linda accepted marriage with Michael knowing full well he was a transsexual, who was legally protecting both her and her children, to provide them the support, comfort and love of a father for 10 years, she now wants the court to close off his rights so she can do what she wants and be "rid of him." That is what she told Dr. Dies was her intended outcome of this case. The children would lose their family life, their father, the love and security he has offered them, their entire lifetime.

## FINAL CONCLUSIONS OF LAW

## FLORIDA'S MARRIAGE STATUTE (S. 741.04, FS 2001)

The review of all the transsexual jurisprudence both foreign and American lays the foundation to study the Florida statutory law on marriage. The Texas and Kansas case decisions relied very heavily on statutory law. We now turn to the statutory law of Florida.

In Florida, a marriage license is issued under section 741.04, Florida Statutes, which reads:

> No County Court Judge or Clerk of the Circuit Court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing signed by both parties to the marriage made and subscribed before some person authorized to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years - - - and unless one party is a male and the other party is a female. . . . The state has a compelling interest in promoting not only marriage but also responsible parenting, which may include the payment of child support, any person who has been issued a social security number shall provide that number." (See laws 1997, @ 97-102, eff. July 1, 1997, removed gender specific references by adding "her" - - - an affidavit - - - which previously read only "him."]

This statute is rather innocuous, it does not attempt to define the meaning of male or female, or marriage and says nothing about same sex marriage or transsexuals. The law does foster marriage and responsible parenting.

However, the Florida Attorney General issued an opinion on the interpretation of the statute by stating: "Two individuals of the same sex may not validly apply for a marriage license; therefore, the Clerk of the Circuit Court is not required to accept such an application and thereafter issue a license." (Ap. Atty. Gen. 0-76-31 Feb. 6, 1976)

The marriage statute provides for age exceptions, as follows:

> In the event, if either of the parties shall be under the age of 18 years but at least 16 years of age, the County Court Judge or Clerk of the Circuit Court shall issue a license for the marriage of such party only if there is first presented and filed with him or her the written consent of the parents or guardian of such minor to such marriage and taken under oath. When both parents of the minor are deceased at the time of the application or when such minor has been previously married, the license shall be issued." (Sec. 741.0405) (Fla. Stat. 1002)

Under this same section, the statute sets forth the public policy of protecting children born out of wedlock and to foster making them legitimate through issuance of a marriage license to their parents, as follows:

> (1) * * * *
>
> (2) The county court judge of any county in the state may, in the exercise of his or her discretion, issue a license to marry to any male or female under the age of 18 years, upon application of both parties sworn under oath that they are the parents of a child.
>
> (3) When the fact of pregnancy is verified by the written statement of a licensed physician, the county court judge of any county in the state, may in his or her discretion issue a license to marry:
>
> > (a) To any male or female under the age of 18 years upon application of both parties sworn under oath that they are the expectant parents of a child, or
> >
> > (b) To any female under the age of 18 years and male over the age of 18 years upon the female's application sworn under oath that she is an expectant parent.
>
> (4) No license to marry shall be granted to any person under the age of 16 years with or without the consent of the parents, except as provided in subsections (2) and (3)."

Section 741.211 (F.S. 2001) provides that Common Law Marriages are void. It states: No common-law marriage entered into after January 1, 1968, shall be valid."

Section 741.21 (F.S. 2001) prohibits incestuous marriages. It states:

> "A man may not marry any woman to whom he is related by lineal consanguinity nor his sister, nor his aunt, nor his niece. A woman may not marry any man to whom she is related by lineal consanguinity, nor her brother, nor her uncle, nor her nephew."

Same sex marriages are not recognized in Florida. Section 741.212 (F.S. 2001) provides the following:

> (1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationship between persons of the same sex which are treated as marriages in any jurisdiction, either within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state."

As if paragraph (1) above, was not comprehensive enough to cover the issue, there is another subsection (2) which states:

> (2) The state, its agencies, and its political subdivisions may not give effect to any public act, record or judicial proceeding of any state, territory, possession or tribe of the United States, or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship."

It is hard to mistake the intent of the legislature that they are opposed to same sex marriages from the reading of section 741.212. Essentially, without saying it, the legislature is prohibiting recognition of "homosexual" marriages no mater where performed, either inside the state of Florida or outside, or within the jurisdiction of an

American Indian Tribe, or an Eskimo tribe in Alaska. Under this same section 741.212, there is another sub-section (3) that provides a "definition" of marriage, as follows:

> For purposes of interpreting any state statute or rule the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term "spouse" applies only to a member of such a union.

(Laws 1997, c. 97-268, s. 1 eff. June 5, 1997)

There is an interesting correlary to the State of Florida not recognizing any same sex marriages performed elsewhere, Florida does recognize a common law marriage validly created in another jurisdiction where they recognize such marriages. (See American Airlines, Inc. v. Majia, 766 So.2d 305 (4th DCA 2000).

In the face of this statute not recognizing common law marriage, Broward County passed a County domestic Partnership Act (CDPA) which the Court of Appeals (4th DCA) ruled did not violate the statute prohibiting recognition of common law marriages because the partnership did not rise to the level of a traditional marital relationship. Lowe v. Broward County, 766 So.2d 1199 (4th DCA 2000), reh. denied, 789 So.2d 346. It is very similar to the law of Vermont, recognizing same sex partnerships and confirming marital rights for them. Baker v. Vermont, 744 A2d 864 (Vt. 1999).

After reading all the applicable Florida statutory law it is plain that no law expressly bars transsexuals from being eligible for a license to marry. It can only be arrived at by implication, if any.

Research of the Florida marriage statute does not, surprisingly, reveal any debates in the legislature to give guidance. I am compelled to approach this complicated and complex issue over transsexual's rights with respect to eligibility at the time of application for a marriage license rather than at the time of birth. The marriage statute

requires minimum age requirements of eighteen years, with the exceptions to age sixteen, for both applicants, male and female. The reason: maturity is required to enter into the mutual demands of marriage and those of the community. The applicants must be mature physically, mentally and sexually; otherwise, why have such an age standard. Sexual organs will be adult, not immature or infantile as at birth. No one at maturity has not substantially changed in every regard since birth. A birth certificate is merely a "head count" recording the fact a child is born and the parents of the child. It is a moment in the history of a person and the sex is identified by a birth attendant by visual inspection of the existence or absence of a penis. Mistakes are made misidentifying a clitoris for a penis and the sex is in error. Correction statutes generally allow for correction of that error once discovered within a limited period of time. In other words, a birth certificate carries a of presumption of correctness, but, that is rebuttable by medical evidence. At the time of applying for a marriage license the Florida statute does not require the production of a birth certificate to prove if the applicant is male or female and no oath is required as to sex, only for age of maturity. Why then, do some court decisions incorrectly make the birth certificate a document written "in stone?" The document does not even perform that intent. No statutory requirement exists.

I believe the rational approach without calling upon emotional influence or popular opinion of "the man on the street" should influence the outcome of this case.

It would appear from the decisions the "traditional" approach to marriage is the main road traveled. Possibly because of its utter simplicity. To adhere to a two-part biological classification of sex, male and female, with no variations between has the benefit of dogmatic rigidity.

## FIRST IMPRESSION IN FLORIDA

Since this case is a matter of first impression in Florida, this Court must recognize that it has a choice of paths to follow from what appears to be two forks in the judicial road.

The one fork open is the Corbett v. Corbett; Littleton v. Prange, and The Estate of Marshall Gardiner, decisions that essentially are "traditionalist" and hold that nature made us the way we are, male and female. If there is any doubt which sex you are, it is resolved by removing your clothes and your birth certificate. The other fork in the road is "reformist" jurisprudence. This fork was forged by the cases of Attorney General v. Ottahuhu of New Zealand and M.T. v. J.T. of New Jersey, and Kevin and Jennifer, and the Court of Appeals in Gardiner.

It will be helpful in this lengthy opinion possibly to reflect once again on only the essential holdings in these "traditional" landmark cases:

(a) In England, April Corbett was a male-to-female and a true transsexual trying to uphold her marriage to Arthur Corbett. He dated her for three yeas before the marriage and said, "she looked like a woman, dressed like a woman, and acted like a woman." She changed her name to "April Ashley" and had surgical intervention, psychiatric counseling, hormonal therapy and a surgically constructed and functioning vagina. All the male organs had been removed, the testes, scrotum, and penis. Her birth certificate said she was male. Judge Ormrod clarified any confusion over her sexual identity by relying on four criteria, namely; (1) chromosomal factors; (2) gonadal factors (i.e., presence or absence of testes or ovaries); (3) genital factors (including internal sex organs); and (4) psychological factors.

The court ignored the psychological factor and relied on the congruence of the other three factors. If they were congruent, then any surgical intervention was dismissed entirely.

The Court found April to be biologically born male and biologically she would so remain. That, as a transsexual she was not a woman for purposes of marriage which is essentially a relationship between a man and a woman, April could not "assign" her own sex by her own volition, in short "once a man always a man."

(b) In Texas, Christie Lee Littleton sought to be declared the surviving "spouse" in a medical malpractice suit against Dr. Mark Prange. He defended on the ground Christie Lee was born a man and could not be the surviving spouse of a man, Christie Lee was born a male, named Lee Cavazos, Jr., with normal male genitalia: penis, scrotum and testicles. As Christie matured into adulthood she had all the child developmental symptoms of a male-to-female transsexual and by age 23 she enrolled in a program at the University of Texas Health Center that lead to psychological, psychiatric, and hormonal therapy over 4 years and eventually to sex reassignment surgery. Her penis, scrotum and testicles were removed and replaced with a female vagina, labia and clitoris. She also had breast reconstruction implants. She was diagnosed as a true male-to-female transsexual by the gender dysphoric team of doctors at the Texas Center and in their opinion Christie was psychologically and psychiatrically a "female" before and after the reassignment surgery.

Judge Hardberger cited a number of cases that held "same sex" marriages are illegal and that transsexualism is a term not often heard on the streets of Texas. He said,

"Congress has even passed the Defense of Marriage Act (DOMA) just in case a state decides to recognize same sex marriages."

Even a school child can tell the difference between a man and a woman "if the person is wearing no clothes." Judge Hardberger says, it's a deep philosophical question: "Can a physician change the gender of a person with a scalpel, drugs and counseling, or is a person's gender immutably fixed by our Creator at birth? The answer to that question has definite legal implications."

The Court reached the following conclusions:

(1) Medical science recognizes that there are individuals whose sexual self-identity is in conflict with their biological and anatomical sex. Such people are termed transsexuals.

(2) A transsexual is not a homosexual in the traditional sense of the word, in that transsexuals believe and feel they are members of the opposite sex. Nor is a transsexual a transvestite. Transsexuals do not believe they are dressing in the opposite sex's clothes. They believe they are dressing in their own clothes.

(3) Christie Littleton is a transsexual.

(4) Through surgery and hormones, a transsexual male "can be made to look like a woman," including female genitalia and breasts. Transsexual medical treatment, however, does not create the internal sexual organs of a woman (except for the vaginal canal). There is no womb, cervix or ovaries in the post-operative transsexual female.

(5) The "male chromosomes" do not change with either hormonal treatment or sex reassignment surgery. Biologically a post-operative female transsexual is still a male.

(6) The evidence fully supports that Christie Littleton, born male, wants and believes herself to be a woman. She has made every conceivable effort to make herself a female including surgery that would make most males pale and perspire to contemplate.

(7) Some physicians would consider Christie a female; other physicians would consider her still a male. Her female anatomy, however, is all man-made. The body that Christie "inhabits" is a male body in all aspects other than what the physicians have supplied.

As a result, Judge Hardberger ruled Christie's marriage is "same sex" and void. To achieve this result required the court to reclassify Christie from a female back to a male. The marriage is now homosexual.

This "reclassification" of sex from post-operative female to pre-operative male is unique to the judiciary. It is done in the name of statutory construction.

(c) Kansas. Since we have reviewed the Gardiner case in depth and there is no need for a summary of the case, except to observe that the Supreme Court of Kansas, through Justice Allegrucci, stated:

"A male-to-female post-operative transsexual does not fit the "definition" of a female."

The presumption would be a female-to-male transsexual, likewise, would not fit the "definition" of male.

These definitions are strictly legal rather than medical.

In summary, transsexuals appear to be none other than people with sex disabilities demanding full standing and the constitutional right to pursue happiness in the married state reserved for all heterosexuals. Our U.S. Supreme Court said marriage is a

"fundamental" right of the people of this nation (Skinner v. Oklahoma, 316 U.S. 535, 581 (1942). It would appear the three traditionalist cases espouse a theory of separating people into groups, those who meet the "traditional" definition of marriage and those who do not, such as transsexuals and homosexuals who blur together and bring social confusion.

Judge Ormrod, Judge Hardberger, and Justice Allegrucci are all of the same frame of mind. They really discount the class of people who suffer the diagnosis of "gender identity dysphoria." Yet, each judge recognized in their opinions the fact of transsexualism. The medical treatment of which may take years to accomplish under the supervision of medical teams at outstanding medical institutions, such as Johns Hopkins Hospital; University of Texas Medical Science Center; the University of Minnesota Medical School and many other hospitals and university medical centers in this nation, about nine altogether. These taxpayer supported institutions function to provide a solution not just to establish a diagnosis.

We should reflect, finally, on what Justice Allegrucci said "The fundamental role of statutory construction is that the intent of the legislature governs. Words in common usage are to be given their natural and ordinary meaning.

"When a statute is plain and unambiguous, the court must give effect to the intention of the legislature so expressed, rather than determine what the law should or not be. The words "sex," "male," and "female" are words in common usage and understood by the general public.

However, does the "man on the street" comprehend the recognized "medical indicia" of male and female sex that includes genetic or chromosomal sex, gonadal sex,

external and internal morphologic sex, phenotypic sex, assigned sex and psychological sex or sexual identity?

The medical treatment for transsexuals is generally "abhorrent" to the "man on the street." The very thought of it makes one "perspire," said Judge Hardberger.

Justice Allegrucci believes the Legislative definitions he utilized for sex, male and female and marriage, are all found in Black's Law Dictionary (6th ed 1999), and Webster's New Twentieth Century Dictionary (2d ed. 1970). He did, however, refer to a "medical" dictionary, Stedman's (1841 – 26th ed. 1995):

> "for a definition of 'transsexual;" a 'person with the external genitalia and secondary sexual characteristics of one sex, but whose personal identification and psychosocial configuration is that of the opposite sex; a study of morphologic, genetic and gonadal structure may be generally congruent or incongruent."

Justice Allegrucci reached the conclusion from these dictionary definitions that:

> The words "sex," "male" and "female" in everyday understanding do not encompass transsexuals. The ordinary meaning of "persons of the opposite sex" contemplates a biological man and a biological woman and not persons who are experiencing gender dysphoria. A male-to-female post operative transsexual does not fit the definition of a female.
>
> The male organs have been removed, but the ability to "produce ova and bear offspring" does not and never did exist. There is no womb, cervix, ovaries, nor is there any change in his chromosomes. - - - the transsexual still "inhabits - - - a male body in all aspects other than what the physicians have supplied."

The dictionary definitions of man, woman, male and female, emphasize the biology of sex without mention of the "psychology" of sex or "gender," except reference

in Black's Law Dictionary to the "character of being male or female." This would refer to maleness and femaleness which is a projection of gender, and is not biological.

It is unmistakenly clear the traditionalist view point does not believe that transsexualism as a true medical phenomena, is a matter for the Courts, rather , it is for the Legislature to decide if it deserves much attention or consideration by the courts where marriage is concerned.

