

Examining the “T” in LGBTQIA

Terminology, Trends, and Tips from
Federal Law

Examining the “T” in LGBTQIA

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- II. Why Trans Issues Matter
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WHY TRANS ISSUES MATTER

STATISTICS

- An estimated 3.8% of adults in the United States identify as lesbian, gay, bisexual, or transgender. (9 million Americans)
- An estimated 0.3% of adults are transgender (700,000 Americans)

The Williams Institute, April 2011

STATISTICS

700,000 = more than the population of Washington, D.C.

If you are in a high school of 2,000 kids, you will probably have somewhere between 2 and 4 transgender students.

STATISTICS

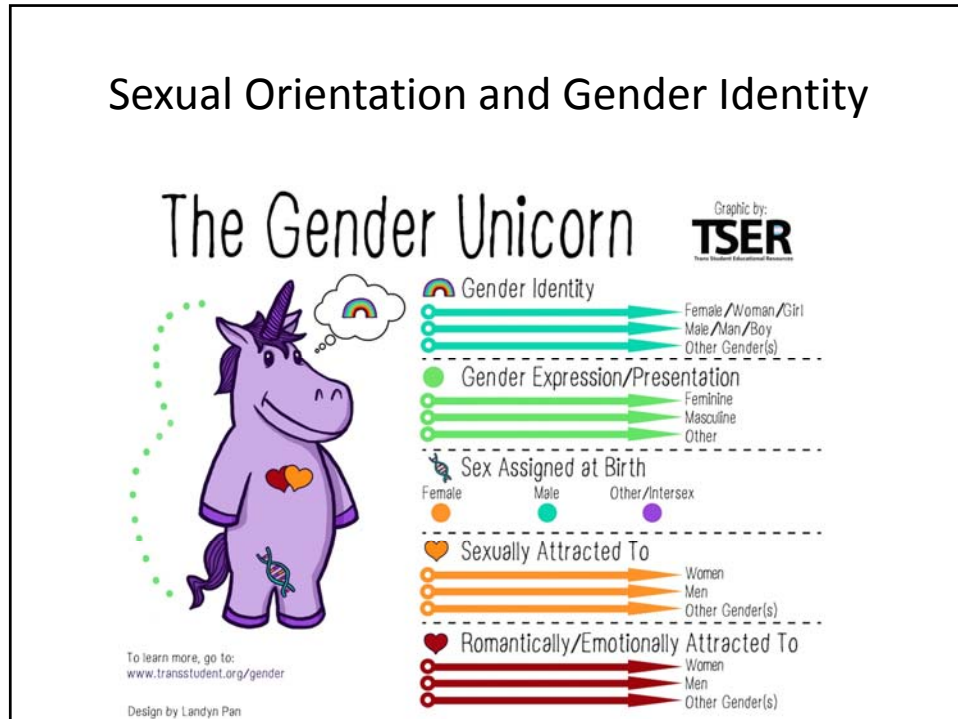
- At least 15 people have been murdered so far this year for being lesbian, gay, or bisexual (that have been reported)
- At least 13 people have been murdered for being transgender

Developments in Federal Law

- Recent developments in federal law require that transgender students are afforded equal rights and protection under the law
- Violating this can result in severe penalties for school districts as well as large settlements or court verdicts paid to the student

UNDERSTANDING THE “T” IN LGBT

Sexual Orientation and Gender Identity



Sex vs. Gender?

- **Sex** is a biological term referring to genetics and anatomy (were you born with male, female, or indeterminate anatomy?)
- **Gender Role** refers to the traditional behavioral differences between men and women, as defined by the culture in which they live
- **Gender Identity** refers to a person's internal or perceived sense of their gender (do you feel like you are male or female?)

Important Terms

In order to better understand transgender issues and concerns, it's important to understand terms associated with the LGBTQIA population.

Terminology

- Lesbian
 - A woman who self-identifies as having an emotional, sexual, relational attraction to other women
- Gay
 - A man who self-identifies as having an emotional, sexual, relational attraction to other men
- Bisexual
 - A person who self-identifies as having an emotional, sexual, relational attraction to men and women

Terminology

- Queer
 - Used by some to refer to themselves, the LGBT community, or a person who is LGBT
 - Often viewed as a political statement
- Questioning
 - Individual who may be experiencing lesbian, gay, bisexual, or transgender feelings or urges but has not yet identified with their sexual orientation or gender identity.

