SEVENTH CIRCUIT HOLDS TITLE VII DOES NOT PROTECT TRANSSEXUAL Reversing a district court decision, the U.S. Court of Appeals for the Seventh Circuit has held that Title VII does not forbid employment discrimination against transsexuals. Ulane v. Eastern Air Lines, Inc., No. 84-1431, 1984 Daily Lab.Rep. No. 176, D-1 (9/11/84). Ken Ulane, a Vietnam War air combat veteran, was hired as a pilot in 1968. In 1979, Ulane was diagnosed as a transsexual and began receiving treatment for sex reassignment, culminating in surgery in 1980. After surgery, she received a new birth certificate and a revised FAA flight certificate, but was discharged by Eastern. The district court had held that "sex" in Title VII meant sexual identity, so that discrimination on that basis was unlawful. Reversing, the circuit court held that "sex" in Title VII, which has no specific legislative history, must be regarded as having the ordinary meaning of biological gender, citing past cases holding that gays and transsexuals were not meant to be covered by Title VII.****Other Employment Law News: Dealing with the first charges filed under Governor Cuomo's Executive Order 28, the Office of Employee Relations has dismissed the complaint of John Nehrich, an Albany man, who claimed anti-gay discrimination in his discharge by the Division for Youth. The investigation of the charge revealed, according to the investigator, that Nehrich's discharge was due to incompatibility with his supervisor which had nothing to do with his sexual orientation.****As noted above, Eastern Air Lines has real hang-ups about unconventional people in their cockpits... Eastern has routinely asked employment applicants whether they have "homosexual tendencies," although it had responded positively to a 1975 NGTF corporate survey on employment policies with respect to gay people. When National Gay Rights Advocates threatened Eastern with a lawsuit if it did not delete the question from its application materials, Eastern responded by deleting the question and stating that inquiry into sexual orientation is no longer part of its employment process.****Oral argument before the Massachusetts Supreme Judicial Court is scheduled for October 4 in the case of Christine Madsen, the lesbian sports reporter for the Christian Science Monitor who was discharged when she refused counselling to change her sexual orientation. This case may present for the first time at the state supreme court level the question whether gay employees not covered by labor agreements have any job protection under judicially-created exceptions to the common law employment at will rule. In an earlier case, the Mass.S.J.C. has held that an obligation of good faith and fear dealing is part of every employment contract, and that court has also recognized privacy rights of gays in cases arising under

sexual solicitation laws. Madsen's complaint raises various contract, tort, and privacy theories for the court's consideration.****The San Bernardino (Calif.) Unified School District is challenging a 1983 California Attorney General Opinion which held that, pursuant to the California Supreme Court's Pacific Telephone decision, gay public employees are protected against discrimination. The issue has arisen in a lawsuit by a lesbian employed by the district, who claims she was demoted due to her sexual orientation.