There is a vast amount of law review study devoted to transsexualism. Academia should be referred to because it represents the other fork in the road, called the "reformist" view point. It will be helpful to refer to some Law Review Articles for assistance in determining the law's approach to sex and sexuality. Accordingly, we turn to:

## ACADAMIA'S RESPONSE

The Connecticut Law Review, Vol. 7, page 288 (1975) under the title, "The Law and Transsexualism: A Faltering Response to a conceptual Dilemma," it states:

> The transsexual characteristically expresses his condition as one of unspeakable mental misery that is incomprehensible to others. A male trapped in a female body; wronged by nature; at war with one's self – such are the recurring phrases. It is possible through hormonal and surgical techniques to transform a person's body into one more or less perfectly of the opposite sex. With the increasing availability of treatment the numbers of people seeking such treatment are growing. yet the law is stumbling in its response."

This commentator observes that the complexity of human sexual differentiation makes the classification of individuals as "male" or "female" an uncertain undertaking.

The so-called man on the street or layman is naturally "instilled with the preconception that there are "two discrete sexes, male and female."

These categories and the tacit assumption that they are discrete likewise "permeates our legal system." On the other hand, medical science has begun to recognize that in a significant number of instances the classification breaks down because "certain individuals do not fit easily into either category."

The commentator says anomalies raise questions on the appropriate tests for sex. Medical science's own analytical tools for determining sex increase the awareness that sexual classification can pose a theoretically and actually "complex problem." The reason is explained, as follows:

> "There are many factors that are relevant to sex determination, and there are cases in which those factors do not unanimously point to "male" or "female" as the appropriate label for an individual. Where there are contra-

indications one cannot say without qualification that the person is male or female.

A listing of the recognized indicia relevant to the sex classification of an individual would include the following factors:

1. Sex chromosome constitution.
2. Gonadal sex.
3. Sex hormonal pattern.
4. Internal sex organs other than gonads.
5. External genitalia.
6. Secondary sexual characteristics.
7. Apparent sex (the sex others presume you are and therefore the sex role in which you are reared).
8. Psychological sex (the sex you consciously feel yourself to be). Also called "gender identity."

The majority of individuals would register clearly male or female when measured by each of these tests, but two facts are significant. First, there are individuals who would be classified male by one test and female by another. The most sharply defined examples are hermaphrodism and pseudohermaphrodism. The hermaphrodite has the physical characteristics of both sexes, e.g. both a testis and an ovary or an incompletely differentiated gonad with both testicular and ovarian tissue. . . . Thus the problem is not always solved by picking a single test to govern since no single test works for all cases.

"The few courts that have discussed the issue have gravitated to the sex chromosome constitution of an individual as definitive, yet several aberrations of the normal XX or XY pattern are found in individuals that develop to adulthood. In fact, it appears that confusion can be complicated one step further by the presence in an individual of a mosaic of cells not only differing from the XX or XY norm, but also differing from each other.

Factors #3 and #6 having to do with sex hormone balances are not reliable indicators of sex. While the broad parameters of maleness and femaleness may be recognized, the continuum of possible balances and the ease of change through drugs makes this endocrinological approach worthless as a hard and fast "test" of sexuality.

Factors #2 and #5, gonadal and genital sex, would appear to offer clear cut tests and in the statistically normal case they do. But it is precisely the anomalous case which is of interest and when there are strong counter-indications among the other factors, there appears to be no sufficient reason to single out the presence of male or female gonads or genitalia as definitive. This is exactly what has traditionally been done. The existing legal criteria of sex, by which is meant the most common way in which sex is determined for legal purposes (first evidenced on hospital records and birth certificates), is the visual impression of the genitals of the newborn. In short, a doctor or even a lay attendant says, "It's a boy" or "It's a girl". This perfunctory determination has enduring legal significance.

It might be thought that the easiest solution to a situation in which there are conflicting indications of sex is that the classification should be determined by a majority of the factors. Such a procedure would presume that all the factors are of equal weight, which is almost certainly false. The eighth factor, gender identity, is arguably the most important. In the normal individual it conforms to all other factors and is taken for granted, but when in disharmony with the others the conflict is acute since strong physical indicators may point one way and the person's conscious life, his whole sexual gestalt, may point in another.

"Transsexualism" is a disorder of gender identity. Persons with this problem feel a lack of harmony between their psychological sex and their anatomic sex." The transsexual is not a homosexual. The latter is clearly classifiable as to sex on all factors and consciously seeks sexual relationships as a member of the "opposite" sex. The transsexual also should not be confused with the transvestite, defined as one who experiences psychological relief and sexual arousal from dressing in the clothes of the opposite sex. There is now an extensive body of medical and psychological literature on transsexualism and a sizeable medical community worldwide dealing with the problem.

The consensus is that the true transsexual is among the most miserable of persons. The gender conflict is manifest in early childhood, usually at about four years of age, and does nothing but intensify with developing sexuality.

> Unhelped, the transsexual often turns to self-mutilation and suicide. Attempts to treat gender disorders by changing gender identity through psychotherapy to conform to anatomical sex are almost without exception failures. With the growing awareness and acceptance by the profession of the uniqueness and, if you will, legitimacy of the transsexual's problem, the obvious alternative in treatment has been developed, that is changing the anatomical sex of the patient to conform to his gender identity—the "sex change operation."
>
> * * *
>
> Transsexualism is probably new and suspect to most laymen. While there are still pockets of opposition in the medical profession, it is generally recognized that there are at least some cases where sex reassignment is indicated. The anatomical and morphological sex change techniques are quite refined already and due to be more so. The phenomenon has come of age medically; it is just starting to be dealt with in the law.
>
> * * *
>
> More important, whatever the movement in society may be as to the breaking down of sexual role stereotypes, these changes are irrelevant to the transsexual. He desperately wants legal recognition of his new anatomical sex as a confirmation of his sexual identity." (Emphasis added.)

This article reaffirms that transsexuals are born that way. That, by age 4 or 5, the child becomes aware that something is amiss. This isn't just a "belief" system taking over in the child but a deep conscious awareness that somehow they are different in their sex or gender role. This awareness once announced increases until puberty when nature explodes forth and the awareness is visible – to themselves and others (parents). It progresses through adulthood when corrective steps might be taken by awareness of medical alternatives to having to live in a sexual no-mans-land.

A birth attendant examining an infant's genitalia in the process of declaring genital configuration to be male (with penis) or female (without penis) sets the legal stage for eligibility to a married life. Except, the birth attendant has no visible measure of transsexualism which is present. A baby is born transsexual. Its existence becomes observable by age three to four years. Later in life when the transsexual is an adult what is the ultimate goal of the sex reassignment surgery?

It will be helpful to revisit the New Jersey Supreme Court decision in M.T. v. J.T. and its statement about "sex organs," in the sex change process.

> "A transsexual in a proper case can be treated medically by certain supportive measures and through surgery to remove and replace existing genitalia with sex organs which will coincide with the person's gender. If such sex reassignment surgery is successful and the post operative transsexual is, by virtue of medical treatment thereby possessed of the full capacity to function sexually as a male or female, as the case may be, we perceive no legal barrier, cognizable social taboo, or reason grounded in public policy to prevent that person's identification at least for purposes of marriage to the sex finally indicated."

(Id. at 210-11)

There is one problem, the constructed sex organs should be functional the same as any heterosexual's sex organs. The sex organs removed are functionable and are to be replaced by organs that are equally functionable.

The transsexual's sex organs and gender or psychological sex are to be concordant . . . they have been harmonized through medical treatment.

In the case of a male-to-female, the constructed labia, vagina, and clitoris and breast are functionable, organsmic, and psychologically within the realm of female

heterosexual satisfaction. The aesthetics are also supposed to be pleasing to sight. The absence of ovaries, cervix, fallopian tubes is not visible.

Can that functional requirement be equally achieved by the female-to-male transsexual? That is the rub. As we see in the medical reports, it is relatively successful for a man to transition to a woman both psychologically and physically. The female-to-male can be successful psychologically and physically, except male genitalia is not truly duplicable, either functionally or sexually satisfying. There is no orgasm or erection for penetration through phalloplasty.

This problem has to be confronted by Michael Kantaras if he is to fall within the law of marriage eligibility. This issue was not discussed in M.T. Turning once more to acadamia to shed light on this complex problem, the Cornell Law Review article styled Transsexualism, Sex Reassignment Surgery and The Law, Vol 56, page 963 (19__), states that transsexualism, hermaphroditism and transvestism have been a part of human history and has occurred in all societies since antiquity. This article goes on to state:

> "Perhaps in response to these infrequent aberrations, or possibly as an instinctive social ordering, most cultures have regulated social conduct in such a way as to protect the supposedly unique role of each of the "two" sexes. Thus an early Judaic code of sexual morality forbade the wearing of clothing of the opposite sex. Joan of Arc was adjudged a heretic in part because her transvestism was found to violate spiritual law. (For which she was burned at the stake.)
>
> The cultural, religious, and moral assumption that man can be classified into two clearly identifiable and distinct sexes quite naturally became embedded in the law despite its inaccuracy. Recent medical advances into the physiological and psychological nature of human sexuality, however, challenge this legal assumption and raise important questions in both civil and criminal arenas.

> It is probably impractical for the law to abandon the two-sex assumption. The law must deal with social practicalities, not medical niceties, and most people are clearly male or clearly female. In light of present medical knowledge, however, it is improper for the law to continue to rely on outward appearances for the determination of an individual's sex, considering that determination has important legal implications. A careful analysis must be made of the parameters of human sexuality. The object of such an analysis would be to arrive at an administrable and equitable legal standard by which to test a person's sex while preserving the traditional sexual dichotomy."

This commentator referred to the same eight factors that the medical profession uses to evaluate sex and observed, that the transsexual would register one sex on all scales except the psychological and possibly sex of rearing. In other words, heterosexual.

The commentator states that chromosomal sex, out of the eight factors, is merely of "abstract, scientific and theoretical interest in the case of transsexuals." Nobody can see an XX or XY constellation (except with a microscope). And it was further observed:

> "To insist that a person must live and be legally classified in accordance with his or her chromosomal sex violates common sense, as well as humanity. It reduces science to a mere technicality and an absurd one at that."

(Id. at 966)

This law review article goes on to observe the "genital test" disqualifies those suffering pseudohermaphroditism, Klinefelter's, Turner's and meta-female syndromes. Even so, the law insists on the perfunctory standard of genital sex be used on official birth certificates, even though inadequate and even when "no normal genitalia are present." Furthermore,

> A decision based on technical information incorrectly assessed runs the risk of "wrecking everything that a doctor is trying to do for his patient."

The commentator addressed the eighth factor or psychological sex, as follows:

> "The remaining determinant of sex considered medically relevant is the individual's assumed sex role or psychological sex. A court is likely to shy away from such a standard because it is necessarily subjective. Still, the psychological sex of an individual should be the single most important standard used to judge his legal sex.
>
> The law is concerned with man's relations with other men and with society as a whole. Because society considers them crucial, factors other than a person's psychological sex cannot be ignored. In fact, they must be held to be controlling if overwhelmingly contrary to the assumed sex role.

The author proceeds to distinguish the difference between the preoperative transsexual and the post operative, as follows:

> Thus, a preoperative transsexual would have to be classified according to his anatomical sex. Society would consider a fully anatomical male to be male regardless of a convincing feminine appearance or the individual's inner beliefs. Society has a rightful, dominant interest in seeing that the female impersonator is legally considered just that – regardless of motive. The dangers inherent in having a procreatively functional male classified as a female are apparent.

The author considers the total difference the post-operative person assumes:

> This is not the case after sex reassignment surgery has been performed. The individual procreatively is no longer of his original sex; he is sterile. Functionally he is a member of the "new" sex, capable of coition and often of achieving orgasm. Likewise, his secondary sex characteristics are those of the "new" sex. His anatomy now conforms to his psychological self-image; only by medical examination or chromosome tests may his "original" sex be determined.

Why does the psychological sex assume such importance?

> The psychological test is appealing because it is at once practical, realistic, and humane. In cases of doubtful biological sex identity such as hermaphroditism, the test

> can be used to resolve the ambiguity. The decision arrived at by the patient, his doctor, family, and friends as to which sex the hermaphrodite is better suited should be accepted and given legal effect by the courts. For transsexuals the psychological test legally recognizes what the individual has thought himself to be all along, a conception to which his anatomy now conforms. The requirement of completed reassignment surgery protects the public against possible fraud and acknowledges that an irreversible medical decision has been made affirming the patient's psychological sex choice.

The law should not frustrate the success of medical resolution of the transsexuals' dysphoria.

> "[The medical profession] should be as conservative as possible in consenting to an irrevocable "conversion operation," but after it has been done and we are dealing with a fait accompli, it should be made as easy as possible for the patient to succeed in his or her new life. And the legal recognition of his new life is a very essential part indeed."
>
> Common sense dictates a recognition of a psycho-social criterion for sex determination, at least after surgical intervention.

What about the role of the courts in this process of making a decision about the transsexual? The author answers the question as follows:

> "Ultimately it is not for the law to decide the sex of an individual. The law must accept medical decisions in this area and give them the legal effect that is in the best interests of the individual and society. What those best interests are is difficult to determine, especially since the issues are clouded by conventional morality and religion. However, provided the psychological choice of the individual is medically sound, not mere whim or caprice, and irreversible surgery has been performed, society has no right to prevent the transsexual from achieving personal happiness." (Emphasis added.)

The issue of marriage and the right of a transsexual to participate therein was directly addressed, as follows:

> "The right to marry is one of the fundamental civil rights of man." Loving v. Virginia, 388 U.S. 1, 12 (1966); Skinner v. Oklahoma, 316 U.S. 535, 541 (1941). The desire of a postoperative transsexual to exercise that right is perfectly natural, and many have in fact married in the new sex. Since marriage is by definition, a relationship between people of opposite sexes, the law will be required to pass on the transsexual's legal sex in order to ascertain the validity of these marriages."

The commentator turned to Corbett v. Corbett (otherwise Ashley) and after reviewing the facts of the English case, stated as follows:

> "Judge Ormrod, who is also a medical doctor, reasoned that since marriage is "essentially a relationship between man and woman, the validity of the marriage in this case depends, in my judgment, upon whether the respondent is or is not a woman. More specifically he chose to determine what is meant by the word "woman" in the context of a marriage. His conclusion in this regard was disturbingly simplistic.
>
> Conspicuously absent from the opinion is a description of the "essential role of a woman in marriage." Without such a description one can only speculate why only a person with certain biological attributes can fulfill it or why a person without those attributes cannot. If by this phrase Judge Ormrod meant the ability to procreate, he would void innumerable marriages throughout the world. If he meant the ability to have sexual intercourse as a woman he ignored the uncontroverted evidence of his own court medical examiners, who reported "there is no impediment on 'her part' to sexual intercourse." In addition, April Ashley had testified to successful sexual relations with at least one man prior to the marriage. If he meant the ability to look and act like a woman he rebutted his own admission that April's "outward appearance . . . was convincingly feminine.' Calling her an "accomplished female impersonator" does not detract from her conceded ability to appear feminine.

The only clue Judge Ormrod gave to his meaning is his statement:

> "It is common ground between all the medical witnesses that the biological sexual constitution of an individual is fixed at birth (at the latest), and cannot be changed, either by the natural development of organs of the opposite sex, or by medical or surgical means. The respondent's operation, therefore, cannot affect her *true* sex."

The author analyzed the meaning of true sex:

> "True" sex is biologically determined at or before birth – perhaps at the instant of conception. A person who is "naturally capable of performing the essential role of a woman in marriage" is one who has certain biological traits – coincidentally those that are determined at or before birth. Accordingly, whether a person can be a woman for the purposes of marriage is determined at or before birth. The "essential role of a woman in marriage" under this view is simply *being a woman* from conception or birth.

The author concludes the Corbett principal has gone too far:

> Such a fatalistic approach ignores the subtle but nevertheless real effects of human social and physical development. It excludes the essence of human existence: the ability to affect one's own destiny. It reduces life to a collection of mere physical events. Nevertheless, such an approach inexorably comes from the apparent meaning of the judge's words. Such few words perhaps do not deserve such severe criticism, but the fact that the *Corbett* case stands as the sole precedent for courts throughout the world to follow in a novel and controversial area requires that it withstand the strictest scrutiny.