WHAT CAUSES DIFFERENT SEXUAL ORIENTATION?

- Sexual orientation has not been conclusively found to be determined by any particular factor or factors. Sexual orientation is not synonymous with sexual activity. Many adolescents may identify themselves as lesbian, gay, or bisexual without having any sexual experiences.

IS IT A MENTAL ILLNESS?

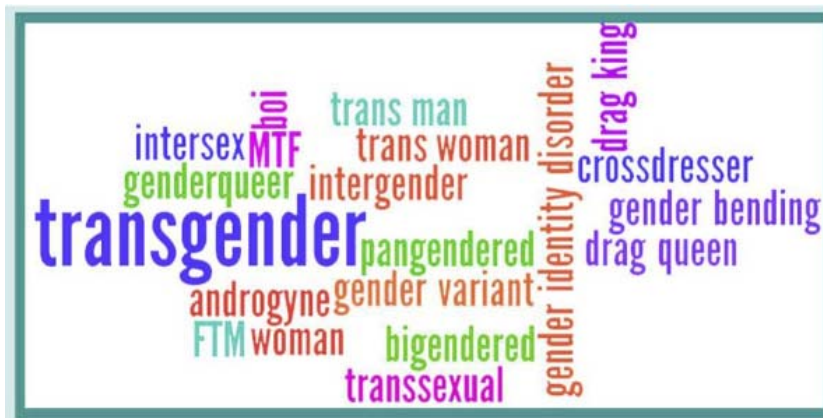
- Is being lesbian, gay or bisexual a mental illness?
- The American Psychiatric Association states: No. All major professional mental health organizations have gone on record to affirm that homosexuality is not a mental disorder.

Just the Facts Coalition. (2008). *Just the facts about sexual orientation and youth: A primer for principals, educators, and school personnel*. Washington, DC: American Psychological Association. Retrieved from

www.apa.org/pi/lgbcc/publications/justthefacts.html.

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What does “transgender” mean?



What does “transgender” mean?

- An umbrella term for a person whose gender identity and/or expression is different from that typically associated with their assigned sex at birth.
- Some individuals *may seek* some degree of gender affirmation surgery, take hormones or undergo other medical procedures.
- Others may pursue gender expression (masculine or feminine) through external self-presentation and behavior.
- Also trans or trans*

Transgender Terminology

- *Transwomen* (assigned ‘male’ at birth, but identifying as female)
 - ‘transgender women’, ‘MtF transpeople’, ‘women of transgender experience’
- *Transmen* (assigned ‘female’ at birth, but identifying as male)
 - ‘transgender men’, ‘FtM transpeople’, men of transgender experience’
- *May* make the gender transition (towards presenting socially in accordance with their identity)
- *May* undergo *sex/gender affirmation surgery*
 - *Transsexual (outdated term)* – people whose gender identity is different from their assigned sex at birth; sometimes used to refer to a transgender person who has sought medical interventions

IS BEING TRANSGENDER A DISORDER?

In May 2013, Medical professionals removed “Gender Identity Disorder” from the Diagnostic and Statistical Manual of Mental Disorders (DSM-V)

- Replaced it with “Gender Dysphoria”

Gender Dysphoria

- **Gender Dysphoria:** Negative feelings arising from some aspect of gender experience, possibly including but not limited to:
 - an assigned gender different from one's gender identity
 - body dysphoria (where one's sexual characteristics seem wrong)
 - others' perceptions of one's gender
 - social treatment related to perceived or assigned gender
- Not all transgender people experience dysphoria.

TRANS*

I recently adopted the term "trans*" (with the asterisk) in my writing. I think you should, too. If it's new to you, let me help clarify. Trans* is one word for a variety of identities that are incredibly diverse, but share one simple, common denominator: a trans* person is not your traditional cisgender wo/man. Beyond that, there is a lot of variation.

WHAT DOES THE * STAND FOR?

