GLBT Historical Society
http://www.glbthistory.org

GLHS OHP 95-119

VOICES
the Oral History Project
of GLHSNC

973 Market St., #400
San Francisco, CA 94103
(415) 777-5455, #1

Interview with Carrington Boggan
Date of Birth: . N/A
By Mike Hippler
In 1987

One Tape/90
The Good Soldier

Code 1S1:000-099 = Tape One, Side One, Counter 000-099
Code 1S2:000-099 = Tape One, Side Two, Counter 000-099

Tape One, Side One

1S1:000-099

MH: First question was when you got involved with the case, at one point was that, what year?

CB: Ah, I don't recall exactly. It was probably '75 or '76.

MH: Well then, he lost at, ah, the military level in late fall of '75, and then the case was appealed to Judge Gehrhardt Gazelle, ah, and his ruling didn't come down until, I believe, June of '76. Now were you involved before that?

CB: No, I was only involved after Gazelle's ruling.

MH: Oh, okay. Ah, and so you told me yesterday . . .

CB: It would probably would be, I guess, in the summer of '76, the fall of '76, that the appeal would have been filed.

MH: Right. Ah, the one thing I don't understand as far as the court system works is Gazelle, that was already in the United States Court of Appeals, right? When . . .

CB: No, it was in the United States District Court.

MH: Okay. Ah, and, does Gazelle, he is only on the Court of Appeals or was he on both?

CB: He was not on the Court of Appeals.

MH: Oh, okay.

CB: He was the United States District judge.

MH: Oh, I see. And so then later on, he issued your decision as well a number of years later. Had he been promoted?

GLBT Historical Society
http://www.glbthistory.org

CB: No, no, he wasn't on the Court of Appeals panel.

MH: Okay.

CB: What happened was it went from Gazelle's decision to the Court of Appeals. The Court of Appeals then reversed Gazelle's decisions, and sent the case back to him. Ah, he then, in effect, sent it back to the Air Force because they were required under the Court of Appeals decision to clarify their policy. So he sent it back to the Air Force for them to clarify and when their clarification was filed with Gazelle, he found it unsatisfactory and indicated that he was going to order reinstatement. So that may be why you're thinking that Gazelle also ruled favorably.

MH: Well, if that . . .

CB: That didn't occur until after the Court of Appeals decision.

MH: Okay, that's why I was confused. So ah, you became involved through whom? How did you meet Leonard?

CB: We had a mutual friend, an attorney named Craig Patton who, ah, has recently passed away, but he, ah, introduced Matlovich to me and after the ACLU decided that it did not wish to handle an appeal . . .

MH: Mm hm.

CB: . . . Matlovich asked if I would, and I agreed.

MH: Now, did you take this case on a pro bono basis or . . .

CB: Yes.

MH: Ah, and at the time, were you, did you have your own private law practice or . . .

CB: Yes, I did.

MH: I see. Did . . did you . .

CB: Proprietorship at that point.

MH: Right, and that was based in New York?

CB: Yes.

MH: Did you work with any other attorneys?

CB: Well, at the time I was also general counsel for an organization called Lambda Legal Defense and Education Fund.

GLBT Historical Society
http://www.glbthistory.org

MH: Mm hm.

CB: And I had also been handling a similar case that had been taken on by Lambda, which involved a naval officer named Vernon Berg.

MH: Right.

CB: And ah, I had been handling that case beginning with the, the hearing in the Navy itself, and was handling that all the way through. Ah, when the, the Matlovich matter initially came to my attention, I also presented it to Lambda to ascertain if they would be interested in sponsoring the appeal on it. But they determined that one military case at that point was all they would able to handle in view of their resources at that time.

MH: Right.

CB: And so neither the ACLU nor Lambda was willing to pursue the Matlovich appeal, so I did it solely on an individual basis. Ah, I did not charge any legal fees, but Matlovich was required to pay the expenses for reproduction of briefs and, and that sort of thing.

MH: Ah, would those have been very costly?

CB: Well, not greatly. I think it, it was probably under a thousand dollars.

MH: Oh, I see.

CB: But had the case been sponsored by ACLU or Lambda, they would have picked up those expense.

MH: Right. Ah, why did you take his case?

CB: Well, because I thought it was an important case ah, and it was very similar to the Navy case which I was handling also. And I thought it was not one that should be allowed just to lapse because no one was willing to handle the appeal.

MH: Right. So this was, ah, those two were the only cases that you had involving military personnel?

CB: They were the only cases of that nature. I've, ah, handled a number of administrative proceedings involving seeking upgrades of Less Than Honorable discharges.

MH: Right.

CB: And those received through various agencies within the military, ah, rather than through the courts.

MH: Had you done any other gay rights cases?

CB: Yes I had. I'd been involved in a number of cases through my affiliation with Lambda Legal Defense Fund.

MH: Mm hm.

CB: And ah, earlier through an organization known as the Gay Activists Alliance which was one of the early groups in New York City.

MH: Right. Which brings me to an earlier clarification. You said you met Leonard through a friend you had in common, this attorney. Did . . . I spoke with Bruce Valor and Bruce in, mentioned that the NGTF getting involved as a go-between. Ah, do you remember that or not?

CB: No, I don't really.

MH: Do, do you know Bruce Valor?

CB: Sure.

MH: Yeah, he claimed that he introduced the two of you but, ah, so I just, I just wanted to . .

CB: Well (Laughs).

MH: Yeah, okay, thanks. You should know your version.

CB: You know, ah what, but how long ago is this?

MH: Twelve years.

CB: Twelve years. And ah, I do distinctly know that I'd heard of Matlovich, of course, because the case received a lot of publicity. But ah I actually met him through Craig Patton and I think Matlovich could probably confirm that too.

MH: Okay. What did you think of Leonard when you first met him?

CB: I thought he was very bright and articulate and very dedicated to trying to vindicate this issue.

MH: Mm hm. Ah, what was your goal in pursuing the case?

CB: Well, our primary goal was to try to have the military's policy thrown out, to be unconstitutional. Ah, we did not achieve that goal, but we did achieve a kind of intermediate, ah, victory, in that the policy that they were then applying in the Air Force was one which was applied in, in a completely arbitrary and capricious manner. It was not applied with any really clear guidelines. They had a written policy which said law homosexuality was not generally to be permitted. That in exceptional cases, a person could be retained.

1S1:100-199

But our feeling was that that was an exception that was never really implemented, or if it was, it was only implemented on the basis of personal whim and discretion by individual commanding officers.

MH: Mm hm.

CB: And the court agreed that the military or that the Air Force, because the Navy did not have a similar exception in its policy, but the court agreed that the Air Force had no clear standards or guidelines as to what would constitute an exception. And, so that the court itself held - this is the Court of Appeals - held that it had no basis on which to review the Air Force's decision to terminate a person on this basis, because the Air Force had not indicated what criteria or standards it would use in deciding whether someone was an exception who should be retained.

MH: Mm hm.

CB: And that's the reason that the court reversed Gazelle's original decision.

MH: Right.

CB: Because they said that it, it really was a decision based on Administrative Law of Principles, ah, which is the body of law that governs proceedings by governmental agencies, and decisions of governmental agencies are reviewable by the courts and one of the fundamental principles of administrative law is that the agencies have to clearly spell out the reasons for their decisions, so that if the court is called upon to review it, it will know the basis on which the agency decided and can then determine whether that basis is correct. And the Court of Appeals in the Matlovich case said that the, the agency, which in this case was the Air Force, had not really spelled out any clear guidelines or criteria on the basis of which they made decisions involving whether to retain or discharge, ah, homosexuals, and therefore the court could not tell on what basis it had decided not to retain Matlovich, and so it reversed and said the case would have to go back for the Air Force to decide, to clarify what criteria it did use in making those decisions.

MH: Now, I'm a little confused in that I, I understand that they sent it back. Why, I thought when a court of a U.S. District, I'm sorry, a Court of Appeals reverses U.S. District Court decision, that it then automatically goes on to the next step, which would be the Supreme Court, wouldn't it? Why, ah, they have the option, obviously, of sending it back.

CB: The Air Force could have appealed.

MH: Uh huh.

CB: Or they could have actually not appealed. They could have asked the Supreme Court to grant, review in the nature of *certiorari*.

MH: Right.

GLBT Historical Society
http://www.glbthistory.org

CB: But they chose not to do so.

MH: Mm hm.

CB: They chose instead to go back and to try to comply with the procedure of clarifying their reasons.

MH: Okay, thanks. Do you remember when that, when the Court of Appeals sent it back?

CB: It was in 1978.

MH: Okay.

CB: Fall of '78. I think it was December that, November or December that the Court of Appeals decision came out.

MH: And so then, ah.

CB: What they did technically was they remanded it to the District Court.

MH: Right.

CB: Then remanded it to Air Force for further proceedings to clarify their policy.

MH: Now Gazelle's decision, final decision, then didn't come out until 1980 I believe, so in those two years, what happened?