* * *

The conclusions reached by this law review article are as follows:

> "Eventually this issue will be faced by a court in this country or elsewhere. The standard that Judge Ormrod suggested, absent the element of biological determinism, is sound. The marriage should be valid if the transsexual is found capable of fulfilling the essential marriage role of the sex he or she has assumed. Such a role should be considered a composite of factors ranging from those incapable of definition, such as the ability to love and

> understand another, to those more concrete, such as the ability to engage in sexual intercourse. The validity of a transsexual marriage cannot be determined by specific rules without sacrificing the human compassion so essential to justice. A marriage, transsexual or otherwise, should not be declared to have legally never existed unless it is apparent that the marriage never existed in the minds of the parties themselves. (Emphasis added.)

This commentator established a broad standard for marriage that transsexuals can qualify to come within, but once again the ability to engage in sexual intercourse in the designated sex remains a factor. This is the same view expressed in the Connecticut Law Review.

The functionality of constructed sex organs whether female or male remains of critical importance. The Law Department of the Macquarie University wrote a law review article on this very subject, styled "From Functionality to Aesthetics: The Architecture of Transgender Jurisprudence."

This commentary, written by Andrew Sharpe, compared the legal position of the New Zealand decision of Attorney General v. Otahuhu in the Family Court and the English decision in Corbett v. Corbett, over the issue of the sexual functioning of the body, as follows:

> "The New Zealand court through Judge Ellis considered the sex claims of transsexual persons and deemphasized a concern over the sexual functioning of the body.
>
> The Corbett case and its progeny are preoccupied with "hetero-sexual capacity" and as such the law expresses a "phallocutrie imperative."

Sharpe believes a body of law is growing from a reform oriented jurisprudence traceable most notably to a New York case.

> "The first U.S. decision to depart from the (bio)logic reasoning of Corbett was the New York case of Re Anonymous, 293 N.Y.S. 2d 334 (1968), which involved an application by a male to female transsexual person to have her birth certificate changed to reflect the surgical intervention. Judge Pecora held the applicant to be female because her "anatomy" had been brought into conformity with her "psychological sex." The judge "appears to understand "harmony" to mean a post-operative vaginal capacity for [hetero]sexual intercourse."

Sharpe observed, "It is especially difficult to account for this requirement in a case concerning an application to change a birth certificate." It is indeed strange that such an observation was made, but Sharpe says it reflects "a legal concern over the adequacy of the vagina and it would seem to be explicable only in terms of phallocentric and performativist assumptions about the female body." (Id. at 2)

It certainly seems functionality of the constructed vagina, labia and clitoris is measured in relation to its capacity to receive an erect penis in coitis.

There can be no procreative function since post-operative male to female transsexuals are sterile, the same with female to male.

Sharpe opines that Judge Pecora's psychological and anatomical "harmony" test was consolidated in M.T. v. J.T. by Justice Handler. Reference was made by the justice to the fact that M.T. could no longer "function as a male sexually either for purposes of recreation or procreation, and the court placed particular emphasis on her post-operative sexual capacity and desire, as follows:

> "Implicit in the reasoning underpinning our determination is that tacit but valid assumption of the lower court and the experts upon whom reliance was placed that for purposes of marriage under the circumstances of this case, it is the sexual capacity of the individual which must be scrutinized. Sexual capacity or sexuality in this frame of reference requires the coalescence of both the physical ability and the

> psychological and emotional orientation to engage in sexual intercourse as either male or female."

(Id. at 209)

Sharpe made another analytical observation about M.T., and the importance of sexual intercourse by constructed sex organs, as follows:

> "The reference to the "psychological and emotional orientation to engage in sexual intercourse" is significant. It suggests that the creation of a 'functional' vagina, while essential, in and of itself, is insufficient for the purposes of legal recognition of male to female transgender sex claims. Rather, recognition for the purposes of marriage proves to be dependent on the additional requirement of heterosexual desire. In this regard, the legal regulation of MT's body is concerned with more than her submission to genital reconstruction. Law desires to know her desire, to know that it is heterosexual, and to be assured through that knowledge as to the 'authenticity' of MT's transsexuality.
>
> In relation to MT's sexual functioning the court explored in some detail her genital topography. Drawing on the evidence of Dr. Ihlenfeld, MT's medical doctor, Handler J. noted that MT had "a vagina and labia which were adequate for sexual intercourse and could function as any female vagina, that is, for traditional penile/vaginal intercourse." There is no reference in the judgment or the medical evidence as to any sexual pleasure that MT might derive from her vagina. Rather, law seeks reassurance that MT's vagina can function as a site of heterosexual male pleasure. The functionality of MT"s vagina in this regard finds further expression in the evidence of Dr. Ihlenfeld, who pointed out that MT's vagina had been "lined initially by the skin of [her] penis", that it would, in all likelihood, later take on "the characteristics of normal vaginal mucosa", and that though at "a somewhat different angle, was not really different from a natural vagina in size, capacity and the feeling of the walls around it." (Emphasis added.)

In Richards v. United States Tennis Association, 400 N.Y.S. 2d 267 (1977), Judge Ascione stated that transsexuals "desire the removal of --- their genital apparatus and

further surgical assistance in order that they may enter into normal heterosexual relationships." (Id. at 271)

Sharpe observed that:

> "Judge Ascione was not only "requiring heterosexual functioning scripted as a prerequisite to legal recognition, rather, sexual function is understood as the end to be realized through the means of sex reassignment surgery. Here the value and meaning of surgery lies in the male to female body's capacity to be sexually penetrated. Moreover, Judge Ascione's anxiety over this matter is assuaged by medical testimony that for all intents and purposes Richards functions as a woman." (Id. at 3)

Sharpe also found that the test of psychological and anatomical harmony was applied in the South Wales Court of Criminal Appeal in the case of R v. Harris and McGuiness, (17 NSWLR 158 ) a case we have previously noted, where Judge Mathews pointed out that surgery had deprived Lee Harris, a male to female transsexual of "the capacity to procreate or to have normal heterosexual intercourse in her original sex, these forms of irrevocable loss do not halt the decision, rather, it is the "capacity for heterosexual intercourse which full sex reassignment provides that proves crucial." The reasoning of Justice Handle in M.T. v. J.T. is "replicated."

Sharpe pointed out a fascinating twist in this case, by the following:

> "The requirement of functionality becomes particularly clear in the context of the judicial reasoning adopted toward the fact that Lee Harris was unable to have sexual intercourse as a female due to the closing-up of her vagina post-surgically. In refusing to treat as significant this inability Mathews J placed emphasis on its 'temporary' nature. That is to say, it is assumed that this inability will be surgically corrected. It would seem that a permanent inability to engage in (hetero)sexual intercourse would fall short of 'full' sex reassignment. It is, perhaps, curious that

> capacity for (hetero)sexual intercourse should have any bearing upon determining sex for the purposes of the criminal law. This is especially so given the facts of, and the charges brought involving Harris and McGuiness. That is to say, it is difficult to see the relevance of vaginal capacity in relation to the practice of fellatio.

Once more, in Australia, the same legal test was utilized in the case of Secretary, Department of Social Security v. H.H., (13 AAR 314), where the Administrative Appeals Tribunal upheld a decision that a male-to-female post operative transsexual person was a "woman" for purposes of obtaining a pension at age 60 rather than 65 years. A Tribunal of Judges O'Connor and Muller applied the "psychological and anatomical harmony" test of the M.T. decision.

Sharpe again states as follows:

> "As in Harris and McGuiness the decision in HH is significant for the way it foregrounds heterosexual capacity as a condition of legal recognition. Thus, Judges O'Connor and Muller insist that anatomy must be the overriding factor in sex determination --- This contention that the female sex role can only be properly fulfilled with the right anatomical parts, specifically a vagina, assumes that the role requires penetrative sex. This phallocentric view of the female sex role finds further expression in the assertion that after reassignment surgery the male-to-female transsexual is "functionally" a member of her new sex."

(Id. at 4)

Sharpe states that these cases stand for the proposition "heterosexual" capacity proves to be an essential precondition of legal recognition of post operative sex reassignment. He observes, "It is through an analysis around functionality that law comprehends and makes sense of the desire for and the fact of sex reassignment surgery. In this regard, law conflates gender identity and sexual desire in thinking about transgender persons."

These cases dealt with one type of transsexual, male-to-female. But what about the female-to-male?

It is really informative how the courts distinguish the pre-operative person from the post, in the following case that also arose in the Federal Court of Australia, Secretary, Department of Social Security v. SRA, (118 ALR 467 (1993)), a preoperative male-to-female transsexual person was recognized as a female for purposes of a "wife's pension" by the lower Administrative Appeals Tribunal. In the process the Tribunal crated a new test rather than the "psychological and anatomical harmony" test and substituted "pychological, social, and cultural harmony" and dispensed with the anatomical consideration.

On appeal, the Federal Court rejected this new test and replaced it with M.T. and emphatically rearticulated the psychological and anatomical harmony approach.

The court, moreover, stressed that SRA, unlike a male-to-female post-operative transsexual was not "functionally a member of her "new sex" and capable of sexual intercourse." (Id. at 493)

These line of cases emphasize that so called "transgender law" does not really depart from the traditional marriage concepts of "opposite sex persons," in that, post-operative transsexual persons must prove that medically constructed sexual organs function essentially as heterosexual organs and the designated sex is opposite to their partner in marriage. And, their mental disposition is to maintain a heterosexual relationship.

The test of "psychological and anatomical harmony" was adopted in New Zealand in the case of M v. M, NZZFL12 337 (1991). This was a marriage between a post-

operative male-to-female transsexual and a biological male. Judge Aubin found M to be a female for marriage purposes. He declined to follow Corbett and its thinking that a transsexual female is a "pseudo-woman", a "pastiche" or an "imitation". Judge Aubin took the view although the question of sex cannot be decided "merely upon sympathetic or compassionate grounds but a change of sex in a real sense had occurred in the case of M. Judge Aubin adhered to the view that:

> "completion of the redirected sex change is essential - - - that "the proper inference to be drawn from the evidence available to me is that the (transsexual) undertook all medical procedures that it was possible for her to take to change her sexuality from that of a man to a woman and that as a result sexual intercourse is possible and she states that she actually achieves a sexual orgasm on occasion. This marriage spanned a period of 12 ½ years showing sexual intercourse was not the problem for the demise of the marriage." (Id. at 340)

One might ask, is the male transsexual person (F to M) to be treated any differently than the female transsexual person (M to F) at law? Obviously, not.

So far we know where Judge Ormrod of England stands on this issue, as well as, Judge Hardberger of Texas and Justice Allegrucci of Kansas. In disagreement with that trilogy, are: Justice Handler of New Jersey; Judge Pecora of New York; Judge Ascione of New York; Judge Mathews of Australia; Judges O'Connor and Muller of Australia; Judge Aubin of New Zealand; Judge Lockhart of Australia; Judge Ellis of New Zealand, and Judge Gernon of Kansas.

Sharpe said probably the first case to have a judge's commentary on the sexual apparatus of a female-to-male person was in SRA, supra. This was a pension law case and not marriage, Judge Lockhart, after expressing satisfaction with respect to post-operative male-to-female heterosexual capacity, observed that:

> "The female-to-male transsexual is probably in a rather different situation because even successful surgery cannot cause him to be a fully functional male, although he can be given the appearance of male genitals."

(Id. at 493)

Despite Judge Lockhart's apparent reservations about a constructed penis, Sharpe stated: "This in no way precludes legal recognition for the purposes of pension law. That is to say, Lockhart, J. makes it quite clear that the post-surgical female to male transgender body is to be regarded as "male" irrespective of a capacity for heterosexual intercourse.

In Attorney-General v. Otahuh Family Court, a case we have extensively outlined deserves mentioning by Sharpe and possibly finally, to bring this research of transgender law to a close and its application to the facts of the Kantaras case. The "International Medical Journals," will be referred to lastly, to demonstrate the magnitude of transsexualisms in medicine. There is scientific research being conducted in the medical research centers all over the world. Would all this be happening if transsexualism was not a significant phenomena?

Sharpe stated Judge Ellis of the New Zealand High Court proposed to follow the legal analysis in M.T. v. J.T.; Harris and McGuiness and M v. M where they ruled that legal recognition of transsexual claims for marriage purposes was dependent on sex reassignment surgery.

Judge Ellis made it clear that bodily change brought about through hormone administration or other medical means was sufficient in this regard:

> "There is clearly a continuum which begins with the person who suffers from gender dysphoria (a state of mental unease or discomfort) but who has not chosen to cross-

> dress on a regular basis and has embarked on no programme of hormonal modification or surgery, through to the person who has embarked on hormone therapy and perhaps had some minor surgical intervention such as removal of gonads, through to the person who undergoes complete reconstructive surgery . . . in order for a transsexual to be eligible to marry in the sex of assignment, the end of the continuum must have been reached and reconstructive surgery done."

Sharpe very insightfully observed that Judge Ellis was consistent with prior decisions in M.T. v. J.T., Harris and McGuiness and M v. M where the judiciary had insisted on articulating the test of psychological and anatomical harmony", but there is a striking difference in Otahuhu. Those prior decisions insisted that legal recognition was dependent on, not merely sex reassignment surgery, but also, post-operative capacity for heterosexual intercourse, Judge Ellis stated:

> "That in order to be capable of marriage two persons must present themselves as having what appear to be the genitals of a man and a woman. But, they do not "have to prove that each can function sexually for there are many forms of sexual expression possible without penetrative sexual intercourse."

(Id. at 615)

Sharpe refers to the above observation as uncoupling intercourse or "uncoupling of sex reassignment surgery from the capacity for "heterosexual intercourse." It seems to highlight concern over bodily aesthetics of transsexuals. In other words, visible sex organs. Judge Ellis finds reassurance "in the fact that the male to female post-operative body can never appear unclothed as a male and that the female to male post operative body can no longer appear unclothed as a "woman." Id. at 615)

Sharpe thinks these transsexual bodies are required to undergo a "risky surgical procedure" if they are to accord with laws aesthetic sensibility and to reduce homophobic anxiety." (Id. at 8)

Actually, Judge Ellis puts the whole matter to rest by stating the law should not hinder the heterosexualization of transsexual bodies affected by sex reassignment surgery, as follows:

> If the law insists that genetic sex is the pre-determinant for entry into a valid marriage, then a male to female transsexual can contract a valid marriage with a woman. To all outward appearances, such "marriages would be homosexual marriages. The marriage could not be consummated."

The law is in a dilemma – it can't have it both ways. It is better that transsexuals be allowed to marry under certain legal conditions whereby they maintain what society wants, a "heterosexual marriage" of opposite sexes. That is precisely what transsexual reform jurisprudence accomplishes.

The female-to-male transsexual achieves post operative reassignment of sex to satisfy the law except in one regard, the sexual apparatus.

The naked visibility the law expects is an aesthetically pleasing penis and, assuming that can reasonably be satisfied, the new phallus should perform within some sexual intercourse standards, that is, penetrative, and possibly orgasmic.

The female-to-male transsexual has to make a major decision as to whether to undergo the high risk, expense and major disappointment associated with phalloplasty. The artificial penis cannot be medically constructed to have any sensation. It can urinate from the tip in a standing position and with a splint can be erected.

Michael Kantaras made the decision not to take on this medically "risky" procedure with the advice of his medical surgeon to forego the phalloplasty, i.e., Dr. Ted Huang.

However, through hormonal treatments Michael testified he has developed by natural causes a "small penis" which was his former clitoris, now enlarged and extended approximately 4 inches. It is penetrative in intercourse, he does achieve orgasm and has full sensation. He might be able to stand to urinate but that was left uncertain. With the aid of a strap-on phallus he testified he can satisfy his partner in normal heterosexual intercourse. Due to the strategic placement of the substitute phallus with his penis the movement can bring him to orgasm.

It is common knowledge that genetic males also utilize the substitute phallus on occasions, where they are impotent due to advanced age, prostate problems, erectile dysfunction, or physical injury from accident or war service.