***TRANS GENDER**

*TRANSSEXUAL *TRANSVESTITE

***GENDER QUEER**

*GENDERFLUID *NON-BINARY *GENDERF*CK

***GENDER LESS**

*AGENDER *NON-GENDERED

***THIRD GENDER**

*TWO-SPIRIT *BIGENDER

***TRANS MAN**

***TRANS WOMAN**

read more at ItsPronouncedMetrosexual.com

Gender Variant/Non-Binary

People who do not adhere to society's rules about dress and activities for people that are based on their sex assigned at birth. They may define their gender as falling somewhere on a continuum between male and female.

- Agender
- Genderqueer
- Gender Bender
- Genderfluid
- Androgyne
- Pangender
- Polygender
- Bi-gender
- Two-Spirit
- Non-binary

Terminology

- Cisgender – the term used to describe people whose gender identity or expression aligns with those typically associated with the sex assigned to them at birth
- Cross-dressing – wearing clothing that is traditionally or stereotypically worn by another gender in their culture. It is NOT indicative of sexual orientation.

Terminology

- Intersex
 - A person with an intersex condition is born with sex chromosomes, external genitalia, or an internal reproductive system that is not considered "standard" for either male or female.
- Cisgender
 - When an individual's experience of their own gender matches the sex they were assigned at birth.

ADDITIONAL STATISTICS

Trans Youth Discrimination

- 55% of transgender youth report being physically attacked
- 74% of transgender youth reported being sexually harassed at school
- 90% of transgender youth reported feeling unsafe at school because of their gender expression
- 78% reported having been verbally harassed
- The rate of drop out, suicide, and homelessness is disproportionately high for transgender youth.

SUICIDE STATISTICS

- Suicide is the 2nd leading cause of death among young people ages 10 to 24. [1]
- LGB youth are 4 times more likely, and questioning youth are 3 times more likely, to attempt suicide as their straight peers. [2]

SUICIDE STATISTICS

- Nearly half of young transgender people have seriously thought about taking their lives, and one quarter report having made a suicide attempt. [4]
- LGB youth who come from highly rejecting families are 8.4 times as likely to have attempted suicide as LGB peers who reported no or low levels of family rejection. [5]

SUICIDE STATISTICS

- Suicide attempts are nearly two times higher among Black and Hispanic youth than White youth. [7]
- Each episode of LGBT victimization, such as physical or verbal harassment or abuse, increases the likelihood of self-harming behavior by 2.5 times on average. [8]

SOURCES:

[1] CDC, NCIPC. Web-based Injury Statistics Query and Reporting System (WISQARS) [online]. (2010) [2013 Aug. 1]. Available from: www.cdc.gov/ncipc/wisqars.

[2] CDC. (2011). *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9-12: Youth Risk Behavior Surveillance*. Atlanta, GA: U.S. Department of Health and Human Services.

[4] Grossman, A.H. & D'Augelli, A.R. (2007). *Transgender Youth and Life-Threatening Behaviors*. *Suicide and Life-Threatening Behaviors*.37(5), 527-37.

[5] Family Acceptance Project™. (2009). *Family rejection as a predictor of negative health outcomes in white and Latino lesbian, gay, and bisexual young adults*. *Pediatrics*. 123(1), 346-52.

[7] CDC. (2011). *Youth Risk Behavior Surveillance – United States, 2011*. Atlanta, GA: U.S. Department of Health and Human Services.

[8] IMPACT. (2010). *Mental health disorders, psychological distress, and suicidality in a diverse sample of lesbian, gay, bisexual, and transgender youths*. *American Journal of Public Health*. 100(12), 2426-32.

SUICIDE RATES FOR LGBT YOUTH

- According to data from the CDC, 1,700 LGBT youth lose their lives to suicide each year.
- There are approximately 42,500 attempts at suicide each year by lesbian, gay, bisexual, or transgender youth.





- A transgender first-grader who was born a boy but identifies as a girl has won the right to use the girls' restroom at her Colorado school.
- Coy's parents had taken her case to the commission after the district said she could no longer use the girls' bathroom at Eagleside Elementary. In issuing its decision, the state's rights division said keeping the ban in place "creates an environment that is objectively and subjectively hostile, intimidating or offensive."



