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ORIGINAL ARTICLE

Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963–86

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Abstract

Scholars are still unsure why American cities passed cross-dressing bans over the closing decades of the nineteenth century. By the 1960s, cities in every region of the United States had cross-dressing regulations, from major metropolitan centers to small cities and towns. They were used to criminalize gender non-conformity in many forms - for feminists, countercultural hippies, cross-dressers (or "transvestites"), and people we would now consider transgender. Starting in the late 1960s, however, criminal defendants began to topple cross-dressing bans.

The story of their success invites a re-assessment of the contemporary LGBT movement's legal history. This article argues that a trans legal movement developed separately but in tandem with constitutional claims on behalf of gays and lesbians. In some cases, gender outlaws attempted to defend the right to cross-dress without asking courts to understand or adjudicate their gender. These efforts met with mixed success: courts began to recognize their constitutional rights, but litigation also limited which gender outlaws could qualify as trans legal subjects. Examining their legal strategies offers a window into the messy process of translating gender non-conforming experiences and subjectivities into something that courts could understand. Transgender had to be analytically separated from gay and lesbian in life and law before it could be reattached as a distinct minority group.

In the early afternoon of March 24, 1964, John Miller was approaching his home on the Upper West Side of Manhattan. He had just crossed the intersection of West End Avenue and Ninety-First Street when a police officer stopped him and asked his name. When he replied "Joan Miller," he was taken into custody.[1] Miller, later described by *The New York Times* as a "tall, burly man of 58,"

[1] Respondent's Brief in Opposition at 2-3, *People v. Miller*, No.145 (U.S. May 15, 1965) (cert denied).

was a father with a military record.[2] He was also a transvestite, or cross-dresser, which meant that he enjoyed dressing as a woman.[3] His crime was violation of Section 887(7) of New York State's vagrancy law, by then over a century old, which made it illegal to appear in public with one's "face painted, discolored or concealed, or being otherwise disguised, in a manner calculated to prevent. . . being identified."[4] While the law did not explicitly reference clothing, police often used it to punish cross-dressing, and courts usually accepted that interpretation. Most of the time, people arrested under such laws did not mount expensive legal defenses, and those who did rarely appealed past the trial court level.

John Miller was different. Yes, like many gender outlaws before him, he could not afford to mount a legal defense.[5] In fact, his arrest cost him his job. But Miller had advantages that his predecessors did not: he could turn to a community of other transvestites through new networks of identification and support. Miller was on the guiding council of Full Personality Expression (FPE), one of the earliest social and political organizations for transvestites, whose reach eventually encompassed much of the United States and parts of Western Europe.[6] The

[2] "A Transvestite Gets Legal Help," *New York Times*, October 13, 1964, https://www.nytimes.com/1964/10/13/a-transvestite-gets-legal-help.html. (accessed February 7, 2018).

[3] At the time of his arrest, Miller was carrying a note from a psychiatrist identifying him as a transvestite. See "A Transvestite Gets Legal Help."

[4] Section 887(7) quoted in *People v. Luechini* 136 N.Y.S. 319 (N.Y. Crim. Ct. 1912). For the origins of New York's anti-masquerade law in upstate tenants' revolts, see Charles W. McCurdy, *The Anti-Rent Era in New York Law and Politics, 1839–1865, Studies in Legal History* (Chapel Hill: University of North Carolina Press, 2001); and Reeve Huston, *Land and Freedom: Rural Society, Popular Protest, and Party Politics in Antebellum New York* (Oxford; New York: Oxford University Press, 2000).

[5] "Gender outlaws" is Kate Bornstein's umbrella term for gender non-conformists, including people we now call transvestites, transsexuals, and transgender people. *Kate Bornstein, Gender Outlaw: On Men, Women, and the Rest of Us* (New York; London: Routledge, 1994). Since this piece traces how diverse gender experiences translated into a trans legal subject, I use the term "gender outlaws" rather than "trans people" to reflect people who shared an experience of gender regulation, if not gender identity. I use "trans" as an umbrella to include people who understood themselves to be transsexuals and transvestites. When discussing specific people, I use historically accurate categories wherever possible. When a person's gender identity is unclear, I use gender-neutral pronouns. It is my hope that these choices will help the reader trace how categories of gender and sexual difference shifted over the course of the 1970s. On cross-dressing law enforcement before the 1960s, see William N. Eskridge, *Gaylaw: Challenging the Apartheid of the Closet* (Cambridge, MA: Harvard University Press, 1999); Joanne Meyerowitz, *How Sex Changed: A History of Transsexuality in the United States* (Cambridge, MA: Harvard University Press, 2002); Susan Stryker, *Transgender History* (Berkeley, CA: Seal Press, 2008); Peter Boag, *Re-Dressing America's Frontier Past* (Berkeley: University of California Press, 2011); Clare Sears, *Arresting Dress: Cross-Dressing, Law, and Fascination in Nineteenth-Century San Francisco*, *Perverse Modernities* (Durham: Duke University Press, 2015); Jen Manion, "The Queer History of Passing as a Man in Early Pennsylvania," *Pennsylvania Legacies* 16 (2016): 6–11; Jen Manion, *Female Husbands: A Trans History* (New York: Cambridge University Press, 2020); and Jesse Bayker, "Regulating Public Gender and the Rise of Cross-Dressing Laws," in *Cambridge History of Sexuality in the U.S.* (New York: Cambridge University Press, forthcoming; draft on file with author).

[6] Siobhan Fredericks, "Kaleidoscope," *Turnabout* 4 (1964): 28. Robert S. Hill also discusses the Miller case in his unpublished dissertation, "'As a Man I Exist; as a Woman I Live': Heterosexual

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organization pledged $300 to his cause.[7] Miller also broadcast requests for financial support in *Transvestia* and *Turnabout*, two early transvestite publications, and received at least seventy contributions from the United States, Canada, and England.[8] The geographic range of this support reflected both the broad scope of the emerging transvestite network, and the community's shared desire to challenge cross-dressing regulation. As one donor from Texas put it in a quick note with his contribution, "We need to get rid of these damn laws."[9]

Laws banning cross-dressing were ubiquitous in urban America by the middle of the twentieth century. Most were more explicit than New York's Section 887(7), like the law in Columbus, Ohio, which criminalized any person who "shall appear upon any public street or other public place . . . in a dress not belonging to his or her sex."[10] Starting in the late 1960s, however, criminal defendants began to successfully undermine cross-dressing bans in a range of cities, from New York and Los Angeles to Toledo and Champaign-Urbana.[11] Hoping to challenge their arrests, these defendants argued that anti-cross-dressing laws were facially unconstitutional, or unconstitutional as applied to them. As their successes mounted, gender outlaws began to bring civil lawsuits against cities to enjoin them from enforcing their anti-cross-dressing ordinances, marking a shift from the defensive posture of the criminal defendant to the offensive posture of the civil litigant. By 1980, criminal defendants had successfully challenged cross-dressing arrests in at least sixteen cities, introducing many courts to transvestite and transsexual people in the process.

To the extent that historians have addressed the decriminalization of cross-dressing, they have understood it as an adjunct to a broader attack on vague municipal laws.[12] This article restores the anti-cross-dressing cases to their place within the LGBT constitutional narrative. In that story, the campaign to decriminalize sodomy looms large. Substantive due process rights to sexual privacy and equal protection for sexual and gender minorities became the

Transvestism and the Contours of Gender and Sexuality in Postwar America" (PhD diss., University of Michigan, 2007), 323–27.

[7] Fredericks, "Kaleidoscope," 28.

[8] Fredericks, "Kaleidoscope," 29. FPE was founded in 1962. Susan Stryker, "Transgender History, Homonormativity, and Disciplinarity," *Radical History Review* 2008 (2008): 55.

[9] Fredericks, "Kaleidoscope," 29.

[10] Ordinance quoted in *Columbus v. Rogers*, 324 N.E.2d 563 (Ohio 1975). See Appendix for complete list of known ordinances.

[11] Gender outlaws had certainly contested their arrests under these laws before the 1960s. Sometimes they were even able to successfully escape penalties in trial court. In 1856, for example, a trans man named Charley Linden successfully convinced a court that there was insufficient evidence that he had violated New York's anti-masquerade law after his lawyer argued that he was "simply wearing the clothing consistent with his identity and long-standing reputation as Charley." See Bayker, "Regulating Public Gender." The challenges discussed in this article differ in that courts ruled the laws unconstitutional.

[12] Eskridge, *Gaylaw*, 28; Risa Lauren Goluboff, *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* (New York: Oxford University Press, 2016), 167; I. Bennett Capers, "Cross Dressing and the Criminal," *Yale Journal of Law & the Humanities* 20 (2008): 12; and Meyerowitz, *How Sex Changed*, 247.

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primary constitutional vehicles for vindication of LGBT rights and full sexual citizenship, culminating in the Supreme Court's endorsement of same-sex marriage in 2015.[13] By reconstructing the disjointed efforts to repeal anti-cross-dressing laws across the country, this paper points to the multiplicity of legal paths for constitutionalizing gender non-conformity in the early days of LGBT constitutional litigation.

The challenges also bring into focus a distinct legal movement of gender outlaws. Although they were not centrally coordinated, gender outlaws across the country developed their own legal strategy to decriminalize cross-dressing, and in some cases, constitutionalize protections for gender non-conformity. They did so in an era before legal nonprofits organized a cohesive gay and lesbian legal agenda, before that group added transgender legal issues to the mix, and indeed before the identity category "transgender" was in wide circulation.[14]

Historians of LGBT law in this period tend to emphasize how gay and lesbian "homophile" activists of the 1950s and 1960s promoted the idea that homosexuality was an identity rather than stigmatized conduct or medical pathology.[15] In

[13] Patricia A. Cain, "Litigating for Lesbian and Gay Rights: A Legal History," *Virginia Law Review* 79 (1993): 1605.

[14] For histories of the contemporary LGBT legal movement, see Patricia A. Cain, *Rainbow Rights: The Role of Lawyers and Courts in the Lesbian and Gay Civil Rights Movement,* (Boulder, CO: Westview Press, 2000); and Patricia A. Cain, "Litigating for Lesbian and Gay Rights: A Legal History," *Virginia Law Review* 79 (1993): 1551–642. For histories of specific LGBT litigation, see Lillian Faderman, *The Gay Revolution: The Story of the Struggle* (Simon and Schuster, 2015); Linda R. Hirshman, *Victory: The Triumphant Gay Revolution* (New York: Harper, 2012); Dale Carpenter, *Flagrant Conduct: The Story of Lawrence v. Texas: How a Bedroom Arrest Decriminalized Gay Americans* (New York: W. W. Norton, 2012); David Boies and Theodore B. Olson, *Redeeming the Dream: The Case for Marriage Equality* (New York: Viking, 2014); and William N. Eskridge, *Marriage Equality: From Outlaws to In-Laws* (New Haven: Yale University Press, 2020). For the history of transgender inclusion in an LGBT legal movement, see Marie-Amelie George, "The LGBT Disconnect: Politics and Perils of Legal Movement Formation," *Wisconsin Law Review* 2018, no. 3 (2018): 503–92; Elias Vitulli, "A Defining Moment in Civil Rights History? The Employment Non-Discrimination Act, Trans-Inclusion, and Homonormativity," *Sexuality Research & Social Policy* 7 (2010): 155–67; Shannon Minter, "Do Transsexuals Dream of Gay Rights?," in *Transgender Rights,* ed. Shannon Minter and Paisley Currah (Minneapolis: University of Minnesota Press, 2000); Stryker, "Transgender History, Homonormativity, and Disciplinarity," 137. For the historical emergence of *transgender* as an identity marker, see Paisley Currah, "Gender Pluralisms under the Transgender Umbrella," Transgender Rights, 2006, 3–31; Stryker, "Transgender History, Homonormativity, and Disciplinarity"; David Valentine, *Imagining Transgender: An Ethnography of a Category* (Durham: Duke University Press, 2007); Jules Gill-Peterson, *Histories of the Transgender Child* (Minneapolis; Baltimore: University of Minnesota Press, 2018); Susan Stryker, *Transgender History* (2008); Marta V. Vicente, "Transgender: A Useful Category? Or, How the Historical Study of 'Transsexual' and 'Transvestite' Can Help Us Rethink 'Transgender' as a Category," *TSQ: Transgender Studies Quarterly* 8 (2021): 426–42; Genny Beemyn, "A Presence in the Past: A Transgender Historiography," *Journal of Women's History* 25 (2013): 113–21; Emmett Harsin Drager and Lucas Platero, "At the Margins of Time and Place: Transsexuals and the Transvestites in Trans Studies," *TSQ: Transgender Studies Quarterly* 8 (2021): 417–25; and J.R. Latham, "Axiomatic: Constituting 'Transexuality' and Trans Sexualities in Medicine," *Sexualities* 22 (2019): 13–30.

[15] They were not the first to do so. See, George Chauncey, *Gay New York: Gender, Urban Culture, and the Makings of the Gay Male World, 1890–1940* (New York: Basic Books, 1994); and Margot Canaday, *The*

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their efforts to organize against police harassment, they drew inspiration from the Black civil rights movement to portray homosexuals as an oppressed minority group.[16] Despite changes in medical taxonomy and self-identification, police and courts did not easily differentiate between sexual orientation and gender identity.

For homophile activists, that was part of the problem. To make the analogy sympathetic, they distanced their politicized homosexual identity from its former bedfellows—gender inversion, racial impurity, sex work, poverty, and crime.[17] Their legal strategy reflected that analysis from the beginning as they mobilized gay identity to articulate a gay legal subject with protected rights to assemble, have sex, organize on campuses, work, and form families as gay people.[18] Those

Straight State: Sexuality and Citizenship in Twentieth-Century America (Princeton: Princeton University Press, 2009).

[16] Cain, "Litigating for Lesbian and Gay Rights," 1993, 1558 (describing the homophile movement's goal "to liberate the homosexual minority"). Daniel Hurewitz, *Bohemian Los Angeles and the Making of Modern Politics* (Berkeley: University of California Press, 2007); Emily K. Hobson, "Policing Gay LA: Mapping Racial Divides in the Homophile Era, 1950–1967," in *The Rising Tide of Color: Race, State Violence, and Radical Movements Across the Pacific*, ed. Moon-Ho Jung (Seattle: University of Washington Press, 2014), 188–212; Christina B. Hanhardt, *Safe Space: Gay Neighborhood History and the Politics of Violence* (Durham: Duke University Press, 2013), 39; Nan Alamilla Boyd, *Wide-Open Town: A History of Queer San Francisco to 1965* (Berkeley: University of California Press, 2003), 174; and John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940–1970* (Chicago: University of Chicago Press, 1998), 65.

[17] For histories emphasizing how the homophile movement whitewashed homosexual identity, see Hanhardt, *Safe Space*, 13; Hobson, "Policing Gay LA: Mapping Racial Divides in the Homophile Era, 1950–1967," 193 (describing how the popular association among homosexuality, racial mixing, crime, and poverty shaped police practices and homophile response to police abuse in Los Angeles); Hurewitz, *Bohemian Los Angeles and the Making of Modern Politics,* 258; and Meyerowitz, *How Sex Changed*, 177. Queer theorist Jasbir Puar identifies a similar dynamic in more recent decades. See Jasbir K. Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham: Duke University Press, 2007). For legal scholars making a similar historical point, see Minter, "Do Transsexuals Dream of Gay Rights?" 150; Paisley Currah, "Defending Genders: Sex and Gender Non-Conformity in the Civil Rights Strategies of Sexual Minorities," *Hastings Law Journal* 48 (1996): 1363.

