



Elaine Noble, of the Massachusetts House of

## Women in Law meeting upsets Wisconsin bar

By Judy Strasser

Madison, Wis. "We knew that it was going to blow people's minds if a bunch of dykes went to federal court with a civil rights case. And it did."

Holly Maguigan was addressing a controversial workshop on lesbian law at the Eighth National Conference on Women and the Law, held in Madison March 24-27. "I'm very cynical about the likelihood of finding justice in the courts," the young Philadelphia lawyer said. "My analysis is that you go to court when you have some other reason than the search for justice to take you there, because unless you're a white Anglo Saxon male, you're not likely to find fair and unfettered minds to hear your case."

Many of the 2,000 participants at the Women and the Law conference apparently shared Maguigan's cynicism, at least to some degree. Other workshop panelists and major speakers emphasized the legal system's bias against women, and suggested a variety of tactics women can use to take control of decisions affecting them.

Radical lawyers like Maguigan emphasized using the law, including civil law suits, as an organizing tool for gay rights, better day-care or equal employment practices. Others, like leading divorce reform advocate Herma Hill Kay, called for passage of non-sexist legislation, including the Equal Rights Amendment.

Elaine Noble, assistant majority leader of the Massachusetts House of Representatives, urged women to run for "all elective offices." She said, "There's no other way we'll get any legislation passed for women." Noble indicated that male legislators would have defeated the Equal Rights Amendment in Massachusetts last November but for the women who led the floor fight.

U.S. Representative Elizabeth Holtzman (D-NY) warned that sex discrimination will continue until large numbers of women are appointed and elected to public office. She reminded her audience of the recent Supreme Court decision that refusal to grant disability insurance to pregnant women is not sex discrimination. A court of nine women would never have arrived at a decision so obviously opposed to biological reality, Holtzman said.

The all-male Board of Governors of the

Wisconsin Bar Association had provided the Women and the Law conference with perhaps its best example of sexism in the legal system when it refused to contribute financially to the conference itself. James Hough, executive secretary of the state bar, said that financial problems and a lack of precedent contributed to the board's decision not to grant the \$2,500 recommended by its own finance committee. Hough added, in an interview with Madison's *Capital Times*, "I don't think there's any question but that the lesbian law section caused some problems [with some board members] on whether or not the board would lend its [financial] support."

Twelve workshops (out of more than 125) comprised the lesbian law section to which the governors objected. These workshops dealt with such problems as employment discrimination based on sexual preference and trial strategy for custody cases against lesbian mothers.

Other conference workshops ranged from discussions of legal theory behind the Equal Rights Amendment to personal sharing of the pleasures and pains of combining a legal career with motherhood.

Ironically, the Wisconsin Bar approved a large number of conference workshops—including several in the lesbian law section—for credit in its Continuing Legal Education (CLE) program. Wisconsin attorneys must earn a specified number of CLE credits each year in order to remain members of the bar.

University of Wisconsin law student Emily Mueller, who chaired the conference budget committee, noted that other state bar associations have contributed handsomely to previous Women and the Law conferences. (None of those conferences included formal discussions of lesbian law, however.) "They told us, if they funded us, then they'd have to fund Native Americans or 55-year-old white male Norwegian lawyers" who wanted to hold a conference, Mueller said.

Mueller agreed that the lesbian law section was a crucial, if unofficial, reason for the governors' decision. "It seemed to be a really volatile thing for them," she said. "We mentioned the word 'lesbian' and everybody got red."

Judy Strasser is a writer living in Madison.

# GAYS

## A make-or-break year for gay civil rights

*The approach of gay reformers has been three-fold: use of judicial processes, repeal of repressive state laws, and legislative prohibitions against discrimination. . .*

By Neil Miller

Homosexual activists around the country see 1977 as a "make or break" year for the gay civil rights struggle. For the first time, anti-discrimination legislation appears on the brink of passage in three states. A recent meeting of 14 gay representatives with aides to President Carter at the White House last month—another historic first—is a sign of recognition.

At the same time, a major anti-gay backlash seems to be developing across the country.