- Tyler, born female, was 2 when he announced to his parents that he was a boy.
- Parents Jean and Stephen found their younger daughter wanted nothing to do with the girly hand-me-downs from her older sister and didn't want to play with girls, let alone acknowledge being one.
- After a year of insisting she was a boy, Jean decided to put her daughter's behavior to rest. Jean showed her a toddlers version of an anatomy book and said, "See? You're a girl. You have girl parts. You've always been a girl." The confused child replied, "When did you change me?"
- When she was 4, her parents took her to a psychologist who confirmed that she had Gender dysphoria. The doctor recommended that the little girl be allowed to live as a boy.
- Elated, Jean and Stephen's daughter wanted to be called "he" right way and changed his name to Tyler.
- Tyler started wearing boys clothes and felt, for the first time, comfortable in his own skin. "I am not transgender," Tyler insists, "I. AM. A. BOY."



- Transgender Oklahoma teens, Arin Andrews and Katie Hill, who made headlines when they fell for each other during their transitions, have split. The couple were champions of the transgender community and their fight for recognition was made even more challenging as they were both raised in America's "Bible Belt" where traditional values are the norm.
- Love is fleeting for any young couple, and as they explain, "We have a very unique bond because we've been through the same stuff, even though it was in opposite directions. But we're at a point in our lives where things are happening and it's harder to spend time together."

TRANSGENDER YOUTH

- To what can we attribute the rise of transgender youth? Transgender issues attaining a higher profile in popular media, both in entertainment and news programming. "Transgender children who are exposed to trans characters at young ages may recognize their own struggles reflected onscreen, thus allowing them to firmly identify what had previously been only a nebulous feeling that something was very wrong. Meanwhile, parents who see transgender people in the media are more aware of what to look for in their own children and of the increasingly wide array of medical options available for transgender youth.

Transgender Youth and Access to Gendered Spaces in Education, Harvard Law Review (127 Harv. L. Rev. 1722)

UNSAFE SCHOOLS?

- 2011 School Climate Study: Among the more than 700 transgender students in grades 6 through 12 who responded to the survey, 80% reported feeling unsafe at school, 75% reported being verbally harassed, and 17% reported being physically assaulted.
- 2009 School Climate Study: more than 55% of transgender students stated that, at times, they avoided school restrooms out of fear of abuse and 52% stated they avoided locker rooms for the same reason.

American Psychiatric Association POSITION STATEMENT ON TRANSGENDER PERSONS, 2012

- **The American Psychiatric Association:**
 1. **Supports laws that protect the civil rights of transgender and gender variant individuals**
 2. **Urges the repeal of laws and policies that discriminate against transgender and gender variant individuals.**
 3. **Opposes all public and private discrimination against transgender and gender variant individuals in such areas as health care, employment, housing, public accommodation, education, and licensing.**
 4. **Declares that no burden of proof of such judgment, capacity, or reliability shall be placed upon these individuals greater than that imposed on any other persons.**

THE LAW



THE CONSTITUTION



THE FIRST AMENDMENT TO THE CONSTITUTION

- Establishment Clause prohibits public schools from promoting, endorsing, or inhibiting religion or attempting to impose particular religious beliefs on students. For this reason, a public school counselor or teacher cannot proselytize to students or attempt to impose his or her religious beliefs about whether or not being LGBTQ is sinful.
- Free speech rights includes both pure speech and expressive conduct. Transgender students' dress is expressive conduct protected by the First Amendment. Supreme Court of the United States – a person's identity can be expressive conduct.

THE 14TH AMENDMENT

- No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
- Public officials (including schools) may not impose discriminatory burdens or unequal treatment on LGBTQ people because of public animosity toward them. This means that in schools, a district must protect students from anti-LGBTQ harassment just as it protects students from other kinds of harassment.

Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681

- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” The United States has declared that a district’s restroom policy is part of its educational program or activity.
- The United States Department of Education’s implementing regulations provide that a school may not “deny any person any . . . aid, benefit, or service,” or to “otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity” on the basis of sex. The regulations also provide that a school may not “subject any person to separate or different rules of behavior, sanctions, or other treatment” on the basis of sex.