[18] Legal histories from 1950 to 1980—whether discussing the homophile movement, the gay liberation period, or the gay rights movement—all make this point fairly consistently. For identity-based claims in the liquor board cases, see Cain, "Litigating for Lesbian and Gay Rights," 1993, 81–88; Christopher Lowen Agee, *The Streets of San Francisco: Policing and the Creation of a Cosmopolitan Liberal Politics, 1950–1972* (Chicago: University of Chicago Press, 2014), 89; Boyd, *Wide-Open Town,* 145; Anna Lvovsky, *Vice Patrol: Cops, Courts, and the Struggle over Urban Gay Life before Stonewall* (Chicago: University of Chicago Press, 2021), 8, 29; and D'Emilio, *Sexual Politics, Sexual Communities.* For bar raids and vagrancy arrests, see Goluboff, *Vagrant Nation*, 172 (describing the Equal Protection claims for gay people as early as 1967). For discussion of legal arguments in anti-sodomy cases, see Goluboff, *Vagrant Nation* 404 n.56; Patricia A. Cain, *Rainbow Rights: The Role of Lawyers and Courts in the Lesbian and Gay Civil Rights Movement* (Boulder, CO: Westview Press, 2000). 137–42 (describing sodomy law challenges based on privacy rights). On school access cases, see Cain, *Rainbow Rights*, 92–103. On gay employment claims, see Allan Bérubé, *Coming Out under Fire: The History of Gay Men and Women in World War II* (Chapel Hill: University of North Carolina Press, 2010), ch. 9; and Cain, *Rainbow Rights,* 104 (describing Frank Kameny). Katherine Turk has separately suggested that the stark distinctions usually drawn between the movements in those years may not be warranted, at least as a matter of legal history, given continuities in legal strategy through the three phases. See Katherine Turk, "'Our Militancy Is in Our Openness':

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campaigns laid the groundwork for the constitutional arguments most associated with the contemporary LGBT movement: sexual privacy and the civil rights of "discrete and insular minorities" under the Equal Protection Clause of the Fourteenth Amendment.

Unlike many gay rights legal claims of the same period, challenges to cross-dressing bans often succeeded without analogizing gender non-conformity to identity-based minority groups. The split in legal claims mirrored social transformation on the ground. Gender outlaws entered courts amid a major shift in how medical authorities and social groups understood the relationship between sexuality and gender, an epistemic change that Joanne Meyerowitz has called the "taxonomic revolution."[19] In these formative years of movement and identity consolidation, gender outlaws strategically deployed and obscured their identities, exploiting confusion about gender-bending and playing off of courts' ignorance.

In some cases, challengers attempted to introduce the legal system to transvestites, transsexuals, and drag queens without closing the door on other gender outlaws. These efforts met with mixed success: courts began to recognize constitutional rights, but litigation also limited which gender outlaws would benefit.[20] Some challengers sought to expand personal freedoms to include gender expression through clothing, but others yoked trans civil rights to medical authority, defining the trans legal subject as a person seeking medical treatment for pathologized transsexualism. Examining their legal strategies offers a window into the messy process of translating gender non-conforming experiences and subjectivities into something that courts could understand. It also emphasizes the role of legal institutions, alongside social life and medical discourse, in shaping the analytical categories of gender.[21] Over time, one strand of gender outlaw experience consolidated and became legible to courts as a rights-bearing subject, which I call the *trans legal subject*.

Three tactics typify the overall strategy. First, gender outlaws challenged cross-dressing bans for vagueness, inviting courts to invalidate the laws without asking judges to adjudicate, or even understand, their gender identities at

Gay Employment Rights Activism in California and the Question of Sexual Orientation in Sex Equality Law," *Law and History Review* 31 (2013): 423–69.

[19] Meyerowitz, *How Sex Changed*, 169.

[20] For a related point about the transformation of the gay legal subject, see Noa Ben-Asher, "Conferring Dignity: The Metamorphosis of the Legal Homosexual," *Harvard Journal of Law and Gender* 37 (2014): 243–84.

[21] Historians have written about the role of law in producing sexual categories. See George Chauncey, *Gay New York: Gender, Urban Culture, and the Makings of the Gay Male World, 1890–1940* (New York: Basic Books, 1994); Margot Canaday, *The Straight State*; Regina G. Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press, 2008); Hobson, "Policing Gay LA"; and Meyerowitz, *How Sex Changed*. In a recent survey of the field, Regina Kunzel described a shift in "the story of modern American sexuality from the consolidation of sexual identity to the consolidation of a heteronormative political project." Regina Kunzel, "The Uneven History of Modern American Sexuality," *Modern American History* 1, no. 1 (January 2018): 99. One ambition of this project is to show a point of connection between those two literatures.

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all.[22] In a second set of challenges, lawyers argued that cross-dressing was a form of expression protected by the First and Fourteenth Amendments. Under this theory, cross-dressing conduct could be protected regardless of the defendant's gender identity. In a final set of cases brought under the Eighth Amendment, lawyers did make claims based on a consolidated sense of identity, telling courts that cross-dressing was a treatment for medically diagnosed transsexuality.[23]

Many historians have noted the salience of gender non-conformity in anti-homosexual policing in the decades following World War II.[24] But such policing was not limited to gays and lesbians, precisely because homosexuality was not thought apart from other stigmatized behavior. Police targeted a broad range of activities, which Emily Hobson has called "street life," including Black and Brown youth culture, "homosocial contact among working-class men, homosexuality and gender transgression, sex work, and interracial contact of various kinds."[25] Homophile activists believed that social inclusion and legal recognition required a more respectable image.[26] Many histories build from this foundation by following the homosexual once he was shorn of his seedier associations, leaving the subject of gender non-conforming policing both widely remarked upon and relatively under-studied.[27]

[22] When a criminal law does not clearly state what conduct it prohibits, it violates the constitutional "void-for-vagueness" doctrine rooted in the guarantee of due process in the Fifth and Fourteenth Amendments.

[23] Equal protection and privacy arguments did appear in rare circumstances, but they did not determine the outcome of any archival cases. For cases that included a privacy argument, see *Columbus v. Zanders,* 266 N.E. 2d 602 (Ohio Municipal Court 1970); *Mayes v. Texas,* 416 U.S. 909 (1974); and *City of Chicago v. Wilson*, 389 N.E. 2d 522 (Ill. 1978). Additional cases arising in Miami Beach, Detroit, and Chicago raised equal protection claims. "Court Voids Miami Drag Bans," *The Advocate*, July 19, 1972, 4; Joe Baker, "Cross-Dress Law Falls," *The Advocate,* September 24, 1975, 10; and "Chicago Judge Axes Cross-Dressing Law," *The Advocate*, October 24, 1973, 7.

[24] See, for example, Nan Alamilla Boyd, *Wide-Open Town: A History of Queer San Francisco to 1965* (Berkeley: University of California Press, 2003); Cain, *Rainbow Rights*; Agee, *The Streets of San Francisco*; Lvovsky, *Vice Patrol*; D'Emilio, *Sexual Politics, Sexual Communities*; Bérubé, *Coming Out Under Fire*; Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America* (New York: Columbia University Press, 1991); Elizabeth Lapovsky Kennedy and Madeline D. Davis, *Boots of Leather, Slippers of Gold: The History of a Lesbian Community* (New York: Routledge, 1993); Hanhardt, *Safe Space*; and Marc Stein, *City of Sisterly and Brotherly Loves: Lesbian and Gay Philadelphia, 1945–1972* (Chicago: University of Chicago Press, 2000).

[25] Hobson, "Policing Gay LA" 194.

[26] D'Emilio, *Sexual Politics, Sexual Communities*, ch. 4; Hobson, "Policing Gay LA: Mapping Racial Divides in the Homophile Era, 1950–1967," 193; Boyd, *Wide-Open Town*, ch. 4; and David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago; London: University of Chicago Press, 2004). But see, Martin Meeker, "Behind the Mask of Respectability: Reconsidering the Mattachine Society and Male Homophile Practice, 1950s and 1960s," *Journal of the History of Sexuality* 10 (2001): 78–116.

[27] Major exceptions include Hobson, "Policing Gay LA"; Hanhardt, *Safe Space*; and Meyerowitz, *How Sex Changed*. See also Minter, "Do Transsexuals Dream of Gay Rights?," 145–46; Betty Luther Hillman, "'The Most Profoundly Revolutionary Act a Homosexual Can Engage in': Drag and the Politics of Gender Presentation in the San Francisco Gay Liberation Movement, 1964–1972," *Journal of the History of Sexuality* 20 (2010): 153–81; Stryker, *Transgender History*.

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This article asks what happened to the gender outlaws who did not, could not, or would not see themselves in the new homosexual political identity. The answer reveals early constitutional arguments that gender non-conformity deserved protection on its own terms. It also invites a reconsideration of the contemporary LGBT legal movement. Legal histories often describe a gay and lesbian civil rights movement emerging from the ashes of gay liberation in the early 1970s, and only adding the "T" to LGBT in the 1990s.[28] Returning to the history of the late 1960s and 1970s, however, suggests an alternative periodization in which campaigns for trans and gay civil rights sprouted from the same root, and grew in parallel.[29] *Transgender* had to be analytically separated from *gay and lesbian* in life and law before it could be reattached as a distinct minority group.

The cases described in this article form a fractured archive of roughly thirty legal challenges from 1963 to 1986. They are national in scope, arising primarily in the West, Midwest, and Northeast, with some appearances in Texas and Florida. About two-thirds appear in published case reporters that include important details such as the names and affiliations of the attorneys and, in some cases, their written submissions. Other cases come from print media, mostly within gay, lesbian, transvestite, transsexual, and drag publications. The level of detail varies significantly, making it difficult to generalize about the attorneys who brought these cases or the arguments they raised. Regional branches of the American Civil Liberties Union (ACLU) made several important contributions, as did the national office after 1973, and one significant case was brought by a legal clinic at Northwestern University School of Law.[30]

Despite these limitations, this article tells a new story. Gender outlaws and their lawyers drew on the popularity of unisex clothing, movements for free expression, and emerging medical discourses on gender identity to argue that cross-dressing could be a benign fashion choice, a protected expression, or a necessary medical treatment for transsexuality. Their successes helped topple cross-dressing regulation in cities and towns across the country, but not without ambivalent results for gender outlaws on the whole. In order to make gender non-conformity legible to the legal system, lawyers translated the diverse array of gender outlaw experiences into a distinctly trans legal subject, defined by medicalized trans identity. Out of

[28] For work highlighting the 1990s as a turning point in LGB-T legal organizing, see George, "The LGBT Disconnect"; Vitulli, "A Defining Moment in Civil Rights History?"; and Adler, "T."

[29] Historians widely acknowledge trans participation in queer uprisings, including at Manhattan's Stonewall Inn, Compton's Cafeteria in San Francisco, and Cooper's Do-nuts in Los Angeles. The question is, as Shannon Minter put it, "how did a movement launched by bull daggers, drag queens, and transsexuals in 1969 end up viewing transgender people as outsiders less than thirty years later?" Minter, "Do Transsexuals Dream of Gay Rights?" 142.

[30] An interesting feature of this history is how different legal strategies for protecting homosexuality and gender-nonconformity arose within the same institution: the ACLU. Leigh Anne Wheeler has examined how the ACLU came to view sexual privacy as a civil right, but the question of how transgender issues disappeared from the national ACLU docket when the Sexual Privacy Project folded in 1977 remains for future research.

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disjointed legal defense of gender outlaws emerged a transgender legal movement.

A Century of Cross-Dressing Regulation

Scholars are still unsure why American cities passed anti-cross-dressing laws.[31] St. Louis appears to have been the first place to do so in 1843, and Miami may have been one of the last in 1952. No comprehensive national survey has yet been conducted, but we know that at least seventy municipalities and several states in every region of the country had cross-dressing regulation by the 1960s. Their coverage ranged from major metropolitan centers such as Chicago and Los Angeles to small cities and towns including Cheyenne, Wyoming and Vermillion, South Dakota.[32]

The most common ordinances criminalized any person who "shall appear upon any public street or other public place . . . in a dress not belonging to his or her sex."[33] Some towns only penalized cross-dressing "with intent to conceal his or her sex," as in Chicago, or prohibited cross-dressing with intent to commit a crime, as in San Diego.[34] In cities such as Detroit and Miami Beach, ordinances specified only that men could not wear women's clothes in public.[35] Each code was different, but these ordinances were generally passed under the municipal police power, a strong legal doctrine with hazy boundaries, which enabled cities to pass regulations affecting the health, safety, morals, and welfare of their citizens.

Although gaps in our records make it difficult to generalize, most prohibitions were passed in the forty years bookending 1900.[36] Antebellum America churned with social and economic upheaval as young people flocked to cities for work.[37] White upper-class anxiety about the changing urban landscape prompted legal responses to protect their values and social position, including

[31] "Little is known about why cities passed these ordinances in the antebellum period." Bayker, "Regulating Public Gender and the Rise of Cross-Dressing Laws," 7. Clare Sears concurs in *Arresting Dress: Cross-Dressing, Law, and Fascination in Nineteenth-Century San Francisco* (Durham: Duke University Press, 2015), 4. See also, Stryker, *Transgender History*, 33.

[32] In his landmark study, *Gaylaw*, William Eskridge identified cross-dressing bans in California, New York, and nearly sixty municipalities. Eskridge, *Gaylaw*, 338–41. Jen Manion uncovered additional municipal ordinances in the South. Manion, *Female Husbands*, 320 n2. My research turned up state laws in Oklahoma and Texas and in several cities. Further research will undoubtedly uncover more. For the Vermillion, South Dakota ordinance, see Jesse Bayker, "Vagrancy and the Criminalization of Transgender Practices in Antebellum America," unpublished manuscript on file with the author.

[33] Columbus ordinance quoted in *Columbus v. Rogers,* 324 N.E.2d 563 (Ohio 1975). Dallas, Texas, Champagne, Illinois, Miami, Florida, Toledo, Ohio, and San Francisco, California, all had similar ordinances outright prohibiting cross-dressing.

[34] *City of Chicago v. Wilson*, 389 N.E. 2d 522 (Ill. 1978); and *City of Cincinnati v. Adams*, 330 N.E. 2d 463 (Ohio Municipal Court 1974).

[35] "Court Voids Miami Beach Drag Ban"; "To Cross-Dressers Everywhere," *Drag* 2.7 (1972), 4; "San Diego Court Ruling Backs Clothing Ordinance," *Drag* 5.18, 1975, 5.

[36] See Appendix.

[37] Kathy Lee Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia: Temple University Press, 1986); and Joanne J. Meyerowitz, *Women Adrift: Independent Wage Earners in Chicago, 1880–1930* (Chicago: University of Chicago Press, 1988).

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Figure 1. Cover cartoon in *Femme Mirror*, a transvestite magazine published by Tri-Sigma. Source. *Femme Mirror,* October 1978, cover.

tighter restrictions on immigration at the federal level, as well as new state restrictions on interracial marriage.[38] At the city level, vagrancy laws and other municipal morals regulations proliferated.[39] Considered alongside laws against prostitution, sexual deviance, and public indecency, cross-dressing bans likely disbursed across the country as part of a broader attempt to impose upper-class white Christian morality on the new urban masses.[40]

[38] On immigration, see Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004). On interracial marriage, see Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford; New York: Oxford University Press, 2009).

[39] Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998), ch. 3. On vagrancy regulation, see Goluboff, *Vagrant Nation*.

[40] Bayker, "Regulating Public Gender and the Rise of Cross-Dressing Laws," 4; Sears, *Arresting Dress*, 3, 67–70; Manion, *Female Husbands*, 199; Eskridge, *Gaylaw*, 28; George, "The LGBT Disconnect," *Wisconsin Law Review* 2018 (2018): 34 n 139.

