
Ken Osborn Legal Records

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Descriptive Summary

Title: Ken Osborn legal records

Dates: 1992-1998

Collection number: Coll2007-005

Creator: Osborn, Ken (Kenneth Lee), 1964-

Collection Size: 2 archive boxes.(1 linear foot).

Repository: ONE National Gay and Lesbian Archives.

Los Angeles, California 90007

Abstract: Legal records, including briefs, memoranda, trial transcripts, and judicial orders, of 1st Lt. (later Capt.) Ken Osborn, USAR, relating to his participation as one of the named plaintiffs in *Able v. United States* (1994-1998) and its predecessor, *Doe v. Aspin* (1993), the first pro-active court challenge to the Clinton Administration's "Don't Ask, Don't Tell" policy concerning gays in the military.

Languages: Languages represented in the collection: English

Access

The collection is open to researchers. There are no access restrictions.

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Preferred Citation

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Acquisition Information

Gift of Ken Osborn, January 14, 2004.

Processing Information

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Biography

Kenneth Lee Osborn was born in Santa Monica, California, in 1964. His family moved to Huntington Beach, in Orange County, in 1966. He graduated from Fountain Valley High School in 1982, and went on to California State University Fullerton, where he received a B.A. in Communications in 1986. In February 1983, while still a student, he joined the U.S. Marine Corps Reserve, where he was trained as a field radio operator and where he remained for two years, attaining the rank of Corporal. After a short tour with the California National Guard, Osborn joined the Army ROTC program at California State University Fullerton, where he held the positions of Junior Cadet Commander, Battalion Supply Officer, and Senior Class Advisor. He also served concurrently as the Public Affairs Officer of the 311th Corps Support Command. Upon his graduation in 1986, Osborn was commissioned a Second Lieutenant in the U.S. Army Reserve and assigned as a platoon leader to the 361st Supply Company. He served in the company about three years, ending his tour as its executive officer. He was then assigned to the staff of the 155th Corps Support Battalion in South El Monte, and by mid-June 1993 was serving as a 1st Lieutenant in the 304th Material Management Center in West Los Angeles.

Osborn was called up for active duty during Desert Storm (1990/1991), and it was while he was stationed at Ft. Lewis that he came to the realization that he was gay. In 1993, he joined with Lt. Col. Jane Able (a pseudonym), Petty Officer Robert J. Heigl, 1st Lieutenant Donita Holloway, SGT Steven Spencer, Lieutenant Richard von Wohld, and Seaman Werner Zehr, in the first pro-active legal challenge to the Clinton Administration's "Don't Ask, Don't Tell" policy regarding gays and lesbians in the military. Originally filed in the 2nd District Court for the District of Columbia (*Roe v. Aspin* , No. 93-1549) in July 1993, the suit was refiled in the District Court for the Eastern District of New York (*Able v. United States* , No. 94-0974) on March 7, 1994. While District Court Judge Eugene H. Nickerson twice ruled that the "Don't Ask, Don't Tell" policy was unconstitutional, on both occasions he was overruled by the 2nd Circuit Court. In December 1998, the Circuit Court denied the plaintiffs' petition for a rehearing, thus effectively ending their challenge to the "Don't Ask, Don't Tell" policy. In a twist of irony, while the case was before the courts the plaintiffs had been protected from discharge from the military by a temporary restraining order, and during that time Osborn had been promoted to Captain and had been activated and served a tour in Bosnia.

During the course of his court challenge to "Don't Ask, Don't Tell", Osborn became involved in the gay veterans movement, serving as Vice President of Public Affairs of the Gay, Lesbian & Bisexual Veterans of America (GLBVA) in 1995-1996, as well as President of the organization's Long Beach/Orange County chapter. In 2004, he served as Public Affairs Office and Vice President, Region 5, of American Veterans for Equal Rights.

Osborn currently resides in the Atwater Village district of Los Angeles, where he is a member of the Atwater Village Neighborhood Council.

1993, July 27 Lt. Col. Jane Doe, Petty Officer John Roe, 1st Lt. Donita Holloway, Staff Sgt. Harold McCarthy, 1st Lt. Kenneth Osborn, Sgt. Steven Spencer, & Lt. Richard v. Wohld v. Les Aspin, filed in the District Court for the District of Columbia (No. 93-1549).