Michael Kantaras testified his mental inclination and performance of sexual intercourse is strictly "heterosexual." Post-operatively his reassigned sexual surgery and hormonal treatments have successfully completed the journey into maleness. He reached the end of the continuum.

Should the legal system demand it be satisfied by requiring phallophasty? If so, the Courts must understand just what it is they are asking, appearance wise, and functionally. Dr. Ted Huang gave an apt description of phallus construction to be like a piece of meat hanging between the legs, like a sausage. Does anyone suggest this is aesthetically pleasing and conducive to sex? After reviewing the Law Review articles, it seems appropriate to review the Medical Journals on transsexualism and sex organs.

## INTERNATIONAL MEDICAL JOURNALS

In The Journal of Transgenderism, Vol. 2, Number 1 January-March (1998), the Editors Drs. E. Coleman, F. Pfaefflin and Walter Bockting (our expert witness in this Kantaras case) published an article titled "Psycholgoical and Social Function Before and After Phalloplasty" by Dr. James Barrett.

This report is a quantitative assessment of the benefits of phalloplasty in the female transsexual population. It tempers enthusiasm for phalloplasty.

This study concerned 23 transsexuals accepted for phalloplasty, compared to 40 who had undergone such surgery from six to one hundred and sixty months previously. This study was exhaustive and highly technical to the degree it cannot be reproduced here, but in pertinent part it had reported the following:

> ***Female transsexuals***
>
> Female transsexuals feel very uncomfortable with their appearance, and many use a variety of artificial pseudophallus structures for cosmetic or functional effect. Such pseudophalluses may be as simple as a pair of socks stuffed down into the underwear, or may be more complex dildos worn in a sexual context. A permanently attached structure of biological origin and derived from the patient's body tissues constitutes a neophallus. Whether a neophallus incorporates non-biolgoical tissue such as silicone is not important so long as it does so in a wholly enclosed and internal way. Any patient-derived biological structure which was created with an external or visible non-biological splint of any kind would not constitute a neophallus, but would be considered to be a particularly complex and surgically assisted dildo. [It might be observed Michael Kantaras testified he used the "sock" technique.]
>
> ***Phalloplasty***
>
> Phalloplasty procedures have been refined over the years, but major problems remain. Complication rates are much

higher if it is intended to create a urinary conduit through the neophallus. Such urinary conduits have been created in the past from rolled skin tubes but are prone to infection and associated breakdown. One more recent technique employs a skin flap from the upper arm to create the bulk of the neophallus and outer layer of skin, a bladder mucosa graft being employed to create a urinary conduit lined with physiologically appropriate urothelium (hage JJ, de Graaf FH, van den Hoek J et al, 1993). The Middlesex urological team is not actually using this flap, but is rather employing the radial forearm flap.

Sensation in neophallus depends upon a nervous supply and is important to prevent the damage which might otherwise befall insensate tissue. Some surgeons employ co-option of adjacent nerves, such as the pudenal nerve, into the neophallus whilst others attempt to preserve the nerve of the clitoris and divert it into the shaft of the neophallus. Still others attempt to preserve the entire clitoris and incorporate it into a rolled skin tube enophallus.

Obtaining sufficient tissue to create a neophallus or neoscrotum may also pose problems. Some surgeons use tissue from co-incidental vulvectomy or mastectomy, which may have been previously enlared with subcutaneous tissue expanders (Sengezer M, Sadove RC, 1993) whilst others use such tissue expanders in the upper arm or leg to create areas of skin that may be used as material autologous transplantation.

***Practical implications of this study***

The implications of this work for the theoretical study of transsexualism are that far greater alleviation of psychological distress can be achieved by changing the social gender role of female transsexuals than by changing their genital appearance, implying that for female transsexuals the unconscious desire to acquire the self-awareness of possessing a phallus (as is postulated by some theoreticians), if present at all, is less intense a drive than the desire to create an impression in the minds of others that it is possessed.

An unexpected finding is that quality of relationships seems to fall after phalloplasty, albeit to a not significant extent. This might be because of partners of patients being

> sexually disappointed, having had unrealistic expectations of such surgery. They might have expected an ability to have sexual intercourse without the use of prostheses where this was previously impossible. Patients, having been carefully counseled by the surgeon, might have had expectations more in keeping with what is possible, have been expecting less, and so were not disappointed. Whilst this idea would require further studies to be supported, this study implies that it would be as well for surgeons to at least consult with partners of patient as well as patients themselves, to prevent unrealistic expectations being developed by partners. (Emphasis added.)

It should be apparent from the U.K. study that surgical gender reassignment whether it includes phalloplasty or not, is not a cosmetic intervention but one that attempts to reconcile an individual's core identity with their physical characteristics.

The cosmetic does exist, in the case of gender confirming facial surgery altering the masculine or feminine face to conform to the gender designated. This, likely, would only follow sex reconstructed surgery. This was the case with J'Noel.

In the publication Plastic Reconstruction Surgery, Vol. 99, page 1799 (1997) under the title: "Gender-Confirming Facial Surgery: Considerations on the Masculinity and Femininity of Faces" by Drs. J. Joris Hage, M.D., Ph.D., Alfred G. Becking, D.D.S., Floris H. de Graaf, M.D., and D. Gram Tuinzing, D.D.S., Ph.D.

Facial reconstruction does epedify the ultimate degree a transsexual is willing to go to achieve the ultimate transition. These doctors reported, the following:

> "In most human relationships, the face represents the most important expression between people. It reflects our personality and emotions and is intimately connected with both verbal and nonverbal communication. The head and face are commonly considered to be the location of the "self." Because of this psychological and social significance, anything that appears abnormal in the face has a direct influence on one's self-confidence. An individual with a noticeable deformity or incongruity of the face may

> be the object of visual and verbal aggression, leading to feelings of shame, impotence, anger, and even humiliation. An example of such an incongruity may be masculine features found in a female face, or vice versa.
>
> While aesthetic facial surgery performed for reasons of undesired facial masculinity or femininity (usually performed to work on the forceful look in males or to soften the face of the female with masculine features) has had some attention in the literature, there is a lack of information on gender-confirming facial surgery as part of an overall surgical sex reassignment program. Moreover, while describing methods to delineate ideal forms of human faces, most authors do not consider the differences between the male and female face. Only a few differences are mentioned regularly: the more square character of chin and jaw and the protruded forehead in the male and a more rounded orbit in the female. The sex differences in size and form of the teeth and in the line of smile are acknowledged by dentists and maxillofacial surgeons. All other differences are reduced to size alone, with the male, on average, being larger in every dimension.
>
> Facial form is composed of many elements, including both the skeletal foundation and the overlying soft tissue. Although defining the bony foundation is of great importance, it is the soft tissue and skin enveloping it that we observe and measure directly within the frame made out by hairdo and neck and shoulder configuration. Thus, for our following study, we will draw attention to all these elements of the face as they have been discussed by various disciplines ranging from anthropology and forensic science to art and aesthetic surgery." (Emphasis added.)

The language that appears in judicial decisions expresses a disbelief in the reality of transsexualism. And, if it exists it's purely mental. Quite to the contrary,, medical science has come to believe the etiology of transsexualism is biological. In the International Journal of Transgenderism, Vol. 1, No. 1 – July to September 1997, a publication styled "A Sex Difference in the Human Brain and its Relation to Transsexuality" by Drs. J.N Zhou, M.A. Hofman, L.J. Gooren and D.F. Swaab, stated:

> "Transsexuals have the strong feeling, often from childhood onwards, of having been born the wrong sex. The possible psychogenic or biological etiology of transsexuality has been the subject of debate for many years. Here we show that the volume of the central subdivision of the bed nucleus of the stria terminalis (BSTc), a brain area that is essential for sexual behaviour, is larger in men than in women. A female-sized BSTc was found in male-to-female transsexuals. The size of the BSTc was not influenced by sex hormones in adulthood and it was independent of sexual orientation. Our study is the first to show a female brain structure in genetically male transsexuals and supports the hypothesis that gender identity develops as a result of an interaction between the developing brain and sex hormones.
>
> Investigation of genetics, gonads, genitalia or hormone level of transsexuals has not, so far, produced any results that explain their status. In experimental animals, however, the same gonadal hormones that prenatally determine the morphology of the genitalia also influence the morphology and function of the brain in experimental animals in a sexually dimorphic fashion. This led to the hypothesis that sexual differentiation of the brain in transsexuals might not have followed the line of sexual differentiation of the body as a whole. In the past few years, several anatomical differences in relation to sex and sexual orientation have been observed in the human hypothalamus, but so far no neuroanatomical investigations have been made in relation to the expression of cross-gender identity (transsexuality)." (Emphasis added.)

In the Corbett case, Judge Ormrod referred to the possible brain size of transsexuals could be significant and animal studies were underway, but he dismissed this research as too speculative.

All of the case decision on transsexuals have dealt with adults and their capacity to marry. What about transsexualism in children?

In Journal of Urology 2001, October; 155(4): 1426-8, under the title "Sigmoid reconfigured vagina construction in Children" by Drs. Freitas Filho LG, Carnevale J,

Melo CE, Laks M, Miranda EG, from the Department of Urology, Hospital Infantil Darcy Vaargas, San Paulo, Brazil stated:

> We present a modified technique of sigmoid neovaginal construction in children that protects the sigmoid pedicle from traction, allows easy adjustment of caliber and reorients the mucosal fold in a longitudinal direction. From 1997 to 2000, 10 genetically male (46 XY) children 1 to 13 years old underwent construction of a neovaginal with sigmoid, incorporating the Yang-Monti concept of intestinal reconfiguration - - - - Results: Eight (8) children had an adequate caliber neovagina after an initial period of systematic dialation . . . . Conclusions: The new sigmoid reconfiguration technique enables the use of smaller dimension intestinal segments and construction of a long "vaginal conduit of adequate caliber. Its optimal adequacy for penetration must be assessed in the future after these patients begin sexual activity." (Emphasis added.)

Should these Brazilian children come to North America to marry and begin their sexual activity, would they be barred as a matter of law in Texas, Kansas, Ohio and possibly other states from marriage due to the fact they all have surgically constructed vaginas and obviously born male? The publication does not disclose if these children are transsexuals or intersexuals. Regardless, the traditionalists declare an artificial vagina doesn't come within the law's definition of sex.

Showing the impact that transsexualism is having worldwide, in the Journal Am. Acad. Child Adolesc Psychiatry 2001 (April 40(4):472.21), publishing an article on adolescents with "gender identity disorder" who were accepted or rejected for sex reassignment surgery: a prospective follow-up study", by Drs. Smith YL, Van Goozen SH, Cohen-Kettenis PT of the Department of Child and Adolescent Psychiatry, University Medical Center Itrecht and Rudolph Magnus Institute for Neurosciences,

> "The study objective was to conduct a prospective follow up study with 20 treated adolescent transsexuals to evaluate

> early sex reassignment and with 21 non-treated and 6 delayed-treatment adolescents to evaluate the decisions not to allow them to start sex reassignment at all or at an early age . . . . RESULTS: were as follows:
>
> Postoperatively the treated group was no longer gender-dysphoric and was psychologically and socially functioning quite well. Nobody expressed regrets concerning the decision to undergo sex reassignment. Without sex reassignment, the nontreated group showed some improvement, but they also showed a more dysfunctional psychological profile. CONCLUSIONS: Careful diagnosis and strict criteria are necessary and sufficient to justify hormone treatment in adolescent transsexuals. Even though some of the nontreated patients may actually have gender identity disorder, the high levels of psychopathology found in this group justify the decision to not start hormone treatment too soon or too easily." (Emphasis added.)

It is highly significant that this study reported postoperatively the treated group was "no longer gender-dysphoric," but was psychologically and socially functioning well. This demonstrates sex reassignment surgery is the only efficacious medical solution to solve G.I.D.

If these adolescents were to grow up in the United States and sought a mate to marry with the current status of the law all the curative good achieved by medical science in the Netherlands would be effectively destroyed, resulting in psychological "shock" and suicidal ideation to come to the forefront.

An article that appeared in the publication Plastic Reconstructive Surgery 2000, May; 105(6) 1990-6, under the title "Neophalloplasty in female-to-male transsexuals with the island tensor fascial latae flap," by Drs. Santanelli F, and Scuderi, N, of the Department of Plastic Surgery, University of Rome Le Sapeienza, Italy, stated as follows:

> "In the past 60 years, several different procedures have attempted to achieve a postoperative neophallus that is as

> aesthetic and as functional as possible after penile amputation or sex reassignment. Recently, with improvements in free tissue transfer and microvascular technique, many free flap procedures have been developed with the goal of an aesthetically acceptable neophallus of adequate bulk that enables urination in a standing position and sexual intercourse, with minimal functional and aesthetic donor-site defects. Most authors currently agree that the method of choice for penile reconstruction is microsurgical free tissue transfer, although it does not always fulfill all of the aforementioned goals in a predictable manner. In fact, complete urethroplasty, penile rigidity, and donor-site disfigurement remain challenges, thus making this operation one of the most difficult in plastic surgery." (Emphasis added.)

To give some comprehension of the significant number of transsexuals seeking medical release from the misery of facing life as a transsexual we find in the publication BJU Int 2000 May;85(7):851-6, under the title "Surgical conversion of genitalia in transsexual patients" by Dr. Jarolim L, of the Department of Urology of the 1st Medical Faculty, Charles University of Prague, Czech Republic, he stated, as follows:

> "OBJECTIVE: To describe the techniques and outcome of genital and urethral reconstructive surgery during gender conversion as part of the treatment of transsexuals. PATIENTS AND METHODS: From 1992 to 1999, 82 patients were surgically converted after previous sexual and hormonal therapy. Using the male genital tissue to create new female genitalia, and vice versa, 30 male and 52 female transsexuals were converted. For male-to-female transsexuals, the technique of penile skin inversion was used 29 times and sigmoidocolpoplasty five times (in one patient primarily and in four patients to correct inadequate neovaginal size after penile skin inversion). In female-to-male transsexuals, 28 metaidoioplasties and seven neophalloplasties were performed using the groin skin-flap technique, with 42 breast reductions also included as a part of the therapy. RESULTS: Surgical gender reassignment of the male transsexuals resulted in replicas of female genitalia which enabled coitus with orgasm. Depending on the technique used in the reverse conversion, the patient maintained the ability to attain orgasm, and in many cases

> had a satisfactory appearance of the neopenis, with the potential to void while standing. CONCLUSIONS: The morphological proportions of each patient vary, and the different shapes and sizes of the tissues can be used for plastic operations. Thus the modelling of each individual genital in transsexuals can be considered 'original.'" (Emphasis added.)

It is to be observed the neophallus had the "ability to attain orgasm" and in many cases had a satisfactory appearance of the neopenis, with the potential to void while "standing." This report assumes a "significant" breakthrough in the orgasmic ability of a neopenis.

The two doctors Cohen-Kettenis PT and Gooren LJ of the Rudolph Magnus Institute of Neuroscience, Department of Child and Adolescent Psychiatry, Itrecht University, The Netherlands, stated in the Journal of Psychosomatics Res 1999 April; 46(4)315, that"

> "In many countries transsexuals are now treated according to the Standards of Care of the Harry Benjamin International Gender Dysphoria Association, a professional organization in the field of transsexualism. Research on postoperative functioning of transsexuals does not allow for unequivocal conclusions, but there is "little doubt" that sex reassignment substantially alleviates the suffering of transsexuals. However, SRS is no parracea. Psychotherapy may be needed to help transsexuals in adopting to the new situation or in dealing with issues that could not be addressed before treatment." (Emphasis added.)

## FINAL RULING AND CONCLUSIONS OF FACT AND LAW

### Michael Kantaras/Transsexualism

The record in this case Michael Kantaras has met all medical sex reassignment requirements of the Rosenberg Gender Treatment Clinic in Galveston, Texas. He was given psychiatric and psychological testing and diagnosed a "transsexual" or what is now called "gender identity dysphoria." He completed a fourteen month program (life experience) of living and working in the community as a male. He underwent complete hormonal therapy, and had a double mastectomy, bilateral salpingo, oophoriectomy, total abdominal hysterectomy, and male chest reconstruction surgery, all in compliance with the Harry Benjamin International Gender Dysphoria Association Standards of care.