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Fear of sexual and gender deviance may have also motivated cross-dressing regulation. Reports of "passing women" serving in the Union and Confederate armies made headlines nationwide in the years after the Civil War and accompanied accounts of women continuing their "gender fraud" to support themselves in men's jobs.[41] Similar stories about cross-dressing men in the American West stoked fears of social chaos on the frontier.[42] Regulating gender deviance may have been an attempt to thwart nineteenth-century feminist dress reformers who politicized Victorian fashions as a symbol of women's subordination and fought to wear bloomers in public.[43] As Clare Sears has argued in her close study of nineteenth-century cross-dressing regulation in San Francisco, such laws were "central to the project of modern municipal government."[44]

Anti-masquerade laws, like those in California and Cincinnati, did not mention clothing at all, and likely have separate lineages. New York's statute, for example, arose in response to the anti-rent movement that roiled the Hudson Valley from roughly 1839 to 1865. The movement demanded reform of the rent and property systems governing the region's large estates through anti-rent associations, a political party, and organizations of vigilantes known as "Indians."[45] These militant men famously adopted a costume of calico dresses and large leather face masks.[46] In response, the state government passed an anti-mask law, Section 887(7) of the New York Code of Criminal Procedure, the same law that ensnared John Miller.

Texas's anti-masquerade law may have been a response to a different form of vigilante violence. In 1925, the state legislature passed an anti-masquerade law, including among the offenses "[t]he parading of any secret society or organization or a part of the members thereof, when masked or disguised upon or along any public road, or any street, or alley of any city or town of this state."[47] The law may have been intended to target the revived Ku Klux Klan, which grew significantly in Texas in the 1920s.[48] A fuller accounting of the origins and coverage of cross-dressing laws remains to be written.[49]

Another genre of cross-dressing regulation emerged in the wake of Prohibition. Many states passed new liquor board regulations designed to

[41] Jonathan Katz, "Passing Women: 1782–1920" in *Gay American History: Lesbians and Gay Men in the U.S.A.: A Documentary* (New York: Harper & Row, 1985); Boag, *Re-Dressing America's Frontier Past,* ch. 1. For earlier history of "passing women," see Manion, "The Queer History of Passing as a Man in Early Pennsylvania."

[42] Boag, *Re-Dressing America's Frontier Past*, ch. 2; and Nayan Shah, *Stranger Intimacy Contesting Race, Sexuality, and the Law in the North American West* (Berkeley: University of California Press, 2011), 81–83.

[43] Eskridge, *Gaylaw*, 28. Sears, *Arresting Dress*, 143.

[44] Sears, *Arresting Dress*, 3.

[45] McCurdy, *The Anti-Rent Era in New York Law and Politics, 1839–1865*; and Huston, *Land and Freedom*.

[46] Huston, *Land and Freedom,* 117–18.

[47] The Act itself is codified at Article 454a of Vernon's Annotated Texas Penal Code of 1925. The quoted text from the caption is found at Acts 1925, 39th Leg., ch. 63, p. 213, Sec. 1.

[48] For the history of the second Ku Klux Klan (KKK) in Texas, see Patricia Bernstein, *Ten Dollars to Hate: The Texas Man Who Fought the Klan* (College Station: Texas A&M University Press, 2017), ch. 5. For the rise of the second KKK generally, see Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (New York: Oxford University Press, 1994).

[49] Fruitful starting places include Bayker, "Regulating Public Gender and the Rise of Cross-Dressing Laws," and Sears, *Arresting Dress*.

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prevent bars and restaurants from becoming "disorderly" by prohibiting various "persons of ill repute" from congregating there.[50] Although most new statutes did not mention homosexuality or cross-dressing, liquor officials interpreted their mandate to include regulating gender and sexual deviance.[51] New Jersey's liquor board explicitly prohibited licensed bars from hosting "female impersonators."[52] During World War II, the military also directed significant resources toward controlling vice at home.[53] These new regulations and enforcement institutions meant that gender outlaws in major cities had several (sometimes competing) authorities to contend with: the police who enforced local ordinances, the liquor agents who enforced bar license regulations, and the military officials empowered to conduct bar raids of their own.

If historians know very little about the origins of cross-dressing laws, we know a bit more about their enforcement. They appear frequently in gay and lesbian legal histories of "anti-homosexual policing."[54] One of the challenges of this literature has been reconstructing an ontology of gender and sex that is quite different from our own. Nineteenth-century medicine used the term "sexual inversion" to encompass gender deviance in many forms, including homosexual desire.[55] Only at the turn of the twentieth century did sexologists begin to differentiate same-sex attraction from gender non-conformity, but in social practice and popular representation, they remained (and remain) deeply interconnected.[56]

Well into the 1930s, the popular press and liquor officials understood gay men to be a "third sex," or "fairies" whose same-sex attractions were visible in their effeminate gender presentation.[57] As Anna Lvovsky explains, liquor officials thus conceptualized "homosexuality and gender inversion as twin sides of the same pathology."[58] Military authorities focused on "female impersonators" during anti-vice campaigns in Atlantic City, Detroit, and San Francisco during the summers of 1942 and 1943; liquor agents also regularly relied on evidence of bar patrons' appearance—that men were wearing rouge or lipstick, or that women were wearing men's clothes—to prove that the establishment was a gay bar.[59] Bar owners

[50] Lvovsky, *Vice Patrol*, 29.

[51] Ibid.

[52] Ibid.

[53] Bérubé, *Coming Out under Fire,* 120–23.

[54] Police were particularly aggressive toward working class butch lesbians and drag queens, especially those who were not white. Eskridge, *Gaylaw*, 88; and Lvovsky, *Vice Patrol*, 108.

[55] George Chauncey Jr., "From Sexual Inversion to Homosexuality: Medicine and the Changing Conceptualization of Female Deviance," *Salmagundi* 58/59 (1982): 116.

[56] Chauncey, "From Sexual Inversion to Homosexuality"; Chauncey, *Gay New York;* Hillman, "'The Most Profoundly Revolutionary Act a Homosexual Can Engage in,'" 153–81; and Valentine, *Imagining Transgender*.

[57] Lvovsky, *Vice Patrol,* 29.

[58] Ibid.; See also, Chauncey, *Gay New York,* 48.

[59] "North Beach Tavern Linked to Deviates," Grace Miller Box 3 Scrapbook, Grace Miller Papers, San Francisco Public Library (SFPL). Petitioner's Reply Brief, 4. Wide Open Town Papers, Box 2, Folder 10, GLBT Historical Society; Reporter's Transcript for Monday May 21, 1956 in the matter of *Falvey vs. Nickola*, 6. Wide Open Town Papers, Box 2, Folder 9, GLBT Historical Society (noting that the majority of the female patrons were dressed in menswear: "slacks, sport coats, men's type sport shirts and

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attempted to differentiate between homosexuality and the fairy in the 1930s, but without much success.[60]

Those arguments found sympathetic ears twenty years later. Efforts to analytically distinguish homosexuality from heterosexuality based on sexual object choice irrespective of gender presentation date further back, but the idea of a gay political identity was born in the "homophile movement," the first wave of gay and lesbian political organizing. These groups convened in response to police harassment and developed a public-relations and legal strategy undergirded by a sense of consolidated gay and lesbian identity.[61]

Consider, for example, two canonical early cases in the history of gay civil rights. The first began in 1949 when the California State Board of Equalization moved to revoke the liquor license of a prominent San Francisco gay bar. The proprietor argued that the presence of gay patrons in his bar could not sustain the charge that he was keeping a "disorderly house." The Supreme Court of California agreed, holding that the regulations were meant to prevent illegal or immoral conduct and could not limit the right of free assembly based on gay status.[62] No less famous in queer history is the arrest of Dale Jennings in 1952 for cruising. Jennings was a founder of the first homophile organization in the country, the Los Angeles Mattachine Society, and he, too, pressed the distinction between conduct and status in defense of his civil rights as a gay man. He told the jury that he was indeed homosexual but protested that he had not broken the law.[63] The jury could not reach a verdict, and the charges were dropped.[64] These examples show how homophile activists differentiated gay identity from criminalized behavior, including public, commercial, underage, and non-consensual sex, as well as gender non-conformity.[65] Cleansing the image of the homosexual was a key tactic in early attempts to secure gay civil rights.[66]

low-heeled oxford men's type shoes or loafers"). Lvovsky, *Vice Patrol,* 41–42, 56; Faderman, *Odd Girls and Twilight Lovers;* and Kennedy and Davis, *Boots of Leather, Slippers of Gold.*

[60] Lvovsky, *Vice Patrol,* 45.

[61] Hurewitz attributes this argument to Harry Hay, the founder of the Mattachine Society. Hay wanted to include a broader array of gender non-conformists under the identitarian umbrella, but the membership rejected that approach at the Mattachine conference of 1951. *Bohemian Los Angeles and the Making of Modern Politics,* 261.

[62] *Stoumen v. Reilly* 37 Cal.2d 713 (Cal. 1951). For descriptions of the case as a landmark and in conduct/status terms, see D'Emilio, *Sexual Politics, Sexual Communities,* 187–90; Cain, *Rainbow Rights,* 80–81; Boyd, *Wide-Open Town*, 128–29; Agee, *The Streets of San Francisco,* 85; and Lvovsky, *Vice Patrol,* 49.

[63] Hobson, "Policing Gay LA: Mapping Racial Divides in the Homophile Era, 1950–1967," 190. Patricia Cain described the Jennings trial as "one of the first times that a gay man had been willing to stand up in court and say, 'Yes, I am gay, but I nonetheless have legal rights.'" Patricia A. Cain, "Litigating for Lesbian and Gay Rights: A Legal History," *Virginia Law Review* 79 (1993): 1559.

[64] Cain, "Litigating for Lesbian and Gay Rights," 1559.

[65] Of course, sodomy was illegal. So the activists relied on the status/conduct distinction to argue that *being gay* was not the same as *committing the crime* of gay sex.

[66] The homophile model of gayness deeply shaped politics at the gender and sexual margins. Joanne Meyerowitz describes a mixed reception for transsexual issues in the homophile press, sometimes insinuating that transsexuals were "dangerous sellouts" or expressing fear that they

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As homophile activists continued to bring this concept of homosexuality to court, cross-dressing regulation continued apace. A snapshot of anti-cross-dressing law enforcement in the single year of 1972 demonstrates the diverse array of gender outlaws who continued to be caught up in these laws. It also helps illuminate the continued association that police officers made between cross-dressing and homosexual effeminacy, sex work, and gender "fraud." Sometimes police interrupted drag performances inside clubs, as in Memphis when four men between the ages of 19 and 24 were arrested "for impersonating females" inside a lounge bar where they were "singing and dancing in women's dresses and wigs, kissing one another and kissing customers."[67] In Lexington, Kentucky, police initially arrested four performers for go-go dancing in violation of a local morality law, only to "discover that the women were female impersonators" and rebook them for "wearing disguises."[68] Cross-dressing bans also formed part of police anti-prostitution arsenals, as in San Francisco, where "forty-one men in drag were arrested. . . . between midnight and 2am" in the city's red light district for "obstructing the sidewalks and wearing women's clothing with intent to deceive."[69] The ordinances were one legal tool in a broader constellation of local morals regulations.

Cross-dressing bans were also enforced without suspicion of other crimes. In these instances, the police acted to reinforce normative gender by ensuring that dress was not deceptive. In 1972, teenagers Jerome Swigart and Frederick LaFitte, for example, were simply walking down the street wearing women's clothing in Sarasota, Florida, when they were picked up and later charged with "appearing in the dress of another person not belonging to the same sex."[70] When defendants challenged these sorts of arrests, police and prosecutors often attempted to justify their actions by referencing their fear of men using women's bathrooms.[71] The Houston chief of police told a reporter, "We have a lot of people here who would like to dress in women's clothes and 'tippie toe' in and out of women's restrooms," when asked why he was enforcing the city's anti-cross-dressing ordinance in 1972.[72]

Penalties for cross-dressing varied considerably, including fines of $1 to $100 or more, and nights or months in jail.[73] Even when the legal consequences were relatively minor, humiliation and abuse by police could render the impact of an arrest quite terrible. In the early 1960s, a traveling salesman

would mar the reputation of middle-class homophiles by association with "undignified, low-class behavior." Meyerowitz, *How Sex Changed,* 178. On homophile respectability politics, see footnote 26.

[67] News Section, *Drag* 1.5, 1972, 3.

[68] News Section, *Drag* 2.6, 1972, 7.

[69] News Section, *Drag* 2.7, 1972, 9.

[70] News Section, *Drag* 1.5, 1972, 4.

[71] *City of Chicago v. Wilson,* 389 N.E. 2d 522 (Ill. 1978); *Doe v. McConn*, 489 F. Supp. 76 (S.D.T.X. 1980); *Mayes v. Texas*, 416 US 909 (1974); and "Chicago Judge Axes Cross-Dressing Law," *The Advocate,* October 24, 1973, 7.

[72] "He Will Be She in Spite of Houston," *The Advocate*, November 8, 1972, 23.

[73] Toni Mayes was fined eleven dollars. See News Section, *Drag* 2.8, 1972, 6. Wallace Wilson and Kim Kimberley were each fined $100 for their arrest in Chicago, see "His Costly Change of Clothes Could Get Him 3 Years in Jail," *The Advocate*, May 22, 1974, 5.

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and transvestite was arrested while "dressed" in an unfamiliar town after a solo dinner in a local restaurant. After he changed into masculine clothing and spent the night in jail, the assistant chief of police demanded that he get "dressed" again, took gratuitous mug shots of him, and proceeded to "lead various men into the room and tell each one, 'I'll give you fifty bucks if you'll mount her.'" As he wrote in his account of the ordeal, he had "tears streaming down my face."[74] In 1971, a trans woman arrested in Dallas recounted that after her arrest, the police "took my clothes and put me in a release tank with male prisoners for one hour with nothing on except a girdle and shoes." To underscore why this abuse was so traumatic, she added, "I have a quite well-developed bust now after nine months of shots," a reference to hormone treatment.[75] Two years later, two trans women arrested for violating Chicago's anti-cross-dressing ordinance were forced to strip to their underwear for photographs at the police station; at trial, the officers explained that they wanted to "prove" that they were both men.[76] In these kinds of first-person accounts, gender outlaws regularly describe police officers teasing, humiliating, and degrading them.

A particularly horrific string of police abuses against a trans person named Linda Sue Jackson ultimately led to criminal convictions against four deputy sheriffs in Hot Springs County, Arkansas. Officers arrested Jackson, who worked as an Avon salesperson, several times over the course of 1977. On the occasion of one arrest, they were "forced to appear naked" in the Malvern City Jail, and, according to eyewitnesses, police then taunted and beat them.[77] After a subsequent arrest, officers drove to a remote location where Jackson was beaten "with nightsticks and flashlights, had turpentine poured into [their] anus, and was set upon by two Doberman pinschers. One of the officers then poured alcohol on [Jackson's] wounds and asked to be fellated."[78] According to the report in *Drag* magazine, "a physician at the trial described [Jackson] as the most severely beaten patient he had ever treated."[79] Although the language of anti-cross-dressing ordinances may make them appear as relatively harmless misdemeanor offenses, these arrests made gender outlaws vulnerable to police abuse.

One of the most striking features of the reported cases is that there are no detectable trans men, drag kings, or transvestite women.[80] Most of the defendants were drag queens, male transvestites, and trans women, with

[74] Pegie Val Addair, "Transvestism and the Law, Part II," *Turnabout* 5 (1965): 13–16.

[75] News Section, *Drag* 1.4, 1971, 6–7.

[76] Abstract of Record, Report of Proceedings July 19, 1974. Direct Exam, Cross, Redirect of Officer LoBue by Mr. Swartzman and Assistant State's Attorney Mr. Cahill, *City of Chicago v. Wilson,* 389 N.E. 2d 522 (Ill. 1978).

[77] "Horror in Arkansas," *Drag* 8.27, 1980, 8.

[78] Ibid.

[79] Ibid.

[80] Gender outlaws assigned female at birth did face arrest, but they do not appear in the case reporters. "Aldrich 'Walks Alone,'" *Ladder* 1 (1957): 16–19. "The ACLU Takes a Stand On Homosexuality," *Ladder* 1 (1957): 8–9. See also, Agee, *The Streets of San Francisco*, 78–79. Lillian Faderman has written about an incident in San Francisco in which female college students were arrested for wearing men's clothing in a gay bar (*Odd Girls and Twilight Lovers*, 335 n.11).