CB: Well, the Air Force was trying to come up with a basis which would justify its actions . . .

MH: Right.

CB: . . . in the final clarification of its policy. And what they did is they filed with the District Court, with Gazelle, what I believe was called a Declaration, which was the Air Force's attempt to explain how they proceeded. But it really did not clarify anything. It did not really give any guidelines that would be generally applicable to deciding cases like that. And that's why Gazelle rejected it.

MH: Mm hm.

CB: Now, of course, in the meantime, the Air Force also changed its policy to eliminate the Exception Provision that had gotten them into so much trouble, so that their, under the policy they came out with, there was no longer any basis for retaining people on exceptional grounds.

MH: Do you know when they did that?

CB: That was, I believe, during that two-year period.

MH: So even though they eliminated the Exception Policy, they still had to come up with a reason that would be retroactively applicable?

CB: Well they had - Matlovich, of course, was discharged before they changed the policy.

MH: Right.

CB: The rule that was applicable to him would have been the, the one in effect at that time.

MH: Mm hm.

CB: But they still had to, to try to answer the court's objection on that.

MH: Now when I asked you what your goal was in pursuing the case, you said it was to prevent them from kicking out gay people essentially. Ah.

CB: We had, ah, in our appeal, we had ah continued the challenge to the constitutionality of the regulation, which had been initially raised.

MH: I wanted to ask you about that, because David Addlestone told me that the reason that the ACLU dropped the case was when Gazelle issued his first decision, he basically threw out the constitutional issue and referred to the Virginia Sodomy Case of 1975.

CB: That's correct. That was John Doe versus Commonwealth's Attorney.

MH: And obviously it was a major dilemma for the ACLU according to Addlestone. He said they really did talk about it and decided to end it. They had lost on those grounds but, and so it was pointless to pursue that, that end of it. And if it was going to proceed as just a tech, on a, you know, based on a technicality, then that they weren't interested. Ah, but you went ahead and pursued it that way anyway?

CB: Well, there was a disagreement among attorneys who were handling gay rights cases at that time as to what the effect of that Virginia case was, what it really meant.

MH: Right, mm hm.

CB: Because the Supreme Court had not issued any opinion. It had simply summarily affirmed a lower federal court decision of a district court in Virginia, without giving any reasons or basis for its decision. And so there was a lot of discussion of what the court's decision really meant. And in fact you may recall the subsequent case from Georgia, the Hardwick Sodomy Case?

MH: Right.

CB: The Court of Appeals that had held ah that the Georgia sodomy law was invalid also felt that that Virginia decision was not controlling on the issue. Ah, so it's not, you know, it was not something that was open and shut. There was substantial disagreement about it. And my view was that since the Supreme Court had not definitively stated any reasons.

GLBT Historical Society
http://www.glbthistory.org

1S1:200-299

And, in fact, in an opinion that had come out since the Virginia case, the Supreme Court had stated specifically in another opinion that it had had, had not yet definitively decided the issue of the extent to which state laws prohibiting consensual adult sexual conduct were valid. So in view of the fact that it had not issued an opinion in the Virginia case and in a subsequent case, which was called Carrie versus Population Services International, had said that it had not definitively decided the issue. My feeling was that it was still open for, for litigation and ah . . .

MH: Mm hm. So when you . . .

CB: So when I appealed . . .

MH: Right.

CB: . . . we took exactly that position, that it had not been resolved by the Supreme Court, and therefore the Court of Appeals and the District Court too did have the, the power to pass on the issue of whether or not prohibitions against private consensual sexual conduct violated a person's right of privacy. And the argument was that if there was a fundamental right to engage in private consensual sexual conduct, then the Air Force's regulations, and the similar regulations in all the other branches too, would infringe upon that right. And the Air Force would then be required to provide a compelling reason to justify infringing on that right.

MH: And what did the Court of Appeals say to that argument?

CB: The Court of Appeals, in its decision, I don't know if you've read it or not, but you might want to get a copy and take a look at it when you're working on this. They said that ah they recited our arguments, and then they said it wasn't necessary for them to decide (Laughs) which is typical of, of ah, how a court will approach a constitutional issue. If it can resolve the case on another basis, it will always do so, and will not decide a constitutional issue.

MH: Oh, I see.

CB: It's one of those mechanisms the courts use in, in reaching decisions, is not to decide a constitutional issue unless it's absolutely necessary to deciding the case. So they concluded that since they could resolve it on this administrative law basis that I described to you a minute ago, that it would not be necessary for them to decide the constitutional issue. So that's what they did.

MH: I see. Ah, see, I have a copy of the first court case that ends with Gazelle issuing a decision in 1976. Ah, and oddly enough, another reason I think I'm confused is because the cover of that - this is probably all something that was just filed when you were doing yours because it says United States Court of Appeals and your name is on the front. Ah, but it does end in '76 with ah, in July.

CB: What's the name of that case?

MH: It says, ah, Leonard P. Matlovich versus Extra The Air Force, and Colonel Thorkerson, ah, On Appeal from an order of the United States District Court for the District of Columbia.

CB: Where do you see Gazelle's name?

MH: At the very last thing in the booklet that, which is, you know, many, several hundred pages. Ah, it just has his decision. About 19, July, '76. Now maybe this is only a partial, this is only, this is an appendix actually.

CB: Yeah, that's what I was going to say.

MH: Oh, okay.

CB: Yeah, what you have is the record that was filed in the Court of Appeals.

MH: Okay.

CB: For the Appeal, that has the proceedings of the District Court.

MH: And that's what I realized as I was telling you that. So I really do need to get a later one. Ah.

CB: That was filed on the appeal, but it was, it was what the Court of Appeal was asked to look at to ah. With that they would also have been filed the briefs of ah, both sides.

MH: Right.

CB: And then the Court decision would have been something separate that came out later.

MH: So, ah, the case resolved when Gazelle . . . well, how did the case resolve in your own words?

CB: Well, after Gazelle had determined that he was not satisfied with the Air Force's response, he had issued an order of reinstatement. Then, of course, the Air Force could have, could have appealed, could have gone back to the Court of Appeals and, if it didn't like what happened there, it could have gone onto the Supreme Court. But instead the Air Force determined to enter into settlement discussions. And the earlier case I had mentioned to you, the Navy case and Vernon Berg?

MH: Right, mm hm.

CB: The Berg case and the Matlovich case had been decided together by the Court of Appeals. They had consolidated them for the purposes of argument, and since I was handling both cases, when I appeared in the Court of Appeals, I was appearing to argue both cases because the Court of Appeals had ordered that they both be heard together. As the cases were not combined, but they were consolidated in order to have a single argument

presented to the court on both cases. And so it decided both cases the same day, separate opinions but both reaching the same result. The Navy case also was remanded because the Navy's policy was not held to be sufficiently clear for the court's review.

1S1:300-399

MH: Okay.

CB: So they, from the time of that consolidation for argument in the Court of Appeals, two cases were basically being handled together by the Pentagon, put down as one problem which it had. And it decided that it would attempt to settle both cases. So, ah, the Wilmer-Cutler & Pickering firm agreed to come in as counsel as well at this stage.

MH: Right.

CB: At that point, the name of the firm was simply Wilmer & Pickering because Lloyd Cutler was then serving as counsel to President Carter, so he had withdrawn from the firm, ah, during that period. But ah, their firm came in and ah, participated in these settlement discussions, which were initiated by the services.

MH: Now, did you drop out at that point?

CB: No, I continued to ah, to consult with Patricia Douglas who was the attorney there who was most actively involved, and with Berg and Matlovich as to the various proposals that were being made and, ah, we all sort of pooled our views on them and . . .

MH: Now what were your views? Did you encourage Leonard to settle or not?

CB: Ah, I did not encourage him to settle or not to settle. I tried to give him my best estimate of ah, what could happen if there were further appeals and, and basically it was up to him to decide what his life was like at that point and what he wanted to do. Because the whole procedure had been very disruptive, both to him and also the Navy matter had been similarly disruptive to ah Berg in the Navy case. If, you know, there were a number, there were a number of considerations, not just the success of the litigation or not, but also the, the personal toll it was taking on these people.

MH: Mm hm. Did Berg settle as well?

CB: Yes. Both cases were settled.

MH: Ah, how did you feel about that? Did you consider that a victory for Leonard and/or the gay community?

CB: In a sense, in that the Air Force and the Navy - I guess you would say the defense establishment - was ah recognizing that they had a serious problem with their policy. One that they were not willing to subject to the, to the challenge of further litigation. But, of course, it wasn't the victory that we had wanted, which was a declaration by a court that their

policy was invalid. Ah, and just this past, was it last week or week before? The Ninth Circuit issued a decision on exactly that.

MH: Last week, uh huh.

CB: So that made me very happy.

MH: Were you disappointed initially that you didn't get exactly what you wanted?

CB: Well, in litigation, you almost never get exactly what you want.