Under the Standards of Care, his physiological orientation is complete in the new sex. Michael Kantaras accomplished all that medical science required to succeed in the transition from female to male (F to M).

Dr. Cole testified with respect to Michael Kantaras "is there any doubt in your mind that he was correctly diagnosed as a transsexual? He replied, "absolutely not." Michael has a male gender identity. . . . He's male in my estimation. Michael's transition has been successful, he has no doubt," under the Harry Benjamin Standards of Care.

His sex reassignment surgery was successful. As a post operative transsexual Michael Kantaras, is, by virtue of all his medical treatment, possessed of the capacity to function sexually as a heterosexual male. In accordance with M.T. v. J.T., there should be no legal barrier, cognizable social taboo or reason grounded in Florida public policy, to prevent Michael's qualification at least for purposes of marriage to be of the male sex

and as indicated by the medical experts in this case, Michael Kantaras was certified to be a "male."

The Court has had the opportunity to directly observe Michael Kantaras both inside the courtroom and in the hallways of the courthouse. Michael is visibly male. He has a deep masculine voice, a chin beard and moustache, a thinning hair line and some balding, wide shoulders, muscular arms and the apparent shifting of fat away from the hips toward the stomach. He has a pronounced "maleness" that prompts one to automatically refer to Michael with the pronoun he or him.

For over a year I've noted everyone calls Michael "he or him" in Court and to say otherwise, such as "she" sounds forced and unnatural. Only during the trialdid Linda say "she" but mostly "he" in her testimony, too.

These observations are akin to those Judge Ormrod exercised, regarding April Ashley when viewing her from the witness stand, and saying he could see through her female impersonator style of acting feminine.

The anatomical changes to the body of Michael are immutable. Moreover, Michael is on a continuing regimen of taking testosterone treatments for life which prevents any remission of the otherwise irrevocable anatomical changes.

During the course of the trail of three weeks, witness after witness, referred to Michael with the pronoun he or him and not one, after knowing Linda and Michael for years stated Michael came across as feminine or female. They all professed "shock" on learning Michael was born a woman. This proves Michael's gender role projects the male gestalt.

Michael not only took on the male gender role he petitioned a court in Texas to grant a name change from "Margo" to "Michael John." The judge in that instance would appear to be aware that a transsexual was in Court because the petition disclosed he was. Michael was fully involved in the male role.

Michael's Birth Certificate is from the State of Ohio. Michael petitioned the Probate Court of Mahoning County, Ohio, to change his name and sex on the birth certificate, from Margo Kantaras to Michael John Kantaras and sex from female to male (Case No. 1999 BC 0010). The Probate Magistrate, Richard Wm. Machuga entered an Order granting the petition. He directed the official records custodian, Herman Butler, Registrar, State of Ohio, Dep't of Health, Office of Vital Statistics to issue a new certificate accordingly. That was apparently done, showing the change from Margo to the masculine name of "Michael John" but there was an error in leaving the sex female. This would be classified a Scrivener's error since it was a ministerial function to be performed by the Registrar and not discretionary. (Pet. Ex #11, L & M) This Court will give "full faith and credit" to the Ohio Court Order granting the petition to amend the Birth Certificate that Michael is male and named Michael John. The Certificate as amended was misplaced by Michael and not made an exhibit.

Technically, under Justice Allegrucci "traditionalist" approach, if the Birth Certificate is the final arbiter of true sex, then Michael Kantaras has a male certificate by judicial entitlement and Order. Therefore, he is male, under Ohio law.

It has been established in some American decisions that there are concerns about amending a birth certificate by a transsexual to reflect a change of gender and name to

conform to post operative sex reassignment surgery. Michael's amended certificate was post-surgery. (SRS).

There are fifteen (15) states that by law or administrative regulation permit such an amendment. Florida is not one of those states. Section 382.016(FSA 2000) Amendment of Records, provides:

> (1) The department, upon receipt of the fee prescribed in s. 382.0255, documentary evidence of any misstatement, error, or omission occurring in any birth, death or fetal death record as may be required by department rule, and an affidavit setting forth the changes to be made shall amend or replace the original certificate as necessary.
>
> ***
>
> (2) Until a child's first birthday, the child's given name or surname may be amended upon receipt of the fees prescribed ****."

The Florida Attorney General issued an opinion that amendatory legislation is requied in order to permit state registrars to amend birth certificates issued for individuals who have undergone sex reassignment surgery. Op. Atty. Gen., 076-213, Nov. 10, 1976.

We do not have in this case any issue over amending the Birth Certificate of Michael Kantaras in Florida, since that has already happened in Ohio where he was born.

Florida Birth Registration section 382.013 (FSA 2000) provides:

> "A certificate for each live birth that occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred and shall be registered by the local registrar if the certificate has been completed and filed in accordance with this chapter and adopted rules."

Under subsection (6)(a), it provides:

> "If the mother is married at the time of birth, the name of her husband shall be entered on the certificate as the father of the child."

In subsection (6)(b) it provides,

> "If the mother is not married at the time of the birth, the name of the father shall not be entered on the certificate of birth without the consenting affidavit of the mother and the person to be named as the father, unless paternity is determined by a court of competent jurisdiction.

As we have observed the Florida marriage statute, Section 741.04 (F.S.A. 2000), does not define the meaning of "male" or "female."

Turning to Florida Statutes, Title I, Construction of Statutes, Chapter I, Definitions, it reads as follows:

Section 101 Definitions (FSA 2000):

> "In construing these statutes and each and every word, phrase, or part hereof, where the content will permit:
>
> (1) The singular includes the plural and vice-versa
> (2) Gender-specific language "includes the other gender and neuter"

Turning to Webster's New College Dictionary (1977), it gives the definition of neuter as follows:

> "1(a): referring to things classed as neither masculine nor feminine"
> (3): lacking or having imperfectly developed or nonfunctional generative organs."

The legislative definition when applied to the marriage statute, Section 741.04, and its reference that "unless one party is a male and the other party is a female, the Clerk of the Court is not to 'issue a license for marriage to the applicants.'" Section 101, Florida Statutes, does define "male" and "female" to mean "gender" specific language, which "includes" the other gender and "neuter." From a medical standpoint, Michael is of the male gender and has been his entire life.

Also from a medical standpoint the record in this case showed every man carries some female estrogen in his testes, as part of his own hormonal makeup, and every woman carries male testosterone in her ovaries as her hormonal makeup. This is issential to be of the female gender or male gender. Each includes some portion of the other gender, as a medical fact.

It is doubtful the drafters of the Legislative definitions to be applied throughout Florida Statutory law had the medical truth of human genetics in mind. Regardless, in an appropriate fact situation faced by a court, such as, transsexuals, the definitions are appropriate.

For instances, every female to male (F to M) transsexual has both male and female hormones through treatment; likewise a male-to-female transsexual would have the reverse.

Gender specific language by law includes the other gender, and both genders include "neuter."

"Neuter" is exactly the definition of a transsexual. A male to female (M to F) transsexual has no reproductive capacity although sexually capable of intercourse as a woman.

Likewise, a female to male (F to M) transsexual while capable of intercourse in whatever fashion available, cannot fertilize a female embryo and is neuter.

Transsexuals are strictly "neuter." They are referred to in medicine that way.

A strict application of the statutory definition qualifies Michael Kantaras to assume the role of neuter or a male neuter under the marriage statute.

The male and female referred to in Section 741.04, marriage statute, must be logically applied, in that, there is no requirement the applicants must prove they are sexually fertile.

Genetic heterosexual women who undergo hysterectomy and oopheriectomy or are post-menopausal are still eligible to marry. Men who suffer erectile dysfunction or have a low sperm count, or suffer prostate problems (cancer) are eligible to marry.

And both, as they exist, can be responsible parents with children they already have or they may adopt, or create through artificial insemination.

There is no justification in the law to hold a transsexual to a higher standard than all heterosexuals in approaching marriage. Gender is only relevant, as male or female, at the time of application for a license to marry, not at birth. Age is the only requirement to be under oath. None for gender. The statement in Corbett that sex is fixed at birth is not the controlling law of Florida.

All heterosexuals are legally qualified to apply for a marriage license without having to prove they are capable of producing a family. Virility is not a requirement of either gender. Michael Kantaras is a heterosexual and he is entitled to be treated at law as a heterosexual male.

Fortunately, the Senior Citizens in Florida happily marry each other without the ability to be fertile or even to engage in active intercourse.

Marriage is fundamentally a state of mind, where two individuals pledge their love and devotion to each other, in sickness and in health, hopefully, until death do them part. This pledge is "oral." Seldom, if ever, is it reduced to written form as premarital or post-marital agreements. If marriage does not rise to the level of an honorable

commitment, then the marriage is doomed regardless of the sexual aptitude of the couple. Is Judge Ormrod correct that the essence of marriage is sex?

The marriage law of Florida is committed to the promotion of marriage. The law does recognize the statutory dichotomy of two sexes, male and female. There is no reason to abandon that distinction. This Court adheres to that classification for eligible applicants to apply for a license to marry. That is the law. The facts, however, determine who is eligible. Medical science assists the law to make that determination. This Court rejects the traditionalist rule that it's the law, not the facts that decides the outcome of whether one is male or female. The Corbett principle, that the law can dismiss medical science, disregard it, and make decisions about who is male or female, invites "arbitrariness," as Judge Ellis correctly observed.

In this case, Drs. Bockting, Huang, Cole, and Dies contributed significantly to the outcome of this case. Their time and services were substantial for which they deserve recognition. They were all excellent spokesmen for the community of ethical treatment of transsexuals. And, they uniformly put their medical institutions and reputations on the line when they cerified that Michael Kantaras was "male."

In Littleton v. Prange, the Court of Appeals through Justice Hardberger, stated that the parties "stipulated" that Dr. Greer and Dr. Mohl would testify "that their background, training, education and experience is consistent with that reflected in their *curriculum vitae*, which were attached to their respective "affidavits" in Christie's response to the motions for summary judgment." In other words there was no live testimony in court by these two doctors. Moreover, Dr. Greer and Dr. Mohl "would testify" that the definition of a transsexual is someone whose physical anatomy does not

correspond to their sense of being or their sense of gender, and that medical science has not been able to identify the exact cause of the condition. The Appeals Court further observed "Dr. Greer and Dr. Mohl" would further testify "that in arriving at a diagnosis of transsexualism in Christie" they followed guidelines established at UTHSC and Johns Hopkins Group. Dr. Greer and Dr. Mohl also "would testify" that Christie was diagnosed psychologically and psychiatrically as a genuine male to female transsexual and their opinion, psychologically and psychiatrically female before and after the sex reassignment surgery and that Christie is a true male to female transsexual. These doctors did not testify in court at all. They were not subject to questioning about how they arrived at their conclusions or subject to cross-examination. All their testimony was "proposed" and submitted only in proposal form in "affidavits," attached to the response to a motion for summary judgment.

The Kantaras case all gave live testimony, by Dr. Bockting, Dr. Huang and Dr. Cole, that lasted over several days and they all gave reasons for their opinion that Michael Kantaras was a "male," psychologically and psychiatrically. They were subject to intense, vigorous cross-examination by Ms. Wheeler, Esq., attorney for Respondent, Linda Kantaras.

The Gardiner case suffers from the same record deficiency. The trial court referred to Dr. Schrang and his "letter dated October 1994 stated that J'Noel has a fully functional vagina and should be considered a "functioning, anatomically female." That doctor did not testify. Professor Julia A. Greenberg did not testify and the appeals court, Judge Gernon, heavily relied on her publication in the Arizona Law Review. The Court

of Appeals remanded the case to the trial court to supplement the record with medical testimony and to apply Dr. Greenberg's analysis of transsexual sex.

The Supreme Court of Kansas was obviously disturbed over the lack of credible medical live testimony in the record on appeal. It particularly made reference to the Kevin case in Australia having a substantial record, "that court had the benefit of the testimony of many people who were colleagues, friends, and family of Jennifer and Kevin, as well as volumes of medical and scientific evidence."

The Supreme Court examined the district court's statement that it had considered "conflicting medical opinions" on whether J'Noel was male or female but the Supreme Court said, "The district court did not take into account the factors on which the scientific experts based their opinions on the ultimate question but had relied entirely on the Texas court opinion in Littleton for the facts on which it based its conclusion of law." What was significant, the Supreme Court stated, "There were no expert witnesses or medical testimony as to whether J'Noel was a male or female. The only medical evidence was the Medical Report as to the reassignment surgery attached to J'Noel's memorandum in support of her motion for partial summary judgment. There was included a "To Whom It May Concern" notarized letter signed by Dr. Schrang in which the doctor wrote: "She should now be considered a functioning, anatomical female."

The Supreme Court of Kansas should not be faulted for wanting an adequate medical record if there was to be a challenge to the "traditional" legal concept of marriage. That concept views man and woman in the Webster Dictionary approach of "biological sex." Any challenge to that, if there be one, based on medical science must be convincingly presented in a record. The Kansas Supreme Court is correct in that

regard, and any change in the accepted norms of sex has to be based on sound medical evidence.

In conclusion, it is important that this case not end on statutory technicalities.

Transsexualism is a massively complex and difficult problem deserving of the highest respect and sympathy for those among ourselves who fall afflicted with this sexual crises that pervades their every moment of consciousness wherein their anatomic sex disagrees with their psychic or psychological self-identity as to who they are.

The unbearable doubt without resolution means a lifetime of being a sexual "split personality." Being further denied by the courts of the basic fundamental right to marry violates their Constitutional rights and degrades them as human beings.

Medical science recognized this and gives diagnostic identification, calling it transsexualism, or Gender Identity Dysphoria (DSM – IV), for which the ethical treatment is psychological aid, a minimum of one year "life experience" in the designated gender, hormonal therapy and surgical reassigned sex in conformity with the known gender identity. It is a type of metamorphosis of leaving one body and entering into another. The medical technique is so refined the sexual genitalia and secondary sexual characteristics are transsexed into the reformed body.

The chromosome barrier is ignored. The result is a man indistinguishable from a genetic male even though the metamorphosis started with all the accoutrements of a woman. Does the marriage statute of Florida, calling for a male and female to apply for a marriage license exclude the reformed body of a male, such as Michael Kantaras? He was a female transsexual who's gender and genitalia were once discordant, but now harmonized through medical treatment and who has become physically and

psychologically unified and fully capable of heterosexuality consistent with his reconciled sexual attributes of gender and anatomy as a "male." He passes in every social activity and is seen by heterosexual men as a man. He is even "certified" medically as a male, a distinction most men do not have. He is unable physically or psychologically to ever revert back to the body he departed.

It is essential that Michael completes the sex reassignment in accordance with the Harry Benjamin Standards of Care and have sexual organs that approximate the male penis with which to engage in intercourse with the intentional desire to engage in "heterosexual" activity. Michael meets these medical requirements based on the testimony of the medical experts, Drs. Bockting, Huang and Cole in this case.

Consequently, Petitioner Michael Kantaras should be considered a member of the male sex for marital purposes.

Procreative ability of the applicants for a marriage license, if they seek to have children in the marriage is implicit but not explicitly required. Adoption of children and artificial insemination are legal alternatives to having a family in marriage. Michael Knataras legally qualified under the marriage statute, Section 741.04, (Fla. Stat.), to apply for and be issued a marriage license. It follows that Michael has the capacity to enter into a valid marriage relationship with a person of the opposite sex as required by the marriage law of Florida, which he did and has maintained that relationship for ten years.