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some occasional "hippies" and gender-bending revelers, both gay and straight men.[81] This archive reflects police priorities of the period, which focused on sexual deviance among people the police perceived to be men. Race is another troubling elision in the archive.[82] None of the print sources mentions the race of any of the defendants, and oral history interviews can only provide an outsider's impression. These significant limitations should not be taken to reflect the nature of anti-cross-dressing enforcement in general but do tell us which defendants were most likely to have the time, money, and access to lawyers necessary to challenge their convictions.

Challenges to Cross-Dressing Bans

Trans legal consciousness

During the 1960s and 1970s, two concurrent developments in the social experience and scientific study of gender non-conformity transformed the way that gender outlaws understood themselves.[83] First, doctors and gender outlaws inaugurated a "taxonomic revolution" that reconfigured the relationships between sexuality, gender identity, and gender presentation in medicine and social life.[84] Sexologists had already begun to peel sexual object choice away from gender nonconformity, defining homosexuality by same-sex attraction and transvestism by cross-dressing.[85] At mid-century, they debated the place of transsexuals—people who sought medical interventions for sex change—in this schema.[86] Harry Benjamin developed the prevailing view that, unlike transvestites who wished to appear as the opposite sex, transsexuality reflected deeper cross-gender identification.[87] In order to access surgery in the Benjamin model, transsexuals were required to undergo a psychological evaluation and years of social transition, which included prescribed cross-dressing and hormones.[88] Although sexologists continued to debate terminology and

[81] For example, trans woman Carol Schneider was arrested in Dallas, Texas, in 1971 "when police stopped to question two hippie-dressed friends of hers and discovered she was male." News Section, *Drag* 1.4, 1971, 6–7.

[82] For scholarship on the interrelated histories of racial and gender identity categories, see e.g. C. Riley Snorton, *Black on Both Sides: A Racial history of Trans Identity* (Minneapolis: University of Minnesota Press, 2017); Jules Gill-Peterson, *Histories of the Transgender Child* (Minneapolis: University of Minnesota Press, 2018).

[83] These developments in trans legal consciousness coincided with morals policing reform, including decriminalization of fornication and sodomy, as well as heightened attention to broader police abuses. See Goluboff, *Vagrant Nation;* Anne Gray Fischer, "'Land of the White Hunter': Legal Liberalism and the Racial Politics of Morals Enforcement in Midcentury Los Angeles," *Journal of American History* 105 (2019): 868–84.

[84] Meyerowitz, *How Sex Changed,* ch. 5 (referring to this transformation as a "taxonomic revolution"); and Valentine, *Imagining Transgender,* 42–43.

[85] Meyerowitz, *How Sex Changed*, 169.

[86] Ibid., 170.

[87] Ibid., 174.

[88] Susan Stryker, "MTF Transgender Activism in the Tenderloin and Beyond, 1966–1975: Commentary and Interview with Elliot Blackstone," *GLQ: A Journal of Lesbian and Gay Studies* 4 (1998): 353–54.

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acknowledged that many of their patients existed in the gray areas between the neat categories, their work generated stronger analytical distinctions between homosexuality, transvestism, and transsexuality.[89] Of course, shifts in elite discourses like medicine do not translate directly into social life, and many people we might now consider trans would refer to themselves as simply "gay."[90]

Gender outlaws also drove this process by developing new trans social networks and community knowledge about gender identities. Louise Lawrence collaborated directly with sexologists, sharing her trans experiences with researchers at the University of California at San Francisco (UCSF) throughout the 1940s and 1950s.[91] Lawrence became a mentor to Virginia Prince, who founded *Transvestia* magazine as well as a social club for fellow heterosexual transvestites in Los Angeles in 1960.[92] Throughout the 1960s, Prince and other contributors used the pages of *Transvestia* to define and police the boundaries of transvestite identity.[93] They understood gender identity to be separate from sexual orientation, dividing up transvestites into straight and gay categories and seeing both as different from transsexuals. Most of the contributors to *Transvestia* shared Prince's sense of themselves as heterosexual, middle-class, mostly white transvestites, or "TVs," and disliked being confused with gay transvestites or "gay queens."[94] More inclusive gender outlaws like the editors of *Drag* also contributed to the category work.[95]

Emerging networks did much more than moderate border skirmishes at the sexual margins. They also created circuits for sharing information and building community. In the mid-1960s, Prince's social club blossomed into FPE.[96] From four initial chapters in Los Angeles, Chicago, Cleveland, and Madison, the group

[89] Meyerowitz, *How Sex Changed*, 176.

[90] Meyerowitz, *How Sex Changed*, 196; Valentine, *Imagining Transgender*, 43; Regina Kunzel has made a related argument that the heterosexual/homosexual binary remained porous in actual social practice well after the medical categories became analytically distinct. See Kunzel, *Criminal Intimacy*. Beans Velocci also cautions that the medical categories were not created in a vacuum: figures like Harry Benjamin "did not define transness by establishing solid criteria and then assessing people by how closely they matched them" but developed the criteria based on the fear that unhappy patients would sue them. Beans Velocci, "Standards of Care: Uncertainty and Risk in Harry Benjamin's Transsexual Classifications," *TSQ: Transgender Studies Quarterly* 8 (2021): 462–80. A growing body of transgender studies scholarship has added to the critique of a "master narrative of transgender identity formation." See Regina Kunzel, "The Flourishing of Transgender Studies," *TSQ: Transgender Studies Quarterly* 1, no. 1–2 (May 1, 2014): 287–88.

[91] Stryker, *Transgender History*.

[92] Prince had originally launched *Transvestia* in 1952. Meyerowitz, *How Sex Changed*; for more on Virginia Prince, see Vern L. Bullough, *Cross Dressing, Sex, and Gender* (Philadelphia: University of Pennsylvania Press, c 1993); Hill, "'As a Man I Exist; as a Woman I Live'"; Stryker, *Transgender History*.

[93] Meyerowitz, *How Sex Changed*, 179–80; and Hill, "'As a Man I Exist; as a Woman I Live,'" 268.

[94] *Transvestia* 35 (1965): 83; and *Transvestia* 38 (1966): 82. Much like their homophile contemporaries, some trans activists sought to define themselves against more stigmatized identities. On transvestite respectability politics, see Meyerowitz, *How Sex Changed,* 185.

[95] See, for example, "Viewpoint: Drag Queen vs. Transvestite," *Drag* 1.1, 1971, 1–2; and Editorial, *Drag* 2.6, 1972, 4.

[96] Stryker, *Transgender History*, 2008, 54–57; and Hill, "'As a Man I Exist; as a Woman I Live,'" 271.

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grew to twenty-five chapters by 1975.[97] In the relative safety of a member's living room, transvestites could dress how they liked while sharing beauty tips and relationship advice, as well as medical and legal knowledge. Prince frequently compared FPE to Alcoholics Anonymous as a place where "group commitment" could help transvestites "handle" their desires.[98]

In San Francisco, smaller networks of transsexual activists and service groups also formed over the latter half of the 1960s. Trans women launched Conversion Our Goal (COG), the first known transsexual peer support and activist group, in response to police harassment in the Tenderloin district.[99] COG often referred trans people to the city's Center for Special Problems, where they could obtain unofficial ID cards indicating that they were under treatment for transsexualism.[100] The group found initial financial support from the Erickson Educational Foundation (EEF), a nonprofit founded and controlled by a wealthy trans man named Reed Erickson.[101] Through Erickson's continued investment and federal funding later in the decade, and with the leadership of trans women Louise Ergestrasse and Wendy Kohler, COG transformed into the Transexual Counseling Service, which connected trans people to medical and legal support while conducting its own educational outreach.[102]

Trans people in New York and Los Angeles began to form their own political and service groups in 1970, having participated in the Stonewall uprising only to be effectively shut out of gay liberation organizations.[103] Street queens Sylvia Rivera and Marsha P. Johnson organized Street Transvestite Action Revolutionaries, or STAR, to help street youth access food and shelter.[104] In Los Angeles, drag queen Angela K. Davis founded Transvestite/Transsexual Activist Organization (TAO), which drew greater connections to an international trans community through its publications *Mirage* and *Moonshadow.*[105] That same year, drag queen Lee Brewster and transvestite Bunny Eisenhower formed the Queens Liberation Front and began publishing the era's most

[97] Hill, "'As a Man I Exist; as a Woman I Live,'" 272–73, 312. In 1967, FPE merged with another transvestite organization called "Mamselle" to form a new group called "Tri-Sigma." Tri-Sigma rebranded itself Tri-Ess in 1980. Hill, 265.

[98] Hill, "'As a Man I Exist; as a Woman I Live,'" 270.

[99] Stryker, *Transgender History*, 75; Stryker, "MTF Transgender Activism in the Tenderloin and Beyond, 1966–1975," 362; and Meyerowitz, *How Sex Changed*, 230–31.

[100] Stryker, *Transgender History*, 75–76. Erickson Educational Foundation, "Legal Aspects of Transsexualism" (1971) 2.

[101] For more on Reed Erickson, see Aaron H. Devor and Nicholas Matte, "ONE Inc. and Reed Erickson: The Uneasy Collaboration of Gay and Trans Activism, 1964–2003," *GLQ: A Journal of Lesbian and Gay Studies* 10 (2004): 179–209; Vern L. Bullough, ed., *Before Stonewall: Activists for Gay and Lesbian Rights in Historical Context* (New York: Harrington Park Press, 2002), 383.

[102] Meyerowitz, *How Sex Changed*, 230–32; and Stryker, *Transgender History*, 77–78, 80–81.

[103] Stryker, *Transgender History*, 86; Eric Marcus, *Making History: The Struggle for Gay and Lesbian Equal Rights, 1945–1990: An Oral History* (New York: HarperCollins Publishers, 1992), 266–68 (discussing opposition to trans participation in gay pride events in 1973); Currah, "Defending Genders."

[104] Stryker, *Transgender History*, 86; and Meyerowitz, *How Sex Changed,* 235.

[105] Stryker, *Transgender History*, 88–89; Stryker, "MTF Transgender Activism in the Tenderloin and Beyond, 1966–1975," 366; and Meyerowitz, *How Sex Changed,* 238–39.

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thorough accounts of trans activism in *Drag* magazine.[106] Queens Liberation Front put legal change at the top of its agenda by prioritizing the "right to dress as we see fit" in its original prospectus.[107] By its own account, the group had some success pressuring authorities in New York to remove anti-cross-dressing provisions in permits for dances, catering, and cabarets.[108]

Whether by accessing services, attending events, joining a club, or reading a magazine, gender outlaws in the late 1960s and early 1970s could link into a growing political network. Many of the organizations failed after only a few years of operation due to disagreements between leaders and lack of funding. But the period is marked by persistent efforts to bring legal issues for gender non-conformers into circulation. The small world of trans publications shared tips for managing an arrest, fictionalized accounts of cross-dressing prosecutions, and news items covering cross-dressing law enforcement and challenges to ordinances.[109] *Transvestia* canvassed readers for "any cases in which the courts have given any kind of verdicts favorable directly or indirectly to transvestism."[110] A typical news item from *Drag* magazine in 1973 told readers that Toledo's anti-cross-dressing law had been found unconstitutional and would no longer pose a threat to drag attendees of the city's annual Halloween Ball.[111] *Turnabout,* a short-lived trans magazine out of Brooklyn, published a three-part series on transvestism and the law.[112] EEF also published pamphlets to educate trans people about their legal options. The 1971 edition of "Legal Aspects of Transexualism" included the names and addresses of three sympathetic attorneys and began its analysis with cross-dressing regulations.[113] Since many ordinances included an intent requirement, EEF recommended that trans readers write in for unofficial EEF identification cards, which would explain that cross-dressing was part of the treatment protocol.

The coverage consistently portrayed transvestites as a minority.[114] In the pages of *Transvestia,* Virginia Prince told readers that supporting John Miller "is definitely in the interests of all TVs" because they could be a part "of the first legal effort ever collectively made in the interest of TVs."[115]

[106] *Drag* bridged the gay and straight transvestite communities, declaring in a 1972 editorial that it was "about the transvestite, be they gay, straight, or just plain confused!" For more on STAR, QLF, and *Drag*, see Meyerowitz, *How Sex Changed*, 235–36; and Stryker, *Transgender History*, 87–88.

[107] "Queens Liberation Front...What is it?" *Drag,* 1.6, 1971, 13.

[108] Ibid., 13–14.

[109] For tips on what to do in case of arrest, see *Turnabout* 4 (1964): 8–10. For fictionalized accounts of cross-dressing prosecution, see *Transvestia* 38 (1966): 16; for news items, see *Drag*, most issues.

[110] *Transvestia* 1.2 (1960): 18. EEF also asked readers to share their legal victories. *EEF Newsletter* 5 (1972): 3.

[111] "News," *Drag* 3.12, 1973, 5–6.

[112] "Transvestism and the Law Part 1: How to Keep an Arrest from Becoming a Disaster," *Turnabout* 4 (1965) 8–10; Pegie Val Addair, "Transvestism and the Law Part 2: Arrest Without Trial," *Turnabout* 5 (1965): 13–16; and "Transvestism and the Law Part 3: The Miller Case: A Finale," *Turnabout* 6 (1965): 13–14.

[113] EEF, "Legal Aspects of Transexualism," 1971, 2–3.

[114] Ibid., 1, referring to transsexuals as a "minority."

[115] "Defense Fund Report," *Transvestia* 27 (1964): 86.

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Turnabout's Siobhan Fredericks also described the case as one about transvestite rights, calling it "the ideal 'test case'" for challenging New York's masquerade law.[116] Making rights claims as trans people did not necessarily translate into legal arguments based on trans identities, however. Prince was notorious for defining transvestism against homosexuality and transsexuality, and yet she articulated this expansive legal imagination. She suggested that challenges to cross-dressing regulation like Miller's would promote "freedom of expression in clothing" and "greater freedom for the male to express himself."[117] Taken at face value, such arguments could benefit a broader range of gender outlaws than the group of transvestites Prince allowed to join FPE.[118]

Trans organizations also contributed to a greater public understanding of trans legal problems. In San Francisco, Wendy Kohler led a pioneering day-long workshop on transsexual issues including doctors, policy experts, and service providers.[119] Throughout her extensive domestic travels, Virginia Prince made a point of attempting to dissuade local police officials from enforcing anti-cross-dressing laws.[120] During a visit to a bar for "gay queens" in Honolulu, Prince learned that trans women attempted to avoid arrest by pinning signs stating "I am a Boy" to their dresses.[121] She arranged a meeting with the local police in an attempt to explain transvestism so that they would "treat TVs with some understanding."[122] On a visit to Los Angeles in 1966, she took a detour to San Diego to try to persuade the police department not to endorse a new anti-cross-dressing ordinance there.[123] EEF also tried to educate law enforcement by publishing "Information on Transexualism for Law Enforcement Officers."[124] The booklet was organized in an accessible question and answer format, offering its take on quandaries like "what is a transsexual" and "isn't cross-dressing against the law?"[125]

These combined efforts trickled into the legal profession, in part through EEF's financial support for articles on trans issues. Starting in 1968, Colorado attorney John P. Holloway wrote a series of articles entitled "Transexuals—Their Legal Sex," "Transexuals: Legal Considerations," and "Transsexuals—Some Further Legal Considerations," which he had researched with cooperation from sexologists at Johns Hopkins University.[126] Holloway presented his findings at the

[116] Siobhan Fredericks, "Kaleidoscope," *Turnabout* 4 (1964): 27.

[117] Virginia Prince, "Defense Fund Appeal," *Transvestia* 33 (1965): 12; and Virginia Prince, "Defense Fund," *Transvestia* 34 (1965): 72.

[118] For Prince's tight grip on FPE membership, see Hill, "'As a Man I Exist; as a Woman I Live,'" ch. 5.

[119] "Pioneer Seminar on Transsexualism," *EEF Newsletter* 3 (1970): 1; Meyerowitz, *How Sex Changed*, 232; and Stryker, *Transgender History*, 76.