The approach of gay reformers has been three-fold: use of the judicial process to try to better the legal position of homosexuals, the repeal of state laws banning certain sexual activity between consenting adults and legislative and municipal protection for homosexuals in the areas of employment, housing, and public accommodations. In addition, an anti-discrimination measure that would protect gay people's civil rights has been introduced in the House of Representatives this year with 39 cosponsors.

### ► Supreme Court decision a roadblock.

The U.S. Supreme Court's ruling in a Virginia case last March that individual states have the constitutional right to make laws that ban private consensual sexual activity has emerged as a major roadblock in attempts to change the legal status of homosexuals by use of the judicial process. This decision has influenced a number of other judicial decisions and has steered many activists away from the courts.

The impact of the court's decision can be seen in liberal Washington, D.C., Justice Gerhard Gesell's ruling in the case of ousted Air Force Sgt. Leonard Matlovich. Although Gesell made clear his sympathetic position towards Matlovich and towards the situation of gay people within the armed forces, he cited the Supreme Court decision as a primary reason he could not overturn the Air Force's policy of discharging homosexuals.

Despite the high court's decision, there have been some lower court rulings in favor of gay rights. Only last month, the Federal District Court of Northern California ruled that the Navy's policy of issuing automatic discharges to homosexuals was a violation of due process. Although the court did not rule that the Navy had no right to discharge gays, the decision asserted that they must be on a case-by-case basis.

Other judicial action has been mixed. Two months ago, the Washington State Supreme Court ruled that a teacher could legally be dismissed because of homosexuality (See accompanying story.) Activists are clearly nervous about appealing a case like the Washington one to the U.S. Supreme Court for fear that the conservative court will strengthen its previous decision.

### ► Shift to pressure on elected officials.

With progress through the judicial system in doubt, the gay establishment is increasingly putting its hopes on the support of elected officials. As the centerpiece of the strategy, activists emphasize the power of the gay vote and many Democratic party politicians have apparently been convinced by this argument: Every major Democratic presidential candidate—with the exceptions of Henry Jackson and George Wallace—sought the gay vote last year.

Even a man as conservative on sexual

matters as Jimmy Carter promised to sign the national gay rights bill. Last month's meeting between gay representatives and Carter aide Margaret (Midge) Costanza indicates that Carter may be held to this campaign promise.

The primary target of legal change continues to be the state legislatures. Eighteen states have repealed their sodomy laws, but in every case except one (California), this repeal has been done quietly through general law reform packages.

This tactic of a low profile for sodomy reform reached an amusing height last year when it was revealed that New Hampshire's gay-baiting governor, Meldrin Thomson, was unaware that by signing a rape reform package, he had eliminated the state's penalties against gay sexual acts. Thomson only learned what he had done when it was brought to his attention by the gay press; but the governor had not tried to reintroduce legal penalties for the "crime against nature."

By contrast, the Arkansas legislature—once it learned that it had been "duped" has moved to reimpose penalties for "deviant sexual activity." The state's House of Representatives voted 66-2 to restore the Arkansas sodomy prohibitions last month, and the Senate is expected to follow suit. A similar move in the Indiana legislature died in committee.

### ► Optimism in several states.

Activists are optimistic that three states—Massachusetts, Oregon and Minnesota—will pass anti-discrimination laws this year. (At present no states have laws protecting gay people from discrimination in housing, jobs, and public accommodations.)

Efforts in Massachusetts and Minnesota are helped by the presence of openly gay legislators—Rep. Elaine Noble in Massachusetts and Sen. Allen Spear in Minnesota. Noble has assiduously cultivated close relations with the Democratic leadership in the Massachusetts legislature and she is confident that a bill banning discrimination against homosexuals in private employment will be approved this year. But the vulnerability of Noble's strategy of good relations "at the top" was emphasized recently when her political ally, Sen. James Kelly, was named as an "unindicted co-conspirator" in a widely-reported corruption case.

Thirty-nine municipalities have passed gay rights protection laws—including San Francisco, Los Angeles, Washington, D.C., and Austin, Texas. Tucson, Ariz., became the most recent municipality to protect gay rights, a decision given some impetus when a local judge sentenced four high school students to probation in the murder of a gay activist.