SUMMARY: The law prohibits discrimination on the any and all aspects of sex and gender. Discrimination based on a person’s gender identity, a person’s transgender status, or a person’s nonconformity to sex stereotypes constitutes discrimination based on sex.

SEX INCLUDES GENDER IDENTITY

- The case law on gender identity makes clear that the term “sex” encompasses both sex – the biological differences between men and women – and gender. Current scientific understandings recognize that sex is not defined by any single biological characteristic, but encompasses a range of traits including gender identity. The Supreme Court of the United States has held that “sex” encompasses both the biological differences between men and women and also gender identity. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989).

Dear Colleague Letter from the U.S. Department of Education, Jun 14, 2011

- 1984 – Ronald Reagan signed into law the Equal Access Act, requiring public secondary schools to provide equal access for all extracurricular clubs. “More than 90% of LGBT students in grades 6 through 12 reported being verbally harassed – and almost half reported being physically harassed.
- A school that allows at least one noncurricular student group to meet on school grounds during non-instructional time may not deny similar access to other noncurricular student groups, regardless of the religious, political, philosophical, or other subject matters that the groups address.

Dear Colleague Letter Oct. 26, 2010

Gender-based harassment is actionable under Title IX.

- prohibits harassment for exhibiting what is perceived as a stereotypical characteristic for the student’s sex, or for failing to conform to stereotypical notions of masculinity or femininity.
- prohibits harassment of lesbian, gay, bisexual, or transgender students based on gender nonconformity. For example, harassing conduct based in part on a student’s failure to act as some of his peers believed a boy should act is actionable under Title IX.

RECENT CASES

- The Supreme Court of Maine held that a school violated the law and discriminated against a transgender student (MTF) when it prohibited the student from using the girls' communal bathroom and required her to use the unisex staff bathroom as the student was treated differently from other students solely because of her status as a transgender girl. This student had a 504 plan for her diagnosis of gender dysphoria.
- The court noted that particularly where young children are involved, it can be challenging for a school to strike the appropriate balance between maintaining order and ensuring that a transgender student's individual rights are respected and protected.

Doe v. Regional School Unit 26, 86 A.3d 600 (Me. 2014)

RECENT CASES

- A junior high school student (MTF) who had been diagnosed with gender identity disorder brought suit against a school district based on their refusal to allow her to wear clothing in school that was customarily worn by female teenagers. The court concluded that in view of her gender identity disorder, coming to school in boys' clothing was not a viable choice for her because doing so would endanger her psychiatric health.
- The court stated: The student had the soul of a female in the body of a male.

Doe ex rel. Doe v. Yunits, 15 Mass. L. Rptr. 278 (Super. Ct. 2001)

RECENT CASES

- A minor (MTF) suffering from gender identity disorder alleged that city had violated provisions of the law by preventing her from wearing skirts and dresses at the all-male foster care facility at which she was currently placed.
- The court found her rights had been violated, and that the city should have provided reasonable accommodations in order to ensure that she had enjoyed equality of opportunity.

Doe v. Bell, 754 N.Y.S.2d 846 (Sup 2003)

RECENT CASES

- G.G. (FTM) was banned from using the boys' restroom and required him to use a separate private facility. "The United States has a significant interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination and that the proper legal standards are applied to claims under Title IX."

G.G. v. Gloucester County School Board, Civil Action No. 4:15cv54, Statement of Interest of the United States

VERDICTS

- Michigan – Jury verdict of **\$800,000.00** for 12 year old under Title IX claim of harassment
- In 2003, a California school district paid **\$1.1 million** to six students who alleged their classmates repeatedly harassed them because of their sexual orientation and the school administration did not adequately address the harassment.
- July 2013 – U.S. Department of Justice and the Department of Education's Office for Civil Rights announced a settlement agreement with a school to resolve allegations of discrimination by a transgender student. He had been banned by the school from using the boys' restrooms and locker rooms. He was required to stay in a separate room on a field trip. The resolution required the school treat the FTM as all other male students in all aspects of the education programs and activities.

