

IN THE MATTER OF:

THE STUDENT COALITION FOR GAY RIGHTS,  
A PROPOSED STUDENT ORGANIZATION OF  
AUSTIN PEAY STATE UNIVERSITY

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PROPOSED FINDINGS OF FACT

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The following are the proposed findings of fact submitted on behalf of Austin Peay State University in regard to the appeal by the Student Coalition for Gay Rights from the denial of official recognition as a student organization by the University. These proposed findings are based upon the record in this case pursuant to the hearing held on May 9 and 10, 1979, before Dr. David F. Adkisson, hearing officer.

1. On December 1, 1978, following its approval by the Austin Peay State University (APSU) Student Government Association, the application for recognition of the Student Coalition for Gay Rights (SCGR) as a student organization was submitted to Dr. Charles N. Boehms, Vice President for Student Affairs of APSU (Exhibit 17, attachment 2). The purpose of the proposed organization, as stated in its proposed constitution (Exhibit 17, attachment 1), was "to work to promote human rights and to encourage a better understanding of alternate lifestyles."

2. The words "alternative lifestyles" as used in the proposed constitution mean homosexual lifestyles and behavior, and were so construed by officials of APSU (Exhibit 17, attachment 2; Testimony of Mr. Richard Lewis; Exhibit 3).

3. Following the clarification of certain procedural matters related to the application, recognition of the SCGR was denied by Dr. Boehms on January 31, 1979 (Exhibit 17, attachment 2). The reasons for his denial of recognition included the following:

(a) official recognition would give credibility to homosexual behavior and tend to expand violations of the state law (T.C.A. § 39-707) prohibiting homosexual activities;

(b) official recognition would lead to increased personal and psychological stress of students who are troubled about their sexual identity;

(c) official recognition of the organization would not be consistent with the educational goals of the University; and

(d) official recognition of an organization whose implied and stated purposes were to encourage activities in violation of state law would not provide the educational experiences which students seek.

4. On February 6, 1979, Mr. Richard Lewis, President of the SCGR, appealed the denial of recognition by Dr. Boehms to the President of APSU, Dr. Robert Riggs. On February 8, 1979, President Riggs denied the appeal, finding: that the proposed organization implicitly endorses homosexuality, which involves activity in violation of state law; that there were ample alternatives for students and faculty to engage in scholarly inquiry on the subject; and that the purposes of the group were contrary to the mission of the University (Exhibit 17, attachment 4).

5. Following the denial of the appeal by President Riggs, the SCGR appealed the denial of recognition to the Chancellor of the Board of Regents, who appointed the undersigned as the hearing officer for a hearing which was conducted on May 9 and 10, 1979. The hearing was held in accordance with the hearing procedures set forth in Attachment A, and both the SCGR and APSU were represented by counsel at the hearing.

6. The first witness for the University was Dr. Harvey Reese, a licensed psychiatrist from Memphis, Tennessee, who was a former full-time professor of psychiatry at the University of Tennessee Medical School in Memphis, and who is now engaged in private practice. Dr. Reese testified that a significant proportion of his patients are homosexual, and that he is familiar with the research and literature concerning homosexuality through his practice.

7. Dr. Reese testified that, in his opinion, official recognition of the SCGR by APSU would be construed as University approval of homosexuality by the students and the surrounding community of APSU, and that it would be detrimental to the well-being of the student body and society. He indicated recognition would have a long-term effect upon people's attitudes, and would propagate and promote a permissive attitude on sexual conduct which is illegal and grossly undesirable. He indicated that people can be persuaded to try such conduct as a result of promotional activity, and that groups such as the SCGR are established for the purpose of promoting homosexuality.

8. Dr. Reese further testified that recognition of the SCGR would have a more significant impact on younger persons, who are influenced by the conduct of others, and who learn behavior from their elders. In addition, he testified that gender identity problems - i.e., the problem of persons who have ambivalent emotions toward male and female sexual roles - are fairly common at the college-age level, and that if the SCGR was recognized, some students with such problems would believe that homosexual behavior was acceptable and would try it.

