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Another challenge to military ban falls short

by Peg Byron
Special to Q-Notes

NEW YORK—On September 23, a three-judge panel of the Second Circuit Court of Appeals unanimously ruled in the case of *Able v. USA* that courts owe total deference to Congress regarding military policies and that "Don't Ask, Don't Tell" is not in violation of the First Amendment nor the Equal Protection Clause of the United States Constitution.

Beatrice Dohrn, Legal Director of Lambda Legal Defense and Education Fund, said, "The court abdicated its constitutional responsibility by refusing to even examine 'Don't Ask, Don't Tell.' Lesbian and gay servicemembers are prepared to defend the Constitution with their lives, but the court today says they are not entitled to basic protections simply because Congress and the military say they aren't."

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discharge five or seven or ten loyal, brave Americans who it will admit have served their country well. The day after that, they'll do it again. And so it will go for the foreseeable future," said Matthew Coles, director of the American

Civil Liberties Union's (ACLU) Lesbian and Gay Rights Project. "The shame and disgrace in this belongs not to these good people, but to those in government who passed this law and those who allow it to govern the military," he added.

The 23-page decision does not analyze the rationale behind "Don't Ask, Don't Tell." It begins with a strong presumption of the policy's validity and then narrows the scope of the equal protection review customarily afforded discriminatory

government action. The Court concluded that where the military is concerned, "...we will not substitute our judgment for that of Congress."

The decision reverses a ruling by US District Court Judge Eugene Nickerson that had

handed the anti-gay military policy its most comprehensive defeat. In July 1997, Nickerson said that the special rules that the military imposes on lesbian and gay servicemembers serves only to accommodate the anticipated anti-gay feelings of other military personnel.

Nickerson's decision was hailed by civil rights advocates for its insightful analysis of the government's defense of "Don't Ask, Don't Tell" as nothing more than euphemisms for discrimination against lesbian and gay servicemembers. "Don't Ask, Don't Tell" prohibits any off-duty sexual and affectionate conduct by lesbians and gay men, but not by heterosexuals. The military policy also prohibits gay personnel from making statements that indicate their sexual orientation.

It remains for the government to decide whether to expel the six plaintiffs because they disclosed their sexual orientation in order to challenge the policy.

Able differs from previous challenges in that the servicemembers proactively sued, asserting that both the conduct and speech portions of the ban are unconstitutional. Other cases regarding "Don't Ask, Don't Tell" have been in response to discharge proceedings and most have focused on the "speech" portion of the ban and its presumption that anyone who speaks out also engages in prohibited conduct.

There are no other cases involving the military ban before district or appellate courts. ▼



US House candidate Cammermeyer

Third lesbian candidate wins

by Karen Henein
Special to Q-Notes

EVERETT, WA—Congressional candidate Grethe Cammermeyer won the Democratic primary for Washington's 2nd District seat by a margin of more than 2 to 1. A retired Army colonel who served as chief nurse of the state National Guard, Cammermeyer is set to face Republican incumbent Jack Metcalf in this swing district. Swept into office in the GOP tidal wave of 1994, Metcalf fared poorly for an incumbent, garnering less than 49 percent of the vote in the Republican primary.

"The District's history and [the] primary results clearly show that Metcalf is vulnerable and Grethe Cammermeyer has the qualifications, courage and character to win this race," said Kathleen DeBold, deputy director of the Gay and Lesbian Victory Fund, a national political action committee (PAC) that works to increase the number of qualified openly gay and lesbian public officials.

This historic win makes Cammermeyer the Victory Fund's third openly lesbian Congressional candidate to advance to this year's November 3 general elections, following in the footsteps of San Diego City Councilwoman Christine Kehoe, who won the Democratic nomination for California's 49th District seat in June, and Wisconsin State Assemblywoman Tammy Baldwin, who won the Democratic primary for Wisconsin's open 2nd District seat. Openly gay, US House incumbents Barney Frank (D-MA) and Jim Kolbe (R-AZ) also won their primary elections.

"The unprecedented number of openly gay
See CANDIDATE on page 23

First multi-drug resistant HIV infection documented

by Dan Van Mourik
Q-Notes Staff

SAN FRANCISCO, CA—Researchers at the University of California have discovered the first evidence of transmission of a multi-drug resistant strain of HIV from an infected person to a non-infected person. Scientists have feared this possibility and this case report presents the first hard evidence that such transmission is now a reality.

In the case reported, a person began suffering symptoms of acute HIV infection a few days after an unsafe sexual encounter (receptive anal intercourse without a condom). While a standard test for HIV returned an expected negative result, the more sensitive p24 antigen and polymerase chain reaction tests confirmed HIV infection. Treatment was begun a few weeks after the patient joined the Options Project, a study of primary HIV infection at the Univer-

sity of California. Unlike other primary infection patients in the study, this patient did not respond to triple drug therapy nor to a subsequent change to a second protease inhibitor. Since there was little doubt as to the initial source of infection, researchers contacted the source patient who volunteered for study. Researchers learned he had been failing on the same treatment regimens as the other patient. He also acknowledged poor adherence in using the treatments. Extensive resistance analysis of the virus present in each patient showed them to have nearly identical strains of the virus and nearly all of the same mutations and patterns of drug resistance. Some European researchers have reported similar cases.

It is still possible that multi-drug resistant HIV is less potent, but it is now clear that it remains a source of infection. Therefore, the need for careful adherence to therapy regimens

and the need to pick the most appropriate regimen to begin with are even more important to help avoid the possibility of producing multi-drug resistant virus.

Despite the alarming nature of this case report, researchers say the public should not panic. They do not yet know how common this form of transmission might be and it is too early to determine the scope of the public health issues concerned.

What this case report should tell people is that safer sex is still a requirement to reduce the potential for HIV infection. Even if two people are both HIV positive, there is substantial evidence that different strains of HIV can be transmitted from partner to partner, requiring safer sex practices no matter what one's HIV status.

For information on safer sex practices, contact your local AIDS Service Organization. ▼

Gay October

National Gay and Lesbian
History Month



October 1 - 31

National Breast Cancer
Awareness Month



October 1 - 31

OutCharlotte '98
Cultural Festival



October 7 - 11

National Coming
Out Day



October 11