[120] Hill, "'As a Man I Exist; as a Woman I Live,'" 307.

[121] Virginia Prince, "It Couldn't Happen But — It Did," *Transvestia* 35 (1965), 83.

[122] Ibid.

[123] Virginia Prince, "Virginia Views: Let's Do Make Waves," *Transvestia* 38 (1966), 84–85.

[124] EEF, "Information on Transexualism for Law Enforcement Officers."

[125] Ibid., 1, 13.

[126] John P. Holloway, "Transsexuals—Their Legal Sex Symposium on Sex and the Law in Contemporary Perspective," *University of Colorado Law Review* 40 (1968 1967): 282–96; John P. Holloway, "Transsexuals: Legal Considerations," *Archives of Sexual Behavior* 3 (1974): 33–50; John

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EEF's second International Symposium on Gender Identity in Copenhagen.[127] Another attorney published an article on trans law in the *Cornell Law Review*, which EEF advertised on the first page of its winter 1971 newsletter.[128] By 1983, EEF's legal referral list had grown to thirty-eight names.[129]

The challenges

As trans organizing expanded alongside widespread challenges to police abuse in the mid-1960s, it might seem overdetermined that challenges to cross-dressing laws would also increase. But going to court opened a trans person to retaliation in their private and professional life. Transsexuals seeking surgical care faced a particular double-bind: to access surgery, doctors pressured them to "pass" as cisgender through social transition; but in order to mount a defense, they would have to make their gender history public.[130] In the words of trans theorist Sandy Stone, transsexuals were "programmed to disappear."[131] Speaking in court about their gender identity did not exactly qualify.

Trans people took that risk. As criminal defendants, they were already in a defensive position relative to legal authority and may have felt that fighting the charges might improve a bad situation. Most of the reported cases began when a trans person was arrested for cross-dressing. Rather than suffer the punishment privately, these defendants decided to appear in court to raise constitutional objections to the legitimacy of cross-dressing regulations. For their part, defense lawyers groped for statutory interpretation and constitutional arguments amid significant legal change. In the 1960s, as state vagrancy laws came under pressure, it was not obvious whether arrests would be more vulnerable to legal attacks that characterized cross-dressing as harmless sartorial conduct or expression of a personal status.

In a series of cases including John Miller's defense, attorneys in New York tried to challenge Section 887(7) by arguing that it was unconstitutionally

P. Holloway, "Transsexuals--Some Further Legal Considerations," *Comparative and International Law Journal of Southern Africa* 5 (1972): 71; and Meyerowitz, *How Sex Changed*, 246.

[127] The second symposium was held in 1971. "Second International Symposium," *EEF Newsletter* 4, no. 4 (1971). It is not clear how Holloway came into the EEF circle. According to his publications, he obtained his J.D. from the University of Colorado, where he was later resident legal counsel. He also served as an assistant attorney general for Colorado. Holloway, "Transsexuals: Legal Considerations," 33; and Holloway, "Transsexuals: Some Further Legal Considerations," 71.

[128] "Light in the Law Library," *EEF Newsletter* 4 (1971): 1.

[129] List of Attorneys on EEF Referral List, 1983, University of Victoria Transgender History Archive, Reed Erickson Collection, Box 1, Folder 16.

[130] The question for doctors was "not whether someone was really a woman but if they could pass as a woman." Velocci, "Standards of Care," 463. On the pressure to "pass" from treating physicians, see also Minter, "Do Transsexuals Dream of Gay Rights?"; Stryker, "MTF Transgender Activism in the Tenderloin and Beyond, 1966–1975"; Stryker, *Transgender History*; and Meyerowitz, *How Sex Changed.*

[131] Sandy Stone, "The Empire Strikes Back: A Posttranssexual Manifesto," *Camera Obscura* 10 (1992): 150–76.

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vague, exceeded the state's police power, and required criminal intent that ruled out application to cross-dressers.[132] Prosecutors retorted that the laws clearly prohibited androgynous dress. In opposition to John Miller's appeal, for example, the district attorney reinforced the popular notion that cross-dressing was essentially deceptive conduct. By "hiding in the guise of women," he wrote, "transvestites necessarily frustrate minimum standards of societal order."[133] Since conduct could be criminalized under the police power, Miller's challenge failed. Even judges who might find such readings excessive still believed that the law was intended to discourage "overt homosexuality" and "sexual aberration."[134]

As long as courts understood cross-dressing to be criminal conduct, it was difficult to convince them that the laws exceeded municipal power to regulate welfare. But in the late 1960s and early 1970s, lawyers convinced judges in state courts across the country that similar laws were, in fact, unconstitutional. These lawyers relied on the growing popularity of unisex fashions, the expanding protections for personal expression, and changes in the science of transsexuality to develop legal theories that the laws were void for vagueness, violated personal freedoms, and criminalized transsexual medical diagnoses.

Each of these strategies reflected a different understanding of the relationship between cross-dressing and personal identity. In the vagueness cases, lawyers often steered courts away from inquiries into the deeper meaning of their clients' cross-dressing, instead folding the dressing practices of gender outlaws such as gay party-goers, drag queens, transvestites, and transsexuals into the broader trend toward unisex styles. By contrast, challenges rooted in the First and Fourteenth Amendments asserted something like a freedom to cross-dress as part of defendants' right to choose their clothing, either as a form of protected expression or as a substantive due process right.

A final subset of cases raised arguments under the Eighth Amendment, framing trans identity as an "involuntary condition" that could not be criminalized. This theory drew judicial attention closest to defendants' personal identities and gained sympathy in court by highlighting the double-bind facing transsexuals. Regardless of which strategy lawyers deployed, even in cases in which judges were not asked to adjudicate the defendant's gender identity, these challenges represented a crucial turning point in the legal legibility of trans people.

No single set of lawyers was responsible for the strategy, but the ACLU played an outsized role.[135] Regional ACLU chapters had supported local challenges going back at least as far as John Miller, whose attorneys secured an amicus brief from the civil rights juggernaut.[136] In 1973, attorneys in the national office founded the Sexual Privacy Project, which included cross-

[132] *People v. Gillespi,* 204 N.E.2d 211 (N.Y. 1964); *People v. Miller* (App. Term, 1st Dept., Nov. 1964, No. 394); *People v. Hirshhorn* (N.Y. App. Term, First Dept., May 1966, No. 187); and *People v. Archibald*, 296 N.Y.S.2d 834 (N.Y. App. Div. 1968).

[133] Respondent's Brief in Opposition, *People v. Miller*, No.145 (U.S. May 15, 1965) (cert denied), 6.

[134] *People v. Archibald*, 296 N.Y.S.2d 834, 838 (N.Y. App. Div. 1968) (Markovitz, J., dissenting).

[135] Of the cases examined in this article, five had ACLU support at some stage.

[136] Siobhan Fredericks, "The Miller Case," *Turnabout* 5 (1965): 18.

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dressing challenges alongside challenges to laws banning sodomy, loitering, solicitation, and prostitution, as well as sex offender registration and cohabitation regulations.[137] Led by Marilyn Haft, the Project worked on three other challenges in St. Louis, Louisville, and Winston-Salem in its first year of operation. After the Sexual Privacy Project closed in 1977, the short-lived Transsexual Rights Committee of the Southern California ACLU took up similar work.[138] It advanced important changes for trans people in California and provided materials to attorneys challenging cross-dressing laws elsewhere.[139]

Void for vagueness and cross-dressing as fashion

The Supreme Court's landmark decision in *Papachristou v. City of Jacksonville* clarified the terms of debate by making it more difficult to criminalize conduct. The decision of 1972 invalidated Jacksonville's vagrancy ordinance on the grounds that it "fail[ed] to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," and made "criminal activities which by modern standards are normally innocent," in violation of due process guarantees in the Fifth and Fourteenth Amendments.[140] The Court reined in police discretion by ruling that citizens must have fair notice of what conduct is considered illegal.[141]

Papachristou rendered anti-cross-dressing ordinances newly vulnerable to vagueness challenges in the 1970s. In fact, it was the dispositive argument in half of the twenty-seven challenges recorded in legal reports and trans press between 1963 and 1986. The explosion of unisex clothing also made it much more difficult for police or judges to tell that a person's clothing was intended for men or for women. As a judge put the problem, "What distinguishes the male high-heeled shoe from the female? Is it the thickness of the heel or the sole, the design of the toe, the contour of the instep or just what?"[142] In

[137] "The Haft ACLU Docket 1973," Lyon Martin Collection, GLBT Historical Society, Box 19, Folder 1.

[138] Leigh Ann Wheeler, *How Sex Became a Civil Liberty* (New York: Oxford University Press, 2013), 175. See also, *Renaissance Update* 7, no. 1 (1983). Trans memoirist Lou Sullivan was a member of the ACLU's trans committee in 1984. Diane Saunders, ACLU Transsexual Rights Committee Chairwoman to Lou Sullivan. Los Angeles, California, August 21, 1984.

[139] Stryker, *Transgender History*, 121. On the ACLU's involvement in gay and lesbian and transgender rights, see Cain, "Litigating for Lesbian and Gay Rights," 1993; Wheeler, *How Sex Became a Civil Liberty*; and D'Emilio, *Sexual Politics, Sexual Communities.* For connections between the Transsexual Rights Committee and other litigation efforts, see correspondence between B. Stephen Miller and Joanna Clark, in the ACLU of Eastern Missouri papers, University of Washington St. Louis.

[140] *Papachristou v. Jacksonville*, 405 U.S. 156 (1972).

[141] Ibid.

[142] "Cross Dress Law Falls," *The Advocate,* September 24, 1975, 10. Such challenges were also considered before *Papachristou*. In 1968, an attorney representing several women who had been arrested for cross-dressing in Houston told *The Houston Chronicle* that "the difference between men and women's attire is now too ambiguous to be legislated." "Police Will Refile Charges," *The Ladder*, (quoting *The Houston Chronicle*) October 1968, http://www.houstonlgbthistory.org/

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an age of unisex clothing, how could an ordinary citizen determine whether their clothing would violate the law?

Over the previous decade, an array of social movements explicitly politicized self-presentation as part of their protest of the status quo: Male hippies and youth activists began to wear their hair long and adopt unisex fashions to protest the clean-cut political establishment behind the Vietnam War; Black Power activists encouraged African Americans to reject white standards of beauty by embracing natural hairstyles and African-inspired clothes; feminists wore pants as a sign of gender equality; and gay male liberationists embraced the "Peacock Revolution" in menswear, with its emphasis on bright colors and accessories.[143] Cross-dressing among men had long been associated with male effeminacy and homosexuality, connections that raised fears about the "homosexual conspiracy" behind unisex styles when they first emerged.[144] These styles were quickly shorn of their countercultural roots. By the 1970s, "long hairstyles on men, pants on women, and unisex fashions were no longer restricted to baby-boomer youths or social movement activists," as they made their way into the cultural mainstream.[145]

Lawyers in several cases solicited testimony at trial to underscore the difficulty of enforcing cross-dressing bans in light of unisex clothing. In 1971, the ACLU of Florida teamed up with the Gay Activists Alliance of Miami and the National Coalition of Gay Organizations to argue that Miami Beach's anti-drag and anti-cross-dressing ordinances were unconstitutionally vague. The lawyers called the chief of police to testify and showed him "some 15 items of unisex apparel obtained from a local clothing store and asked if a man wearing them would be subject to arrest for appearing in clothing inappropriate to his sex." He responded that "it would depend on the person and the circumstances."[146]

In Detroit, two courts called fashion writers from the *Detroit Free Press* to testify about the difficulty in separating men's from women's clothing.[147] One writer explained that "the distinction between male and female clothing has blurred tremendously, and . . . clothes have become sexless."[148] In 1975, the Supreme Court of Ohio similarly relied on the unisex clothing trend when it faced a challenge to the cross-dressing ordinance in Columbus. "Modes of dress for both men and women are historically subject to change in fashion," wrote Chief Justice C. William O'Neill. "At the present time, clothing is sold for

Houston80s/Misc/Cross%20Dressing/68-ladder-oct68-chronicle-072768.jpg (accessed February 9, 2018).

[143] Betty Luther Hillman, *Dressing for the Culture Wars: Style and the Politics of Self-Presentation in the 1960s and 1970s* (Lincoln, NE: University of Nebraska Press, 2015), 24.

[144] Psychiatrist Robert P. Odewald and sociologist Charles Winick argued that unisex clothing would lead to homosexuality. Luther Hillman, *Dressing for the Culture Wars,* 26.

[145] Ibid., 124.

[146] "Court Voids Miami Beach Drag Bans," *The Advocate,* July 19, 1972, 4. The judge ruled that the ordinances were void for vagueness.

[147] The first prosecution concerned a steelworker named James LeGrande. The charges were dropped based on contemporary fashions. "News," *Drag* 2, no. 7, 1972: 8. The second case was *Columbus v. Rogers*, 324 N.E. 2d 563 (1975).

[148] Joe Baker, "Cross-Dress Law Falls," *The Advocate*, September 24, 1975, 10.

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both sexes which is so similar in appearance that 'a person of ordinary intelligence' might not be able to identify it as male or female dress. In addition, it is not uncommon today for individuals to purposefully, but innocently, wear apparel which is intended for wear by those of the opposite sex."[149] The court unanimously ruled the ordinance void for vagueness.[150]

By referencing the ubiquity of unisex styles, lawyers implied that the dressing practices of their clients were not unique to sexual or gender subcultures but benign parts of a larger shift. The approach worked to the advantage of the defendants in two of the cases discussed.[151] These arguments also enabled lawyers to skirt questions about their client's intent or identity while still winning the case. Judges invalidated old laws without having to adjudicate the sex or gender of defendants or understand much of anything about how gender outlaws identified.

The new personal expression and cross-dressing as conduct

A separate line of Supreme Court cases opened another avenue for challenging cross-dressing regulation. In the 1960s, constitutional protections for free expression expanded to include new recognition of the right to control one's personal appearance. Some lawyers seized on these developments to argue that cross-dressing was a component of personal expression for their clients. In the process, they shifted the legal meaning of cross-dressing away from associations with gender fraud and stigmatized homosexuality, carving out some protections for gender non-conformity on its own terms.[152]

In a string of cases during the late 1960s, the Supreme Court was forced to grapple with the extent of First Amendment protections for various forms of protest against the Vietnam War. In 1968, the Court held that burning draft cards did not merit constitutional protection, but the following year, it ruled that wearing black armbands at school was protected symbolic conduct in *Tinker v. Des Moines Independent Community School District*.[153] An important element of that case was the Court's assertion that the armbands were protected even though other students and school staff found it distasteful. In the 1974 case *Spence v. Washington,* the Court similarly found that a student's right to fly the American flag upside down outside his dorm window was protected by the First Amendment.[154] Where previous decisions defined the limits of "pure speech," these cases expanded First Amendment protections to

[149] *Columbus v. Rogers*, 324 N.E.2d 563, 565 (Ohio 1975).

[150] Ibid.

[151] Both of the defendants were trans women. "City Cross-Dressing Ban Is Repealed, But Ohio Court Agrees to Hear Case" The *Advocate*, August 28, 1974, 14; and Ellen Grzech, "Judge Allows Men to Dress in Female Clothing," *Detroit Free Press,* reprinted in *Empathy Forum* November 1975, 7.

[152] The First Amendment arguments differ from the more familiar ones in the gay and lesbian legal canon, which concerned the right to disseminate gay and lesbian material and to "come out" as queer at work. Perhaps the best known such case is *One, Inc. v. Olesen*, 355 U.S. 371 (1958).

[153] *United States v. O'Brien*, 391 U.S. 367 (1968); and *Tinker v. Des Moines Independent Community School District,* 393 U.S. 503 (1969).

[154] *Spence v. Washington,* 418 U.S. 405 (1974).

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expressive forms of symbolic conduct, including some elements of personal appearance.

