


Judge Oliver Gasch to disqualify himself from further involvement in *Steffan v. Cheney*, which challenges the Defense Department policy of excluding homosexuals from the service. Gasch dismissed the case in 1989 when Steffan refused to answer questions about his sexual activities during a deposition. See 733 F.Supp. 121. This decision was reversed by the D.C. Circuit in 1990, 920 F.2d 74, and the case was remanded to Gasch for trial on whether a policy of dismissing gays based on status (not conduct) was constitutional. At a March 6 hearing when the parties were contesting the scope of discovery, Gasch commented: "The most I would allow is what relates to this plaintiff, not every homo that may be walking the face of the earth at this time." When Gasch raised a question about the factual basis for Steffan's complaint and Marc Wolinsky, Steffan's lawyer, referred to an affidavit Steffan had filed, Gasch said, "That he's a homo and knows other homos, is that it?"

In motion papers, Wolinsky said that Gasch's remarks "are the equivalent of directing racial epithets at an African-American plaintiff in a case alleging racial discrimination." The 84-year-old Gasch, appointed in 1965 by President Lyndon B. Johnson, is on senior status and expected to retire soon. Not soon enough, it appears.

New York City Police Officers Indicted for Gay-bashing

The *New York Times* reported March 22 that three New York City police officers have been indicted for the brutal beating of three men they perceived to be gay while off duty but in uniform. The officers were leaving a Christmas party in the early morning hours Dec. 22 when, seeking a cab, they noted one stopped in front of a store with two male passengers (their third companion was in the store making a purchase). The police roused the men out of the cab with anti-gay slurs, chased them up the street and beat them and pistol-whipped them. The three men were treated for broken ribs and multiple bruises. Charges of assault and official misconduct have been filed against officers Daniel McCormick, Brian Carter, and John Talt. Manhattan D.A. Robert Morgenthau stated that no allegation of anti-gay bias was included in the charges, because it would not affect the charge under state law. New York's State Senate last year rejected a legislative proposal to provide enhanced penalties for bias-related violence against gays.

New Federal Law Bans Possession of Kiddy Porn

The Crime Control Act of 1990, PL 101-647 which has now gone into effect, includes a ban on private possession of so-called "kiddy porn", contained in an amendment to 18 U.S.C. § 2252. The constitutionality of such a law was upheld by the Supreme Court in *Osborne v. Ohio*, 110 S.Ct. 1691 (1990), holding that the government's interest in banning the manufacture and sale of sexually-explicit materials featuring minors provided sufficient justification to overcome the constitutional right adults normally have to possess pornographic material in their homes, previously recognized in *Stanley v. Georgia*, 394 U.S. 557 (1969). Any person found to knowingly possess "three or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction [of minors engaged in sexual activity] that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including computer" will be subject to substantial fines and imprisonment up to ten years. Repeat offenders will be subject to a minimum five year sentence and maximum fifteen year sentence. According to *The Washington Blade*, the proprietors of Lambda Rising bookstore indicated they would review their inventory and remove any items that appeared to fall within the provisions of the law.  *The Blade* also reported that another provision of the law makes production and sale of "poppers" in interstate commerce a federal crime.

Artists Seek Declaration on Unconstitutionality of "Decency Standard"

The National Association of Artists' Organizations and four performance artists (some openly lesbian or gay) filed suit March 18 in U.S. District Court for the Central District of California (Los Angeles), seeking a declaration that provisions in the National Endowment for the Arts budget authorization requiring the Endowment to consider "general standards of decency" in deciding grant applications violates the First Amendment. The American Civil Liberties Union is representing the plaintiffs, who named the endowment and its chairman, John E. Frohnmayer, as

defendants. The complaint alleges that the "decency" standard is unconstitutionally vague and an impermissible restraint on protected speech.

NJ Appeals Court Approves Transsexual Name Change

Reversing a trial court, the New Jersey Appellate Division decided Jan. 11 in *In re Application of John William Eck*, 127 N.J.L.J. 562 (2/28/91) that a transsexual man who had yet to obtain a sex change operation was entitled to a legal change of name from John William Eck to Tina Lindsay. Lindsay began her process of change in 1988, when she began to assume the appearance of a woman except at her job. By 1988 she was living full time with a female appearance, and had been diagnosed as having gender dysphoria. She encountered employment difficulties since the name she assumed was not legally documented. The Law Division judge denied her application for a name change, stating that "it is inherently fraudulent for a person who is physically a male to assume an obviously 'female' name for the sole purpose of representing himself to future employers and society as a female." The Appellate Division disagreed, noting that at common law individuals are free to change their names except for a fraudulent, criminal or other illegitimate purpose. According to the *New Jersey Law Journal*, since there was no fraudulent purpose, "a person has a right to a name change whether he or she has undergone or intends to undergo a sex change through surgery, has received hormonal injections to induce physical change, is a transvestite, or simply wants to change from a traditional 'male' name to one traditionally 'female,' or vice versa.... Finally, it seems that the judge was concerned about a male assuming a female identity in mannerism and dress. That is an accomplished fact in this case, a matter which is of no concern to the judiciary, and which has no bearing upon the outcome of a simple name-change application." The applicant was represented by ACLU staff attorney Ruth Harlow.

Lesbian Defendant Prevails on Battered-Spouse Syndrome

Outweek reported that Priscilla Forbes was acquitted by an Idaho jury of criminal charges stemming from her stabbing of her lover, Lynn Zarek, during a fight on Aug. 12. Forbes' defense was self-