1994, March 7 Lt. Col. Jane Able, Petty Officer Robert J. Heigl, 1st Lt. Donita Holloway, 1st Lt. Kenneth Osborn, Sgt. Steven Spencer, Lt. Richard von Wohld and Seaman Werner Zehr v. United States of America and William J. Perry, Secretary of Defense, filed in the District Court for the Eastern District of New York (No. 94-0974). Assigned to Judge Eugene H. Nickerson.

1994, April 4 Judge Nickerson grants temporary restraining order to plaintiffs.

1994, June 3 Judge Nickerson grants second temporary restraining order to plaintiffs.

1994, July 8 Government appeals temporary restraining orders to the Court of Appeals for the Second Circuit.

1995, January 3 Circuit Court orders that restraining orders remain in force and remands case back to District Court for trial on the merits.

1995, March 30 Judge Nickerson rules that 10 USC 654 (the law embodying the "Don't Ask, Don't Tell" policy) violates the First and Fifth Amendments to the Constitution.

1996, July 1 Circuit Court vacates Judge Nickerson's ruling and remands case back to him.

1997, July 2 Judge Nickerson rules that 10 USC 654 (b) violates the equal protection clause of the Fifth Amendment.

1998, September 23 Circuit Court reverses Judge Nickerson's decision.

1998, December 1 Court denies petition for rehearing.

Scope and Content

The collection consists almost entirely of legal papers filed in the course of *Able v. United States* (1994-1998) and its predecessor, *Doe v. Aspin* (1993), together with transcripts of a small number of newspaper and magazine articles concerning the "Don't Ask, Don't Tell" policy, two ACLU press releases concerning the case, several pamphlets concerning gays in the military, and a small correspondence file. The legal papers are incomplete, in particular for the Circuit Court and later District Court proceedings. Among the missing materials is Judge Eugene H. Nickerson's decision (favorable to the plaintiffs) in the second of the two District Court trials on the merits of the case, issued on July 2, 1997; however, the materials in the collection include copies of all other judicial decisions. The correspondence file contains a copy of Osborn's letter in June 1993 to Senators Diane Feinstein and Barbara Boxer announcing his impending court challenge to the "Don't Ask, Don't Tell" policy, and their responses.

Indexing Terms

The following terms have been used to index the description of this collection in the library's online public access catalog.

Osborn, Ken (Kenneth Lee), 1964-

Able, Jane

Heigle, Robert J.

Holloway, Donita

Spencer, Stephen

Wohld, Richard von

Zehr, Werner

Gays in the military

Able v. United States

Box: 1-2	Legal Papers 1993-1998
Box: 1 : 1-14	Doe v. Aspin, District Court for the District of Columbia (93-1549) 1993
Box: 1 : 1	Complaint for declaratory judgment and permanent injunction July 27, 1993
Box: 1 : 2	Plaintiffs' first request for production of documents July 28, 1993
Box: 1 : 3	Report by Cheri McGilvery to David Braff on Judge Thomas Penfield Jackson August 6, 1993
Box: 1 : 4	Statement read to 1st Lt. Osborn by LTC Michael E. Plotkin August 14, 1993
Box: 1 : 5-23	Able v. United States, District Court for the Eastern District of New York (94-0974) 1994
Box: 1 : 5	Draft Complaint for declaratory judgment and injunctive relief February 8, 1994
Box: 1 : 6	Complaint for declaratory judgment and injunctive relief; memorandum of law in support of plaintiffs' motion. Order to show cause and temporary restraining order March 7, 1994
Box: 1 : 7	Affidavit of David H. Braff March 7, 1994
Box: 1 : 8	Transcript of proceedings before Judge Eugene H. Nickerson March 18, 1994
Box: 1 : 9	Defendants' memorandum of law supporting motion to dismiss before April 1, 1994
Box: 1 : 10	Plaintiffs' memorandum in opposition to defendants' motion to dismiss April 1, 1994
Box: 1 : 11	Defendants' memorandum replying to opposition to motion to dismiss circa April 1, 1994
Box: 1 : 12	Judge Eugene H. Nickerson's memorandum and order granting a preliminary injunction April 4, 1994
Box: 1 : 13	Defendants' memorandum of law in support of motion to vacate preliminary injunction circa April 18, 1994
Box: 1 : 14	Plaintiff's memorandum in opposition to defendants' motion to vacate preliminary injunction April 29, 1994
Box: 1 : 15	Defendants' memorandum of law in reply to opposition to motion to vacate preliminary injunction May 3, 1994
Box: 1 : 16	Judge Eugene H. Nickerson's memorandum and order denying motion to vacate preliminary injunction May 9, 1994