MH: Uh huh.

CB: The court usually will, ah, find some basis for acting that's not precisely what you had hoped for. So I, you know, I was not disappointed in the sense that I had thought certainly we would get what we wanted. But I initially had been pleased at the decision of the Court of Appeals because it had made clear that the, the Services were not proceeding on a very rational basis, one that could not even be reviewed by the Court of Appeals, was not a very sound policy. And the Services, in deciding to settle these two cases, were in effect admitting that they had a problem with the application of their policies. And on that point, they were not willing to take a chance on what a higher court would say.

MH: You used the term earlier and I'm not sure exactly what it means, *certiorari*?

CB: *Certiorari*..

MH: Right. How do you spell that?

CB: *C-E-R-T-I-O-R-*

MH: Uh huh, *A-R-Y*?

CB: No, *A-R-I*.

MH: Okay.

CB: It's a procedure by which a higher court reviews a decision of a lower court.

MH: Okay.

CB: And that's how most decisions reach the Supreme Court.

MH: Okay, it's legalese for me.

CB: Yeah.

MH: Ah, what are you doing now, Mr. Boggan?

CB: I'm a professor of law at the University of West Los Angeles.

1S1:400-438

MH: Right. I assumed as much since every time I called that, what they, what they said.

CB: Yeah, I'm also still affiliated with as a counsel with a firm in New York, Glazier & Gottlieb, which I believe you also had called initially.

MH: Right. Do ah, you handle gay rights cases anymore?

CB: Ah, the only gay rights matters I've done in the last, ah, year or so have involved the military upgrade procedures, administrative procedures.

MH: Right. Well, I believe that's about it. There may be some other questions that come up and, if so, if you minded if I just called you briefly to clarify points.

CB: Sure.

MH: Ah, I find when I throw everyone's interviews together and try and make sense for the layman and myself, ah, little things will come up.

CB: Now you probably were told by Patricia Douglas and Matlovich too that the exact terms of the settlement in his case were not to be disclosed.

MH: Ah, well, anything that appeared in the newspapers back then is basically what I have, ah, which is okay. Like I know that he received a hundred and sixty thousand dollars. Other than that, I don't know.

CB: Well, that's what was not to be disclosed. I don't know where that appeared.

MH: Oh that ah, that was in *The Advocate*. Ah, and it was also, where else? I believe it was.

CB: Well.

MH: Why was that not to be disclosed? Was that an agreement?

CB: No, that was one of the terms of the settlement with the Air Force, that the amount

End of Side 1, Tape 1 - End of Interview

GLBT Historical Society
http://www.glbthistory.org

VOICES of the Oral History Projectof GLHSNC
973 Market Street, #400
San Francisco, CA 94103
Telephone (415) 777-5455, #1
Interview with Carrington Boggan
Date of Birth: N/A
By Mike Hippler, One Tape/90
In 1987
GLHS OHP #95-119, The Good Soldier
1S1:000-099 = Tape One, Side One, Counter 000-099
1S2:000-099 = Tape One, Side Two, Counter 000-099
Tape One, Side One
1S1:000-099

MH: First question was when you got involved with the case, at one point was that, what year?

CB: Ah, I don't recall exactly. It was probably '75 or '76.

MH: Well then, he lost at, ah, the military level in late fall of '75, and then the case was appealed to Judge Gehrhardt Gazelle, ah, and his ruling didn't come down until, I believe, June of '76. Now were you involved before that?

CB: No, I was only involved after Gazelle's ruling.

MH: Oh, okay. Ah, and so you told me yesterday . . .

CB: It would probably would be, I guess, in the summer of '76, the fall of '76, that the appeal would have been filed.

MH: Right. Ah, the one thing I don't understand as far as the court system works is Gazelle, that was already in the United States Court of Appeals, right? When . . .

CB: No, it was in the United States District Court.

MH: Okay. Ah, and, does Gazelle, he is only on the Court of Appeals or was he on both?

CB: He was not on the Court of Appeals.

MH: Oh, okay.

CB: He was the United States District judge.

MH: Oh, I see. And so then later on, he issued your decision as well a number of years later. Had he been promoted?

CB: No, no, he wasn't on the Court of Appeals panel.

MH: Okay.

CB: What happened was it went from Gazelle's decision to the Court of Appeals. The Court of Appeals then reversed Gazelle's decisions, and sent the case back to him. Ah, he then, in effect, sent it back to the Air Force because they were required under the Court of Appeals decision to clarify their policy. So he

sent it back to the Air Force for them to clarify and when their clarification was filed with Gazelle, he found it unsatisfactory and indicated that he was going to order reinstatement. So that may be why you're thinking that Gazelle also ruled favorably.

MH: Well, if that . . .

CB: That didn't occur until after the Court of Appeals decision.

MH: Okay, that's why I was confused. So ah, you became involved through whom? How did you meet Leonard?

CB: We had a mutual friend, an attorney named Craig Patton who, ah, has recently passed away, but he, ah, introduced Matlovich to me and after the ACLU decided that it did not wish to handle an appeal . . .

MH: Mm hm.

CB: . . . Matlovich asked if I would, and I agreed.

MH: Now, did you take this case on a pro bono basis or . . .

CB: Yes.

MH: Ah, and at the time, were you, did you have your own private law practice or . . .

CB: Yes, I did.

MH: I see. Did . . did you . .

CB: Proprietorship at that point.

MH: Right, and that was based in New York?

CB: Yes.

MH: Did you work with any other attorneys?

CB: Well, at the time I was also general counsel for an organization called Lambda Legal Defense and Education Fund.

MH: Mm hm.

CB: And I had also been handling a similar case that had been taken on by Lambda, which involved a naval officer named Vernon Berg.

MH: Right.

CB: And ah, I had been handling that case beginning with the, the hearing in the Navy itself, and was handling that all the way through. Ah, when the, the Matlovich matter initially came to my attention, I also presented it to Lambda to ascertain if they would be interested in sponsoring the appeal on it. But they determined that one military case at that point was all they would able to handle in view of their resources at that time.

MH: Right.

CB: And so neither the ACLU nor Lambda was willing to pursue the Matlovich appeal, so I did it solely on an individual basis. Ah, I did not charge any legal fees, but Matlovich was required to pay the expenses

1 for reproduction of briefs and, and that sort of
2 thing.
3 MH: Ah, would those have been very costly?
4 CB: Well, not greatly. I think it, it was probably
5 under a thousand dollars.
6 MH: Oh, I see.
7 CB: But had the case been sponsored by ACLU or
8 Lambda, they would have picked up those expense.
9 MH: Right. Ah, why did you take his case?
10 CB: Well, because I thought it was an important case
11 ah, and it was very similar to the Navy case which I
12 was handling also. And I thought it was not one that
13 should be allowed just to lapse because no one was
14 willing to handle the appeal.
15 MH: Right. So this was, ah, those two were the only
16 cases that you had involving military personnel?
17 CB: They were the only cases of that nature. I've,
18 ah, handled a number of administrative proceedings
19 involving seeking upgrades of Less Than Honorable
20 discharges.
21 MH: Right.
22 CB: And those received through various agencies
23 within the military, ah, rather than through the
24 courts.
25 MH: Had you done any other gay rights cases?

1 CB: Yes I had. I'd been involved in a number of
2 cases through my affiliation with Lambda Legal Defense
3 Fund.
4 MH: Mm hm.
5 CB: And ah, earlier through an organization known as
6 the Gay Activists Alliance which was one of the early
7 groups in New York City.
8 MH: Right. Which brings me to an earlier
9 clarification. You said you met Leonard through a
10 friend you had in common, this attorney. Did . . . I
11 spoke with Bruce Valor and Bruce in, mentioned that
12 the NGTF getting involved as a go-between. Ah, do you
13 remember that or not?
14 CB: No, I don't really.
15 MH: Do, do you know Bruce Valor?
16 CB: Sure.
17 MH: Yeah, he claimed that he introduced the two of
18 you but, ah, so I just, I just wanted to . .
19 CB: Well (Laughs).
20 MH: Yeah, okay, thanks. You should know your
21 version.
22 CB: You know, ah what, but how long ago is this?
23 MH: Twelve years.
24 CB: Twelve years. And ah, I do distinctly know that
25 I'd heard of Matlovich, of course, because the case

1 received a lot of publicity. But ah I actually met
2 him through Craig Patton and I think Matlovich could
3 probably confirm that too.
4 MH: Okay. What did you think of Leonard when you
5 first met him?
6 CB: I thought he was very bright and articulate and
7 very dedicated to trying to vindicate this issue.
8 MH: Mm hm. Ah, what was your goal in pursuing the
9 case?
10 CB: Well, our primary goal was to try to have the
11 military's policy thrown out, to be unconstitutional.
12 Ah, we did not achieve that goal, but we did achieve a
13 kind of intermediate, ah, victory, in that the policy
14 that they were then applying in the Air Force was one
15 which was applied in, in a completely arbitrary and
16 capricious manner. It was not applied with any really
17 clear guidelines. They had a written policy which
18 said law homosexuality was not generally to be
19 permitted. That in exceptional cases, a person could
20 be retained.
21 IS1:100-199
22 But our feeling was that that was an exception that
23 was never really implemented, or if it was, it was
24 only implemented on the basis of personal whim and
25 discretion by individual commanding officers.