## THE CHILDREN

Some thought needs to be given to the two children, Mathew and Irina, who are the beneficiaries of this marriage. Mathew was born out of wedlock to Linda Gail

Forsythe and his father noted on the birth certificate was John Atkinson. Linda received a proposal of marriage from John after the birth and he bought her marital rings to secure the engagement. They lived together approximately four years. Linda rejected the proposal of marriage by John and in turn, several months later, became involved with Michael Kantaras. They married and Michael adopted Mathew after the marriage. Irina was born during the marriage through artificial insemination with her uncle, Thomas Kantaras, the sperm donor.

These children make this case unique because in all the prior transsexual cases, heretofore reviewed, there have been no children except Kevin. These children have had the benefits and protection that the law provides to married parents. Michael testified he is employed as a male at "Sam's Club" in the capacity of a baker, has a medical benefit package, retirement, a profit sharing plan and life insurance with the children named as beneficiaries in case of his death. The children have the right of inheritance, testate and intestate succession. These children have a legally sanctioned family with all the law's benefits and privileges, plus grandparents from whom they may have inheritance. If the marriage of their parents is declared "invalid" *ab initio*, these children will have lost what the marriage statute of Florida was intended to provide, especially, the "right of support" particularly addressed in section 741.04, Florida Statutes.

Linda, likewise, as the legal "spouse" will lose all the benefit of support for herself and her children, as well as, any claim on the marital home and assets. All this to her detriment and if she is unable to support her children once the benefits of marriage is removed, she may find her meager income as a "substitute" school teacher, "Place"

program employee and employee of her church, insufficient, requiring her to turn to State aid or other charitable sources for help.

These consequences are deplorable. The consequences of "divorce" is bad enough as a "fall out" on the children, without hindering their rightful development into adulthood by having their birth legitimacy put in question. These children are innocent and have been intentionally drawn into this adult conflict over transsexualism which a narrow and rigid interpretation of the Florida marriage statute can lead to calamites results for these children.

## BORDERLINE PERSONALITIES

The Merck Manual of Diagnosis and therapy, 15th Edition, (1987), published by Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, N.J., describes persons diagnosed with "Borderline Personalities" as "unstable in several areas, including interpersonal relationships, behavior, mood and self-image.

Characteristics include frequent mood shifts, impulsivity, inappropriate and frequently uncontrolled intense anger, uncertainty concerning identity.

These persons are extremists for whom the world is either black or white, hated or loved – never neutral." (Para. 7, page 1474)

Dr. Cole stated "borderline personality disorder, would be found in the DSM, and the chief symptoms are:

> "Generally this is an individual who has a lot of instability in his or her life in terms of inner-personal relationships, work relationship and the like.
>
> Often these relationships can be very intense. If a person loves you or loves the job and then suddenly feels wronged in some fashion, they can become very angry, very vindictive. In many cases, there is evidence of individuals engaging in suicidal gestures or attempts, self-mutilating behavior, . . . One of the hallmarks of all personality disorders is that the person doesn't think there's anything wrong with them - - - they tend to not think there's anything wrong with them. They tend to externalize it or project it. It's other people.
>
> They are on AXIS II of the diagnostic nomenclature. In other words, Axis I is reserved for your major clinical syndromes, your depressions, schizophrenias, things like that. Axis II is reserved for such problems as personality disorders. They are pervasive problems that have been in existence usually since childhood, adolescence, they begin to show up on into adulthood." It would affect the ability to function as a parent - - - "it would probably manifest in

> terms of not always being consistent, perhaps being impulsive, maybe not necessarily checking things out with the other parent if you're going to discipline or do things. I mean, generally it's the impulsivity, the intensity that you see."

(TR 1283-85)

Dr. Dies' updated report (Pet. Ex. #5) made particular reference to the professional notes of Dr. Boone covering sixteen (16) sessions with the Kantaras family that states Linda Kantaras is "suffering a borderline personality disorder, consistent with angry, impulsive actions." Dr. Boone also expresses "considerable concern about her." Dr. Dies states, Dr. Boone puts that, at times, in terms of his concern that she will essentially manipulate the system and interfere with their father." (TR 740)

The total record in this case reveals Linda's spontaneous anger, to the degree she frightens her own children. Mathew has repeatedly been subjected by her discipline to slapping in the face, goading him to strike her so she can find grounds to place him in a juvenile boot camp. She is both loving with Mathew, tender and caring but resorts to a belt for punishment because she seems to make "discipline" and obedience her primary approach to her son who has deep seated emotional problems. He suffers himself from oppositional defiance. The clash of their "wills" is decidedly unhealthy. Linda Kantaras was contemptuous of court orders granting Michael Kantaras the right to have routine visitation with Mathew and Irina. Linda's problems are an overlay on Mathew's problems.

The Court could find repeated references throughout this voluminous trial transcript that would seem to cause wonderment in the face of Dr. Boone's diagnosis.

It is the opinion of this Court that it would be remiss if it did not heed the professional opinion that Linda Kantaras needs counseling for what appears to be a borderline personality disorder. Linda Kantaras testified she too took note of Dr. Boone's diagnosis and she was going to seek some understanding from him about this diagnosis.

There is apprehension in Dr. Boone's concern that Linda will continue to frustrate the legal process in the future if this problem is not addressed.

Therefore, this Court Orders Linda Kantaras to seek counseling before she can be qualified to assume the duty of having primary residential custody returned to her in the future. Upon showing she has undertaken counseling in the interest of her own children, the Court would consider her sincerity a major factor for custody consideration in the future.

## CUSTODY OF CHILDREN

The Court on august 7, 2000, appointed an independent expert to conduct a comprehensive custody evaluation in this complex case. Dr. Robert Dies, Ph.D., (*curriculum vitae* – Pet. Ex. #4) was selected to assist the Court in deciding which of the two parents should be considered as the primary residential custodian, Linda or Michael Kantaras and which should be the visitation parent.

The history of the case shows in the divorce proceedings, as well as the collateral Domestic Violence Injunction proceedings that Linda Kantaras, as Respondent, has been uniformly accorded the position of "primary residential parent" with Michael placed in the position of the "visitation parent."

Linda demonstrated a consistent pattern of conduct that frustrated Michael's visitation time with the children, Mathew and Irina, canceling it out for months at a time. Michael was forced to seek recognition of his court directed visitation through filing and setting for hearing as many as eight motions for contempt until the court finally found Linda in contempt of court.

Dr. Dies conducted a formal psychological evaluation of both parents in October, 2000. He followed up with a study of the interactions of the children with each parent during the months of November and December, 2000. Both parents were asked to supply names of persons he could personally interview regarding their parenting skills, which was done.

Dr. Dies' report to the court pointed out that he was first retained by Linda Kantaras, through her attorney. Peter O. Brick, Esquire, in the early stages of the case to psychologically evaluate Mathew (age 9) and Irina (age 7) to see how they might react to

the pending divorce proceedings. Meetings with the children and Linda took place in April, May and July of 1999. Michael Kantaras had no visitation with the children but this was resolved by the parties agreeing that Dr. Lonnie Shelef, a family counselor would supervise any visitation by Michael with the children. Dr. Shelef was scheduled to conduct counseling between the children and their father, Michael.

Eventually, Dr. Lonnie Shelef was replaced because Linda thought she was biased against her. Linda replaced her attorney Peter O. Brick, Esquire, with Theodore I. Rachel, Esquire of Tampa. Dr. James Boone, a psychologist, was substituted for Dr. Shelef on November 11, 2000.

Even prior to Dr. Dies being retained by Linda, there was Ms. Glenda Davenport, a family counselor, who was also being consulted by Linda. Altogether, there were four professionals making a study and observations about the Kantaras family.

Dr. Dies' Report addresses the transsexual issue squarely by placing at the very beginning of the report a letter concerning Michael Kantaras dated September 8, 1998, written by Drs. Collier Cole and Lee Emory from the Rosenberg Clinic of Galveston, Texas. That letter reads as follows:

> This letter is to verify that Michael Kantaras (DOB: 3-26-59, #294-56-9287) was an active patient in our program between 1985-87, being treated for the neuro-endocrinological condition of gender dysphoria, commonly referred to as transsexualism. Although born anatomically female, he has had longstanding feelings of being male dating back to early childhood. In accordance with the Standards of Care of the Harry Benjamin International Gender Dysphoria Association, he underwent the real life test, living full-time in the male gender role. Sex reassignment surgery was performed in 1987 and he is now regarded medically, legally, and socially as male. Most recently (August 1998) he was seen for follow-up in Galveston and continues to live, work, and socialize as a

> male. Throughout his period of involvement with our program over the last decade, he has evidenced no signs or symptoms of major underlying psychopathology (e.g., thought disorder as in schizophrenia, mood disturbance as in a major affective disorder).

Dr. Dies made an evaluation of the children following four psychological tests: (1) a Sentence Completion Test; (2) the Family Kinetic Drawing Test; (3) the Roberts Apperception Test; and (4) the Rorschach Inkblot Test. With respect to the test results pertaining to Mathew his diagnosis was, as follows:

> "Mathew was found to be a very angry and distressed young man with significant problems of self-esteem, depression, conflicts in social relationships, difficulties with impulse control, limited resources for coping with stress, poor information processing and major problems in both perceiving accurately and reasoning realistically." (Page 4)

This assessment of Mathew is most severe. It would indicate this boy is in delicate balance, if tripped one way or the other, dire consequences could follow.

On the other hand, the diagnosis of Irina was, as follows:

> "Irina was found to be less" angry and troubled, but she too showed a number of adjustment problems in the areas of social relationships, self esteem, and processing information efficiently. However, she revealed fewer problems with impulse control or faulty judgment.

It is obvious that Irina is more stable than Mathew, although the stress of this divorce can destabilize both children. The mental equilibrium of both parents is critical to these children.

The view each parent has of the other parent's skills of raising the children has a bearing. Dr. Dies formulated a psychological test to determine the parents' opinions, which he called the "Shared Parental Responsibility Questionnaire" (SPRQ). From this

test it revealed what Linda felt about Michael's parenting skills, such as his communication over the children as "very poor" and that Michael was "very ineffective in disciplining the children." Dr. Dies states the degree of Linda's perception of Michael, as follows:

> "She judged the quality of relationship between Michael and both children as "negative (hostile and rejecting)," and depicted him as "very controlling, manipulative, confused, selfish, lies, hormonally unstable, bad temper. Michael don't stop to think about other people feelings if it don't benefit Michael." She marked virtually every item on the SPRQ checklist regarding his parenting. That is, she expressed concerns about drug or alcohol abuse, neglect of the children, emotional abuse, physical abuse, suicide. Her depictions of Michael are extremely negative and not consistent with evidence obtained throughout this evaluation procedure from many sources of information, including reports from the children, test scores, behavioral observations, and reports from others (friends and three different therapists).

The evidence received in the trial of this case depicts Michael in an entirely different light, which Dr. Dies also observes "Her statements are not consistent with the evidence obtained."

On the other hand, Michael's assessment of Linda's parenting skills is equally enlightening, because he says their biggest disagreement is over "disciplining Mathew." Every incident, he says, was a battle of wills between Linda and Mathew. Linda's need for control "made her often irrational." Dr. Dies' observations about Michael was as follows:

> "He elaborated that 'Linda's tactics of discipline were basically fear and intimidation. Irina required little or no disciplining whereas Matt was constantly being punished, told he was bad, and spanked by Linda. We argued often over her methods of punishment, i.e., hitting with a belt, flicking finger on lips or facial area.' In characterizing

> Linda's major weaknesses, Michael wrote, 'Very irrational, reacts to issues on blind rage, cannot control her emotions, does not consider the children's best interests by emotionally burdening them with the issue of choosing one parent over the other by continually playing the victim. Although Michael portrays Linda in considerably negative terms, he is not as extreme as Linda, and there is support from other sources (see below) that his descriptions may be valid. Michael worries about Linda's emotional abuse of the children, her mental health (that she is often irrational and unstable), and about some of her harsh tactics of physical discipline.

Dr. Dies' report takes note of the difference in the children's attitude toward their father following the transsexual revelation by Linda, Aunt Crystal, and Uncle Billy, on November 4, 1999.

Linda contends that she had to tell the children because Michael's gender issue was known or being talked about by teachers at the children's school. She wanted to prevent the children discovering the facts on the school yard. Michael said it was Linda who breached their confidentiality about his transsexualism by telling her girlfriends. As we know, from the testimony of witnesses in this trial, the disclosure of Michael's sex change came about through Linda boldly announcing the fact to her female friends – totally unsolicited and unaware, by all concerned.

The trauma to the children from this revelation that their father was born a woman speaks volumes.

The children felt they were psychologically abandoned, no roots, no father, no idea who they were or belonged to whom. Mathew said of his parents "they're both retarded" and Irina said "They should not have brought two children into the world, "Mom should ask God for forgiveness." And, that their father should have completed the third step in his transition form female to male (phalloplasty). Dr. Dies reported the

children were concerned about the meaning of being "gay" or "lesbian" and how to respond to children at school who might approach them.

The November 16th counseling session following the November 4th revelation found the children hostile toward their father. Dr. Shelef, reported both children were really hostile toward Michael. Irina said, "I really want to go to Michigan - - - he's really not my dad - - - and I don't want to live with Sherry." She voiced her opinion that she would not even miss her father --- "I'm tired of him." Mathew remarked, "I don't want to go with that sick person, and that "kids will say there's that he/she." "I don't care if he buys me all the toys in the world." Mathew claimed he would tell the judge, "I don't want to see my dad --- please let us move to Michigan." Both children had just been told that Michael was not their real father.

The "fall out" toward Michael was devastating. Mathew made threats of "shooting his father" because "he made me miserable" and "if he loved me he would change to a man (have a constructed penis) – instead of half boy and half girl. He calls his father "Marchael" which is part "Margo" and part "Michael." Irina said "I found out he's not really my dad – you need privates and balls to be a man."

For three months following November 4th, Michael was not able to visit with his children. There was a treatment session on January 21, 2000, where Dr. Lonnie Shelef, Mathew, Irina and Michael would meet. At this session, Michael was in contact with the children starting January 21 through June 2000, and something remarkable took place according to Dr. Dies, who states:

> "A careful review of the progress notes from these meetings reveals that the confrontations between Michael and the children were often fraught with tension and open hostility in the beginning, but that over time, and with

> Michael's calm and patient manner, the children's attitudes became less negative and their interactions with their father more constructive. Mr. Kantaras explained his transsexualism and surgery to the children and openly responded to questions and countered false information they were provided by their mother.

Dr. Shelef opined that Michael "truly possesses good parenting skills and after each of six sessions she witnessed Mathew would end the session with a quick "I love you."

In regard to Linda's parenting skills, Dr. Shelef had this to say:

> "Although I have had less time to observe Linda Kantaras with the children, she seems to be an adequate parent. However, it seems to me that she may actually be abusing the legal system with restraining orders, canceled therapy sessions, inappropriate disclosures to the children regarding adult marital and sexual issues. In my opinion, these behaviors are not in the best interest of the children and may alienate the children against their father."

By October 9, 2000, a remarkable transition had taken place under the therapy of Dr. Shelef and Michael's skills because by that date Irina said she would tell the judge that "its fair to see both parents – to see them equally."

Mathew and Irina reported that their mother said "Michael would take them to Greece and not bring them back."

Dr. James Boone, Psychologist, was appointed by the Court to replace Dr. Shelef.

Dr. Dies summarized Dr. Boone's interviews and treatment sessions from the professional notes of Dr. Boone, who wrote that:

> "Michael is more emotionally stable but may have a history of being emotionally controlling of Linda. . . . Linda is a chronically depressed and dependent-manipulative woman who is intensely angry with Michael for his perceived abandonment of her." Dr. Boone further stated: "I suspect that her anger is to the level that she is willing to

> circumvent court orders to sabotage his visitation and relationship with the children."

Dr. Dies draws upon Dr. Boone's observation that when Linda tells the children Michael is "living a lie" and cannot be regarded as a "man," the impact of such comments would in most cases "alienate" children against their parent. (page 11)

These observations of Dr. Boone weigh heavily because Linda can't control her hatred for Michael, as Mathew himself said, "she hates his guts." (Page 10)

The children, indirectly, are burdened with that "hatred" which is directed at them, should they show any understanding, sympathy, or affection toward Michael. Irina, it is observed, fears her mother's anger being directed at her should she anytime be supportive of Michael.