9. Dr. Reese further testified that it was a normal tendency for people involved in the promotion or advocacy of a concept to attempt to counsel other persons into similar beliefs. He indicated that this has long been recognized as a trap for psychiatrists, who must be trained to not inculcate their own beliefs into the patients whom they are treating. He testified that attempts to steer people toward homosexual behavior will happen more frequently if the SCGR is recognized, since their purpose is to "get people out of the closet," and to encourage other people to join the organization. For example, he cited the case of one of his patients who is homosexual and in search of a permanent partner who is proud of the number of "straights" (heterosexuals) he has solicited, and indicated that a considerable number of homosexuals are like that.

10. Dr. Reese testified that studies have shown, and that it is his opinion, that there is a significant higher incidence of suicide among homosexuals. He further testified that conflicting behavior is common among homosexuals, that they suffer from more emotional distress than heterosexuals, and that the disruption not only affects the homosexuals but also their friends, neighbors and relatives. He indicated that homosexuality is a treatable condition, provided that the patient has the proper motivation and receives proper psychological treatment.

11. The second witness called by the University was Dr. Garland Blair, Chairman of the Department of Psychology of APSU, who has his terminal degree in psychology. Dr. Blair testified that any publicity of behavior increases the probability of the occurrence of the behavior, and that recognition of the SCGR would increase the publicity of homosexuality. He indicated that official recognition includes permission to advertise on campus, and would permit people who wish to solicit to identify subjects. He further indicated that it is human nature to attempt to convert people to one's point of view on a subject.

12. Dr. Blair further testified that recognition of the SCGR is inappropriate since no gay student has been denied any privileges by the University, and that the only reason for the organization is to promote the homosexual lifestyle. He indicated that other purposes of the organization are possible, but are peripheral to and supportive of the basic concept of the organization that the homosexual lifestyle is an appropriate one.

13. The third witness on behalf of APSU was Dr. Charles N. Boehms, Vice President for Student Affairs. Dr. Boehms indicated his doctorate was in zoology, that he was a former faculty member in the Department of Biology, and that he had been involved in student affairs since 1968 as both Dean of Students and Vice President.

14. Dr. Boehms described the process for recognition of student organizations at APSU, which are more fully set forth in Exhibit 4. Included among the various requirements for recognition are the following:

- (a) the policies and objectives of the proposed organization must be consistent or compatible with the broad educational goals of the University;

(b) the constitution of the organization must specify and define the purpose of the organization and its officers; and

(c) the organization must be granted final approval by the Vice President of Student Affairs.

15. In regard to the application for recognition submitted by the SCGR, Dr. Boehms testified that his reasons for declining to approve the organization were as follows:

(a) Recognition of the organization would constitute approval of it by the University, and thus would tend to increase homosexual actions on campus;

(b) Recognition of the organization would create a stressful situation for students with sexual identity problems;

(c) The goals of the organization are not consistent with the educational goals of the University; and

(d) The implied and stated purposes of the organization are to encourage violations of state law, and would not provide the educational experiences needed by students.

16. Dr. Boehms stated that one of the purposes of student organizations is educational in nature, and the University tries to encourage organizations which have an educational benefit to students who are members and to the student body at large.

17. In regard to students with sexual identity problems, Dr. Boehms testified that they are prevalent on campus. He stated they seek guidance on their problems through diverse methods - through the counseling center, through group counseling sponsored by the center, through contacts with faculty, and through contacts with other students.

18. Dr. Boehms stated that, on the basis of his experience, student organizations attempt to expand their memberships, and to increase the number of persons who support their activities. If the SCGR was recognized, he stated that it would give the impression of official sanction of homosexual activities by the University, and would tend to cause students in doubt to become associated with it. He stated that he has become aware of several students who, subsequent to the organizational activities of the SCGR, have experimented with homosexual behavior.