1 MH: Mm hm.
2 CB: And the court agreed that the military or that
3 the Air Force, because the Navy did not have a similar
4 exception in its policy, but the court agreed that the
5 Air Force had no clear standards or guidelines as to
6 what would constitute an exception. And, so that the
7 court itself held - this is the Court of Appeals -
8 held that it had no basis on which to review the Air
9 Force's decision to terminate a person on this basis,
10 because the Air Force had not indicated what criteria
11 or standards it would use in deciding whether someone
12 was an exception who should be retained.
13 MH: Mm hm.
14 CB: And that's the reason that the court reversed
15 Gazelle's original decision.
16 MH: Right.
17 CB: Because they said that it, it really was a
18 decision based on Administrative Law of Principles,
19 ah, which is the body of law that governs proceedings
20 by governmental agencies, and decisions of
21 governmental agencies are reviewable by the courts and
22 one of the fundamental principles of administrative
23 law is that the agencies have to clearly spell out the
24 reasons for their decisions, so that if the court is
25 called upon to review it, it will know the basis on

In 1987

GLBT Historical Society
http://www.glbthistory.org

1 which the agency decided and can then determine
2 whether that basis is correct. And the Court of
3 Appeals in the Matlovich case said that the, the
4 agency, which in this case was the Air Force, had not
5 really spelled out any clear guidelines or criteria on
6 the basis of which they made decisions involving
7 whether to retain or discharge, ah, homosexuals, and
8 therefore the court could not tell on what basis it
9 had decided not to retain Matlovich, and so it
10 reversed and said the case would have to go back for
11 the Air Force to decide, to clarify what criteria it
12 did use in making those decisions.
13 MH: Now, I'm a little confused in that I, I
14 understand that they sent it back. Why, I thought
15 when a court of a U.S. District, I'm sorry, a Court of
16 Appeals reverses U.S. District Court decision, that it
17 then automatically goes on to the next step, which
18 would be the Supreme Court, wouldn't it? Why, ah,
19 they have the option, obviously, of sending it back.
20 CB: The Air Force could have appealed.
21 MH: Uh huh.
22 CB: Or they could have actually not appealed. They
23 could have asked the Supreme Court to grant, review in
24 the nature of certiorari.
25 MH: Right.

1 CB: But they chose not to do so.
2 MH: Mm hm.
3 CB: They chose instead to go back and to try to
4 comply with the procedure of clarifying their reasons.
5
6 MH: Okay, thanks. Do you remember when that, when
7 the Court of Appeals sent it back?
8 CB: It was in 1978.
9 MH: Okay.
10 CB: Fall of '78. I think it was December that,
11 November or December that the Court of Appeals
12 decision came out.
13 MH: And so then, ah.
14 CB: What they did technically was they remanded it to
15 the District Court.
16 MH: Right.
17 CB: Then remanded it to Air Force for further
18 proceedings to clarify their policy.
19 MH: Now Gazelle's decision, final decision, then
20 didn't come out until 1980 I believe, so in those two
21 years, what happened?
22 CB: Well, the Air Force was trying to come up with a
23 basis which would justify its actions . . .
24 MH: Right.
25 CB: . . . in the final clarification of its policy.

1 And what they did is they filed with the District
2 Court, with Gazelle, what I believe was called a
3 Declaration, which was the Air Force's attempt to
4 explain how they proceeded. But it really did not
5 clarify anything. It did not really give any
6 guidelines that would be generally applicable to
7 deciding cases like that. And that's why Gazelle
8 rejected it.
9 MH: Mm hm.
10 CB: Now, of course, in the meantime, the Air Force
11 also changed its policy to eliminate the Exception
12 Provision that had gotten them into so much trouble,
13 so that their, under the policy they came out with,
14 there was no longer any basis for retaining people on
15 exceptional grounds.
16 MH: Do you know when they did that?
17 CB: That was, I believe, during that two-year period.
18 MH: So even though they eliminated the Exception
19 Policy, they still had to come up with a reason that
20 would be retroactively applicable?
21 CB: Well they had - Matlovich, of course, was
22 discharged before they changed the policy.
23 MH: Right.
24 CB: The rule that was applicable to him would have
25 been the, the one in effect at that time.

1 MH: Mm hm.
2 CB: But they still had to, to try to answer the
3 court's objection on that.
4 MH: Now when I asked you what your goal was in
5 pursuing the case, you said it was to prevent them
6 from kicking out gay people essentially. Ah.
7 CB: We had, ah, in our appeal, we had ah continued
8 the challenge to the constitutionality of the
9 regulation, which had been initially raised.
10 MH: I wanted to ask you about that, because David
11 Addlestone told me that the reason that the ACLU
12 dropped the case was when Gazelle issued his first
13 decision, he basically threw out the constitutional
14 issue and referred to the Virginia Sodomy Case of
15 1975.
16 CB: That's correct. That was John Doe versus
17 Commonwealth's Attorney.
18 MH: And obviously it was a major dilemma for the ACLU
19 according to Addlestone. He said they really did talk
20 about it and decided to end it. They had lost on
21 those grounds but, and so it was pointless to pursue
22 that, that end of it. And if it was going to proceed
23 as just a tech, on a, you know, based on a
24 technicality, then that they weren't interested. Ah,
25 but you went ahead and pursued it that way anyway?

GLBT Historical Society
http://www.glbthistory.org

1 CB: Well, there was a disagreement among attorneys
2 who were handling gay rights cases at that time as to
3 what the effect of that Virginia case was, what it
4 really meant.
5 MH: Right, mm hm.
6 CB: Because the Supreme Court had not issued any
7 opinion. It had simply summarily affirmed a lower
8 federal court decision of a district court in
9 Virginia, without giving any reasons or basis for its
10 decision. And so there was a lot of discussion of
11 what the court's decision really meant. And in fact
12 you may recall the subsequent case from Georgia, the
13 Hardwick Sodomy Case?
14 MH: Right.
15 CB: The Court of Appeals that had held ah that the
16 Georgia sodomy law was invalid also felt that that
17 Virginia decision was not controlling on the issue.
18 Ah, so it's not, you know, it was not something that
19 was open and shut. There was substantial disagreement
20 about it. And my view was that since the Supreme
21 Court had not definitively stated any reasons.
22 1S1:200-299
23 And, in fact, in an opinion that had come out since
24 the Virginia case, the Supreme Court had stated
25 specifically in another opinion that it had had, had

1 not yet definitively decided the issue of the extent
2 to which state laws prohibiting consensual adult
3 sexual conduct were valid. So in view of the fact
4 that it had not issued an opinion in the Virginia case
5 and in a subsequent case, which was called Carrie
6 versus Population Services International, had said
7 that it had not definitively decided the issue. My
8 feeling was that it was still open for, for litigation
9 and ah . . .
10 MH: Mm hm. So when you . . .
11 CB: So when I appealed . . .
12 MH: Right.
13 CB: . . . we took exactly that position, that it had
14 not been resolved by the Supreme Court, and therefore
15 the Court of Appeals and the District Court too did
16 have the, the power to pass on the issue of whether or
17 not prohibitions against private consensual sexual
18 conduct violated a person's right of privacy. And the
19 argument was that if there was a fundamental right to
20 engage in private consensual sexual conduct, then the
21 Air Force's regulations, and the similar regulations
22 in all the other branches too, would infringe upon
23 that right. And the Air Force would then be required
24 to provide a compelling reason to justify infringing
25 on that right.