These children are not only being caught between their divorcing parents, they are being targeted for emotional abuse. Physical abuse by the use of a belt, flicking finger on lips and slaps to the face are routine disciplinary measure that Linda invokes on Mathew. Irina has been spared physical punishment.

On January 16, 2001, Linda called Dr. Dies to inform him about an "emergency" in that Mathew was temporarily living with his father because she was afraid of Mathew. Apparently Mathew went "ballistic" over the punishment Linda was meeting out to him. Linda said, he attempted to put his head through a window and threatened to kill himself, as well as his mother and sister. Linda contacted Michael to take Mathew for safety reasons. Under Michael's attention Mathew's level of hostility calmed down and in a few days returned to his mother. Irina told Dr. Dies she did not hear Mathew threaten to kill her or his mother. Mathew denied saying it, except killing himself. (Page 9-10)

Compounding Linda's disciplinary problem is her belief she is doing the right thing, Michael "just talks" to the children for discipline, she complains.

Dr. Dies concluded his Report to the Court with an "Update" Report about his interviews with both parents following their receipt of his primary Report and to have additional input with him if they objected to his Report.

Florida Statute, section 61.13(2) and (3), sets forth the criteria to be followed by the Court in determining whether there is to be "shared parental responsibility" and who should be "primary residential custodian." Dr. Dies very carefully and meticulously discusses each criteria, by setting out the statutory elements following by his comments, as to whether one parent or the other meets the test, as follows:

CRITERIA

(1) The parent who is more likely to allow the child frequent and continuing contact with the nonresidential parent:

Michael Kantaras qualifies best here.

(2) The love, affection and other emotional ties existing between the parents and the child:

Michael is said by Dr. Dies to have a distinct disadvantage under this criteria because he is portrayed in such an "adverse light." However, during the home observations Dr. Dies observed "both children showed Michael their love and affection and interacted with him comfortably." Linda scores favorably under this criteria.

Both children love their parents and the parents equally love their children.

(3) The capacity and disposition of the parents to provide the child with food, clothing, medical care or other remedial care, and other material needs:

Michael unfailingly met the financial support of his family. Linda's financial contribution even from her part time job which she obtained in the last years of their ten (10) year marriage, has been less than significant and has contributed "virtually nothing to the professional assistance she has received." In Dr. Dies' opinion the financial evidence "clearly favors Michael."

(4) The length of time the child has lived in a stable, satisfactory, environment and the desirability of maintaining continuity:

Dr. Dies observed both parents favor stability of having the children remain in the marital home. Because he could not predict the outcome of the divorce proceedings he was unable to score this criteria.

(5) The permanence, as a family unit, of the existing or proposed custodial home:

The discussion under criteria (4) above, settles this issue.

(6) The moral fitness of the parents:

Dr. Dies stated that "neither parent presents as 'immoral' in the sense of drug or alcohol abuse, criminal record, child physical or sexual abuse, or sexual misconduct.

Linda's willingness to violate Court orders poses a serious judgmental flaw in Linda's approach to setting a good example for her children and their visitation rights with their father. Dr. Dies suggests that Linda "is much more inclined to distort the truth and to engage in behaviors that are quite inappropriate to suit her needs. As such, there may be questions about her moral judgments."

Michael is to be favored under this criteria.

(5) The mental and physical health of the parents;

Neither parent reports significant health concerns in terms of medical problems. Both were given the MMPI-2 test and the Rorschach Inkblot test to determine if there was any symptoms of maladjustment.

Dr. Dies reports the testing showed, the following: Michael's pattern of scores on the validity scales shows that he answered the MMPI-2 in "an honest fashion with little effort to conceal problems." In contrast, "Linda obtained an elevated L (lie) scale, suggesting extreme defensiveness and/or denial of psychological problems. An alternative interpretation is that she tends to be overly moralistic and conventional, with little insight into her own motivations, or awareness of the consequences to other people of her behavior. Her pattern of scores reflect people who harbor intense feelings of anger and hostility and these feelings are expressed in occasional emotional outbursts. Dr. Dies said these symptoms describe Linda, based upon "information gathered from many sources."

Michael's scoring suggests that he tends to be overly concerned with behaving in socially acceptable ways and strives to "convince others he is reasonable and logical." Dr. Dies says such individuals are often insecure and have a strong need for attention, affection and sympathy. Michael's pattern of scores are self-centered or overly self-focused.

Neither Michael nor Linda could be described as seriously maladjusted. The comments from Drs. Shelef and Boone were "consistent in their view of Michael as more stable and less likely to undermine the relationship between the children and the other parent."

This criteria favors Michael.

(7) The home, school, and community record of the child:

Despite the fact Linda works at Place in the children's school, Anclote Middle School, and acts part time as replacement teacher she moved the children from school to school to school without notifying or consulting with Michael about the reasons for such moves. The evidence shows she told Michael he would "never see" the children again – and they disappeared from one school, while moving to another. There was no rational basis to justify yanking the children from one school to another. Linda has no formal education, stopping at the high school level, but she performs well as a substitute teacher. Michael has no college level education either, but he actively pursues school activities with the children. Linda became president of the school PTA and demonstrates organizational talent. The evidence in this case shows she intimidated the school authorities by saying she would hold them liable if they let her children go with Michael on his visitation days, one minute early. Michael says "schooling" has been a big issue between him and Linda, saying Linda's unwillingness to work with him on what's best for the children has been a problem. Mathew was thrown out of the Place Program while she worked there.

This Court believes Michael has a more positive interest in advancing the children academically, and he has underwritten their school costs. This criteria favors Michael in the long run.

(9) The reasonable preference of the child, if the Court deems the child to be of sufficient intelligence, understanding and experience to express a preference:

Dr. Dies observes, as well as Dr. Boone, that the children have expressed a preference to live with their mother as primary custodian. Both Drs. Dies and Boone

commented the children were "brain washed" so to speak, by Linda's persistent and opportunistic approach to denigrate Michael whenever or however possible. The children have gyrated emotionally as a consequence, loving their father until the "great revelation," then they hated their father as a freak and mellowing back to a surprisingly mature attitude about Michael's transsexuality.

This Court had the opportunity to meet, individually, with Mathew and then Irina. They were informed that the privacy of our meeting in chambers would not be commented on by the Court, as to what they each told this Judge.

The Court is satisfied their emotional maturity is their saving grace and Mathew has a level of comprehension that is healthy. He can, with the right parental support, achieve a balance and not be oppositionally defiant. Irina is collected and calm with a reserved insight as to her parents' own emotional crisis.

These children are paramount in the decisional process – their welfare, and stability is uppermost in the mind of the Court. The Court will not disclose the preferential choice of the children.

The legal consequences of interpreting the statutory law of marriage should not result in the destruction of these two bright and lovely children.

(10) <u>The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the children and the other parent</u>:

Dr. Dies merely recites the weight of the evidence in this case and recounts recent talks with Linda's sister Crystal and brother-in-law Billy, who relate the family attitude along with Linda that Michael is a "he/she/it." Dr. Dies then states: "Linda and her family have given the children powerful and insidious messages that undermine Mathew

and Irina's relationship and respect for their father, as well as, the woman with whom he plans his future (Sherry). The pervasive pattern of name-calling, blaming, manipulating have been harmful and destructive."

There is no doubt from this evidence that Linda suffers from the parental alienating syndrome. The Court takes note of the diagnosis that Dr. Boone gave Linda Kantaras, in that, available data raises concerns for her suffering a "Borderline Personality Disorder."

This criteria unmistakenly favors Michael.

In summary, Michael is favored in all criteria, except possibly number nine (9), according to Dr. Dies, who states the weight of the evidence favors Mr. Kantaras as the person who should have primary residential custody, but with ample visitation allowed for the mother. This significant modification in the children's lives will require monitoring and counseling to foster a productive transition."

The Court accepts the recommendation of Dr. Dies. The Court expresses its deep appreciation for the tremendous task assumed by Dr. Dies to prepare this "outstanding" custody Report, and the supplemental update Report. These reports will be attached to this opinion and incorporated therein.

Accordingly, Michael Kantaras will be designated the primary residential parent and Linda Kantaras will be designated the visiting parent under liberal visitation rights.

## OUTLINE OF CONCLUSIONS OF LAW

1. This is a case of divorce where the parties agree their marriage is irretrievably broken and should be dissolved.
2. The parties have two children, both minors, one child was of a prior relationship prior to this marriage and adopted by the husband following this marriage and the other child was produced by artificial insemination during the marriage.
3. Each parent claims primary custody of the children with the non-custodial parent to have visitation rights on a liberal basis.
4. Each child by law is old enough to express their preference for which parent they prefer to have as primary custodian because the boy, Mathew, is ten (10) years of age and the girl, Irina, is seven (7) years of age. They have indicated to the court their preference in a confidential meeting.
5. The court has the benefit of a custody evaluation report prepared by Dr. Robert R. Dies who recommends the father, Michael Kantaras should have primary custody and the mother Linda Kantaras, should have visitation on a liberal basis.
6. The parents should have shared parental responsibility over the children is the recommendation of Dr. Dies.
7. The question that arose in this case is that the wife Linda Kantaras claims the marriage she entered into with the husband, Michael Kantaras on July 18, 1989, was legally invalid and that her husband and father of their children has no legal basis to claim any rights to the custody of the children. She claims the marriage was never consummated and never could be on the basis that Michael was a woman at the date of the marriage because he was born a woman.

8. The parties agreed that the birth certificate of Michael disclosed his given name was "Margo" and the sex was female.
9. Michael, on March 10, 1986 and prior to the date of the application for a marriage license had a legal change of name to Michael John Kantaras." At the time the marriage license was obtained he presented himself as a male, certified his age to be more than 18 years and signed as "groom."
10. On the application in the District Court of Brazoria County, Texas (300th Judicial District) for a name change the reason given for the request was Petitioner was undergoing treatment for a neuroendocrinological condition, the treatment of which involves sex reassignment and classification in the male gender. The change of name to what is commonly accepted as a male name is good cause due to the treatment which Petitioner has received.
11. The application to marry in the Sixth Judicial Circuit does not have a provision to declare if the applicant is male or female, other than the name of the groom and bride and a certification that the information provided is correct. The marriage took place in Sandford County, Florida, and the application for a license was not made an exhibit but the court presumes the application would be similar to that of the Sixth Judicial Circuit, which is attached to this opinion.
12. Michael, on February 25, 1987, was diagnosed as a female transsexual by the Rosenberg Clinic Gender Treatment Program of Galveston, Texas and he satisfied all the psychiatric and medical criteria to be admitted to sex reassignment surgery under the standards of the Harry Benjamin International Gender Dysphoria Association. (Pet. Ex. #1-A)

13. The Rosenberg Clinic, on April 7, 1987, through Dr. L.C. Powell, Jr., M.D., Professor, Dep't of OB-GYN, University of Texas Medical Branch at Galveston, Texas Program Director, wrote that Michael Kantaras had undergone total abdominal hysterectomy, bilateral salpingo-oophorectomy in accordance with the gender treatment program. (Pet. Ex. #1-B)

14. The Rosenberg Clinic on September 9, 1998, through Dr. Collier M. Cole, Ph.D., Clinical Psychologist and Dr. Lee E. Emory, M.D. – FAPA, Psychiatrist, Medical Director, stated in a letter Michael Kantaras was an active patient in their program from 1985-1987, being treated for the neuroendocrinological condition of "gender dysphoria," commonly referred to as transsexualism. He was born anatomically a female; had long standing feelings of being male dating back to early childhood; in accordance with the Standards of Care of the Harry Benjamin International Gender Dysphoria Association, he underwent the real life test, living full-time in the male gender role; and sex reassignment surgery was performed in 1987 and he is now regarded medically, legally and socially as "male." He lives, works and socializes as a male and has no signs or symptoms of major underlying psychopathology (e.g. a thought disorder as in schizophrenia, mood disturbance as in major affective disorder). (Pet. Ex. #1-C)

15. At the time of this application for a marriage license, Michael presented himself to the clerk of the court of Sandford County, Florida, as a male or groom and Linda presented herself as a female and bride and the clerk performed the marriage ceremony in the Sandford Court House, and thereafter pronounced them

married as husband and wife, which was witnessed by relatives who accepted Michael as a male.

16. The marriage statute of Flordia, section 741.04 (Fla. Stat.) requires the marriage applicants to be 18 years of age or older, and to be male and female. There is no definition in the statute of either "male" or "female." The statute does provide that the state has a compelling interest in "promoting" not only marriage but also responsible parenting.
17. In section 7412.12, Florida Statutes, "same sex" marriage is made illegal in Florida. In sub-section (3), the definition of marriage is stated to mean "only a legal union between one man and one woman as husband and wife and the term 'spouse' applies only to a member of such a union."
18. The marriage law of Florida clearly provides that marriage shall take place between one man and one woman. It does not provide when such status of being a man or woman shall be determined.
19. The eligibility to marry is confined to mature adults who must present themselves visibly as of the male and female gender to the County Court Judge or Clerk of the Circuit Court, before the license to marry shall be issued.
20. There is no statutory requirement that the applicants shall prove their gender by producing a birth certificate at the time of their application.
21. The gender or sex of a person at birth as evidenced by a birth certificate may be relevant but is not by law dispositive. There is a presumption of correctness for most purposes, but it is a rebuttable presumption in the face of medical evidence.

22. For the purpose of ascertaining the legal validity of a marriage between two adults of the opposite gender the question whether a person is a man or woman should be determined as of the date of the application for the license because that is the critical time, and not later than the date of marriage.

23. There is no rule of law or medical basis that requires the circumstances at the time of birth to be the sole factor to determine qualification for a license to marry because there are so many medical variables between birth and a fully grown adult over some 18 years and its on adults the obligation of marriage is placed, particularly, if there are to be children of the marriage.

24. Michael at the date of marriage was a male based on the persuasive weight of all the medical evidence and the testimony of lay witnesses in this case, including the following:

    (a) As a child, while born female, Michael's parents and siblings observed his male characteristics and agreed he should have been born a "boy."

    (b) Michael always has perceived himself as a male and assumed the male role doing house chores growing up, played male sports, refused to wear female clothing at home or in school and had his school high school picture taken in male clothing.

    (c) Prior to marriage he successfully completed the full process of transsexual reassignment, involving hormone treatment, irreversible medical surgery that removed all of his female organs inside of his body, including having a male reconstructed chest, a male voice, a male configured body and hair with beard and moustache, and a naturally developed penis.

(d) At the time of the marriage his bride, Linda was fully informed about his sex reassignment status, she accepted along with his friends, family and word colleagues that Michael in his appearance, characteristics and behavior was perceived as a man. At the time of the marriage he could not assume the role of a woman.

(e) Before and after the marriage he has been accepted as a man in a variety of social and legal ways, such as having a male driving license; male passport; male name change; male modification of his birth certificate by legal ruling; male participation in legal adoption proceedings in court; and as a male in an artificial insemination program, and participating for years in school activities with the children of this marriage as their father.

All of this, was no different than what Michael presented himself as at the date of marriage.

25. Michael was born a heterosexual transsexual female. That condition is now called "Gender Identity Dysphoria," was diagnosed for Michael in adulthood some twenty (20) years after birth. Today and at the date of marriage, Michael had no secondary female identifying characteristics and all reproductive female organs were absent, such as ovaries, fallopian tubes, cervix, womb, and breasts. The only feature left is a vagina which Dr. Cole testified was not typically female because it now had a penis or enlarged, elongate clitoris.

26. Michael after sex reassignment or triatic treatments would still have a chromosomal patter (XX) of a woman but that is a presumption. No

chromosomal tests were performed on Michael during the course of his treatment at the Rosenberg Clinic.

