nearly universally condemned and readily regarded as, at best, grossly disproportionate to the national security concerns at one time asserted as justifications." In other words (i.e., Defense Secretary Dick Cheney's words), the FBI is relying on "an old chestnut" about gays as security risks. Now that Cheney has said as much, the argument may not wash, even for conservative federal district judges appointed by George Bush. Armstrong has been on the federal bench less than a year.

Attorney Richard Gayer represents Buttino. No indication as we go to press whether the government will appeal this interlocutory ruling or go to trial.

Washington State Appeals Court Requires Boeing to Accommodate a Transsexual

The Washington State Court of Appeals ruled Feb. 10 in *Doe v. The Boeing Company* [1992 WL 19759] that the company had to reasonably accommodate a male employee who was cross-dressing in preparation for sex-reassignment surgery. The plaintiff was hired as a male in 1978, was diagnosed in 1984 as "gender dysphoric" and, following doctor's instructions, notified family, friends and employer of this condition and the need to begin cross-dressing. In March 1985, Doe informed Boeing about the impending surgery. Boeing informed Doe it would tolerate "unisex" fashions but would not permit a male employee to wear female garb. Boeing did not have a formal dress code, but management stated it would not allow Doe to wear "dresses, skirts, or frilly blouses." Doe's co-workers were supportive of her efforts to change gender, but some women raised complaints when Doe used the women's restroom, and a supervisor regularly visited her work station to check that her attire was "acceptable." Doe was discharged when she wore a pink pearl necklace on November 5, 1985.

The trial court held that gender dysphoria was a "handicap," but held that the accommodation burden was met by Boeing allowing Doe to wear unisex clothing, the same as any other employee. The court of appeals affirmed the ruling that gender dysphoria was a handicap, but asserted that the reasonable accommodation requirement was more demanding: "Affording Doe the same rights as other non-gender dysphoric employees misses the point of the statute," said Judge Agid, stating that the law "requires an employer to take positive steps to accommodate an employee with a handicap or disability." The employer must "take into account" Doe's "unique characteristics," which requires allowing her to wear feminine dress prior to her surgery. Since Boeing did not present evidence that allowing Doe to dress in feminine garb presented an undue burden, the court reversed the trial court and remanded for consideration of an appropriate remedial order.

The Americans With Disabilities Act, effective for employment purposes in July 1992, exempts transsexuality from its definition of disability, and amends the Vocational Rehabilitation Act to similar effect. Thus employment protection for transsexuals will remain strictly a question of state law.

U.S. Attorney Drops Lawsuit to Protect Evidence of Illegal Anti-Gay Tactics

Bruce Mailman received an early valentine this year. According to *The New York Times* of Feb. 13, Otto Obermaier, U.S. Attorney for the Southern District of New York, announced he would "drop charges against three men who say they were singled out by a Federal prosecutor for arrest because they are gay." The government action suggests defendants Bruce Mailman, Boris Fedushin and Carlos Insignares were correct in claiming that Assistant U.S. Attorney James McGuire, in collaboration with I.R.S. agents Frank Primerana and Holly Cusick, targeted them for prosecution on drug-related charges in *U.S. v. Mailman*, 90 Cr. 102, because of their homosexuality.

The government agreed to drop charges after Mailman's lawyer moved to dismiss because of anti-gay bias and sought copies of documents gathered in an internal investigation by the Public Integrity Section of the Department of Justice (DOJ). The government's hasty agreement may have been motivated by its desire to maintain the confidentiality of DOJ's findings, including possible tampering with evidence by McGuire and his cohorts. At a Feb. 6 hearing the DOJ's lawyer supported dismissal, pointing out that once the case was dismissed, the request by Mailman's lawyer for DOJ records detailing Mr. McGuire's tactics would become moot. N.Y.L.J., Feb. 18, 1992, at 1, col.3.

At a prior hearing, Judge Kevin Thomas Duffy called McGuire an "obnoxious little twerp," saying that he was "appalled" that the government had not informed him earlier that DOJ was investigating charges alleging McGuire's anti-gay prosecutions. Obermaier defended his office's failure to inform the Court, saying that because an investigation was underway, it would be "inappropriate for my office to investigate itself." The DOJ investigation into the charges that McGuire and the I.R.S. agents illegally and systematically singled out gays for arrest on drug and tax charges is ongoing. McGuire has been suspended from his job in an unrelated matter. Primerana has retired from the I.R.S.

Mailman was represented by James M. LaRossa; Insignares was represented by Isabelle A. Kirschner; Fedushin was represented by David Greenfield. C.C.

NY Surrogate Approves Lesbian Co-Parent Adoption

Following recent decisions in District of Columbia, Vermont and California, N.Y. County Surrogate Eve Preminger ruled in *Matter of Evan*, 18 Fam.L.Rep. (BNA) 1175 [N.Y.L.J., 2/3/92, p.25] that a lesbian co-parent could adopt the 6–year-old boy born through alternative insemination by her domestic partner. The women have lived together in a familial relationship for 14 years. In 1985, they decided to raise a child and one of the women obtained a sperm donation from a friend who agreed to waive parental rights. Preminger appointed Prof. Sylvia Law of N.Y.U. Law School, a family law scholar, to serve as guardian ad litem, and also received reports from two social workers, one retained by the petitioners and one appointed by the court. Prof. Law and the social workers agreed that adoption by his co-parent would be in Evan's best interest.

Preminger concurred, pointing out legal and social advantages Evan would gain from being part of a two-parent family, including coverage under the co-parent's health insurance policy, which provides better coverage than his "biological" mother's. Adoption would provide legal security for Evan's future contact with the co-parent, as last year's decision in *Alison D. v. Virginia M.*, 77 N.Y.2d 651 held that in the absence of adoption the co-parent would have no standing to seek custody or visitation rights if the women ended their relationship.

Although §117(1) of New York's Domestic Relations Law provides that adoption cuts off parental rights of "natural" parents, Preminger held it was within the equitable power of her court, and consistent with N.Y. precedents, to avoid that result, following recent cases from other jurisdictions. She noted that numerous studies established that lesbians and gay men are not unfit to be adoptive parents solely due to their sexual orientation, and that state regulations specifically forbid sexual orientation discrimination in adoption decisions. She concluded:

> Social fragmentation and the myriad configurations of modern families have presented us with new problems