Box: 1 : 17	Affidavit of David H. Braff concerning defendants' intention to proceed with separation actions against SGT Steven Spencer and Seaman Werner Zehr May 23, 1994
Box: 1 : 18	Plaintiffs' notice of motion for preliminary injunction and memorandum in support of motion for further injunctive relief May 31, 1994
Box: 1 : 19	Declaration of Richard G. Lepley concerning separation proceedings against SGT Stephen Spencer and seaman Werner Zehr; defendants' memorandum of law in opposition to motion for further injunctive relief June 1, 1994
Box: 1 : 20	Notice by defendants of appeal to court of appeals for the second circuit July 8, 1994
Box: 1 : 21	Judge Eugene H. Nickerson's memorandum and order denying defendants' motion to dismiss September 14, 1994
Box: 1 : 22	Plaintiffs' memorandum in opposition to defendants' motion to certify interlocutory appeal after September 14, 1994
Box: 1 : 23	Answer of defendants October 7, 1994
Box: 1 : 24-25 ; 2 : 1-2	Able v. United States, Court of Appeals for the Second Circuit (94-6181) 1994-1995
Box: 1 : 24	Brief for appellants September 16, 1994
Box: 1 : 25	Draft of plaintiff's brief in opposition to defendants' appeal of preliminary injunction October 9, 1994
Box: 2 : 1	Circuit Court opinion remanding case to district court January 3, 1995
Box: 2 : 2	Memorandum to plaintiffs from their lawyers concerning Circuit Court decision January 5, 1995
Box: 2 : 3-10	Able v. United States, District Court for the Eastern District of New York (94-0974) 1995
Box: 2 : 3	Plaintiffs' verified responses and objections to defendants' first set of interrogatories February 27, 1995
Box: 2 : 4	Plaintiffs' pre-trial memorandum March 7, 1995
Box: 2 : 5	Plaintiffs' amended verified responses to defendants' interrogatories March 12, 1995
Box: 2 : 6	Transcript of trial March 13, 1995
Box: 2 : 7	Transcript of trial March 14, 1995
Box: 2 : 8	Transcript of trial March 15, 1995
Box: 2 : 9	Transcript of trial March 16, 1995
Box: 2 : 10	Judge Eugene H. Nickerson's memorandum and order (finding for plaintiffs) March 30, 1995
Box: 2 : 11	Able v. United States, Court of Appeals for the Second Circuit (95-6111 and 95-6141). Circuit Court opinion remanding case to district court July 1, 1996
Box: 2 : 12-13	Able v. United States, District Court for the Eastern District of New York (94-0974) 1996
Box: 2 : 12	Defendants' post-trial brief, September 28, 1996; Plaintiffs' post-trial memorandum September 30, 1996
Box: 2 : 13	Plaintiffs' reply to defendants' post-trial brief October 23, 1996
Box: 2 : 14-16	Able v. United States, Court of Appeals for the Second Circuit (97-6205) 1998
Box: 2 : 14	Circuit Court decision reversing district court September 23, 1998
Box: 2 : 15	Plaintiffs' petition for rehearing November 6, 1998
Box: 2 : 16	Circuit Court opinion denying petition for rehearing December 7, 1998
Box: 2 : 17	Miscellaneous legal papers 1994-1995
Box: 2 : 18	Newspaper and periodical accounts, press release 1995-1998
Box: 2 : 19	Correspondence 1993
Box: 2 : 20	Printed materials 1992-1994
