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national news

'Don't ask, don't tell' down but not out

Gay men and lesbians had one more reason to celebrate Independence Day this year: The "don't ask, don't tell" ban on serving openly in the military was declared unconstitutional by a federal judge ruling on the case *Able vs. USA*. Still, the celebration was short-lived due to the fact that just hours later the Justice Department said it would appeal the ruling.

"Yes, it will," Attorney General Janet Reno said July 3, when asked by reporters whether the department would appeal. She did not elaborate.

The White House, meanwhile, said President Clinton would not abandon the policy.

"We continue to believe the policy is a good one," presidential spokesman Mike McCurry said.

On July 2 in New York, U.S. District Judge Eugene Nickerson ruled that a military "called on to fight for the principles of equality and free speech embodied in the United States Constitution should embrace those principles in its own ranks."

"The Constitution does not grant the military special license to act on prejudices or cater to them," he wrote in rejecting the policy on both equal protection and First Amendment grounds.

Nickerson dismissed the government's argument that the ban is necessary to preserve "unit cohesion," and called the policy "a euphemism for catering to the prejudices of heterosexuals.... It is hard to imagine why the mere holding of hands off base and in private is dangerous to the mission of the armed forces if done by a homo-

sexual but not if done by a heterosexual."

C. Dixon Osburn, co-director of the Servicemembers Legal Defense Network, praised the decision, but warned the ruling only applies within that district and said the Pentagon will continue to prosecute gay and lesbian service members elsewhere.

Lambda and the ACLU brought the *Able* case soon after the "new" ban on gay men and lesbians in the military was adopted in 1993.

In March 1995, Nickerson, a liberal judge nominated to the bench by President Carter in 1977, ruled the policy unconstitutional on the grounds it violated First Amendment rights to free speech. With that action, he became the first federal judge to strike down the policy.

The government appealed, and last year a three-judge panel of the 2nd U.S. Circuit Court of Appeals said the lower court failed to address the section of the policy banning homosexual acts.

The panel wrote, in part, "The issue of free speech was incidental and wholly subservient to the restriction on acts."

The case was in turn remanded back to Nickerson for a ruling based upon equal protection. Those proceedings concluded last fall.

Most observers had anticipated Nickerson's decision months ago. They could only speculate that Nickerson was waiting for the U.S. Supreme Court to conclude its term so he could incorporate relevant decisions into his ruling.

It is likely the same three-judge panel which remanded the decision to Nickerson will hear the latest appeal, possibly by the end of the year.

Bob Roehr

HIV Testing Day spawns unlikely alliance

National HIV Testing Day, June 26, brought together strange political bedfellows who encouraged everyone at risk to be tested for the virus.

The odd couple who stood together in front of the Capitol during a sweltering afternoon were Daniel Zingale, executive director of the AIDS Action Council, and Republican U.S. Rep. Tom Coburn of Oklahoma.

Many AIDS lobbyists hold Coburn as their chief congressional foe because of his leadership in pushing what they view as mandatory HIV testing—first of pregnant women and now more broadly.

Coburn is a pediatrician who continues to practice on weekends and holds a strategic seat on the House Commerce Committee's health subcommittee. He is also a close ally of fundamentalist leader James Dobson, head of the Colorado-based Focus on the Family.

While AIDS groups had previously met with Coburn's staff, this was the first time they met face to face with the congressman.

Zingale proposed the joint event, hoping it would lead to better working relations with Coburn.

"Our goal is the same," Coburn said. "No one else should get HIV. And one of the ways is to know who has HIV."

Both men readily acknowledged there are areas where they disagree, but they vowed to work together where possible.

During the joint event the two were supposed to have blood drawn, but the doctor set to do the task was called on an emergency. Coburn and Zingale pledged to get tested the following day to

draw attention to the issue.

In response to questions, Coburn said he expected the committee would hold hearings this year on his bill to expand HIV testing, contact tracing and other matters. But he said he would not press for the measure to come to a vote until next year.

"My goal is that everybody should be treated for every disease in this county," Coburn said. "We should not make a special case for HIV."

Zingale, however, pointed out how HIV/AIDS is treated differently. "For other STDs [sexually transmitted diseases], if you get tested and you are positive then you get treatment on demand. Dr. Coburn's bill doesn't do that. We ought to make sure we can do something for you besides just test you and put you on a federal database," he said.

One of their disagreements revolves around needle-exchange programs.

"My underlying premise is what we are doing is enabling somebody to fail," Coburn said. "And

we are also helping them break the law."

Zingale countered, "There is a mountain of evidence that suggests that needle-exchange programs save the lives of men, women and children at risk for HIV. We can promote abstinence from drugs at the same time that we allow communities to make their own decisions about needle exchange to save lives."

The U.S. Conference of Mayors recently passed a resolution urging federal health officials to lift the ban on funding needle-exchange programs.

More than half of all new HIV infections can be traced directly or indirectly to injection drug use, according to the Centers for Disease Control.

Bob Roehr



Rep. Tom Coburn

PHOTO BY BOB ROEHR