

John Henry Vaisey



A former Army captain himself, John Vaisey was one of the leading advocates for the rights of gay members of the military during the 1970s and 80s. He obtained his law degree from UCLA and was admitted to the bar in California in 1969. Vaisey lived in San Francisco in the 1970s and 1980s.

Vaisey was on the board of directors of the Pride Foundation in San Francisco, a gay rights organization in the 70s and 80s. He was involved in a project of the Pride Foundation called Coalition to Defend Gays in the Military. In May 1976, Vaisey spoke at a coalition-sponsored forum on the rights of LGBT individuals in the military.

Vaisey was involved in many high-profile legal cases involving LGBT military members. In 1975, he represented Commander Hess of the U.S. Naval Reserve who faced the prospect of dishonorable discharge due to public comments he made regarding his bisexuality. Vaisey argued that the Navy's actions violated the commander's First Amendment right and sought an injunction to prevent the Navy from holding a hearing on the issue. Ultimately, the Court ruled against Vaisey and allowed the Navy to proceed. Fortunately for Commander Hess, a three-person Navy fitness panel recommended Hess be honorably discharged. Thus, Hess became the first person in Navy history to be honorably discharged for being gay - foreshadowing the possibility of acceptance of LGBT people within the military.

In 1978, Vaisey represented Ignacio Martinez, a U.S. Naval officer who was unilaterally discharged after being labeled a "homosexual" by Navy officials – he was given no hearing on the issue. Martinez denied the allegations, and with the help of Vaisey he vowed to fight the accusations. Vaisey filed for an injunction barring the Navy from discharging him with less than an honorable discharge and demanded a full evidentiary hearing on the merits of the case. Ultimately, when Vaisey and Martinez prevailed in the matter, a U.S. District Court judge wrote:

"We conclude that such mandatory exclusion from military service of persons on the basis of homosexual propensity or conduct is irrational and capricious, and violates the due process rights secured to plaintiff by the Fifth Amendment.

...

"We hold that the Government must provide a procedure for evaluating the question of fitness to serve in light of all relevant

factors instead of treating the matter as subject to mandatory exclusion.

...

“Homosexuality may be a legitimate factor to be considered in deciding whether to discharge or deny reenlistment to this plaintiff, but it is only one factor, not the only determinant.”

However, this tremendous win was overshadowed shortly thereafter in 1980 in the case of *Beller v. Middendorf*. In this case, Vaisey represented James Lee Miller an openly gay Naval service member, and a Federal Appeals Court held that the Navy had a right to, “[dismiss homosexuals to] protect the fabric of military life . . . A substantial number of naval personnel have feelings regarding homosexuality . . . which would create tensions and hostilities.” Vaisey called the decision disappointing and said it highlighted the “hypocrisy of the military.” Not to be deterred, Vaisey appealed the decision and ultimately prevailing in 1983 in the 9th Circuit Court of Appeals in *Miller v. Lehman*, where the Court held that the Navy could not discharge Miller due to his sexuality alone.



UCLA Law Magazine noted the passing of John H. Vaisey (68) in 2015. An [obituary](#) on legacy.com explained that he died on May 16, 2015 in Oregon at the age of 88. He was survived by a sister and many nieces and nephews. (Photo: headstone at Oakwood Cemetery in Syracuse, New York)

References

“ACLU Fights Draft Registration.” *ACLU News*, New York, NY, Mar. 1980 - [Link](#)

“The U.S. Draft Proposal That No One Supported | CBC Archives.” *CBCnews*, CBC/Radio Canada, 8 Feb. 2020 - [Link](#)

Seager, Ilana. “First Gay Man to Be Honorably Discharged from the Navy Passes Away at 81.” *GLAAD*, 17 Oct. 2011 - [Link](#)

Martinez v. Brown, 449 F. Supp. 207 (N.D. Cal. 1978) - [Link](#)

“Homosexual policy approved.” *The Daily Breeze*, Torrance, CA, 26 Oct. 1980 – [Print](#)

Beller v. Middendorf, 632 F.2d 788 (9th Cir. 1980) - [Link](#)

Miller v. Lehman, 736 F.2d 1268 (1983) - [Link](#)

News Stories – [Link](#)