

## 6th Circuit Denies Appeal by Transsexual Inmate

In a per curiam opinion covering consolidated actions, *Murray v. U.S. Bureau of Prisons*, 1997 WL 34677 (Jan. 28), a panel of the U.S. Court of Appeals for the 6th Circuit affirmed a summary judgment and a jury verdict against a male-to-female transsexual prisoner on her complaints about her treatment in prison.

Michelle Murray was first assigned to the Federal Correctional Institute ("FCI") in Morgantown, West Virginia, and later transferred to the FCI in Ashland, Kentucky. She alleged that prison officials at FCI Ashland violated her constitutional rights by: placing her in segregated confinement; preventing her from receiving items she needed to maintain a feminine appearance; harassing her verbally with regard to her appearance and perceived sexual orientation; abusing her physically; denying her sufficient levels of hormone treatments; and filing a false report in retaliation for lodging her initial complaint. A federal magistrate awarded summary judgment to defendants on all claims except for one allegation charging a correctional officer of physical abuse. On Nov. 29, 1994, a jury found the defendant officer not guilty. A magistrate judge entered a judgment consistent with that verdict.

The court of appeals found that Murray's segregated confinements violated neither Due Process nor the 8th Amendment. The first placement was necessary to protect the plaintiff from assault soon after she arrived at

FCI Ashland and the second was necessary to maintain order and was a reasonable response to her refusal to wear a brassiere, held the court, which also held that the denial of cosmetic products could not be considered a deprivation denying "the minimal civilized measure of life's necessities" and therefore did not offend the 8th Amendment. In addition, the court found that prison officials' alleged remarks disparaging Murray's appearance and presumed sexual preference was not a violation of her constitutional rights. Although recognizing that such actions may be offensive, the court stated that the 8th Amendment "does not afford us the power to correct every action, statement or attitude ... with which we might disagree."

In denying Murray's claim that her dosage of female hormones was inadequate, the court acknowledged that transsexualism is a recognized medical disorder for which the plaintiff has a right to treatment. However, it asserted that Murray did not have the right to dictate a specific course of treatment. The court maintained that this was the responsibility of the prison doctor and that the court was in no position to second guess the judgment of a physician. Despite Murray's being placed in segregated confinement the same day that she filed her initial complaint, the court did not find that prison officials acted in retaliation. On the morning that she filed her complaint, a correctional officer claimed that he found her in bed with another prisoner. Murray alleged that the inmate was sitting on the edge of her bed, not in it. Nonetheless, the court found that the evidence was sufficient to justify Murray's segregated confinement. Finally, the court denied her appeal of the jury verdict on procedural grounds. The court pointed out that it sits to hear only appeals that have been specifically identified in the notice of appeal. Although Murray's appeal failed to mention the magistrate's final judgment after trial, the court indicated that it had the discretion to hear cases despite such procedural defects. However, the court refused to exercise its discretion to review the magistrate's entry of the jury verdict because Murray failed to provide the court with a transcript of the trial. C.W.