

**SECOND-CLASS ALL THE WAY:
Notes from a worn-down but still hopeful civil rights lawyer**

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So here I am again full of thoughts and what many might call angst. The federal district court in San Francisco is about to rule on whether the heinous Prop 8 (preventing gays and lesbians from marrying in California) violates the equal protection clause of the 14th amendment to the U.S. Constitution. Of course it does, and I'm certain the judge will agree. Then the bad guys, the ones who funded Prop 8 in the first place and bussed themselves into California, a state in which very few of them had any justifiable reason to visit, will appeal to the 9th Circuit that covers a bunch of states, including not just California, but Hawaii, Nevada, etc. etc. My bet is that it will uphold the ruling of the lower court. The real question is whether either or both of those courts will stay their decisions until the case has run the full appeal gauntlet. Whoever loses will appeal to the U.S. Supreme Court. I was originally more optimistic about what it would do but after visiting in her chambers with my old friend, Justice Ruth, I worry. Of course she didn't say what they'd do but she did say something like "it will be a long time, Brenda", after I'd told her how sick I was of always being some sort of second-class citizen (Jew in anti-semitic near north side of Chicago), woman at Harvard Law School in the '60s and now in a marriage that is painfully second-class. Joanne and I got married on July 4, 2008. The problem is that while only four justices are needed to accept a case, if the liberals feel we're going to lose, they, too, may vote not to grant cert. I.e. If Justice Kennedy is perceived to be against same-sex marriage, odds are that case won't be heard. Joanne and I are treated like straight married couples in California but not by the federal government. When one of us dies, the other won't get the social security that any widow or widower would get out of a straight marriage; we can't transfer more than \$14,000 per year of property to each other without incurring a gift tax, etc., etc. As I said last time, I'm just positively delighted that two very smart, big straight male lawyers are fighting hard on our side but they can only do so much. The groups that are supposedly so concerned about equality truly let us all down by going the route of encouraging the ballot box fight over the initiative. I don't want my (minority) rights to be determined by the (tyranny of) the majority of uninformed voters.

DOMA ("Defense of Marriage Act") is still alive and kicking though it's being challenged in federal court in Massachusetts. That's the law that says it's okay for a state not to recognize same-sex marriages performed outside that particular state and, even worse, that the U.S. Government will not recognize same-sex marriage. I have no clue whose marriages are being defended by that law. Despite its being a clear violation of both the equal protection and the full faith and credit clauses of the U.S. Constitution, it remains law, put into effect by Bill Clinton who thought he was making some sort of compromise with the devil. Of course, Obama has done nothing. In fact, he's said that he opposes same-sex marriage, though in some twisted mental hijink, he's also declared his opposition to Prop 8. The DOMA challenge will eventually hit the Supreme Court; again I have no idea if they'll take that case, leaving total uncertainty about the effect of the lower federal courts' decisions in that circuit.

And, finally, there's Don't Ask; Don't Tell. It seems to be something most of the folks in power are able to say they oppose but they sure aren't doing anything to speed its repeal. While over 13,000 gay and lesbian service members have been discharged under it since the policy went into effect in 1993, there are now mumblings that maybe it's time to get rid of it. First, Admiral Mike Mullen, chairman of the Joint Chiefs of Staff said he thought it should go. Then Defense Secretary Robert M. Gates said he was "carrying out Mr. Obama's policy of moving to repeal "don't ask, don't tell". But at the end of February the two top generals from the Army and the Air Force expressed "deep concern" about moving rapidly to lift the ban on openly gay service members, saying it could make it harder for their forces to do their jobs while fighting two wars.... Honestly, it's appalling.

Back in 1991, Meredith Baxter and I started to develop a movie about the purge of lesbian marines from the Parris Island Marine Corps base in South Carolina. We visited with the women who had been thrown out, including a lieutenant who'd graduated from Annapolis and whose dream it was to become a Marine general. The story of her love affair with a younger woman in the Marines was touching - and horrible, with the latter being court-marshaled and sent to jail. Anyway, I've got a great movie script about the horrors inflicted on gays and lesbians, yet no one in Hollywood, so far, has wanted to make the movie. To them maybe it's just plain obvious that this noxious policy has to go. To the masses, it might be informative - and entertaining. So if you folks want to contribute to our movie fund, we're happy to make you official investors. If you don't, just get out there and scream for repeal of DOMA, Don't Ask; Don't Tell and, of course, Prop 8.

I'll be back when we have a decision from the federal court - or before if I can't restrain myself.

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