

## Judge hears first challenge to "don't ask, don't tell" policy

The first legal challenge to the "new" anti-gay military policy of "don't ask, don't tell," was back in court March 18. *Able vs. USA*, filed March 7, came before the Brooklyn courtroom of federal judge Eugene Nickerson for arguments on a preliminary injunction to keep the military from banning six service members.

The six plaintiffs in the suit represent diverse active-duty and reserve personnel, from various branches of the military and regions of the country. "Jane Able" is a pseudonym for a lieutenant colonel in the Army Reserve who fears professional harm should her name be used.

Nickerson listened to arguments but did not issue a ruling at that time. Beatrice Dohrn, an attorney with the Lambda Legal Defense and Education Fund, was only mildly disappointed. The veteran judge is known for never having issued an injunction in writing.

Much of the judge's questioning centered around the section of the regulations dealing with the concept of a "rebuttable presumption" to one's "propensity" to engage in homosexual activity. He questioned the circularity of the government's arguments, asking how one could demonstrate the negative—not having such a propensity. "It seems to me a bit of a hoax," Nickerson said.

The plaintiff's case holds as unconstitutional the recently enacted federal law and Department of Defense regulations excluding gays and lesbians from the military. The policy, commonly known as "don't ask, don't tell," took effect Feb. 28.

"This is the first piece of federal legislation specifically requiring discrimination against lesbians and gays," said attorney Marc Elovitz of the American Civil Liberties Union. "The distinction between what were regulations and what is now federal law is an important one." Other federal statutes have merely omitted or ignored sexual minorities from civil rights or other protections. This one actively discriminates against them.



## CDC report shows 111 percent increase in AIDS cases

The annual report of the Centers for Disease Control shows 103,500 new cases of people with AIDS in 1993, an 111 percent increase over the previous year. The increase stems in part from the relentless progression of the disease, but it also reflects a change in the definition of AIDS that went into effect last January.

Earlier government definitions of AIDS had been based largely on symptoms most common to gay men. The new one made long-overdue revisions, including the addition of symptoms more prevalent in women. It brought into the pool of those classified as having AIDS a backlog of people, disproportionately female, who should have been counted in previous years.

Heterosexually transmitted cases, defined as those not resulting from direct homosexual or IV-drug-use experience, account for only 9 percent of the total. Approximately two-thirds of those contracting AIDS in this manner were women. For the first time since statistics have been gathered, the gay male case load dropped below 50 percent of the total.

Fifty-four percent of cases in 1993 come under the new definition, 46 percent under the older definition. The latter figure is a 2 percent decrease from the previous year.

The bulge of new and old cases in 1993 has several statistical impacts: for one, decreasing the percentage of those more traditionally defined people with AIDS, i.e., gay men. The 1993 figures show gay men as 46.6 percent of the new cases of AIDS, down from 66.5 percent in 1985.

CDC anticipates that the gross number of new cases of AIDS will decline in 1994—resulting from incorporation of the 1993 definitional changes, not a decline in the actual numbers of new cases. The trend for gay men will likely reverse for a year in the next report and show an increase in cases, as a percentage of total new cases, before returning to a slow downward trend.

These statistics are a useful guide to keep in mind when evaluating federal, state, and local claims of increased resources being directed toward the fight against AIDS. While actual dollars spent may indeed be growing, often at impressive percentages, they seldom keep pace with the burgeoning number of people with AIDS.

## Gay, lesbian and bisexual local officials organize

The Gay, Lesbian, and Bisexual Local Officials, a constituency group of the National League of Cities, met in Washington on March 13 as part of the regular NLC meeting.

The group formed last fall at the NLC meeting in Orlando, Fla., and elected Seattle City Councilwoman Sherry Harris as its interim chair. At that

meeting the group adopted an agenda focusing on three priorities: public health and funding issues surrounding HIV/AIDS, domestic partnership, and discrimination focusing on sexual orientation.

More than a dozen elected officials plus their friends and consorts filled the Washington meeting room. They spanned the gamut of cities from Cambridge, Mass., to Laguna Beach, Calif., from Dallas, Texas, to Moscow, Idaho.