### ► Backlash in Dade County.

The passage of an anti-discrimination ordinance in Florida's Dade County has set off a backlash that many fear will disrupt further progress. After the Miami Metro Commission passed anti-bias safeguards by a 5-3 vote on Jan. 18, religious fundamentalist groups—led by orange juice publicist and "born again" Christian Anita Bryant—began a petition drive to force a county-wide referendum on the ordinance. The coalition, called Save Our Children Inc., charges gays with attempting to "recruit" heterosexual youth. It garnered almost 60,000 signatures to force a June 7 recall vote.

Faced with a legal quandary in which it

(Continued on next page.)



## GAYS

# Firing of gay teacher arouses Tacoma

*No evidence was presented that Gaylord had committed a single illegal or immoral act. He had not used his classroom to proselytize for gay rights nor made advances to his students.*

By Doug Honig and Hal Nelson

Should teachers have the right to choose their own life style? The Washington State Supreme Court has said "no" in a ruling that Jim Gaylord, a gay teacher in Tacoma, is unfit to teach public school children. The court found that homosexuality is immoral and that public knowledge of it would render Gaylord ineffective.

The January decision ended more than four years of legal wrangling that began when Gaylord answered a knock at his front door one October night in 1972. He was confronted by his vice-principal with allegations from a former student that Gaylord was a homosexual. The student had once held a lengthy personal discussion with Gaylord, from which he had inferred that Gaylord was gay.

Gaylord admitted it. He had been a successful social studies teacher at Wilson High for the previous 12 years. His professional file bulged with favorable evaluations, the most recent citing his "high standards and thorough teaching." He had carefully kept his private life separate from school. What difference should his sexual orientation make to his ability to teach?

Gaylord found out soon enough. In November the Tacoma school board notified him that he was to be dismissed from Wilson. Determined to keep his job, Gaylord took his case to the board, to the Pierce County Superior Court, and ultimately to the Washington Supreme Court. Each time his firing was upheld.

Writing for the state supreme court majority, Judge Charles Horowitz drew on sources ranging from the Kinsey Report to the New Catholic Encyclopedia to show that homosexuality is "widely condemned as immoral and was so condemned during biblical times." While conceding that it is not a disease, he cited a psychiatrist's testimony that homosexuality has been "a frightening idea" in our society. Horowitz concluded that allowing a known homosexual on a teaching staff would cause "fear, confusion, suspicion, parental concern, and pressure."

## ►No evidence of any wrongdoing.

No evidence was presented that Gaylord had committed a single illegal or immoral act. He had not used his classroom to proselytize for gay rights nor had he made advances to his male students. His "crime" seems to have been his honesty in freely acknowledging his sexuality and his membership in the Dorian Society, a gay organization. As Al Brisbois, president of the Washington Federation of Teachers, explains, "The logic used by the court allows a teacher to be fired on the basis of mere speculation about past personal conduct and future teaching efficiency."

## Make-or-break

(Continued from previous page.)

must either allocate \$400,000 for the referendum or rescind gay civil rights protection altogether, the Miami Metro Commission is considering an outright repeal of the ordinance. The powerful *Miami Herald*—which had supported gay rights—urged the repeal of the ordinance in an editorial entitled "Gay Rights Is Not a \$400,000 Issue."

Washington law does hold that immorality is sufficient grounds for firing a teacher. But the law is vague as to what "immorality" means, giving free rein to the prejudices of public officials. As Judge James Dolliver commented in a dissenting opinion, "The opportunities for industrious school boards seem unlimited."

The Gaylord decision adds fuel to the recent backlash over gay rights. David Harrison, executive director of the Washington branch of the American Civil Liberties Union, calls it "Outrageous—the worst decision in the long struggle to win constitutional protection for gay citizens." Washington gay activists believe the decision is already having a chilling effect on thousands not yet "out of the closet."

The local gay community has not taken the decision quietly. Public meetings, including a symposium on "Gays and Work" have been held at the University of Washington. And a bill has been introduced in the state legislature to prohibit discrimination against gays in housing and employment. Sponsored by a bipartisan group of 11 legislators, it has drawn supporters ranging from Seattle's mayor to the Washington Association of Churches.