19. Dr. Boehms described the benefits which accrue to organizations which are recognized by the University (Exhibit 14). Of the various benefits Dr. Boehms testified that only two are exclusively reserved to recognized organizations - use of a campus post office box in the name of the organization and listings in the student handbook and yearbook. In regard to use of campus facilities, he stated that recognized organizations could schedule meeting rooms, whereas non-recognized groups could only use such rooms on a non-scheduled basis. However, the record reflects that the SCGR has been using campus facilities for scheduled meetings. (See Exhibit 1, Key Vol. 1, No. 2, p. 3; Vol. 1, No. 3, p. 5)

In addition, Dr. Boehms stated that both recognized and non-recognized organizations could: seek approval for guest speakers; distribute literature on campus; post notices on bulletin boards; seek funds for projects and activities; and advertise events in the campus newspaper.

20. The SCGR submitted an affidavit from Mr. William Riley, Director of Student Life of the University of Missouri - Columbia, a university which recognized a gay rights organization in 1977. Mr. Riley stated that, as Director of Student Life, he has not been able to find any indication that recognition has resulted in increased or expanded homosexual conduct among students (Exhibit 5). However, Dr. Boehms later testified that, as Dean of Students and Vice President for Student Affairs, he has never been able to determine the occurrence of sexual activity on campus.

21. The SCGR then called as its first witness Mr. Richard Lewis, who was the first president of the SCGR until it switched to an executive council system, and who is a member of the executive council. Mr. Lewis reviewed the statement of purpose set forth in the proposed constitution (Exhibit 17, attachment 1), and stated that a new statement of purpose had been adopted by the executive council (Exhibit 8). He indicated the new statement was adopted for the benefit of the members, and it expressly states that it is not a goal of the SCGR to promote homosexual behavior.

22. Mr. Lewis stated that one of the primary goals of the SCGR was to provide a better understanding of homosexuality, and the organization would seek to distribute literature in furtherance of that goal. Examples of such literature were provided through Exhibits 9 through 13.

23. While Mr. Lewis testified that counseling of students with problems is provided only through a private psychologist, or the University counseling center, or through consciousness-raising groups under the supervision of the counseling center, it is noted that one of the purposes of the organization as set forth in one of the first statements submitted to the University (Exhibit 2) expressly included counseling, including peer counseling.

24. In regard to the purposes of the organization, Mr. Lewis acknowledged the following different statements of purposes which had been advanced by the SCGR since its inception:

(1) Statement of purposes and objectives set forth in a draft press release on or about November, 1978 (Exhibit 2);

(2) Statement of objectives set forth in a newsletter on or about November, 1978 (Exhibit 2);

(3) Statement of purpose set forth in the proposed constitution of the SCGR on or about November, 1978 (Exhibit 17, attachment 1);

(4) Statement of purpose submitted to the University on April 2, 1979 (Exhibit 3); and

(5) Statement of purpose adopted by the SCGR on April 11, 1979 (Exhibit 8).

Each of the above statements has varied in regard to the purposes, objectives, and proposed activities of the SCGR, and despite Mr. Lewis' statements to the contrary, it appears that the progressively more detailed statements of purpose were developed for the purpose of achieving recognition, and that if recognition were granted, the stated purposes of the organization would continue to change. The SCGR has not submitted any of the revised statements of purposes to the student senate for approval as required by the University's policy (Exhibit 4). ✓

25. Mr. Lewis testified that he was the first president of the SCGR, but that he is now a member of the executive council. When asked about this change in governance structure, Mr. Lewis stated that it was adopted on a trial basis. However, Volume 1, No. V of the Key (Exhibit 3) shows that when the SCGR was unable to select a group of new officers of the organization, it adopted at its March 27, 1979 meeting a new executive council form of administration. The revised form of governance has not been submitted to the University for approval, and the SCGR is not operating in accordance with its proposed constitution. ✓

26. The SCGR called Mr. Glenn Carter, Assistant Professor of Social Work at APSU, as a witness, and he testified that he is a faculty advisor to the SCGR. He stated that he has attended the meetings of the organization, which have been conducted in a professional manner in his opinion.