National Gay and Lesbian Task Force organizer Betsy Gressler briefed attendees on national issue priorities. Tim McFeeley, executive director of the Human Rights Campaign Fund, hosted the reception that followed.

The formation of GLBLO "caused some questions on the part of board members," said David J. Borut, NLC executive director.

Those "questions" prompted a new, more formal process of recognizing constituency groups and giving them access to NLC support. What had heretofore been at the discretion of the executive director is now regulated: New groups must have at least 50 members in 10 states and be formally recognized by the governing board. GLBLO would not have met those standards but "essentially was grandfathered in," Borut said. He had come to the meeting to express his support for the group.

U.S. Rep. Barney Frank (D-Mass.) stressed two points to those assembled. One was to support his efforts to rein in increased military spending. He argued, "Unless we are able to turn this back on the military, the chance of there being any net increase in funds available for municipalities is zero." The tight budget situation for the next several years means, according to Frank, that more funding for the military will come at the direct expense of domestic spending.

Frank's second point was more immediate. He urged the local officials, when speaking with their congressional representatives, to strongly oppose a discriminatory amendment being proposed by U.S. Rep. Mel Hancock (R-Mo.). That amendment to the education bill, HR 6, "would cut off all federal aid to any school system which promotes or encourages homosexuality," said Frank. The amendment is so broadly written, it could deny funding to major school systems such as those in Los Angeles and New York City. Frank said he believes the amendment attempt will be soundly defeated.

## Leavitt and publisher admit to plagiarism

"Publisher kills novel over pilfered plot," Read in *The Washington Post*.

It marked the close of the legal battle between writer David Leavitt and Stephen Spender, the octogenarian English poet who first gained notoriety in the 1930s.

The charge of plagiarism had haunted Leavitt's current novel, *While England Sleeps*, ever since the U.S. edition came off the press last fall.

Leavitt tried to downplay the controversy while on tour promoting the book. He told the *Bay Area Reporter*, "The lesson I've learned is, if you're

going to write a historical novel, base it on the life of someone who is dead!"

Spender sued to prevent publication of the British edition. His grounds were that Leavitt had infringed on the copyright of Spender's autobiography, *World Within World*, and had also violated his "moral right" regarding how the material of his life might be handled. The latter concept was enacted into British law relatively recently and has little record of case law or trials to delineate its boundaries.

In an out-of-court settlement Leavitt's publisher, Viking, took two extraordinary steps. One was to cancel the British edition, already printed, in a warehouse, and now presumably to be destroyed. The second was to cancel the U.S. paperback edition of the book, scheduled for release next fall. Viking and Leavitt will also pay Spender's legal fees.

"I don't bear [Leavitt] any ill will. I am 85 and on the brink of my grave, so I try to be benevolent," said Spender. "The people to criticize are the publishers. They don't seem to have editors who save young writers from making these bad mistakes."

Spender had strenuously objected to the explicit sex in the book earlier, saying: "I don't see why [Leavitt] should unload all his sexual fantasies onto me in my youth. If he wanted to write about his sexual fantasies, he should write about them as being his, not mine."

Leavitt is believed to have agreed to rework those portions of the novel as part of the agreement. The altered novel will likely then be reissued.

The original U.S. press run of 30,000 is still in bookstores and will not be recalled. "I assume they'll quickly become collectors' items, and people that get them will be happy," said Deacon Maccubbin, proprietor of Lambda Rising, the nation's largest gay and lesbian bookstore.

How the story plays out for Leavitt remains to be seen. Some feel that the author will be judged by his next work. However, one anonymous editor at a major publishing house was quoted in the *Post* as saying: "Literature isn't ice skating, at least not yet. If you pillage someone else's memoir for your source material, it tends to indicate a thinness of literary imagination. Leavitt's aura has been damaged, to state the obvious."

Spender's autobiography will be reissued in the fall, as will a collection of his poems.

Compiled by Bob Roehr



PHOTO BY MARION ETLINGER

## cathartic comics I featuring The Brown Bomber and Diva Touché Flambé by Prof. I.B. Gittendowne