Federal courts in the early 1970s were also inundated with cases brought by public employees, prisoners, members of the military, and public school students against male dress and grooming codes. Their victories helped expand constitutional protection for personal appearance under a different set of constitutional arguments emanating from the Due Process Clause of the Fourteenth Amendment.[155] These "long hair cases" culminated in *Kelley v. Johnson*, which reached the Supreme Court in 1976.[156] The case concerned a patrolman's challenge to his department's requirement that male police officers be clean-shaven and keep their hair short. While the officer lost his case, the Court limited its decision to the specific circumstances of policemen as public employees, leading observers (and subsequent circuit courts) to conclude that the Court recognized "some sort of 'liberty' interest within the Fourteenth Amendment in matters of personal appearance" for the first time.[157] Together, the *Tinker* and *Kelley* decisions suggested that personal appearance was constitutionally protected to some extent, although the precise contours remained unclear.

Attorneys for Martin Hirshhorn anticipated these developments by several years. Hirshhorn, who also used the name Sandy Lorin, was a licensed hairdresser who had been wearing exclusively women's clothes for three years when they were arrested in 1965 for cross-dressing.[158] ACLU lawyers came to Hirshhorn's aid and petitioned the Supreme Court to invalidate the law for abridging the "right to dress as one pleases" under the substantive due process guarantee of the Fourteenth Amendment.[159] That articulation of the right at issue made it possible, at least in theory, for the Court to agree without knowing *why* Hirshhorn had been wearing women's clothes when they were arrested.

[155] For legal literature expanding this point, see David P. Troup, "Long Hair and the Law: A Look at Constitutional and Title VII Challenges to Public and Private Regulation of Male Grooming Comment," *University of Kansas Law Review* 24 (1975): 143–72; Laura Richards Craft and Matthew A. Hodel, "*City of Chicago v. Wilson* and Constitutional Protection for Personal Appearance: Cross-Dressing as an Element of Sexual Identity Symposium: Sexual Preference and Gender Identity," *Hastings Law Journal* 30 (1979): 1151–82; and Gael Graham, "Flaunting the Freak Flag: *Karr v. Schmidt* and the Great Hair Debate in American High Schools, 1965–1975," *The Journal of American History* 91 (2004): 522–43.

[156] *Kelley v. Johnson*, 425 U.S. 238 (1976).

[157] In *Kelley v. Johnson*, the court assumed that the right existed without deciding. 425 US 238 (1976). For subsequent cases, see Craft and Hodel, "*City of Chicago v. Wilson* and Constitutional Protection for Personal Appearance," 1163. Constitutional law distinguishes between procedural and substantive rights emanating from the Due Process Clause of the Fourteenth Amendment and substantive rights called "substantive Due Process" rights.

[158] Goluboff, *Vagrant Nation*, 170–171. Goluboff merges gender and sexual non-conformity, in the way that Hirshhorn's attorneys were attempting to avoid, by writing that the cert petition and reply brief were steps toward "an affirmative identity-based sexuality." She later cites the case as evidence that "law enforcement officers sometimes arrested gay men and lesbians in private places and charged them with lewd vagrancy and the like," 175.

[159] Petition for Writ of Certiorari at 9, *Hirshhorn v. New York*, 386 U.S. 984 (1967) (cert denied).

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As a result, Hirshhorn's lawyers did not need to take a position on whether cross-dressing was a conduct or a status.[160] In fact, they referred to it both ways in a single paragraph, arguing that "to criminally punish for conduct completely dissociated from any criminal intent and totally unrelated to any criminal act cannot be defended on any grounds. The State, in effect, is arbitrarily making mere status a criminal offense."[161] They argued that since Hirshhorn "is a transvestite," and transvestism is not itself illegal, Hirshhorn was being punished simply for the act of wearing women's clothes.[162] But they also explained that for Hirshhorn, cross-dressing "defines [their] identity," which constitutes a "unity and persistence of personality."[163] Rather than challenge the notion of gender fraud, they argued that Hirshhorn would be "concealing [their] identity only if [they] wore men's clothing." In other words, Hirshhorn avoided gender fraud by cross-dressing.[164]

It might have been anathema in sexology to see transvestism as both conduct and status, but in this situation, Hirshhorn's lawyers improved their prospects by declining to pick a side. They appeared to be aware of the growing movement to define a discrete transsexual status since they cited a front-page headline from *The New York Times* in 1966, declaring "A Changing of Sex by Surgery Begun at Johns Hopkins" as evidence that "modern surgical innovations would also seem to make meaningless the sanctions of this statute." But, as Risa Goluboff has remarked, the attorneys fell short of arguing that transgender people constituted a minority deserving constitutional protection.[165] The form of their legal argument might hold part of the explanation why—they may have decided that it was too risky to introduce judges to a developing taxonomic field when any definition of cross-dressing that linked it to sartorial freedom would do. We'll never know what the Court would have made of that argument, since the Supreme Court declined to hear Hirshhorn's case in 1967, as it had declined to hear John Miller's case a few years prior.

These arguments appeared again in the early 1970s after the Supreme Court had developed the speech and due process principles of free expression in *Tinker* and *Kelley*. From the start of the five-year battle to topple Chicago's anti-cross-dressing ordinance, freedom of personal appearance arguments were powerful tools for defendants and their lawyers. The opening salvo against the ordinance came from the courtroom of Circuit Court Judge Jack Sperling in a case concerning the arrest of four gender outlaws between the ages of seventeen and twenty. Melinda, Mona, Tanya, and Tammie had gone

[160] The strategy may have been motivated in part by ignorance on the part of the lawyers. They wrote the brief just one year after Harry Benjamin published *The Transsexual Phenomenon* and did not appear to be familiar with the latest literature. The only attempt to define transvestism in the brief came from a 1965 essay that departed significantly from contemporary understandings. Petition at Michael Balint, "Perversions and Genitality," in *Perversions: Psychodynamics and Therapy*, ed. Sandor Lorand (New York: Random House, 1965).

[161] Petition for Writ of Certiorari at 12, *Hirshhorn v. New York,* 386 U.S. 984 (1967) (cert denied).

[162] Ibid., 11.

[163] Ibid.

[164] Ibid.; and Goluboff, *Vagrant Nation,* 170.

[165] Goluboff, *Vagrant Nation*, 170.

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to the police one evening in 1973 to report that they had been beaten up at a local tavern after one of them had used the ladies' room, only to be arrested inside the police station for cross-dressing.[166]

Under "Public Morals" heading, Section 192-8 of the Chicago Code imposed a fine between $20 and $500 on "any person who shall appear in a public place in a dress not belonging to his or her sex, with intent to conceal his or her sex."[167] Noted civil rights lawyer Renee Hanover represented the young people for free. She argued that the ordinance violated due process, was unconstitutionally vague, and violated the defendants' constitutionally protected freedom of personal appearance.[168] Assistant Corporation Counsel Arthur Mooradian defended the ordinance "because a transvestite 'with intent to deceive' could enter women's washrooms," rob unsuspecting strangers, or trick potential romantic partners.[169] According to local press, Judge Sperling ruled the ordinance unconstitutional by basing "his decision on recent cases . . . declaring government dress codes unconstitutional" because people "have the right to present themselves physically to the world in the manner of their own individual choice."[170] Within three days of the Sperling decision, Melinda Balderas was evicted from her apartment, Tanya Williams lost her job, and Mona Garcia's house was burned down.[171]

In 1974, gender outlaws got another chance to challenge the Chicago law. The case began when two plainclothes officers arrested Wallace Wilson and Kim Kimberley as they left a breakfast restaurant in Chicago's bustling downtown Loop neighborhood. According to the police, Wilson was wearing a "black knee-length dress, a fur coat, nylon stockings and a black wig;" Kimberley "had a bouffant hair style and was wearing a pants suit, high-heeled shoes and cosmetic makeup."[172] At the station, the officers forced Wilson and Kimberley to disrobe and photographed their genitals. Wilson and Kimberley decided to fight their arrest, asking the Legal Assistance Clinic at Northwestern University School of Law to represent them.[173] Thomas Geraghty, a recent graduate, and law students Wendy Metzler and Daniel Swartzman aggressively fought

[166] "Chicago Officials Move to Restore Drag Law," *The Advocate,* November 7, 1973, 20.

[167] *City of Chicago v. Wilson*, 389 N.E. 2d 522 (Ill. 1978).

[168] "Chicago Officials Move to Restore Drag Law."

[169] "Chicago Judge Axes Cross-Dressing Law."

[170] "Chicago Judge Axes Cross-Dressing Law." According to press reports, Judge Sperling based his ruling on the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment and may have also cited the right to privacy. "Cross Sex Dress Ban Overruled," *Chicago Tribune,* September 21, 1973, 17; and "Chicago Officials Move to Restore Drag Law." See also "Cross-dressing Ban Under Fire," *EEF Newsletter* 6 (1973): 2.

[171] Three Chicago newspapers reported the decision. See Marie Kuda, "Cross-Dressing Law Struck Down in 1972," *Windy City Times*, May 14, 2008, 8. That fall, council member Clifford Kelley introduced a bill to repeal the anti-cross-dressing ordinance and enact protections for gender and sexual minorities in employment, housing, and public accommodations. Timothy Stewart-Winter, *Queer Clout: Chicago and the Rise of Gay Politics* (Philadelphia: University of Pennsylvania Press, 2016), 118. The bill passed in 1988.

[172] *City of Chicago v. Wilson,* 389 N.E. 2d 522 (Ill. 1978).

[173] The clinic had open walk-in hours and had developed a reputation for representing people who had been entrapped and arrested for cruising in public bathrooms. Interview with Thomas Geraghty, January 29, 2018.

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the arrests. Their legal argument was both broad and narrow: it was couched in capacious terms as constitutional protection for an individual's right to cross-dress but was fueled by the expressive importance of cross-dressing for these defendants as trans women. The strategy highlighted the stakes of the right at issue but defined the protected group as medicalized transsexuals.

At trial, Wilson and Kimberley explained that they wore women's clothing not with "intent to conceal" their sex but with intent to express it. Both Wilson and Kimberley testified that they were transsexuals and that dressing in women's clothing was part of their treatment in anticipation of surgery. Wilson told the court, "I feel more comfortable in the clothes I was arrested in because that is the way I like to dress. I consider myself a female, but I am a male."[174] Wilson and Kimberley hoped to show the judge that their expressive conduct was following doctor's orders. The judge was unconvinced, however, ruling that the ordinance properly regulated "public conduct" and could be upheld since Wilson and Kimberley intended to "conceal the fact that they are males."[175] He fined each of the defendants $100.

On appeal to the Illinois Supreme Court, the legal team tried a handful of constitutional arguments, hoping that one would stick.[176] The brief educated the court about the developing science of gender identity by attaching an appendix including medical research from Harry Benjamin and other leading sexologists, a publication of the Gender Identity Clinic at Johns Hopkins University, and EEF's "Information on Transsexuals for Law Enforcement Officers."[177] Bringing medical definitions of transsexuality into the courtroom made it easier for the judge to see a contradiction between the standards of medical care for transsexuality that required cross-dressing and the city law that criminalized it.

In their substantive due process argument, the lawyers articulated an expansive view that the Constitution protects "the right to dress as one pleases." For Wilson and Kimberley, that right was all the more important because they were trans women who were "psychologically compelled to engage in such expression through dress and hairstyle."[178] They embedded a First Amendment claim in this larger argument by analogizing the right to expression in clothing to symbolic speech communicating that Wilson and Kimberley were women.[179] In other words, cross-dressing was not necessarily an attempt to conceal one's sex but could be a part of trans identity.

[174] Abstract of Record, Report of Proceedings, September 24, 1974, *City of Chicago v. Wilson,* 389 N.E. 2d 522 (Ill. 1978), 13–15.

[175] "City's Dress Code Upheld," *Chicago Tribune*, August 8, 1974, A1.

[176] *City of Chicago v. Wilson*, 389 N.E. 2d 522 (Ill. 1978).

[177] Ibid. The brief also argued that even if the city's arguments about homosexuality were true—it was indeed constitutional to criminalize sodomy, as thirty states still did by 1978—the arguments were totally irrelevant to Wilson and Kimberley's case. Furthermore, the city could not argue that the legitimate purpose of the ordinance was to govern homosexual conduct because consensual sodomy had been legal in Illinois for sixteen years. In fact, the state legislature's only foray into trans issues contradicted the city's argument, since the state had begun to allow trans people to change the sex designation on their birth certificates in 1961.

[178] Petition to Appeal, *Chicago v. Wilson*, 28.

[179] Ibid., 30.

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Applying the rule of *Tinker,* Chicago could not suppress the idea conveyed by Wilson and Kimberley's dress, even if some members of the public did not like it.

The Supreme Court of Illinois held that the Chicago cross-dressing ordinance was unconstitutional as applied to transsexuals because it violated their substantive due process right to dress as they pleased.[180] Justice Moran's opinion leaned on medicine. He had conducted his own research on transsexuality and the law, and his decision cited three law review articles (not referenced in the defense's appendix) for the proposition that cross-dressing was a part of trans medical treatment. After striking out at trial and the appellate court, the decision was a major victory for transsexual rights. It meant that the law could no longer be used to arrest transsexuals for cross-dressing in the city and enshrined a positive portrayal in the state law reporter.[181]

In another sense, however, the defense's arguments had worked too well. The lawyers wanted to underscore that the liberty interest in clothing had deep stakes for their clients, so they conveyed cross-dressing as primarily a part of medical treatment for transsexuals. This logic structured the decision, limiting its protections to cross-dressing motivated by transsexuality. In other words, legal legibility came at the price of a narrow trans legal subject.[182] It reinforced the idea that transsexual identity was determined by doctors and implicitly defined it against other gender outlaws. The opinion defended the liberty to choose one's clothes but limited the sorts of people who could access that freedom.[183]

Trans statuses and cross-dressing as treatment

Lawyers pushed arguments of medical necessity even further in challenges to cross-dressing arrests under the Eighth Amendment's prohibition on cruel and unusual punishment. Where Wilson and Kimberley's lawyers had suggested that cross-dressing was a medical necessity for transsexuals, some lawyers used recent Eighth Amendment developments to argue that transvestism and transsexuality were involuntary statuses. In the 1962 case *Robinson v. California*, the Supreme Court overturned a California statute that made

[180] *City of Chicago v. Wilson*, 389 N.E. 2d 522 (Ill. 1978).

[181] At least one law review article also called this development to the attention of legal scholars. See Craft and Hodel, "*City of Chicago v. Wilson* and Constitutional Protection for Personal Appearance."

[182] Libby Adler also warned about the downsides of an identitarian transgender civil rights strategy in "Appending Transgender Equal Rights to Gay, Lesbian and Bisexual Equal Rights," Columbia Journal of Gender and Law 19, no. 3 (December 1, 2010) https://doi.org/10.7916/cjgl.v19i3.2598.

[183] Victory in one part of the country did not necessarily translate elsewhere. In 1975, a trans woman named Nichole Murray raised the same objection when she was arrested for cross-dressing in San Diego. She lost on the grounds that "[w]hether the defendant is a transsexual or not is irrelevant to the statute." "San Diego Court Ruling Backs Clothing Ordinance," *Drag*, 5.18, 1975, 5. Nor did police always stop enforcing cross-dressing bans in places where they were found unconstitutional. Miami's ordinance was ruled unconstitutional in 1971 but was still being actively enforced through at least 1974. "Yes It's True," *Mirage* 1, no. 3 (1974): 7.