1 MH: And what did the Court of Appeals say to that
2 argument?
3 CB: The Court of Appeals, in its decision, I don't
4 know if you've read it or not, but you might want to
5 get a copy and take a look at it when you're working
6 on this. They said that ah they recited our
7 arguments, and then they said it wasn't necessary for
8 them to decide (Laughs) which is typical of, of ah,
9 how a court will approach a constitutional issue. If
10 it can resolve the case on another basis, it will
11 always do so, and will not decide a constitutional
12 issue.
13 MH: Oh, I see.
14 CB: It's one of those mechanisms the courts use in,
15 in reaching decisions, is not to decide a
16 constitutional issue unless it's absolutely necessary
17 to deciding the case. So they concluded that since
18 they could resolve it on this administrative law basis
19 that I described to you a minute ago, that it would
20 not be necessary for them to decide the constitutional
21 issue. So that's what they did.
22 MH: I see. Ah, see, I have a copy of the first court
23 case that ends with Gazelle issuing a decision in
24 1976. Ah, and oddly enough, another reason I think
25 I'm confused is because the cover of that - this is

1 probably all something that was just filed when you
2 were doing yours because it says United States Court
3 of Appeals and your name is on the front. Ah, but it
4 does end in '76 with ah, in July.
5 CB: What's the name of that case?
6 MH: It says, ah, Leonard P. Matlovich versus Extra
7 The Air Force, and Colonel Thorkerson, ah, On Appeal
8 from an order of the United States District Court for
9 the District of Columbia.
10 CB: Where do you see Gazelle's name?
11 MH: At the very last thing in the booklet that, which
12 is, you know, many, several hundred pages. Ah, it just
13 has his decision. About 19, July, '76. Now maybe
14 this is only a partial, this is only, this is an
15 appendix actually.
16 CB: Yeah, that's what I was going to say.
17 MH: Oh, okay.
18 CB: Yeah, what you have is the record that was filed
19 in the Court of Appeals.
20 MH: Okay.
21 CB: For the Appeal, that has the proceedings of the
22 District Court.
23 MH: And that's what I realized as I was telling you
24 that. So I really do need to get a later one. Ah.
25 CB: That was filed on the appeal, but it was, it was

GLBT Historical Society
http://www.glbthistory.org

what the Court of Appeal was asked to look at to ah. With that they would also have been filed the briefs of ah, both sides.
MH: Right.
CB: And then the Court decision would have been something separate that came out later.
MH: So, ah, the case resolved when Gazelle . . . well, how did the case resolve in your own words?
CB: Well, after Gazelle had determined that he was not satisfied with the Air Force's response, he had issued an order of reinstatement. Then, of course, the Air Force could have, could have appealed, could have gone back to the Court of Appeals and, if it didn't like what happened there, it could have gone onto the Supreme Court. But instead the Air Force determined to enter into settlement discussions. And the earlier case I had mentioned to you, the Navy case and Vernon Berg?
MH: Right, mm hm.
CB: The Berg case and the Matlovich case had been decided together by the Court of Appeals. They had consolidated them for the purposes of argument, and since I was handling both cases, when I appeared in the Court of Appeals, I was appearing to argue both cases because the Court of Appeals had ordered that

they both be heard together. As the cases were not combined, but they were consolidated in order to have a single argument presented to the court on both cases. And so it decided both cases the same day, separate opinions but both reaching the same result. The Navy case also was remanded because the Navy's policy was not held to be sufficiently clear for the court's review.
1S1:300-399
MH: Okay.
CB: So they, from the time of that consolidation for argument in the Court of Appeals, two cases were basically being handled together by the Pentagon, put down as one problem which it had. And it decided that it would attempt to settle both cases. So, ah, the Wilmer-Cutler & Pickering firm agreed to come in as counsel as well at this stage.
MH: Right.
CB: At that point, the name of the firm was simply Wilmer & Pickering because Lloyd Cutler was then serving as counsel to President Carter, so he had withdrawn from the firm, ah, during that period. But ah, their firm came in and ah, participated in these settlement discussions, which were initiated by the services.

MH: Now, did you drop out at that point?
CB: No, I continued to ah, to consult with Patricia Douglas who was the attorney there who was most actively involved, and with Berg and Matlovich as to the various proposals that were being made and, ah, we all sort of pooled our views on them and . . .
MH: Now what were your views? Did you encourage Leonard to settle or not?
CB: Ah, I did not encourage him to settle or not to settle. I tried to give him my best estimate of ah, what could happen if there were further appeals and, and basically it was up to him to decide what his life was like at that point and what he wanted to do. Because the whole procedure had been very disruptive, both to him and also the Navy matter had been similarly disruptive to ah Berg in the Navy case. If, you know, there were a number, there were a number of considerations, not just the success of the litigation or not, but also the, the personal toll it was taking on these people.
MH: Mm hm. Did Berg settle as well?
CB: Yes. Both cases were settled.
MH: Ah, how did you feel about that? Did you consider that a victory for Leonard and/or the gay community?

CB: In a sense, in that the Air Force and the Navy - I guess you would say the defense establishment - was ah recognizing that they had a serious problem with their policy. One that they were not willing to subject to the, to the challenge of further litigation. But, of course, it wasn't the victory that we had wanted, which was a declaration by a court that their policy was invalid. Ah, and just this past, was it last week or week before? The Ninth Circuit issued a decision on exactly that.
MH: Last week, uh huh.
CB: So that made me very happy.
MH: Were you disappointed initially that you didn't get exactly what you wanted?
CB: Well, in litigation, you almost never get exactly what you want.
MH: Uh huh.
CB: The court usually will, ah, find some basis for acting that's not precisely what you had hoped for. So I, you know, I was not disappointed in the sense that I had thought certainly we would get what we wanted. But I initially had been pleased at the decision of the Court of Appeals because it had made clear that the, the Services were not proceeding on a very rational basis, one that could not even be

GLBT Historical Society
http://www.glbthistory.org

1 reviewed by the Court of Appeals, was not a very sound
2 policy. And the Services, in deciding to settle these
3 two cases, were in effect admitting that they had a
4 problem with the application of their policies. And
5 on that point, they were not willing to take a chance
6 on what a higher court would say.
7 MH: You used the term earlier and I'm not sure
8 exactly what it means, certiorari?
9 CB: Certiorari..
10 MH: Right. How do you spell that?
11 CB: C-E-R-T-I-O-R-
12 MH: Uh huh, A-R-Y?
13 CB: No, A-R-I.
14 MH: Okay.
15 CB: It's a procedure by which a higher court reviews
16 a decision of a lower court.
17 MH: Okay.
18 CB: And that's how most decisions reach the Supreme
19 Court.
20 MH: Okay, it's legalese for me.
21 CB: Yeah.
22 MH: Ah, what are you doing now, Mr. Boggan?
23 CB: I'm a professor of law at the University of West
24 Los Angeles.
25 1S1:400-438

1 MH: Right. I assumed as much since every time I
2 called that, what they, what they said.
3 CB: Yeah, I'm also still affiliated with as a counsel
4 with a firm in New York, Glazier & Gottlieb, which I
5 believe you also had called initially.
6 MH: Right. Do ah, you handle gay rights cases
7 anymore?
8 CB: Ah, the only gay rights matters I've done in the
9 last, ah, year or so have involved the military
10 upgrade procedures, administrative procedures.
11 MH: Right. Well, I believe that's about it. There
12 may be some other questions that come up and, if so,
13 if you minded if I just called you briefly to clarify
14 points.
15 CB: Sure.
16 MH: Ah, I find when I throw everyone's interviews
17 together and try and make sense for the layman and
18 myself, ah, little things will come up.
19 CB: Now you probably were told by Patricia Douglas
20 and Matlovich too that the exact terms of the
21 settlement in his case were not to be disclosed.
22 MH: Ah, well, anything that appeared in the
23 newspapers back then is basically what I have, ah,
24 which is okay. Like I know that he received a hundred
25 and sixty thousand dollars. Other than that, I don't

1 know.
2 CB: Well, that's what was not to be disclosed. I
3 don't know where that appeared.
4 MH: Oh that ah, that was in The Advocate. Ah, and it
5 was also, where else? I believe it was.
6 CB: Well.
7 MH: Why was that not to be disclosed? Was that an
8 agreement?
9 CB: No, that was one of the terms of the settlement
10 with the Air Force, that the amount
11 End of Side 1, Tape 1 - End of Interview
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GLBT Historical Society
http://www.glbthistory.org

-#-

#1 [1] 1:5
#119 [1] 1:10
#400 [1] 1:3

-'-

'75 [2] 1:17 1:20
'76 [6] 1:18 1:22 2:2 2:2 16:4 16:13
'78 [1] 10:10

-0-

000-099 [2] 1:11 1:12

-1-

1 [2] 23:11 23:11
19 [1] 16:13
1975 [1] 12:15
1976 [1] 15:24
1978 [1] 10:8
1980 [1] 10:20
1987 [1] 1:9
1S1:000-099 [2] 1:11 1:14
1S1:100-199 [1] 7:21
1S1:200-299 [1] 13:22
1S1:300-399 [1] 18:9
1S1:400-438 [1] 21:25
1S2:000-099 [1] 1:12

