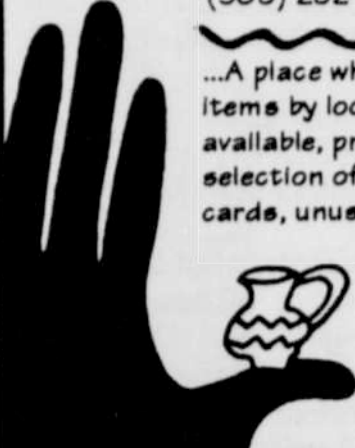


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national news

The bicoastal military battles

It may be that continued court losses and a changing social climate will move Clinton to end the military's discrimination against sexual minorities

by Bob Roehr

In California Petty Officer Keith Meinhold took the oath of office for his latest tour of duty in the Navy, then went off to the U.S. Court of Appeals for the 9th Circuit to hear oral arguments as to whether he will be allowed to stay in the Navy. About the same time, President Clinton was announcing his choice for Secretary of Defense, retired Admiral Bobby Inman. An odder couple would be hard to imagine, but those actions, on Dec. 16, wed each to the other in ways which will continue for months, if not years, and profoundly affect both parties.

Inman is a 30-year naval officer who made his mark in the intelligence field, capping that career as director of the National Security Agency, the nation's high-tech espionage agency. He then moved to be deputy director of the Central Intelligence Agency but left after a year, reportedly because of differences with his boss, William Casey, over covert operations. He has worked for the last decade at senior levels in the private sector, in the computer and defense industries.

Tanya Domi, retired Army captain and legislative director for the National Lesbian and Gay Task Force said, "He doesn't have a real big public record." Nonetheless, she is optimistic about Inman because of his record at the NSA.

"I am mildly optimistic," said Evan Wolfson, attorney with the Lambda Legal Defense and Education Fund. "There certainly are some things in his reputation that give one a shred of hope." Wolfson believes that once Clinton makes the political decision to lift the ban, Inman will be a much stronger Secretary in terms of getting the military to implement it.

Inman was director of NSA in 1980 when a landmark decision was reached concerning an employee of that agency. Internal security learned that the man was gay and wanted to follow existing policy to fire him as a security risk. The employee fought that action and won a recommendation from the NSA's legal office to be retained. Inman signed the recommendation, signaling a breakthrough on security clearance matters for gay and lesbian employees of that super-secret agency.

In San Francisco, Meinhold started off his day with a great photo opportunity, taking the oath of office for his latest re-enlistment. Swearing him in was Lt. Zoe Dunning, a lesbian naval reserve officer in the middle of her own fight to keep from being discharged. In the background was the banner of the Alexander Hamilton Post 440 of American Legion, a gay and lesbian veterans group. An hour later, he was at the courthouse.

John Maguire, Meinhold's attorney, thought the arguments went well. He said they had drawn a three-judge panel that was considered moderate by most observers. He was encouraged by the intangibles, "When you say something about being gay and they look at you like they understand what you are talking about—for me that is the big hump. If you get past that, then we're talking legal details."

In his final rebuttal the government attorney raised the Goldman case, where the court deferred to the military in prohibiting a Jewish officer from wearing a yarmulke while on duty. Judge Rymer quickly cut him off. She said the proper case under Goldman would be if the officer had said he was Jewish, and was discharged because there was the likelihood that he might wear a yarmulke.

Marquie thought that response by Rymer showed the seriousness of preparation and thought the panel had already given to the case.

Meanwhile in Washington, schisms within the Clinton administration over the military ban continue. The latest debate centers around whether or not to appeal the Steffan decision. Some have argued that the panel which heard the Steffan case contained the most liberal judges and might be overruled by the more conservative majority on the U.S. Court of Appeals for the Federal Circuit. Marc Wolinsky, Steffan's attorney, doesn't see that as



Keith Meinhold with Lt. Zoe Dunning

likely given the arguments and the language of the written decision.

The Justice Department seems to be arguing to not appeal Steffan, to concede cases under the old regulations, and force a new round of litigation under the new regulations, which will be issued shortly. The Defense Department is defending the principles of the old regulations in further appeals because the new regulations share so many of those same principles.

Lambda has agreed to withdraw a pending suit against the old regulations, *Doe vs. Aspin*, involving a number of plaintiffs, in exchange for the Defense Department not taking action against those clients for at least 20 days after the new regulations are published.

"That gives us a window to protect them and challenge the new [regulations]," said Beatrice Dohrn, Lambda's legal director. Wolfson says they may reformulate that case and possibly take it to another court depending on exactly what the regulations say, "but we indubitably will have a case, and there will be others."

Wolfson thinks there will be a federal district court ruling on the new regulations by the end of 1994 but does not see the battle ending until there is an appellate decision as well. He thinks that continued court rebuffs, a strengthened public image, and a changing social and political climate on the issue will finally convince Clinton to implement the policy he claims to believe in—that of ending discrimination against gays and lesbians in the military.

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