"the status of narcotic addiction a criminal offense."[184] The Court reasoned that an illness like drug addiction was an involuntary status, not an act, and to criminalize something "which may be contracted innocently or involuntarily" ran afoul of the Eighth Amendment.[185] In a few cases, lawyers took advantage of the fact that "transvestism" and "transsexualism" could be medical diagnoses, arguing that they were involuntary conditions and thus could not be criminalized under the *Robinson* rule.[186] Indeed, as Risa Goluboff has shown, ACLU attorneys Osmond Fraenkel and Stephen Stein also raised this argument in Martin Hirshhorn's unsuccessful appeal to the Supreme Court in 1967.[187]

As Hirshhorn's case wound its way toward the Supreme Court, the long history of medical interest in gender minorities was gaining new cultural salience and institutional legitimacy. With financial support from Reed Erickson, sexologists at Johns Hopkins University founded a Gender Identity Clinic in 1966 and began to accept patients for sex-affirming surgery.[188] Clinics at Northwestern University, Stanford University, and the University of Washington soon followed.[189] Each clinic had its own rubric for evaluating which patients to approve for surgery, but the broad outlines were the same: patients required psychological evaluation to determine that they had persistent "crossgender identification," and they were required to live in their preferred gender for months or years, often taking sex hormones, under medical supervision.[190]

Lawyers representing transsexual clients quickly realized that the developing medicine could bolster their claims and began to call medical experts to testify at trial. For example, Dr. Bryon Stimson, chairman of the Department of Psychiatry Transsexual Protocol Committee of the Ohio State University Hospital testified at the trial of Joseph Zanders in 1970. Stimson explained that he had been treating Zanders for a year and a half, using "psychiatric examinations" and "social and emotional testing" to determine that Zanders was "a true transsexual" and "a prime candidate for transsexual surgery."[191] He also took care to differentiate between transsexuality, transvestism, and homosexuality.

Stimson's testimony was a major factor in convincing Franklin County Municipal Court Judge Jenkins that Zanders's arrest for cross-dressing should be thrown out. So too was an article in the *American Journal of Psychotherapy* by Harry Benjamin, from which the judge quoted extensively in his decision. "It is apparent from the medical authorities cited that the true transsexual suffers from a mental defect over which [she] has little practical control," wrote Jenkins. Since criminal sanction could not flow from "a mental disease or mental defect," Zanders could not be punished under the ordinance. The decision reflected the same intuition driving Eighth Amendment challenges to

[184] *Robinson v. California,* 370 US 660 (1962).
[185] Ibid.
[186] In so doing, they echoed Virginia Prince's analogies between transvestism and addiction.
[187] Goluboff, *Vagrant Nation*, 169.
[188] Meyerowitz, *How Sex Changed*, 219.
[189] Ibid., 222.
[190] Ibid., 225.
[191] *Columbus v. Zanders*, 266 N.E. 2d 602 (Ohio Municipal Court 1970).

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Figure 2. Toni Mayes wearing a sign that reads "My body is male." Toni Mayes portrait courtesy of Houston LGBT History Collection, JD Doyle Archive. Available at https://www.houstonlgbthistory.org/Houston80s/Misc/Cross%20Dressing/Mayes/Toni%20Mayes-1972.jpg.

cross-dressing ordinances, a sense that there was something unsavory about criminalizing an involuntary medical status.[192]

But this approach was a high-wire act, requiring that the doctors give supportive testimony and that judges were receptive to their message. Zanders learned how easily the strategy could backfire when she appeared before the Ohio Court of Appeals for the Tenth District in 1974. In the four years after her successful legal challenge, she had been arrested for cross-dressing in Columbus six more times. For this appeal, Zanders mounted the same defense as before, arguing that "as a transsexual [her] course of conduct was prescribed by the doctor as a course of treatment for a clearly defined medical problem," and the arrests were therefore unconstitutional. Dr. Stimson also made a repeat appearance, but this time he portrayed the state of transsexual medicine as unreliable, testifying that there were cases of "reversible transsexualism" and that the field lacked a "standard diagnosis."[193] The appellate court was particularly interested to hear from Dr. Stimson that Zanders had been inconsistent in seeking treatment for the past several years and had not undergone surgery.[194] They took this evidence as an indication that Zanders may not have been sincere in her description of herself as a transsexual, despite Simson's additional testimony that Zanders met the medical requirements for surgery but simply could not afford

[192] The court found the statute constitutional despite Zanders's claims under the Eighth and other Amendments, but it threw out the charges against Zanders by finding that she lacked the requisite mental state.

[193] *Columbus v. Zanders* Nos. 74AP-88, 74AP-89, 74AP-90, 74AP-91, 74AP-92, 74AP-93., 1974 WL 184390 (Ohio Ct. App. 1974).

[194] Ibid.

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the $30,000 price tag.[195] Simson's testimony cast doubt on Zanders's claims to medical necessity, and she lost all six appeals.

That same year, the ACLU made its third attempt to get the constitutionality of cross-dressing bans before the Supreme Court, this time pushing an Eighth Amendment strategy.[196] The client, a trans woman named Toni Rochelle Mayes, had socially transitioned in 1971, wearing women's clothing and taking estrogen as part of her treatment.[197] She asked the city council and, later, the police department if they would issue ID cards to gender outlaws that they could show to police officers to avoid arrest for violating the Houston ban on dress "of the opposite sex."[198] Instead, the city council revised the ordinance to impose a penalty only if a Houstonian cross-dressed "with the intent to disguise his or her true sex as that of the opposite sex," apparently hoping the change would make the law less vulnerable to legal challenge.[199] In order to avoid the appearance of using women's clothing as a disguise, Mayes started to wear a sign which read "my body is male" (Figure 2).[200]

The police department was unrelenting, using the ordinance to arrest Mayes eight times over a three-year period. On one occasion, she was put in a men's jail for nine hours, later telling the press, "I felt terrible. . . . I had my wig torn off and there were a lot of remarks I didn't care for."[201] She reported that she'd spent "$1,000 in legal fees and bonds since I've been taking the hormones" and that she was "immediately recognized everywhere, can't get a job, and ha[d] no income."[202] She decided to challenge the constitutionality of the ordinance to help protect other trans people from the same experience, recognizing that the publicity from a lawsuit could help educate the public.[203]

Throughout her legal battle, Mayes and her lawyers hewed closely to the medical model of transsexuality. At trial, they called her doctor, a reproductive endocrinologist, to testify that she was transsexual and describe her physicality and mental state.[204] The defense team emphasized the fact that Mayes's cross-dressing was part of a larger plan to pursue sex reassignment surgery. Mayes herself testified that she "was a woman and therefore dressed like one," and in their petition to the Supreme Court, her attorneys added that "an essential part of petitioner's status as a transsexual is the compulsion to wear female clothing."[205]

[195] Ibid.

[196] The first two attempts were *People v. Miller* (App. Term, 1st Dept., Nov. 1964, No. 394) and *Hirshhorn v. New York*, 386 U.S. 984 (1967).

[197] "Man Changing Sex Claims Harassing," *Abilene Reporter News*, May 23, 1973; and "He Will Be She in Spite of Houston."

[198] "Mayes Harassed by Police but Won't Leave Town," *The Nuntius*, October 1972, 1, 12; "If 'It' Breaks the Law, Arrest Action Is Ahead," *Brownwood Bulletin*, August 27, 1972, http://www.texasobituaryproject.org/2007/11/Mayes/Mayes-082772b.jpg (accessed February 9, 2018).

[199] "He Will Be She in Spite of Houston."

[200] "Man Changing Sex Claims Harassing."

[201] "Houston Man Wants to Pose as Woman," *Pampa Daily News*, March 30, 1972, http://www.texasobituaryproject.org/2007/11/Mayes/Mayes-033072.jpg (accessed February 9, 2018).

[202] "If 'It' Breaks the Law, Arrest Action is Ahead"; and "He Will Be She in Spite of Houston."

[203] "If 'It' Breaks the Law, Arrest Action Is Ahead."

[204] "Man Changing Sex Claims Harassing."

[205] Petition for Writ of Certiorari at 3, *Mayes v. Texas* 416 U.S. 909 (1974) (cert denied).

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This evidence provided the necessary background to challenge Houston's ordinance under the Eighth Amendment. Five years after the *Robinson* decision, the Supreme Court seemed to backtrack on its holding. In *Powell v. Texas,* it ruled that Texas could impose criminal penalties for public intoxication because alcoholism was not clearly an involuntary status, and, in any case, the law concerned the public expression of that condition.[206] Marilyn Haft of the ACLU's newly formed Sexual Privacy Project saw the *Mayes* case as an opportunity for the Court to chart a course between *Robinson* and *Powell.* She argued that the Houston ordinance punished Mayes for her "status as a transsexual," even though "the appearance in public of a transsexual in the clothing of the opposite sex is the passive and essentially involuntary expression of a status and does not harm others."[207] She urged the Court to hold that the Eighth Amendment "prohibits punishment of public expression of a status when an essential and substantially involuntary ingredient of the status is to harmlessly act out and express that status in public."[208] Quoting a concurrence from *Robinson,* Haft wrote, "we would forget the teachings of the Eighth Amendment if we allowed sickness to be made a crime and permitted sick people to be punished for being sick."[209] But the Supreme Court would not hear the case, leaving Houston's ordinance in effect.

These cases were firmly grounded in a coherent sense of transsexual identity. They told courts that transsexual people were a minority group whose status could not be criminalized. *Robinson* looked like an attractive constitutional hook for a fledgling movement, but lawyers still took a risk in pursuing it, since it required trans people to ask their doctors to help them prove that their identities were legitimate. In structure, if not substance, these claims most resemble contemporaneous claims for gay and lesbian rights based on a consolidated sense of gay identity. The arguments tried to open an aperture in the Constitution just big enough for transsexual people under medical treatment to walk through, leaving other gender outlaws outside.

"Action was brought by transsexuals"[210]

When trans defendants challenged their arrests as infringements on their right to dress as they pleased, or as cruel and unusual punishment, they steered state and municipal courts toward definitions of gender identity from political activism and sexology. Their challenges as criminal defendants helped courts understand the harms of anti-cross-dressing enforcement to trans legal subjects. In the 1980s, trans litigants built on this foundation through civil suits in federal court. Stuck between medical treatment regimes and law enforcement, these litigants made affirmative demands on state power.

[206] *Powell v. Texas,* 392 US 514 (1968).
[207] Petition for Writ of Certiorari at 8, Mayes v. Texas 416 U.S. 909 (1974) (cert denied).
[208] Ibid. at 7, 8.
[209] Ibid. at 9.
[210] *Doe v. McConn*, 489 F. Supp. 76 (S.D.TX 1980).

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For example, a group of seven trans women anonymously brought a civil lawsuit against the city of Houston in 1980.[211] On the case caption, they appeared as Jane Does to protect themselves from harassment, preserve their privacy, and stave off "prosecution resulting from this action."[212] Many of the women had been arrested for cross-dressing in the past, and, if their lawsuit failed, they could become targets. Just ask Toni Mayes, who left the courtroom in her case only to be arrested again on the courthouse steps.

The plaintiffs went on the offensive, demanding that the court invalidate the ordinance and enjoin the police from enforcing it. When the district court ruled in their favor, it relied on the rationale from *Chicago v. Wilson*.[213] The opinion spent more time explaining transsexuality as a diagnostic category, differentiating it from homosexuality and transvestism, and elaborating on the "passing" requirement before surgery could be pursued, than it did on the legal content of the case. When it got there, the decision quoted a full paragraph from *Chicago v. Wilson* and held that the Houston ordinance was an unconstitutional intrusion on the substantive due process right to control one's personal appearance. It reasoned that for transsexual people, cross-dressing was "medically necessary."[214]

Like *Chicago v. Wilson,* the holding only extended to "individuals undergoing psychiatric therapy in preparation for sex-reassignment surgery."[215] From the standpoint of all gender outlaws, it was a partial victory. The trans legal subject was limited to transsexual persons seeking medical care under a doctor's supervision, but the ruling also added to activist pressure on the ordinance, which the city council fully repealed four months later.[216] For transsexual Houstonians who had been harassed and prosecuted, the case was a watershed. The plaintiffs had proven that legal authority could recognize trans people as legible subjects, and some trans people could come out of criminal defense and play offense for trans rights.

The narrow frame of the trans legal subject shaped attorneys' strategic imagination. In 1984, the ACLU of Eastern Missouri constructed a lawsuit to challenge prohibitions on cross-dressing and "lewd and lascivious conduct" in St. Louis's vagrancy ordinance.[217] The suit represented one trans

[211] A psychiatrist who treated several of the women was also a plaintiff.

[212] Ibid.

[213] Section 28-42.4 of the Code of Ordinances of the City of Houston read: It shall be unlawful for any person to appear on any public street, sidewalk, alley, or other public thoroughfare dressed with the designed intent to disguise his or her true sex as that of the opposite sex. Ibid.

[214] *Doe v. McConn,* 489 F. Supp. 76 (S.D.TX 1980).

[215] Ibid.

[216] After years of lobbying from Phyllis Frye, the Houston City Council repealed the ordinance in August of 1980. Phyllis Frye, "Facing Discrimination, Organizing for Freedom: The Transgender Community," in *Creating Change: Sexuality, Public Policy, and Civil Rights*, ed. Urvashi Vaid, John D'Emilio, and William B. Turner (New York: St. Martin's Press, 2000), 518 n20. For many years, Frye was the only out transgender attorney in Texas, and she became the first trans judge in the country. She was also instrumental in the fight to include transgender protections in the Employment Non-Discrimination Act (ENDA). George, "The LGBT Disconnect."

[217] St. Louis Ordinance 15.30.010 criminalized "[a]ny person who shall, in this city, appear in any public place in a state of nudity or in a dress not belonging to his or her sex or in an indecent or

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woman who had been arrested under the anti-cross-dressing provision and one drag queen who had been arrested with other "female impersonators" in a gay bar raid. The lawyers understood transsexuals, transvestites, and homosexuals to be analytically distinct and also recognized that the ordinance targeted them all.[218] They asked the court to strike down the ordinance and sought $25,000 in damages under a federal anti-discrimination statute.[219] The case reached the United States Court of Appeals for the Eighth Circuit, which agreed that both clauses were unconstitutionally void for vagueness.[220] Rather than seek constitutional protection for non-conforming dress in general, lawyers framed the case as a coalition between gay and trans people to tackle the entire ordinance. Gender outlaws and their lawyers had brought the taxonomic revolution to court, separating gender non-conformity from sexual orientation, and they had won. Legal defense of gender outlaws became a transgender legal movement.

Conclusion

By the mid-1980s, gender outlaws had succeeded in convincing courts across the country to throw out their cross-dressing arrests, and sometimes, their cross-dressing bans.[221] Lawyers and their clients found protections for gender outlaws

lewd dress, or shall make an indecent exposure of his or her person, or be guilty of an indecent or lewd act of behavior."

[218] "Cross-Dressing Law Ruled Invalid," ACLU News Press Release, 1986. GLBT Historical Society, Christine Tayleur Collection, Box 1.

[219] Ibid.

[220] *DC v. City of St. Louis*, 795 F. 2d 652 (8th Cir. 1986). The decision arrived 1 month after the United States Supreme Court rejected a vagueness challenge to Georgia's anti-sodomy law in *Bowers v. Hartwick*, 478 US 186 (1986). The first transgender anti-discrimination claims reached federal district courts in 1975, but the Supreme Court did not decide a transgender rights case until 1996. Kylar Broadus, "Employment Discrimination Protections" in *Transgender Rights*, ed. Paisley Currah, Richard M. Juang, and Shannon Minter (Minneapolis: University of Minnesota Press, 2006), 94–96.