-4-

415 [1] 1:5

-7-

777-5455 [1] 1:5

-9-

94103 [1] 1:4
973 [1] 1:3

-=-

= [2] 1:11 1:12

-A-

A-R-I [1] 21:13
A-R-Y [1] 21:12
able [1] 4:19
absolutely [1] 15:16
according [1] 12:19
achieve [2] 7:12 7:12
ACLU [5] 3:14 4:22 5:7 12:11 12:18
acting [1] 20:19
actions [1] 10:23
actively [1] 19:4
Activists [1] 6:6
Addlestone [2] 12:11 12:19
Administrative [1] 8:18
administrative [4] 5:18 8:22 15:18 22:10
admitting [1] 21:3
adult [1] 14:2
Advocate [1] 23:4
affiliated [1] 22:3
affiliation [1] 6:2
affirmed [1] 13:7
against [1] 14:17
agencies [4] 5:22 8:20 8:21 8:23
agency [2] 9:1 9:4
ago [2] 6:22 15:19
agreed [4] 3:17 8:2 8:4 18:16
agreement [1] 23:8
ahead [1] 12:25
Air [22] 2:24 3:1 7:14 8:3 8:5 8:8 8:10 9:4 9:11 9:20 10:17 10:22 11:3 11:10 14:21 14:23 16:7 17:10 17:12 17:15 20:1 23:10
Alliance [1] 6:6
allowed [1] 5:13
almost [1] 20:15
always [1] 15:11
among [1] 13:1
amount [1] 23:10
Angeles [1] 21:24
answer [1] 12:2
anyway [1] 12:25
Appeal [3] 16:7 16:21 17:1
appeal [7] 2:2 3:15 4:17 4:23 5:14 12:7 16:25
appealed [5] 1:20 9:20 9:22 14:11 17:12
Appeals [26] 2:6 2:10 2:11 2:17 2:21 2:21 2:25 3:8 8:7 9:3 9:16 10:7 10:11 13:15 14:15 15:1 15:3 16:3 16:19 17:13 17:21 17:24 17:25 18:12 20:23 21:1
appeals [1] 19:11
appeared [3] 17:23 22:22 23:3
appearing [1] 17:24
appendix [1] 16:15
applicable [3] 11:6 11:20 11:24
application [1] 21:4
applied [2] 7:15 7:16
applying [1] 7:14
approach [1] 15:9
arbitrary [1] 7:15
argue [1] 17:24
argument [5] 14:19 15:2 17:22 18:3 18:12
arguments [1] 15:7
articulate [1] 7:6
ascertain [1] 4:16
assumed [1] 22:1
attempt [2] 11:3 18:15
attention [1] 4:15
Attorney [1] 12:17
attorney [3] 3:12 6:10 19:3
attorneys [2] 4:3 13:1
automatically [1] 9:17
away [1] 3:13

-B-

based [3] 4:1 8:18 12:23
basis [16] 3:18 4:24 7:24 8:8 8:9 8:25 9:2 9:6 9:8 10:23 11:14 13:9 15:10 15:18 20:18 20:25
became [1] 3:10
beginning [1] 4:12
Berg [6] 4:10 17:18 17:20 19:4 19:16 19:21
best [1] 19:10
Birth [1] 1:7
body [2] 8:19
Boggan [2] 1:6 21:22
bono [1] 3:18
booklet [1] 16:11
branches [1] 14:22
briefly [1] 22:13
briefs [2] 5:1 17:2
bright [1] 7:6
brings [1] 6:8
Bruce [3] 6:11 6:11 6:15

-C-

C-E-R-T-I-O-R [1] 21:11
CA [1] 1:4
capricious [1] 7:16
Carrie [1] 14:5
Carrington [1] 1:6
Carter [1] 18:21
Case [2] 12:14 13:13
case [36] 1:16 1:20 2:22 3:18 4:8 4:12 4:18 5:7 5:9 5:10 5:11 6:25 7:9 9:3 9:4 9:10 12:5 12:12 13:3 13:12 13:24 14:4 14:5 15:10 15:17 15:23 16:5 17:7 17:8 17:17 17:17 17:20 17:20 18:6 19:16 22:21
cases [17] 5:16 5:17 5:25 6:2 7:19 11:7 13:2 17:23 17:25 18:1 18:4 18:4 18:12 18:15 19:22 21:3 22:6
CB [92] 1:17 1:24 2:1 2:8 2:11 2:13 2:17 2:20 3:7 3:12 3:17 3:20 3:23 3:25 4:2 4:4 4:8 4:12 4:22 5:4 5:7 5:10 5:17 5:22 6:1 6:5 6:14 6:16 6:19 6:22 6:24 7:6 7:10 8:2 8:14 8:17 9:20 9:22 10:1 10:3 10:8 10:10 10:14 10:17 10:22 10:25 11:10 11:17 11:21 11:24 12:2 12:7 12:16 13:1 13:6 13:15 14:11 14:13 15:3 15:14 16:5 16:10 16:16 16:18 16:21 16:25 17:5 17:9 17:20 18:11 18:19 19:2 19:9 19:22 20:1 20:12 20:15 20:18 21:9 21:11 21:13 21:15 21:18 21:21 21:23 22:3 22:8 22:15 22:19 23:2 23:6 23:9
certainly [1] 20:21
Certiorari [1] 21:9
certiorari [2] 9:24 21:8
challenge [2] 12:8 20:5
chance [1] 21:5
changed [2] 11:11 11:22
charge [1] 4:24
chose [2] 10:1 10:3
Circuit [1] 20:10
City [1] 6:7
claimed [1] 6:17
clarification [3] 3:2 6:9 10:25
clarify [6] 2:25 3:1 9:11 10:18 11:5 22:13
clarifying [1] 10:4
clear [5] 7:17 8:5 9:5 18:7 20:24
clearly [1] 8:23
Colonel [1] 16:7
Columbia [1] 16:9
combined [1] 18:2
commanding [1] 7:25
common [1] 6:10
Commonwealth's [1] 12:17
community [1] 19:25
compelling [1] 14:24
completely [1] 7:15
comply [1] 10:4
concluded [1] 15:17
conduct [3] 14:3 14:18 14:20
confirm [1] 7:3
confused [3] 3:9 9:13 15:25
consensual [3] 14:2 14:17 14:20
consider [1] 19:24
considerations [1] 19:18
consolidated [2] 17:22 18:2
consolidation [1] 18:11
constitute [1] 8:6
constitutional [5] 12:13 15:9 15:11 15:16 15:20
constitutionality [1] 12:8
consult [1] 19:2
continued [2] 12:7 19:2
controlling [1] 13:17
copy [2] 15:5 15:22
correct [2] 9:2 12:16

GLBT Historical Society
http://www.glbthistory.org

costly [1] 5:3
counsel [4] 4:4 18:17 18:21 22:3
Counter [2] 1:11 1:12
course [5] 6:25 11:10 11:21 17:11 20:6
Court [43] 2:6 2:8 2:10 2:11 2:17 2:21 2:21 2:24 3:7 8:7 9:2 9:15 9:16 9:18 9:23 10:7 10:11 10:15 11:2 13:6 13:15 13:21 13:24 14:14 14:15 14:15 15:1 15:3 16:2 16:8 16:19 16:22 17:1 17:5 17:13 17:15 17:21 17:24 17:25 18:12 20:23 21:1 21:19
court [18] 2:5 8:2 8:4 8:7 8:14 8:24 9:8 9:15 13:8 13:8 15:9 15:22 18:3 20:7 20:18 21:6 21:15 21:16
court's [3] 12:3 13:11 18:8
courts [3] 5:24 8:21 15:14
cover [1] 15:25
Craig [2] 3:12 7:2
criteria [3] 8:10 9:5 9:11
Cutler [1] 18:20

-D-

Date [1] 1:7
David [1] 12:10
December [2] 10:10 10:11
decide [6] 9:11 15:8 15:11 15:15 15:20 19:12
decided [9] 3:14 9:1 9:9 12:20 14:1 14:7 17:21 18:4 18:14
deciding [4] 8:11 11:7 15:17 21:2
decision [23] 2:15 2:20 2:25 3:8 8:9 8:15 8:18 9:16 10:12 10:19 10:19 12:13 13:8 13:10 13:11 13:17 15:3 15:23 16:13 17:5 20:10 20:23 21:16
decisions [7] 2:22 8:20 8:24 9:6 9:12 15:15 21:18
Declaration [1] 11:3
declaration [1] 20:7
dedicated [1] 7:7
Defense [2] 4:5 6:2
defense [1] 20:2
definitively [3] 13:21 14:1 14:7
described [1] 15:19
determine [1] 9:1
determined [3] 4:18 17:9 17:16
dilemma [1] 12:18
disagreement [2] 13:1 13:19
disappointed [2] 20:13 20:20
discharge [1] 9:7
discharged [1] 11:22
discharges [1] 5:20
disclosed [3] 22:21 23:2 23:7
discretion [1] 7:25
discussion [1] 13:10
discussions [2] 17:16 18:24
disruptive [2] 19:14 19:16
distinctly [1] 6:24
District [10] 2:8 2:13 9:15 9:16 10:15 11:1 14:15 16:8 16:9 16:22
district [1] 13:8
Doe [1] 12:16
dollars [2] 5:5 22:25
done [2] 5:25 22:8
Douglas [2] 19:3 22:19
down [2] 1:22 18:14
drop [1] 19:1
dropped [1] 12:12
during [2] 11:17 18:22