27. The SCGR also called Dr. Tom Pinckney, Associate Professor of Political Science at APSU, as a witness. Dr. Pinckney testified that in his opinion the SCGR is a civil rights organization similar to other civil rights movements in American society, such as the movements of Blacks and women. Dr. Pinckney stated he did not have a law degree or legal training, and acknowledged that in the case of other civil rights movements, the issues have always involved the denial of certain basic rights to certain segments of the population due to factors beyond their control - e.g., race or sex. There is no evidence in the record to show that homosexuals have been denied basic rights in such areas as voting, housing, or employment, or that their status as homosexuals is beyond their control. He further stated that he would support University recognition of any organization, even if they advocated such activities as incest or bestiality, so long as the purposes of the organization conformed to the law.

28. The SCGR also called Dr. Embry A. McKee, Associate Professor of Psychiatry at Vanderbilt University, as a witness. Dr. McKee stated that his practice includes dealing with homosexuals, and that he has engaged in research on human sexuality, including heterosexual, homosexual, and transsexual problems. He testified that in terms of official nomenclature of the American Psychiatric Association (Exhibit 16), homosexuality is not a mental disorder unless the person experiences discomfort with that orientation. He later testified that approximately twenty-five percent (25%) of homosexuals do experience such discomfort. He stated the new APA category for such persons is that of a "sexual orientation disturbance."

However, Exhibit 16 further shows that the APA continues to classify homosexuals under the category of "sexual deviations," regardless of discomfort with their orientation.

29. Dr. McKee testified that his research and the research of others show that there are a wide variety of types of homosexuals, similar to heterosexual persons. However, he subsequently acknowledged that such research studies are based upon responses to questions posed to volunteer study groups, and that he has not performed any study on a statistically valid random sample of homosexuals.

30. Dr. McKee stated that, in his opinion, existence of a gay rights group would not lead to an increase in homosexual conduct. He stated that University approval or denial of recognition would not affect it one way or the other, since the reaction of society has not had any affect on it. It is noted that Dr. McKee's testimony concerning the acceptability of homosexual behavior is contrary to that of Dr. Reese, and is inconsistent with the fact that homosexual behavior constitutes a crime against nature in the State of Tennessee.

31. The SCGR also called Dr. Howard Roback, a Professor of Psychology at Vanderbilt University, who has a terminal degree in psychology. Dr. Roback stated that he had been involved in certain of the research studies conducted by Dr. McKee, and that he had also engaged in independent research concerning homosexuals. He stated that he concurred in the opinions expressed by Dr. McKee. He indicated that his research showed no differences in the adjustments of homosexual and non-homosexual populations. He further stated that, in his opinion, based upon the statement of purposes set forth in Exhibit 8, recognition of the SCGR would not tend to increase homosexual behavior on campus. He indicated that the SCGR would provide a maturing process for students, and that that maturing process would mean that some students would experience homosexual behavior and reject it, while others would accept it.

32. Finally, the SCGR submitted in written form the testimony of Dr. Judd Marmor, a Professor of Psychiatry at the University of Southern California Medical School (Exhibit 6). His testimony addresses such matters as the evolution toward acceptance of homosexual behavior as other than a mental disorder by the American Psychiatric Association; the definition of homosexuality; the causes of homosexuality, concerning which he notes that the experts disagree and that there is no generally accepted theory of causation; the clinical features of homosexuals; the results of psychological tests; the status of homosexuality as a mental illness; and the treatment of homosexuality. Of the various points made through his testimony, the following are noted:

(a) male homosexuals are generally quite promiscuous in their sexual behavior (Exhibit 6, page 8);



b) while most homosexual behavior occurs in the homes of homosexuals, some amount of such conduct occurs in public places, such as public restrooms, often where the partners do not even see each other faces (Exhibit 6, page 9);

(c) while homosexuality is not per se compulsive, among a number of males the drive for such contacts take on an enormous compulsive quality, and they may be involved in a dozen or more sexual transactions in a single day (Exhibit 6, page 9);

(d) many contemporary psychoanalysts consider homosexuality as a form of psychopathology (Exhibit 6, page 12);

(e) psychiatric views in favor of considering homosexuality as a form of psychopathology generally rest on three major arguments: (1) that homosexuals are the products of disordered sexual development, (2) that they represent a deviation from the biological norm, and (3) that they are uniformly deeply disturbed, unhappy people (Exhibit 6, page 13). Dr. Marmor noted that he disagrees with each of these arguments.

33. Based upon the foregoing evidence, I find as follows:

A. Recognition of the SCGR would constitute both actual and implicit approval of the purposes of the organization, and would be construed by the student body and the surrounding community as approval of homosexuality.

B. Recognition of the SCGR would cause an increase in homosexual behavior both on campus and in the surrounding community. Recognition would have immediate effects on students with sexual identity problems, by encouraging such persons to experiment with homosexual behavior, and would have long-term effects of increasing the acceptance of homosexuality on campus and in the surrounding community, which would cause a progressive increase in the number of younger persons who engage in such behavior.

C. Recognition of the SCGR would tend to reinforce the personal identities of homosexual members and perpetuate and expand homosexual behavior.

D. Recognition of the SCGR would result in homosexuals counseling other students who are homosexuals or who are suffering from gender identity problems.

E. The SCGR will in fact promote homosexuality, in that it will advocate social acceptance of homosexuality; it will advocate changes in laws that make homosexual behavior a crime; it promotes and sponsors social activities, such as dances, where homosexuals will meet each other; and its members will promote the homosexual lifestyle to other students; and the very essence of the SCGR is promotional of homosexuality in nature.



F. Homosexual behavior is a sexual deviation, and is considered by many psychoanalysts as a mental disorder. Even psychiatrists who consider homosexual behavior to be within the normal range of sexual behavior are of the opinion that a substantial percentage - i.e., twenty-five percent (25%) - of homosexuals fall within the category of persons suffering from a mental disorder.

G. There is a substantially greater incidence of suicides and attempted suicides among homosexuals as compared to heterosexuals.

H. Homosexuality is a psychologically treatable condition.

I. Male homosexuals are generally quite promiscuous in their sexual behavior, and their drive for homosexual contacts often becomes enormously compulsive in nature.


J. The statement of purpose of the SCGR as set forth in its proposed constitution is vague and would not serve to limit any of the activities of the organization, and would preclude any evaluation by APSU as to whether the SCGR is legally fulfilling its mission.

K. The SCGR has continuously varied its statements of purposes since its inception, and in all probability will continue to modify its stated purposes from time to time if it was recognized.

L. The SCGR has failed to operate in accordance with its proposed charter, and has failed to submit its revised statements of purpose and its new system of governance to APSU for approval.

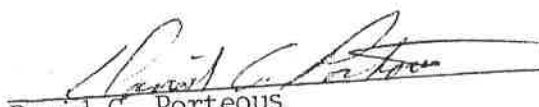
M. The SCGR has in effect received or had the opportunity to receive all of the major benefits of a recognized student organization at APSU.

Respectfully submitted,

  
David C. Porteous  
General Counsel  
Attorney for Austin Peay State University

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Proposed Findings of Fact" has been mailed, postage prepaid, to the attorney for the Student Coalition for Gay Rights, Mr. Gary Crawford, 26th Floor, Life and Casualty Tower, Nashville, Tennessee 37219, this 30<sup>th</sup> day of May, 1979.

  
David C. Porteous