ATTORNEY'S FEES TOO??

- **YES**
- Civil Rights Attorney's Fees Awards Act of 1976 – attorney's fees may be awarded to the plaintiff if he or she prevails in the action. Fees are part of the remedy regardless of whether the action is brought in a federal or state court.

ISSUES



ACCESS TO BATHROOMS

- Many transgender students were “afraid to access school facilities and would often avoid them.” One transgender girl stated: “I’m afraid if I go to the bathroom I’ll get shoved, cornered, anything like that.”
- Restrooms – For transgender people, selecting a bathroom and dealing with the people they find there can be a process fraught with distress. The distress caused by selecting a bathroom can be so severe that children as young as 3 admit to holding their pee to the point of wetting their pants in order to avoid this stress.

Securing Equal Access to Sex-Segregated Facilities for Transgender Students, 28 Wisconsin Journal of Law, Gender, and Society 301, Fall 2013

WHAT DOES THE LAW SAY ABOUT ACCESS TO BATHROOMS?

- The United States Department of Education Office of Civil Rights issued a letter in response to an inquiry about a school district's restroom policies: "The Department's Title IX regulations permits schools to provide sex-segregated restrooms . . . under certain circumstances. When a school elects to separate or treat students differently on the basis of sex in those situations, a school generally must treat transgender students consistent with their gender identity." Letter from James A. Ferg-Cadima, acting Deputy Assistant Secretary of Policy, Office for Civil Rights, U.S. Department of Education, January 7, 2015.

LOCKER ROOMS

- The solution offered by *Securing Equal Access to Sex-Segregated Facilities for Transgender Students*, 28 Wisconsin Journal of Law, Gender, and Society 301, Fall 2013:

DO NOT segregate or exclude the transgender person, but where possible, to increase the privacy options for everyone: lockers and restrooms with separate stalls for showering, changing and privacy. A policy requiring transgender students to use a separate area would have the potentially damaging effect of isolating and stigmatizing the student, and could reveal a student's transgender status without their consent.

DRESS

- In one case, the school argued that any other student who came to school dressed in distracting clothing would be disciplined. However, the court stated that the school overlooked the fact that if a female student came to school in a frilly dress or blouse, make-up or padded bra, she would go, and presumably has gone, unnoticed by school officials. The school also argued that they were attempting to combat threats made by others to “beat up the boy who dressed like a girl.” The court held that to agree with this would grant those contentious students a “heckler’s veto.” “This court cannot allow the stifling of [the student’s] selfhood merely because it causes some members of the community discomfort. Our Constitution... neither knows nor tolerates classes among citizens.”

WHAT ABOUT KIDS WHO JUST WANT TO CAUSE TROUBLE??

- Title IX would likely not prohibit reasonable inquiries related to a student’s gender identity in those unusual cases where there is some legitimate, non-discriminatory reason to believe that the person is seeking access to a gender-specific facility for an improper purpose.

WHAT ABOUT THE RIGHTS OF NON-TRANSGENDER PEOPLE?

- Federal Courts and Circuit Courts of Appeal have held:
 - a person’s desire not to share space with a transgender person does not implicate any legally protected right.

WHAT IF OTHER PEOPLE ARE UNCOMFORTABLE?

- A school district cannot justify sex discrimination by asserting that it acted upon a “desire to accommodate other people’s prejudices or discomfort. *Macy v. Holder*, 2012 WL 1435995 (EEOC Apr. 20, 2012).

WHAT ABOUT OTHER PEOPLE'S PREFERENCES?

- “Allowing the preferences of [others] to determine whether sex discrimination is valid reinforces the very stereotypes and prejudices” that the law prohibits. *Lusardi v. McHugh*, Appeal No. 0120133395, 2015 WL 1607756 (EEOC Apr. 1, 2015).

WHAT ABOUT THE PARENTS?

- “Most courts have concluded that an entity’s desire to cater to the perceived biases of its customers, employees, or other third parties is not a defense for unlawful discrimination. The same principle applies to discrimination against transgender persons.” Directive: Job Corps Program Instruction Notice No. 14-31.

- “The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.” *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

QUESTIONS?