-E-

early [1] 6:6
Education [1] 4:6
effect [4] 2:23 11:25 13:3 21:3
eliminate [1] 11:11
eliminated [1] 11:18
encourage [2] 19:7 19:9
End [2] 23:11 23:11
end [3] 12:20 12:22 16:4
ends [1] 15:23
engage [1] 14:20
enter [1] 17:16
essentially [1] 12:6
establishment [1] 20:2
estimate [1] 19:10
everyone's [1] 22:16
exact [1] 22:20
exactly [6] 1:17 14:13 20:10 20:14 20:15 21:8
Exception [2] 11:11 11:18
exception [4] 7:22 8:4 8:6 8:12
exceptional [2] 7:19 11:15
expense [1] 5:8
expenses [1] 4:25
explain [1] 11:4
extent [1] 14:1
Extra [1] 16:6

-F-

fact [3] 13:11 13:23 14:3
Fall [1] 10:10
fall [2] 1:20 2:2
far [1] 2:5
favorably [1] 3:5
federal [1] 13:8
feeling [2] 7:22 14:8
fees [1] 4:25
felt [1] 13:16
filed [7] 2:3 3:2 11:1 16:1 16:18 16:25 17:2
final [2] 10:19 10:25
firm [5] 18:16 18:19 18:22 18:23 22:4
First [1] 1:15
first [3] 7:5 12:12 15:22
Force [18] 2:24 3:1 7:14 8:3 8:5 8:10 9:4 9:11 9:20 10:17 10:22 11:10 14:23 16:7 17:12 17:15 20:1 23:10
Force's [4] 8:9 11:3 14:21 17:10
found [1] 3:3
Francisco [1] 1:4
friend [2] 3:12 6:10
front [1] 16:3
Fund [2] 4:6 6:3
fundamental [2] 8:22 14:19

-G-

Gay [1] 6:6
gay [6] 5:25 12:6 13:2 19:24 22:6 22:8
Gazelle [11] 1:21 2:5 2:9 3:2 3:5 11:2 11:7 12:12 15:23 17:7 17:9
Gazelle's [6] 1:24 2:20 2:22 8:15 10:19 16:10
Gehrhardt [1] 1:21
general [1] 4:4
generally [2] 7:18 11:6
Georgia [2] 13:12 13:16
giving [1] 13:9
Glazier [1] 22:4
GLHS [1] 1:10
GLHSNC [1] 1:2
go-between [1] 6:12
goal [4] 7:8 7:10 7:12 12:4
goes [1] 9:17
gone [2] 17:13 17:14
Good [1] 1:10
Gottlieb [1] 22:4
governmental [2] 8:20 8:21
governs [1] 8:19
grant [1] 9:23
greatly [1] 5:4
grounds [2] 11:15 12:21
groups [1] 6:7
guess [2] 2:1 20:2
guidelines [4] 7:17 8:5 9:5 11:6

-H-

handle [4] 3:15 4:19 5:14 22:6
handled [2] 5:18 18:13
handling [6] 4:8 4:12 4:14 5:12 13:2 17:23
happy [1] 20:12
Hardwick [1] 13:13
heard [2] 6:25 18:1
hearing [1] 4:13
held [4] 8:7 8:8 13:15 18:7
higher [2] 21:6 21:15
Hippler [1] 1:8
History [1] 1:2
hm [13] 3:16 4:7 6:4 7:8 8:1 8:13 10:2 11:9 12:1 13:5 14:10 17:19 19:21
homosexuality [1] 7:18
homosexuals [1] 9:7
Honorable [1] 5:19
hoped [1] 20:19
huh [4] 9:21 20:11 20:17 21:12
hundred [2] 16:12 22:24

-I-

implemented [2] 7:23 7:24
important [1] 5:10
indicated [2] 3:3 8:10
individual [2] 4:24 7:25
infringe [1] 14:22
infringing [1] 14:24
initiated [1] 18:24
instead [2] 10:3 17:15
interested [2] 4:17 12:24
intermediate [1] 7:13
International [1] 14:6
Interview [2] 1:6 23:11
interviews [1] 22:16
introduced [2] 3:14 6:17
invalid [2] 13:16 20:8
involved [9] 1:15 1:23 1:24 3:10 4:9 6:1 6:12 19:4 22:9
involving [3] 5:16 5:19 9:6
issue [10] 7:7 12:14 13:17 14:1 14:7 14:16 15:9 15:12 15:16 15:21
issued [6] 2:14 12:12 13:6 14:4 17:11 20:10
issuing [1] 15:23
itself [2] 4:13 8:7

-J-

John [1] 12:16

GLBT Historical Society
http://www.glbthistory.org

Judge [1] 1:21
judge [1] 2:13
July [2] 16:4 16:13
June [1] 1:22
justify [2] 10:23 14:24

-K-

kicking [1] 12:6
kind [1] 7:13
known [1] 6:5

-L-

Lambda [6] 4:5 4:9 4:16 4:22 5:8 6:2
lapse [1] 5:13
Last [1] 20:11
last [3] 16:11 20:9 22:9
late [1] 1:20
Laughs [2] 6:19 15:8
Law [1] 8:18
law [7] 3:22 7:18 8:19 8:23 13:16 15:18 21:23
laws [1] 14:2
layman [1] 22:17
Legal [2] 4:5 6:2
legal [1] 4:24
legalese [1] 21:20
Leonard [6] 3:11 6:9 7:4 16:6 19:8 19:24
Less [1] 5:19
level [1] 1:19
life [1] 19:12
litigation [4] 14:8 19:18 20:6 20:15
Lloyd [1] 18:20
longer [1] 11:14
look [2] 15:5 17:1
Los [1] 21:24
lost [2] 1:19 12:20
lower [2] 13:7 21:16

-M-

major [1] 12:18
manner [1] 7:16
Market [1] 1:3
Matlovich [14] 3:14 3:17 4:15 4:23 4:25 6:25 7:2 9:3 9:9 11:21 16:6 17:20 19:4 22:20
matter [2] 4:15 19:15
matters [1] 22:8
may [3] 3:4 13:12 22:12
means [1] 21:8
meant [2] 13:4 13:11
meantime [1] 11:10
mechanisms [1] 15:14
meet [1] 3:10
mentioned [2] 6:11 17:17
met [3] 6:9 7:1 7:5
MH [92] 1:15 1:19 1:25 2:4 2:9 2:12 2:14 2:19 3:6 3:9 3:16 3:18 3:21 3:24 4:1 4:3 4:7 4:11 4:21 5:3 5:6 5:9 5:15 5:21 5:25 6:4 6:8 6:15 6:17 6:20 6:23 7:4 7:8 8:1 8:13 8:16 9:13 9:21 9:25 10:2 10:6 10:9 10:13 10:16 10:19 10:24 11:9 11:16 11:18 11:23 12:1 12:4 12:10 12:18 13:5 13:14 14:10 14:12 15:1 15:13 15:22 16:6 16:11 16:17 16:20 16:23 17:4 17:7 17:19 18:10 18:18 19:1 19:7 19:21 19:23 20:11 20:13 20:17 21:7 21:10 21:12 21:14 21:17 21:20 21:22 22:1 22:6 22:11 22:16 22:22 23:4 23:7
might [1] 15:4
Mike [1] 1:8
military [6] 1:19 4:18 5:16 5:23 8:2 22:9
military's [1] 7:11
minded [1] 22:13
minute [1] 15:19
Mm [11] 3:16 4:7 6:4 7:8 8:1 8:13 10:2 11:9 12:1 14:10 19:21
mm [2] 13:5 17:19
most [2] 19:3 21:18
mutual [1] 3:12

-N-

N/A [1] 1:7
name [4] 16:3 16:5 16:10 18:19
named [2] 3:12 4:10
nature [2] 5:17 9:24
naval [1] 4:9
Navy [8] 4:13 5:11 8:3 17:17 18:6 19:15 19:16 20:1
Navy's [1] 18:6
necessary [3] 15:7 15:16 15:20
need [1] 16:24
neither [1] 4:22
never [2] 7:23 20:15
New [3] 4:1 6:7 22:4
newspapers [1] 22:23
next [1] 9:17
NGTF [1] 6:12
Ninth [1] 20:9
nor [1] 4:22
November [1] 10:11
Now [10] 1:22 3:18 9:13 10:19 11:10 12:4 16:13 19:1 19:7 22:19
now [1] 21:22
number [5] 2:15 5:18 6:1 19:17 19:17

-O-

objection [1] 12:3
obviously [2] 9:19 12:18
occur [1] 3:7
oddly [1] 15:24
officer [1] 4:10
officers [1] 7:25
OHP [1] 1:10
One [7] 1:8 1:11 1:11 1:12 1:13 1:13 20:4
one [14] 1:16 2:4 4:18 5:12 5:13 6:6 7:14 8:22 11:25 15:14 16:24 18:14 20:25 23:9
onto [1] 17:15
open [2] 13:19 14:8
opinion [4] 13:7 13:23 13:25 14:4
opinions [1] 18:5
option [1] 9:19
Oral [1] 1:2
order [4] 3:4 16:8 17:11 18:2
ordered [1] 17:25
organization [2] 4:5 6:5
original [1] 8:15
own [2] 3:22 17:8

