

Night Clubs and Billy Clubs

By Terry FitzPatrick

AMARILLO'S gay community lives underground. In this strongly conservative, deeply religious city, open homosexuality is tolerated in only a few small nightclubs. So when Amarillo police began a pattern of arrests in gay bars that patrons termed "harassment," the gays fought back. And they won, for the most part.

The police crackdown began in September and lasted about two months. Uniformed officers, on routine bar checks, would ask gay patrons to "step outside." There, arrests for public intoxication were made, without conducting a single sobriety test, such as the standard walking-the-line or touching-the-nose.

"In those particular months there were just massive arrests, enough to fill up however many police units happened to be there," said attorney Betty Wheeler, who helped organizers of the

Terry FitzPatrick is a freelance writer living in Amarillo.

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gay rights group Positive Image. "Police would just say 'step outside' and the person was just sitting there and not causing any problems."

Kevin Locke, Positive Image president, says comments by the officers revealed their intentions. "The officers said you better stop going there [the OP club] because we're going to keep doing this until we close the place down," Locke said.

"One person got out [of jail] at 10:30 one night and was back up at the bar and they [police] came back about 1 o'clock and arrested him again and told him that we remember you from last night, why don't you come with us?" Locke said.

So far, everyone who has fought the charges has won. Several cases were dropped by assistant city attorneys when the defendants showed up for trial with a lawyer. Prosecutors declined to accept several other cases. Two cases went to trial; the defendants won. One jury took only four minutes to reach a verdict of not guilty. Many other gay men simply paid their fine, to avoid the publicity.

"It's clearly unconstitutional" to charge anyone with homosexual conduct in Texas, said Wheeler. "There is a valid and permanent injunction issued by a federal judge in Dallas that applies to each and every state prosecutor in Texas saying you may not enforce this statute," she said. (Local District Attorney Danny Hill tried to appeal the Dallas decision, but was rejected by the Fifth Circuit Court of Appeals in New Orleans because Hill didn't have legal standing in the case.)

Wheeler says she informed the city attorneys of the potential problems with the pending case, but they pressed on. Wheeler brought a court reporter to the trial (none is normally present in misdemeanor municipal court) to record the arguments. The case was never tried

because too many potential jurors said they were biased against homosexuals and in favor of police. A jury couldn't be seated.

"We've been able to get a fair jury for gay people where the direct issue does not involve being gay," Wheeler said. "But in the one case involving homosexual conduct, I think it was pretty clear that it's very difficult in this city to find a jury who can be fair when the direct issue itself is homosexuality."

City Attorney Nunn quietly dropped the charge after the initial trial date, but promised he would charge others with homosexual conduct "if the facts warrant."

Things are quieter now, in part because Chief Neil has agreed to provide

Organization is what helped win the trials. Positive Image distributed a flyer in Amarillo's gay bars. It explained how to handle confrontations with police: get the officer's name and badge number, get the names of people who witnessed the arrest, and don't resist.

"Once we distributed those flyers, and after we went to court in the first couple of cases, the arrests screamed almost immediately to a halt," said Wheeler. "Clearly the practice has changed. Those particular officers aren't seen in the clubs very much. It's other officers who are coming in to do the bar check."

Gay leaders think the incidents this fall were isolated, and were not part of a department-wide effort by police to shut down the gay bars. The same officers' names appeared on the arrest reports night after night.

One of the arresting officers, while on the witness stand, denied any previous disciplinary actions against him by the department. Wheeler called Police Chief Jerry Neil to the stand to say that the officer had been "too rigid in his dealings with the public" in the past and had been disciplined. Wheeler told the jury that the officer's original denial was proof that he was simply trying to "justify a bad arrest."

POLICE Chief Neil and City Attorney Merrill Nunn have denied any pattern of bad arrests or harassment. But then came a trial for homosexual conduct.

sensitivity training to officers dealing with the gay community. Police will be more careful in making public intoxication arrests, Neil said, because it is very difficult to prove that an intoxicated person is a public danger, as law requires.

"We're going to have to give the individual more of an opportunity to present danger to himself or someone else, maybe wait until an individual gets into a vehicle," Neil said.

As well, things are quieter because the OP club closed in mid-December. It's unclear just why and how much the arrests hurt business. But as Wheeler said: "It was seriously affecting the patronage of the club because people were afraid that merely to go out for a drink might cause their arrest." □