



KEN OSBORN LEGAL RECORDS

Coll2007-005

Contact Information

One National Gay & Lesbian Archives
909 West Adams Boulevard
Los Angeles, CA 90007
Phone: (213) 741-0094
Fax: (213) 741-0220
E-mail: askone@onearchives.org

Processed by

Michael P. Palmer

Date Completed

March 9, 2007



Table of Contents

Descriptive Summary	p. 2
Administrative Information	p. 3
Biography	p. 5
Chronology of Able v. United States	p. 6
Scope and Content Note and Container List	p. 7



Descriptive Summary

Title

Ken Osborn Legal Records

Creator

Ken Osborn

Extent

Number of containers: 2 archive boxes

Linear feet: 1 linear foot

Date

1992-1998

Repository

ONE National Gay & Lesbian Archives, Los Angeles, California

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.



Administrative Information

Access

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

Publication Rights

Researchers wishing to publish material must obtain permission in writing from ONE National Gay & Lesbian Archives as the physical owner of the material. Note that permission to publish does not constitute copyright clearance. ONE National Gay & Lesbian Archives can grant copyright clearance only for those materials for which we hold copyright. It is the responsibility of the researcher to obtain copyright clearance for all other materials from the copyright holder(s).

Preferred Citation

Box #, folder #, Ken Osborn Legal Records, Coll2007-005, ONE National Gay & Lesbian Archives, Los Angeles, California

Indexing Terms

This collection is indexed under the following terms:

- Able v. United States
- Able, Jane
- Gays in the military
- Heigle, Robert J.
- Holloway, Donita
- Osborn, Ken (Kenneth Lee), 1964-
- Spencer, Stephen
- Von Wohld, Richard
- Zehr, Werner

Acquisitions Information

Gift of Ken Osborn, January 14, 2004



Processing Information

Collection processed by Michael P. Palmer, March 2007.

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 proactive 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 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 Court of Appeals for the Second Circuit. 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.

Chronology of Able v. United States

- 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 Circuit Court denies petition for rehearing.

Scope and Content and Container List

The collection consists almost entirely of legal papers filed in the course of the *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.

Box Folder

1-2		Legal Papers
1	1-4	Doe v. Aspin, District Court for the District of Columbia (93-1549)
1	1	Complaint for declaratory judgment and permanent injunction, July 27, 1993.
1	2	Plaintiffs’ first request for production of documents, July 28, 1993.
1	3	Report by Cheri McGilvery to David Braff on Judge Thomas Penfield Jackson, August 6, 1993.
1	4	Statement read to 1 st Lt. Osborn by LTC Michael E. Plotkin on August 14, 1993.
1	5-23	Able v. United States, District Court for the Eastern District of New York (94-0974)
1	5	Draft Complaint for declaratory judgment and injunctive relief, February 08, 1994.
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.
1	7	Affidavit of David H. Braff, March 7, 1994.
1	8	Transcript of proceedings before Judge Eugene H. Nickerson, March 18, 1994.
1	9	Defendants’ memorandum of law supporting motion to dismiss, before April 1, 1994.
1	10	Plaintiffs’ memorandum in opposition to defendants’ motion to dismiss, April 1, 1994.
1	11	Defendants’ memorandum replying to opposition to motion to dismiss, circa April 1, 1994.
1	12	Judge Eugene H. Nickerson’s memorandum and order granting a preliminary injunction, April 4, 1994.

1	13	Defendants' memorandum of law in support of motion to vacate preliminary injunction, circa April 18, 1994.
1	14	Plaintiff's memorandum in opposition to defendants' motion to vacate preliminary injunction, April 29, 1994.
1	15	Defendants' memorandum of law in reply to opposition to motion to vacate preliminary injunction, May 3, 1994.
1	16	Judge Eugene H. Nickerson's memorandum and order denying motion to vacate preliminary injunction, May 9, 1994.
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.
1	18	Plaintiffs' notice of motion for preliminary injunction and memorandum in support of motion for further injunctive relief, May 31, 1994.
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.
1	20	Notice by defendants of appeal to court of appeals for the second circuit, July 8, 1994.
1	21	Judge Eugene H. Nickerson's memorandum and order denying defendants' motion to dismiss, September 14, 1994.
1	22	Plaintiffs' memorandum in opposition to defendants' motion to certify interlocutory appeal, after September 14, 1994.
1	23	Answer of defendants, October 7, 1994
1	24-25	
2	1-2	Able v. United States, Court of Appeals for the Second Circuit (94-6181).
1	24	Brief for appellants, September 16, 1994.
1	25	Draft of plaintiff's brief in opposition to defendants' appeal of preliminary injunction, October 9, 1994.
2	1	Circuit Court opinion remanding case to District Court, January 3, 1995.
2	2	Memorandum to plaintiffs from their lawyers concerning Circuit Court decision, January 5, 1995.
2	3-10	Able v. United States, District Court for the Eastern District of New York (94-0974)
2	3	Plaintiffs' verified responses and objections to defendants' first set of interrogatories, February 27, 1995.
2	4	Plaintiffs' pre-trial memorandum, March 7, 1995.
2	5	Plaintiffs' amended verified responses to defendants' interrogatories, March 12, 1995.
2	6	Transcript of trial, March 13, 1995.
2	7	Transcript of trial, March 14, 1995.
2	8	Transcript of trial, March 15, 1995.



Ken Osborn Legal Records, Coll2007-005

2	9	Transcript of trial, March 16, 1995.
2	10	Judge Eugene H. Nickerson's memorandum and order (finding for plaintiffs), March 30, 1995.
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.
2	12-13	Able v. United States, District Court for the Eastern District of New York (94-0974)
2	12	Defendants' post-trial brief, September 28, 1996; Plaintiffs' post-trial memorandum, September 30, 1996.
2	13	Plaintiffs' reply to defendants' post-trial brief, October 23, 1996.
2	14-16	Able v. United States, Court of Appeals for the Second Circuit (97-6205)
2	14	Circuit Court decision reversing District Court, September 23, 1998.
2	15	Plaintiffs' petition for rehearing, November 6, 1998.
2	16	Circuit Court opinion denying petition for rehearing, December 7, 1998.
2	17	Miscellaneous legal papers, 1994-1995
2	18	Newspaper and periodical accounts, press releases, 1995-1998.
2	19	Correspondence, 1993.
2	20	Printed materials, 1992-1994.