-P-

P [1] 16:6
pages [1] 16:12
panel [1] 2:17
partial [1] 16:14
participated [1] 18:23
pass [1] 14:16
passed [1] 3:13
past [1] 20:9
Patricia [2] 19:2 22:19
Patton [2] 3:13 7:2
pay [1] 4:25
Pentagon [1] 18:13
people [3] 11:14 12:6 19:20
period [2] 11:17 18:22
permitted [1] 7:19
person [2] 7:19 8:9
person's [1] 14:18
personal [2] 7:24 19:19
personnel [1] 5:16
picked [1] 5:8
Pickering [2] 18:16 18:20
pleased [1] 20:22
point [7] 1:16 3:25 4:18 18:19 19:1 19:13 21:5
pointless [1] 12:21
points [1] 22:14
policies [1] 21:4
Policy [1] 11:19
policy [14] 2:25 7:11 7:13 7:17 8:4 10:18 10:25 11:11 11:13 11:22 18:7 20:4 20:8 21:2
pooled [1] 19:6
Population [1] 14:6
position [1] 14:13
power [1] 14:16
practice [1] 3:22
precisely [1] 20:19
presented [2] 4:16 18:3
President [1] 18:21
prevent [1] 12:5
primary [1] 7:10
Principles [1] 8:18
principles [1] 8:22
privacy [1] 14:18
private [3] 3:22 14:17 14:20
pro [1] 3:18
problem [3] 18:14 20:3 21:4
procedure [3] 10:4 19:14 21:15
procedures [2] 22:10 22:10
proceed [1] 12:22
proceeded [1] 11:4
proceeding [1] 20:24
proceedings [4] 5:18 8:19 10:18 16:21
professor [1] 21:23
prohibiting [1] 14:2
prohibitions [1] 14:17
Projectof [1] 1:2
promoted [1] 2:16
proposals [1] 19:5
Proprietorship [1] 3:25
provide [1] 14:24
Provision [1] 11:12
publicity [1] 7:1
purposes [1] 17:22
pursue [2] 4:23 12:21
pursued [1] 12:25
pursuing [2] 7:8 12:5
put [1] 18:13

-Q-

questions [1] 22:12

-R-

raised [1] 12:9
rather [1] 5:23
rational [1] 20:25
reach [1] 21:18
reaching [2] 15:15 18:5
read [1] 15:4
realized [1] 16:23
really [11] 6:14 7:16 7:23 8:17 9:5 11:4 11:5 12:19 13:4 13:11 16:24
reason [5] 8:14 11:19 12:11 14:24 15:24
reasons [4] 8:24 10:4 13:9 13:21
received [3] 5:22 7:1 22:24
recently [1] 3:13

recited [1] 15:6
recognizing [1] 20:3
record [1] 16:18
referred [1] 12:14
regulation [1] 12:9
regulations [2] 14:21 14:21
reinstatement [2] 3:4 17:11
rejected [1] 11:8
remanded [3] 10:14 10:17 18:6
remember [2] 6:13 10:6
reproduction [1] 5:1
required [3] 2:24 4:25 14:23
resolve [3] 15:10 15:18 17:8
resolved [2] 14:14 17:7
resources [1] 4:20
response [1] 17:10
result [1] 18:5
retain [2] 9:7 9:9
retained [2] 7:20 8:12
retaining [1] 11:14
retroactively [1] 11:20
reversed [3] 2:22 8:14 9:10
reverses [1] 9:16
review [4] 8:8 8:25 9:23 18:8
reviewable [1] 8:21
reviewed [1] 21:1
reviews [1] 21:15
Right [23] 2:4 4:1 4:11 4:21 5:9 5:15 5:21 6:8 8:16 9:25 10:16 10:24 11:23 13:5 13:14 14:12 17:4 17:19 18:18 21:10 22:1 22:6 22:11
right [5] 2:6 14:18 14:19 14:23 14:25
rights [4] 5:25 13:2 22:6 22:8
rule [1] 11:24
ruled [1] 3:5
ruling [2] 1:21 1:24

-S-

San [1] 1:4
satisfied [1] 17:10
says [2] 16:2 16:6
see [7] 2:14 3:24 5:6 15:13 15:22 15:22 16:10
seeking [1] 5:19
sending [1] 9:19
sense [3] 20:1 20:20 22:17
sent [5] 2:22 2:23 3:1 9:14 10:7
separate [2] 17:6 18:5
serious [1] 20:3
Services [3] 14:6 20:24 21:2
services [1] 18:25
serving [1] 18:21
settle [6] 18:15 19:8 19:9 19:10 19:21 21:2
settled [1] 19:22
settlement [4] 17:16 18:24 22:21 23:9
several [1] 16:12
sexual [3] 14:3 14:17 14:20
shut [1] 13:19
Side [4] 1:11 1:12 1:13 23:11
sides [1] 17:3
similar [4] 4:8 5:11 8:3 14:21
similarly [1] 19:16
simply [2] 13:7 18:19
single [1] 18:3
sixty [1] 22:25
Sodomy [2] 12:14 13:13
sodomy [1] 13:16
Soldier [1] 1:10
solely [1] 4:23
someone [1] 8:11
sorry [1] 9:15
sort [2] 5:1 19:6
sound [1] 21:1
specifically [1] 13:25
spell [2] 8:23 21:10
spelled [1] 9:5
spoke [1] 6:11
sponsored [1] 5:7
sponsoring [1] 4:17
stage [1] 18:17
standards [2] 8:5 8:11
state [1] 14:2
States [5] 2:6 2:8 2:13 16:2 16:8
step [1] 9:17
still [4] 11:19 12:2 14:8 22:3
Street [1] 1:3
subject [1] 20:5
subsequent [2] 13:12 14:5
substantial [1] 13:19
success [1] 19:18
sufficiently [1] 18:7
summarily [1] 13:7
summer [1] 2:2
Supreme [8] 9:18 9:23 13:6 13:20 13:24 14:14 17:15 21:18
system [1] 2:5

-T-

taking [1] 19:19
Tape [4] 1:11 1:12 1:13 23:11
Tape/90 [1] 1:8
tech [1] 12:23
technicality [1] 12:24
technically [1] 10:14
Telephone [1] 1:5
telling [1] 16:23
term [1] 21:7
terminate [1] 8:9
terms [2] 22:20 23:9
thanks [2] 6:20 10:6
therefore [2] 9:8 14:14
thinking [1] 3:5
Thorkerson [1] 16:7
thought [5] 5:10 5:12 7:6 9:14 20:21
thousand [2] 5:5 22:25
threw [1] 12:13
through [8] 3:10 4:14 5:22 5:23 6:2 6:5 6:9 7:2
throw [1] 22:16
thrown [1] 7:11
together [4] 17:21 18:1 18:13 22:17
toll [1] 19:19
too [4] 7:3 14:15 14:22 22:20
took [1] 14:13
tried [1] 19:10
trouble [1] 11:12
try [4] 7:10 10:3 12:2 22:17
trying [2] 7:7 10:22
Twelve [2] 6:23 6:24
Two [1] 1:12
two [5] 5:15 6:17 10:20 18:12 21:3
two-year [1] 11:17
typical [1] 15:8

-U-

U.S [2] 9:15 9:16
Uh [3] 9:21 20:17 21:12
unconstitutional [1] 7:11
under [3] 2:24 5:5 11:13
understand [2] 2:4 9:14
United [5] 2:6 2:8 2:13 16:2 16:8
University [1] 21:23
unless [1] 15:16
unsatisfactory [1] 3:3
up [6] 5:8 10:22 11:19 19:12 22:12 22:18
upgrade [1] 22:10
upgrades [1] 5:19
used [1] 21:7
usually [1] 20:18

-V-

valid [1] 14:3
Valor [2] 6:11 6:15
various [2] 5:22 19:5
Vernon [2] 4:10 17:18
version [1] 6:21
versus [3] 12:16 14:6 16:6
victory [3] 7:13 19:24 20:6
view [3] 4:19 13:20 14:3
views [2] 19:6 19:7
vindicate [1] 7:7
violated [1] 14:18
Virginia [6] 12:14 13:3 13:9 13:17 13:24 14:4
VOICES [1] 1:2

-W-

week [3] 20:9 20:9 20:11
West [1] 21:23
whim [1] 7:24
whole [1] 19:14
willing [4] 4:22 5:14 20:4 21:5
Wilmer [1] 18:20
Wilmer-Cutler [1] 18:16
wish [1] 3:15
withdrawn [1] 18:22
within [1] 5:23
without [1] 13:9
words [1] 17:8
works [1] 2:5
written [1] 7:17

-Y-

year [2] 1:16 22:9
years [4] 2:15 6:23 6:24 10:21
yesterday [1] 1:25
yet [1] 14:1
York [3] 4:1 6:7 22:4