27. Chromosomes are only one factor in the determination of sex and they do not overrule gender or self identity, which is the true test or identifying mark of sex. Michael has always, for a lifetime, had a self-identity of a male. Dr. Walter Bockting, Dr. Ted Huang and Dr. Collier Cole, all testified that Michael Kantaras is now and at the date of marriage was medically and legally "male."

28. Under the marriage statute of Florida, Michael is deemed to be male, and the marriage ceremony performed in the Sandford County Court house on July 18, 1989, was legal.

IN THE CIRCUIT COURT OF THE SIXTH JUDICAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CASE NO: 98-537CA
511998DR005375xxxxWS

IN RE: THE MARRIAGE OF:

MICHAEL J. KANTARAS,

Petitioner/Husband,

And

LINDA G. KANTARAS,

Respondent/Wife.

_____/

FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

This cause having come before the Court on the husband's petition for dissolution of marriage, custody of the children, and division of marital assets, the wife, respondent, having answered and filed an amended counter-petition for dissolution, custody of the children and division of marital property, the court having heard testimony of the Petitioner, witnesses called by Petitioner, medical experts, and testimony of the Respondent and witnesses called by Respondent, oral argument of counsel, legal briefs filed by counsel, and there having been due proof and corroboration of residence, on the evidence presented the Court finds:

1. Petition. The Petition for Dissolution was filed by the Petitioner/Husband on September 9, 1998.

2. Marriage. The parties were married on July 18, 1989, in Sandford, Seminole County, Florida.

3. Residence. The Petitioner has been a bonafide resident of Pasco County, Florida, for more than six months before the commencement of this action.

4. Irretrievably Broken. The marriage of the parties is irretrievably broken and should be dissolved.

5. Minor Children. There are two children born of the marriage, namely Mathew T. Kantaras (male) age 13, born Jun 3, 1989, in Rockledge, Florida, and Irina L. Kantaras (female) age 10, born January 23, 1992, in Fort Walton Beach, Florida.

6. Petitioner filed a Declaration under Uniform Custody of Minors Act.

7. Parental Responsibility. Petitioner requested with respect to the children that the parties have "shared" parental responsibility. The Respondent also requested in her counter-petition that the parties have "shared" parental responsibility. Accordingly, the court grants the respective requests and the parties shall have "shared" parental responsibility.

8. Child Custody. Petitioner alleged in his Petition it was in the "best interest" of the children that he be given "primary" physical custody of the children and that Respondent be accorded visitation. The Court agrees that the preponderance or overwhelming weight of the evidence supports the request. The Court does grant the primary physical custody of both children, Mathew and Irina, to Petitioner, with liberal visitation rights to the Respondent.

9. Current Custody. The Court, after the close of the trial in this case, conducted an Emergency hearing on May 1 and May 14, 2002, concerning the interference with and

disruptive conduct by Respondent of Petitioner's visitation schedule. Following that hearing the Court by Order dated June 7, 2002, transferred temporary primary residential custody of the children to Petitioner beginning on May 24, 2002, subject to the following:

a. Because the children were beginning their summer school vacation, Petitioner was to have primary residential custody from May 24 through July 17, 2002.

During that period, Respondent would have visitation with the children but not on a scheduled basis, but open and liberal visitation with reasonable phone contact.

b. Next, on July 17, 2002, through August 11, 2002, the parties reversed positions and Respondent would then have custody of the children and Petitioner likewise would assume visitation but not on a scheduled basis, but open and liberal visitation with reasonable phone contact.

c. On August 12, 2002, the Petitioner was to resume primary physical custody pending the issuance of a Final Order in this action.

d. Respondent was granted scheduled visitation with the children of one evening per week from 4:00 p.m. to 7:00 p.m., (the day to be selected by mutual agreement of the parties) and visitation every other weekend beginning after school on Friday until Sunday at 5:00 p.m.

e. Respondent was not required to pay child support to Petitioner during the period from August 12, 2002, until the Final Order.

10. Collateral DVI Case. The parties were involved in another Domestic Violence Injunction case (Case No. 511998LDR 00 5375 – WS – F) running parallel to this action and which impinged on these proceedings. Petitioner had pursued an injunction against Respondent which was issued on a temporary basis and when it came

to hearing before this Judge, a compromise was suggested to the Court that Petitioner would move to dismiss the injunction upon Respondent being ordered to attend anger management counseling. The Court thereafter entered an Order Granting the modification of the custody/visitation Order of June 7, 2002, and the following was entered by Order on September 27, 2002:

a. Respondent was ordered to attend and successfully complete a court-approved anger management program.

b. Overnight visitation with Respondent by the children was suspended temporarily until such time as Respondent has successfully completed the anger management program. In the mean time, Respondent was allowed visitation as follows:

(1) Alternating weekends, Saturday from 9:00 a.m. to 8:00 p.m.;

(2) Friday 5:30 p.m. to 8:00 p.m.;

(3) Sunday 7:30 a.m. to 8:00 p.m.

c. Upon filing a Certificate of Completion of the Anger Management Program, Respondent will then be allowed overnight visitation.

d. The Order further provided the parties shall not enter the residence of the other without express permission. There shall be curbside exchange of the children with advance notice of arrival.

The parties shall not make negative comments about the other in front of the children, their school classmates or in public areas.

11. Continuing Order. The Court does readopt the above Orders of June 7, 2002 and September 27, 2002, and all their conditions and they remain in full force and effect.

12. Child Support. The Orders of June 7, 2002, stated Respondent was not required to pay child support to Petitioner during the period from August 12, 2002, until the Final Order is issued.

a. Respondent filed her Financial Affidavit (short form) during the trial. It was received in evidence as Respondent's Exhibit #2. She reports her employment as Substitute Teacher, employed at Gulfside Elementary School and the Place Program, 2329 Anclote Blvd., Holiday, Florida. She reports her regular pay is $462.00 payable bi-weekly. Her monthly gross income from all sources is $1,001.00, with deductions of $76.57, having a net balance of $924.43. She reports her expenses total $1,173.30 and her deficit per month is $248.87. The allocation for monthly expenses appears reasonable.

b. Respondent does not have sufficient income to currently pay child support. No support will be awarded Petitioner. Respondent was seeking a supplemental job in addition to being a Substitute Teacher and working in the Place Program of the school system. The supplemental job was at her church, Calvary Chapel Worship Center, New Port Richey, Florida, working twenty (20) hours per week and at minimum wage. The job was tentative.

Therefore the Court reserves jurisdiction to award support under the guidelines to Petitioner, in the event, Respondent's financial condition should improve. Respondent is directed to file three (3) months from the date of this order an updated financial affidavit.

13. Possession of Marital Home. The parties purchased a marital home located at 3525 Umber Road, Holiday, Florida. The parties hold title as husband and wife or as tenants by the entirety.

Respondent moved out of the house recently giving possession to Petitioner and the children.

Respondent is presently residing with a female friend, who is a member of the church.

Petitioner is awarded temporary possession of the home, so long as he is awarded permanent residential custody of the children.

14. Furniture and furnishings. The furniture and furnishings will remain in the marital home. The parties may mutually agree to allow Respondent the use of any furnishings she may need for her relocation.

15. Sale of Marital Home. Respondent in her Counter-Petition, requested that the marital home be sold and the net proceeds of the sale be divided between Respondent and Petitioner. The marital home is not to be sold while the children have need for shelter. However, when the youngest child, Irina, reaches majority of age eighteen (18), the marital home shall be sold and the net sale proceeds after sale expenses shall be equally divided between Respondent and Petitioner.

16. Alimony. Respondent, in her initial pleadings filed in this action, requested temporary rehabilitative and permanent alimony. The request for alimony was dropped in her later pleadings, namely, the Amended Counter-Petition.

In any event, the request for alimony is denied. No evidence was taken regarding alimony during the trial and in her pre-trial memorandum no mention was made of alimony.

17. Mortgages and Maintenance. Petitioner initially paid the down payment on the purchase of the marital home from his savings and several thousand dollars advanced

by his parents. All during the course of this ten (10) year marriage, he has paid the two mortgages on the house plus the expense of any maintenance. Petitioner recently painted the interior walls of the children's bedrooms.

Petitioner shall continue to make the mortgage payments and maintenance costs on the marital house.

18. Insurance. Petitioner shall maintain health insurance for both children. Respondent will be required to pay 50% of any medical costs not covered by insurance.

19. Attorney Fees. Petitioner and Respondent both requested attorney fees in their pleadings.

Petitioner has been represented by three attorneys, namely: Collin D. Vause, Esquire, of Clearwater, Florida; Robert Minton, Esquire, of San Francisco, California; and Karen M. Doering, Esquire, of the National Center for Lesbian Rights, of Tampa, Florida.

Respondent has been represented by four attorneys, namely: Peter O. Brick, Esquire, of New Port Richey, Florida; Theodore I. Reckel, Esquire, of Tampa, Florida; M. Katherine Ramers, Esquire, of Dunedin, Florida; and Claudia Jean Wheeler, Esquire, of New Port Richey, Florida.

It is the Court's understanding from remarks by the attorneys that their professional services are essentially *pro-bono*. Although the evidence does indicated Linda Kantaras may have paid some amount in the beginning of her case for attorney fees and that Michael Kantaras may have likewise paid something toward attorney fees or that both parties only paid something on court costs.

The cost of the transcript of this trial is not certain which took weeks to prepare and may have reached in the area of $16,000 approximately.

For these reasons, the Court reserves jurisdiction on the request for attorney fees, but if those fees of both parties are "*pro bono*," then the Court will deny an attorney fee contribution, pending clarification on the issue.

20. Counseling Fees. The evidence indicates that Petitioner has volunteered to underwrite the professional counseling fees incurred by Drs. Davenport, Shelef, Boone and Dies. Dr. Dies testified that Linda Kantaras has not paid him on a $2,000 billing, or that she contributed any money for the other professionals.

The pleadings filed by the parties are silent on any request for a contribution toward these fees so the Court reserves jurisdiction on that issue pending clarification.

The Court does take note of the fact Michael Kantaras testified that his child support, mortgage costs and general household expenses for the years 1998 through 2001 came to a total of $66,811.27. (See Pet. Ex. #8, 13, 15 and 16)

21. Assets and Liabilities. Respondent requested in her pleadings, and Petitioner, likewise, that the assets and liabilities of the parties during the marriage shall be divided between the parties. They are as follows:

a. Respondent's financial affidavit (Resp. Ex. #2) discloses assets of $40,000 for the marital home (presumably market value divided by 50%) and $700 for the value of her 1990 Oldsmobile. She shows total assets of $40,700. Liabilities of two mortgages at $44,000; a gold Visa card debt of $600 and Capital One Master Card debt of $800. The total liabilities are $45,400, leaving a minus net worth of <$4,700>.

b. Petitioner filed a financial affidavit (short form) reporting he is a baker employed at Sam's Club, in Tampa, Florida, and has monthly wages of $2,882.00. His deductions are $363.91, leaving a net monthly income of $2,518.09. He claims expenses of $1,857 per month leaving a net monthly income of $661.09. His assets are $240 cash and a 1991 Ford Ranger at a value of $1,000. A total asset listing of $1,240 does not mention the marital home market value. He does disclose mortgage liability of $35,000.

c. Petitioner has a 401(k) valued at $3,463.96 and Profit Sharing at $12,432.07.

The pleadings of Respondent did not refer to or make any claim on the Petitioner's 401(k) or Profit Sharing Plan. No testimony was heard with respect to these assets. Therefore, the Court reserves jurisdiction on the allocation of these assets, whether they be marital, or subject to any distribution. In the meantime, those are the assets or property of Petitioner.

d. The Court finds the primary asset of the parties is the marital home. The home shall not be presently sold, but temporary possession has been turned over to Petitioner for purposes of providing a home for the children while he has primary residential custody.

The parties shall be liable for their own credit card debts or any other debts created individually by them. Each shall have title to and possession of their own automobiles.

22. Legality of Marriage. The Court has carefully reviewed all the pleadings, record evidence, expert medical testimony, lay witness testimony and the appropriate statutory authority for marriage in Florida and concludes the overwhelming weight of the

evidence favors declaring the marriage valid as entered into on July 18, 1989, at Sanford, Seminole County, Florida.

23. Adoption and Artificial Insemination. The evidence in this case reported that the son, Mathew T. Kantaras, was adopted by Michael Kantaras, Petitioner, following his marriage to Linda Kantaras who told the judge at the adoption hearing that Michael Kantaras was the only father of Mathew she had in mind. The adoption was the inducement to the marriage, in order to provide Mathew with a father, who was born out of wedlock and to make the boy legitimate in the eyes of the law. The marriage being valid, despite the position of Linda Kantaras, who's legal position withdraws the mantle of legitimacy from her own children, is declared legal.

The daughter, Irina L. Kantaras, was conceived by artificial insemination with Michael's brother, Thomas, being the sperm donor. The birth certificate reflects the marriage status of Michael and his legal position as husband to Linda Kantaras.

Similarly to Mathew, if Michael Kantaras as husband is declared invalid then Irina's birth certificate and Mathew's birth certificate listing parents would be in error, Irina would have no father and she would be conceived out of wedlock and not legitimate at law.

These consequential calamities are avoided through having Michael Kantaras legally husband of Linda Kantaras and father of Irina. The birth of Irina is declared legal and legitimate within the law. The adoption of Mathew is declared legal and legitimate within the law. It is, therefore,

**ORDERED AND ADJUDGED:**

1. Dissolution of Marriage. The marriage between Linda J. Kantaras and Michael J. Kantaras is irretrievably broken and therefore dissolved.

2. Legality of Marriage. The marriage of the parties on July 18, 1989, at Sanford Seminole County, Florida, is valid.

3. Parental Responsibility and Custody. The parents, Linda Kantaras and Michael Kantaras shall have joint parental responsibility over their children, with the father, Michael J. Kantaras having primary residential custody and the mother, Linda G. Kantaras, having visitation rights consonant with the Orders of the Court rendered on June 7, 2002, and September 27, 2002, and under the terms and conditions set forth in said orders and this order.

4. Child Support and Residence. The father, Michael J. Kantaras, having been designated the primary residential custodian of the children, is granted temporary possession of the marital home furniture and furnishings, for the benefit of the children.

The mother, Linda G. Kantaras, shall not be required to pay presently child support, but she will be ordered to contribute fifty percent (50%) of any medical costs incurred on behalf of the children not covered by medical insurance; and to file an updated financial affidavit three (3) months from the date of this order.

The father is directed to provide medical insurance coverage for the children.

The Court reserves jurisdiction to consider imposing some child support on the mother if, and in the event, her employment level should increase. She will be required to pay support under the Florida Guidelines.

5. Attorneys Fees. Michael J. Kantaras is not required to contribute to the financial fees payable by Linda G. Kantaras, to her attorney, Claudia Jean Wheeler, Esquire, or her prior attorneys, Peter O. Brick, Eesquire, Theodore Rechel, Esquire, or M. Katherine Ramers, Esquire.

6. Marital Home. The major asset of this marriage is the residence located at 3525 Umber Road, Holiday, Florida. Title is held jointly, by the entireties. Michael J. Kantaras will be required to maintain the two mortgages on the property. He shall have temporary possession of the residence for the benefit of the children. When the youngest of the children, Irina, reaches majority of 18 years, the residence shall be sold and the proceeds of the sale divided between the parties, less any costs of sale.

7. Adoption and Artificial Inseminaiton. The adoption of Mathew T. Kantaras by Michael J. Kantars is confirmed as legal.

The parentage of Irina, with Michael J. Kantaras as father through artificial insemination is confirmed as legal.

8. Reserves Jurisdiction. The Court reserves jurisdiction to enforce the executory provisions of this judgment.

DONE AND ORDERED at Clearwater, Pinellas County, Florida, this ___ day of February, 2003.

_____
GERARD J. O'BRIEN
CIRCUIT COURT JUDGE

Cc:
Claudia Jean Wheeler, Esquire
Karen M. Doering, Esquire