[221] It is possible that anti-cross-dressing ordinances remain on the books in some cities; a national canvas of every town would be nearly impossible. Significant enforcement seems to have all but disappeared by the 1990s when reported cases and newspaper accounts disappear from the historical record. This absence should not be overestimated, however. Transgender people continued to be singled out for police harassment well into the twenty-first century. In 1976, New York City banned "loitering for the purpose of prostitution," which police used to harass and detain women, including many trans women, often on the basis of their clothing. Melissa Gira Grant, "The NYPD Arrests Women for Who They Are and Where They Go—Now They're Fighting Back," *The Village Voice,* November 22, 2016, https://www.villagevoice.com/2016/11/22/the-nypd-arrests-women-for-who-they-are-and-where-they-go-now-theyre-fighting-back/ (accessed January 3, 2022); and Natasha Lennard, "Repealing the 'Walking While Trans' Ban Is Part of the Struggle to Decriminalize Sex Work," *The Intercept* (blog), February 4, 2021, https://theintercept.com/2021/02/04/walking-while-trans-defund-police-abolition/ (accessed January 3, 2022). "The Legal Aid Society and Cleary Gottlieb Challenge the Constitutionality of New York's Loitering for Prostitution Law: Demand an End to NYPD's Arbitrary and Discriminatory Enforcement of the Law Against Women of Color," Legal Aid Society and Cleary Gottlieb, https://orgs.law.columbia.edu/qtpoc/sites/default/files/content/LAS-Cleary-Gottlieb-

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in the Constitution, convincing courts all over the country that cross-dressing did not have to be a crime; it could be a benign fashion choice, an element of personal expression, or a medical treatment. In the process, they made strategic choices about when trans identities should be visible or obscured and negotiated the tension in winning cases for transsexual people in ways that other gender outlaws could not replicate. Out of the crucible of cross-dressing decriminalization emerged a viable—and yet limited—trans legal subject.

In retrospect, John Miller appears as a paradigmatic litigant in the emerging transgender legal movement. He identified as a transvestite within a national community that fiercely defended the boundaries between gender identity, sexual orientation, and gender presentation. With community financial support, he hired a lawyer to challenge New York's anti-masquerade law on vagueness grounds. And when he needed help with his appeal, he enlisted the New York Civil Liberties Union to write an amicus brief on his behalf.

How different was this, really, from the gay and lesbian legal movement emerging at the same time? Several elements of Miller's story look familiar. Certainly, the ACLU was a major institutional support in the 1960s, including its representation of homophile activists who were arrested for cross-dressing.[222] Evidence of gender non-conformity was often used to prosecute gay bars and patrons. Many early gay civil rights cases also argued that anti-gay laws were void for vagueness or asserted First and Fourteenth Amendment rights for gay people to freely assemble and receive due process.[223] It's also true that before (and during) the taxonomic revolution, sexual orientation and gender identity were so deeply entangled that it makes little sense to separate queer and trans social history.

What sets trans legal history apart in this period is not the targets of cross-dressing prosecution or the constitutional amendments on which lawyers relied. It lies in the expansive trans legal imagination whose legal arguments encompassed a wide variety of gender outlaws. The most intriguing arguments came in substantive due process and free expression claims, in which lawyers tried to translate gender non-conforming lives into legal terms without losing too much in the process. Unlike gay and lesbian legal strategy from the homophile movement forward, those cases were an attempt for gender outlaws to find constitutional safe harbor without defining themselves against their less respectable siblings, sometimes without defining themselves at all. Gender outlaws may have been left out of "homosexuality," but they were not left behind.

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Challenge-the-Constitutionality-of-New-Yorks-Loitering-for-Prostitution-Law-Press-Release-9.30.16.pdf (accessed January 3, 2022). The New York Legislature repealed New York Penal Law Section 240.37 in 2021. Jaclyn Diaz, "New York Repeals 'Walking While Trans' Law," *NPR*, February 3, 2021, https://www.npr.org/2021/02/03/963513022/new-york-repeals-walking-while-trans-law.

[222] ACLU defended members of the Society for Individual Rights (SIR) who were arrested during the New Year's raid.

[223] On anti-sodomy law litigation, see Cain, "Litigating for Lesbian and Gay Rights," 1586; Carpenter, *Flagrant Conduct*; Eskridge, *Gaylaw;* Dudley Clendinen and Adam Nagourney, *Out for Good: The Struggle to Build a Gay Rights Movement in America* (New York: Simon & Schuster, 1999); and Faderman, *The Gay Revolution.*

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The anti-cross-dressing challenges were not the first or the only legal challenges brought in defense of gender non-conformity. They form a partial record to be sure, but as the volume of cases increased, winning arguments traversed jurisdictional boundaries. Defendants like John Miller in the 1960s relied on community fundraising and word-of-mouth networks to secure legal representation. By the 1970s, many cases—including *Chicago v. Wilson* and *Mayes v. Texas*—were brought by regional ACLU offices or with their support at the appellate level and formed a significant portion of the docket for the national ACLU's Sexual Privacy Project in its first year of operation.[224]

Of course, Miller lost his case, a reminder that the trajectory of trans legal history is not linear. Sexual orientation and gender identity continued to bifurcate in sociological categories, in lived experience, and in important areas of constitutional law. *Lawrence v. Texas,* which decriminalized sodomy, and *Obergefell v. Hodges,* which legalized gay marriage, are considered victories for gay rights—but not trans rights—in part because they describe gay people constituting a discrete and insular minority.[225] Movement goals set the strategy, but the equal protection claims were also limited by the structure of the doctrine. From the perspective of these cases, gay rights seems to ignore transgender issues. Transgender people have not been acknowledged by the Supreme Court as a protected class in equal protection doctrine.

Outside of constitutional law, the transgender legal movement's expansive 1970s strategy recently echoed at the Supreme Court. In a 2019 case, ACLU lawyers successfully convinced a conservative Court that federal employment law encompasses transgender and gay people in its prohibition against discrimination "because of sex."[226] Writing for the majority, Justice Gorsuch used a method of statutory interpretation called "textualism," asking what the words of the statute meant when they were enacted in 1964. When the Court found that transgender people could suffer discrimination "because of sex," it expanded transgender civil rights without acknowledging a trans legal subject. A Court that is otherwise hostile to the rights of subordinated minorities nevertheless had learned that "homosexuality and transgender status are inextricably bound up with sex," and understood that gender non-conformity cuts across contemporary identity categories, uniting people by the harm of being held to normative gender standards. Perhaps this strategy might be fruitfully expanded.

Twenty years ago, pioneering trans rights lawyer Shannon Minter asked, "What histories have we lost or failed to map in arriving at a place where transgender inclusion in the gay movement seems like a self-evident necessity to many gay people and completely illogical to others?"[227] This article suggests that a trans legal movement developed separately but in tandem. Cross-dressing

[224] Sexual Privacy Project Docket for year 1973, GLBT Historical Society, Lyon/Martin Collection, Box 194, Folder 1.

[225] The lawyers raised other arguments, but the decisions referred to a mix of equal protection and due process reasons why the government should confer gay people equal dignity.

[226] *Bostock v. Clayton County* 590 U.S. ___ (2020).

[227] Minter, "Do Transsexuals Dream of Gay Rights," 143.

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decriminalization served as a catalyst for the development of a trans legal subject narrowly defined by pathologization. Only after gender identity and sexual orientation were stripped apart into now-familiar categories of lesbian, gay, bisexual, and transgender, could the contemporary coalition take shape.

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Appendix: Cross-Dressing Bans in the United States

Year	City	State	Level	Type	Source
1843	St. Louis	Missouri		Prohibited appearing in public "when naked, or in a dress not belonging to their sex, or in an indecent or lewd dress."	Jen Manion, *Female Husbands: A Trans History* (New York: Cambridge University Press, 2020), 320 n.2; Jesse Bayker, "Regulating Public Gender and the Rise of Cross-Dressing Laws," in *Cambridge History of Sexuality in the U.S.* (New York: Cambridge University Press, draft on file with author), 4.
1845	New York	New York	State law	Disguise in public	William N. Eskridge, *Gaylaw: Challenging the Apartheid of the Closet* (Cambridge, MA: Harvard University Press, 1999), 340.
1848	Columbus	Ohio	Ordinance		Eskridge, *Gaylaw*, 340.
1850	Nashville	Tennessee			Manion, *Female Husbands*, 320 n2.
1851	Chicago	Illinois	Ordinance		Eskridge, *Gaylaw*, 338.
1856	Wilmington	Delaware	Ordinance		Eskridge, *Gaylaw*, 338.

1856	Springfield	Illinois	Ordinance		Eskridge, *Gaylaw*, 339.
1856	New Orleans	Louisiana	Ordinance	Disguise	Eskridge, *Gaylaw*, 339.
1858	Newark	New Jersey	Ordinance		Eskridge, *Gaylaw*, 340.
1858	Charleston	South Carolina	Ordinance		Eskridge, *Gaylaw*, 340.
1858	Louisiana	Louisiana	State law		Manion, *Female Husbands*, 320 n2.
1859	Jefferson City	Missouri			Manion, *Female Husbands*, 320 n2.
1860	Kansas City	Missouri	Ordinance		Eskridge, *Gaylaw*, 339.
1861	Houston	Texas	Ordinance		Eskridge, *Gaylaw*, 341.
1862	Toledo	Ohio	Ordinance		Eskridge, *Gaylaw*, 340.
1863	San Francisco	California	Ordinance		Clare Sears, *Arresting Dress: Cross-Dressing, Law, and Fascination in Nineteenth-Century San Francisco* (Durham: Duke University Press, 2015), 2.
1863	Memphis	Tennessee	Ordinance		Eskridge, *Gaylaw*, 340.
1864	St. Louis	Missouri	Ordinance		Eskridge, *Gaylaw*, 339.
1873	Atlanta	Georgia	Ordinance	Lewd and indecent dress	Eskridge, *Gaylaw*, 338.
1874	California	California	State law	Masquerade for unlawful purpose	Eskridge, *Gaylaw*, 27.
1876	New York	New York	State law	Masquerade	Eskridge, *Gaylaw*, 27.

(*Continued*)

Appendix: (*Continued.*)

Year	City	State	Level	Type	Source
1876	New York City	New York	Statute		Eskridge, *Gaylaw*, 340.
1877	Minneapolis	Minnesota	Ordinance		Eskridge, *Gaylaw*, 339.
1879	Oakland	California	Ordinance		Eskridge, *Gaylaw*, 338.
1880	Dallas	Texas	Ordinance		Eskridge, *Gaylaw*, 341.
1880	Salt Lake City	Utah	Ordinance	Llewd and indecent dress	Eskridge, *Gaylaw*, 341.
1881	Nashville	Tennessee	Code of ordinances		Eskridge, *Gaylaw*, 340.
1882	San Jose	California	Ordinance		Eskridge, *Gaylaw*, 338.
1882	Sioux City	Iowa	Ordinance	Lewd and indecent dress	Eskridge, *Gaylaw*, 339.
1882	Sioux Falls	South Dakota	Ordinance	Lewd and indecent dress	Eskridge, *Gaylaw*, 340.
1883	Tucson	Arizona	Ordinance		Eskridge, *Gaylaw*, 338.
1883	Columbia	Missouri	Ordinance		Eskridge, *Gaylaw*, 339.
1884	Peoria	Illinois	Code of ordinances		Eskridge, *Gaylaw*, 338.
1885	Butte	Montana	Ordinance		Eskridge, *Gaylaw*, 339.
1886	Denver	Colorado	Code of ordinances		Eskridge, *Gaylaw*, 338.
1889	Lincoln	Nebraska	Code of ordinances		Eskridge, *Gaylaw*, 339.
1889	Kansas City	Missouri	Ordinance		Eskridge, *Gaylaw*, 339.
1890	Omaha	Nebraska	Code of ordinances		Eskridge, *Gaylaw*, 339.
1891	New Orleans	Louisiana	Ordinance	Lewd and indecent dress	Eskridge, *Gaylaw*, 339.

1892	Cheyenne	Wyoming	Ordinance		Eskridge, *Gaylaw*, 341.
1897	Cicero	Illinois	Code of ordinances		Eskridge, *Gaylaw*, 338.
1898	Los Angeles	California	Ordinance	Disguise	Eskridge, *Gaylaw*, 338.
1899	Cedar Falls	Iowa	Ordinance		Eskridge, *Gaylaw*, 339.
1901	Sioux Falls	South Dakota	Ordinance	Lewd and indecent dress	Eskridge, *Gaylaw*, 340.
1903	El Paso	Texas	Code of ordinances	Disguise	Eskridge, *Gaylaw*, 341.
1903	San Francisco	California	Ordinance		Eskridge, *Gaylaw*, 338.
1906	Cedar Rapids	Iowa	Code of ordinances		Eskridge, *Gaylaw*, 339.
1907	Orlando	Florida	Code of ordinances		Eskridge, *Gaylaw*, 338.
1907	Seattle	Washington	Ordinance	Lewd and indecent dress	Eskridge, *Gaylaw*, 341.
1908	Tampa	Florida	Code of ordinances	Lewd and indecent dress	Eskridge, *Gaylaw*, 338.
1911	Green Bay	Wisconsin	Code of ordinances	Lewd and indecent dress	Eskridge, *Gaylaw*, 341.
1913	Wilmington	North Carolina	Code of ordinances		Eskridge, *Gaylaw*, 340.
1913	Charleston	West Virginia	Code of ordinances		Eskridge, *Gaylaw*, 341.
1914	Columbus	Georgia	Code of ordinances		Eskridge, *Gaylaw*, 338.
1915	Charlotte	North Carolina	Code of ordinances	Lewd and indecent dress	Eskridge, *Gaylaw*, 340.
1917	Birmingham	Alabama	Code of ordinances	Disguise	Eskridge, *Gaylaw*, 338.
1917	Tulsa	Oklahoma	Code of ordinances	Lewd and indecent dress	Eskridge, *Gaylaw*, 340.
1919	Sarasota	Florida	Code of ordinances		Eskridge, *Gaylaw*, 338.
1920	Pensacola	Florida	Code of ordinances		Eskridge, *Gaylaw*, 338.

(*Continued*)

Appendix: (*Continued.*)

Year	City	State	Level	Type	Source
1923	Oklahoma	Oklahoma	State law	"Mask, hood or covering"	Okla. Stat. Ann. tit. 21, § 1301 (West).
1924	Cleveland	Ohio	Code of ordinances		Eskridge, *Gaylaw,* 340.
1925	Texas	Texas	State law	Masquerade	Texas Acts 1925, 39th Leg., ch. 63, p. 213, Sec. 1.
1926	West Palm Beach	Florida	Code of ordinances		Eskridge, *Gaylaw,* 338.
1951	Indianapolis	Indiana	Code of ordinances	Lewd and indecent dress	Eskridge, *Gaylaw,* 339.
1952	Miami	Florida	Ordinance		Eskridge, *Gaylaw,* 338.
1850s	Detroit	Michigan	Ordinance		Eskridge, *Gaylaw,* 339.
1890s	Santa Barbara	California	Ordinance		Eskridge, *Gaylaw,* 338.
1920s	Miami Beach	Florida	Ordinance		Eskridge, *Gaylaw,* 338.
Unknown	Cincinnati	Ohio	Ordinance		Eskridge, *Gaylaw,* 340.
Unknown	Fargo	North Dakota	Ordinance	"In dress not belonging to his or her sex or in indecent or lewd dress"	*City of Fargo v. Goss*, 302 N.W.2d 404 (N.D. 1981).
Unknown	Honolulu	Hawaii	Ordinance		*Transvestia* 35, 1965, 83.
Unknown	Fort Worth	Texas	Ordinance	Anti-drag	"Fort Worth Judge Raps Drag Ban," *The Advocate,* December 19, 1973, 14.

Unknown	Flagstaff	Arizona	Ordinance		"Isobel Knows the Law," *Femme Mirror* Vol. 2 no. 4 July 1977, 15.
Unknown	San Diego	California	Ordinance		"San Diego Court Ruling Backs Clothing Ordinance," *Drag* 5.18, 1975, 5.
Unknown	Champagne	Illinois	Ordinance		News Section, *Drag* 2.7, 1972, 9.
Unknown	Lexington	Kentucky	Ordinance	Disguise	News Section, *Drag* 2.6, 1972, 7.
Unknown	Louisville	Kentucky	Ordinance		"The Haft ACLU Docket," Lyon Martin Collection Box 194 Folder 1, GLBT Historical Society.
Unknown	Winston-Salem	North Carolina	Ordinance		"The Haft ACLU Docket," Lyon Martin Collection Box 194 Folder 1, GLBT Historical Society.
Unknown	Vermillion	South Dakota	Ordinance		"Ordinance No. 1," *Dakota Republican (Vermillion, SD)*, October 9, 1873.

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