## ►Broad impact.

The potential impact of the Gaylord decision reaches far beyond the gay community. In his dissent, Judge Dolliver suggested that the same logic which finds a teacher "inefficient" could equally apply to blacks or women.

"It affects all of us in one way or another," points out Al Brisbois as he explains that a teacher's right to privacy is at stake. Any unorthodox teacher—say, a socialist living in a communal house—could provoke the "parental concern and pressure" the court cited to justify Gaylord's firing.

Though he likens his situation to *Alice in Wonderland's*, Gaylord intends to continue his fight. The support he's received from fellow teachers is encouraging. The Tacoma Federation of Teachers and its affiliates have footed the bills for his legal battles, and he's supporting himself through a part-time job with the Tacoma local.

Gaylord is filing a petition for a rehearing of his case with the Washington Supreme Court and is prepared to go to the federal courts if necessary. He is cautiously optimistic about the future, though he realizes that months more of waiting lie ahead. And he can still smile, managing to find some humor in the Catch 22 logic of the courts thus far. "Without my sense of humor," Gaylord observes, "I wouldn't have been able to survive."

Doug Honig writes for the *Northwest Passage*, the Puget Sound region's alternative newspaper. Hal Nelson writes for the *Seattle Gay News*.

The wealthy Miami gay community has offered to attempt to underwrite the \$400,000 to save the ordinance but it is doubtful that they can raise that amount of money.

Several incidents of violence have come in the wake of the Dade County anti-gay campaign, including the firebombing of the cars and homes of gay supporters. So



Jim Gaylord

## Being gay no more immoral than being left-handed

**ITT:** When you first discovered you were going to be fired, what made you decide you were going to fight?

**Gaylord:** I didn't think I could live with myself if I didn't. I knew it would be unpleasant to fight but it would be more unpleasant not to.

**How did your firing affect your relations with students, other teachers and personal friends?**

Anyone who had anything to say to me directly, and that included anonymous letters and phone calls, was supportive. My fellow teachers and my straight friends were my strongest support. Former students offered to do what they could.

**Did you feel your membership in the Dorian Society (a gay organization) would be a risk to your teaching career?**

I was under the impression that people could join organizations they wanted to join and that freedom of association actually existed. Apparently the courts don't think much of the Constitution when it's convenient for them to ignore it.

**What is your reaction to being called an immoral person by the state supreme court?**

Let me put it this way. The school board policy under which I was fired—"immorality"—is totally un-

defined. I don't conceive of homosexuality as being immoral any more than I think that left-handedness is immoral. It is just a natural variation in human behavior. I consider myself a moral person.

At my trial I testified that I felt comfortable with my sexual orientation and I had no desire to change it. Apparently that horrified the school board and my judges.

**How did being gay affect your teaching?**

I never considered it relevant. I was a teacher who happened to be gay and I didn't see any connection between the two.

**How has what you've been through affected you?**

I've been radicalized by the experience, though I still plan to operate "within the system." Until the Supreme Court decision, I tried to keep a low profile. Now I can do what I feel is most helpful. When I was asked to testify in Olympia on the gay rights bill this week, I did.

**Has your fight been worth the price you're paying?**

Yes! And I intend to go on with it. I want my job back. I spent a lot of time and money becoming a teacher. I did a good job teaching and should be allowed to do it again.

many threats have been received by some gay rights organizations that they have had to ask for—and receive—police protection.

A note of tragedy was introduced with the suicide of Ovidio Ramos of the Latin Committee for the Human Rights of Gays following an appearance on a Spanish language telephone call-in in which he received a very hostile response.

The growing power of the anti-gay backlash cannot be discounted. The New Hampshire legislature is presently considering a bill to make it illegal for

homosexuals to "consort" in public. The bill is expected to pass the State Senate and should it pass the House as well, Gov. Meldrin Thomson is certain to sign it. In Pennsylvania, a bill outlawing homosexuals to hold certain state jobs—teacher, state police officer, mental health worker and the like—successfully was reported out of committee and is expected to pass the State Senate by a lopsided vote. Gov. Milton Shapp's strong opposition killed a similar bill last year.

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