

1 DAN WOODS (SBN: 78638)  
 2 PATRICK HUNNIUS (SBN: 174633)  
 3 WHITE & CASE LLP  
 4 633 W. Fifth Street, Suite 1900  
 5 Los Angeles, CA 90071-2007  
 Telephone: (213) 620-7700  
 Facsimile: (213) 452-2329  
 Email: dwoods@whitecase.com  
 Email: phunnius@whitecase.com

6 Attorneys for Plaintiff  
 7 Log Cabin Republicans

8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA

10  
 11 LOG CABIN REPUBLICANS, a non-  
 12 profit corporation,

13 Plaintiff,

14 v.

15 UNITED STATES OF AMERICA and  
 16 ROBERT M. GATES, SECRETARY  
 OF DEFENSE, in his official capacity,

17 Defendants.  
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Case No. CV 04-8425 VAP (Ex)

DECLARATION OF NATHANIEL  
 FRANK IN SUPPORT OF LOG  
 CABIN REPUBLICANS'  
 OPPOSITION TO DEFENDANTS'  
 MOTION FOR SUMMARY  
 JUDGMENT

Date: April 26, 2010

Time: 2:00 p.m.

Courtroom: 2

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DECLARATION OF NATHANIEL FRANK

I, Nathaniel Frank, declare that:

1. I am the author of *Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America* (St. Martin’s Press 2009). I am the Senior Research Fellow at the Palm Center at the University of California, Santa Barbara and teach history on the adjunct faculty at New York University’s Gallatin School. My publications on the “Don’t Ask, Don’t Tell” policy and other topics have appeared in the *New York Times*, *Washington Post*, *The New Republic*, *Slate*, *USA Today*, *Los Angeles Times*, *Huffington Post*, *Newsday*, *Philadelphia Inquirer*, *Lingua Franca* and other publications.

2. I have been retained by Plaintiff Log Cabin Republicans to testify as an expert witness in this case.

3. Attached as Exhibit A is a true and correct copy of the expert report that I prepared in this matter.

4. It is an accurate statement of my expert opinion in this matter and sets forth both my qualifications and the factual basis for my opinion.

5. I have reviewed the government’s memorandum of points and authorities in support of its motion for summary judgment. I was surprised to learn that the government had misrepresented my opinions and testimony in this matter.

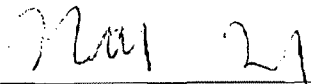
6. For example, the government’s assertion that I “acknowledged that privacy concerns such as those on which Congress relied were not irrational” is a distortion of my deposition testimony and is misleading. Def.’s Mot. Summ. J. 20.

7. The passage of my deposition testimony cited by the government in support of its assertion does not reference rationality or irrationality. The government entirely omitted from its memorandum my statement regarding rationality that “[s]ome people in the military have a desire not to serve with gay people because they believe it is an invasion of privacy.” Deposition of Nathaniel Frank at 46:25-47:4.

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8. Moreover, it is false to suggest, as the government's memorandum does, that I acknowledged that Congress acted rationally with respect to privacy concerns when it passed the statute 10 U.S.C. § 654.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on April 2, 2010 in New York, New York.

  
\_\_\_\_\_  
Nathaniel Frank

# Exhibit A

## **Expert Testimony Report**

*Log Cabin Republicans v. United States*

Nathaniel Frank, Ph.D.

January 18, 2010

### **I. HISTORY OF SERVICE BY GAYS**

The historical record shows that the ban on gay, lesbian, and bisexual service members in the U.S. military dates to the World War II era, and has only existed on a service-wide basis since 1981. Based on this history, it is my opinion that the ban should not be viewed as “longstanding.” This conclusion is based on the following historical evidence:

- Before the 20<sup>th</sup> century, homosexual conduct was viewed as something all people were prone to engage in during moments of moral weakness; there was no concept of people as having an enduring or innate homosexual identity, as in a characteristic behavior of one type of person called a homosexual.
- During this period, military regulations did not speak of homosexual persons and did not explicitly address the act of sodomy, but relied on vague euphemisms such as “unnatural carnal copulation” to refer to people with homosexual proclivities as well as others viewed as non-conformists.
- During the World War I period, homosexuality was normally screened out of the military only when it manifested itself in overt conduct or glaring nonconformity.
- Only in 1917 was sodomy—though still not homosexual identity—explicitly banned in the military by the “Articles of War.”
- By the end of World War II, gays and lesbians were deemed “unsuitable for military service” and were officially banned from all branches. The military used examinations of limited pools of mentally troubled subjects to draw sweeping conclusions about the mental state of homosexuals. Based on these highly unrepresentative samples, it sought to justify the exclusion of gay people from military service.
- Because it was difficult to pin down what it meant to have a proclivity to engage in homosexual conduct, authorities came to rely heavily on stereotypes, especially on the association of effeminacy with homosexuality.
- On January 16, 1981, President Carter’s deputy secretary of defense implemented a service-wide ban on gays and lesbians in uniform, removing any discretion previously enjoyed by different branches or individual commanders. The new policy modified the language that had called gay people unsuitable for military service, opting instead for language stating that “homosexuality is incompatible with military service.”
- In the six months following the 1991 Gulf War, over a thousand gays were fired, including many whose sexuality had been fully known to their superiors.
- The “don’t ask, don’t tell” policy was implemented in 1994 after extensive debate in Congress led to a statute that, while different in detail, essentially codified that policy into law. Both the law and the Pentagon policy call for separation of those military members whose homosexual or bisexual identity becomes known. Under the policy, over 13,000 service members have been discharged.

## II. MORAL ANIMUS AS BASIS OF POLICY (PART 1 OF 2)

It is my opinion that the “don’t ask, don’t tell” policy was based on moral animus toward gay and lesbian people, and not on empirical evidence or reasonable concerns about the impact that openly gay service would have on unit cohesion and overall military effectiveness. This conclusion is based on a thorough examination of the rhetoric comprising the national debate over whether to lift the gay ban in 1992 and 1993, much of which infused and influenced the dialogue among lawmakers and military leaders who were responsible for the final law and policy. The historical record also shows a well-organized and effective campaign by religious conservatives to stigmatize gays and lesbians and cast them as a threat to the military’s effectiveness and core values, an effort supported by the letters, phone calls, and dollars of tens of thousands of Americans who saw the prospect of lifting the gay ban as a battle call. Examples of the sentiment expressed are as follows:

- The Military Working Group was the Pentagon-appointed task force charged with providing options to reform the policy that would be consistent with President Clinton’s pledge to lift the ban. Its June 1993 report, which served as the basis for the ultimate policy, stated that “lifting the ban would leave the military’s image ‘tarnished’” and that “the homosexual lifestyle has been clearly documented as being unhealthy. Due to their sexual practices, active male homosexuals in the military could be expected to bring an increased incidence of sexually transmitted diseases, including AIDS, which could create the perception of an ‘enemy within.’” It said that “the core values of the military profession would be seen by many to have changed fundamentally if homosexuals were allowed to serve,” and that “this would undermine institutional loyalty and the moral basis for service, sacrifice, and commitment” for the bulk of straight soldiers. This statement suggests it was the opinion of the military that the “core values” of the armed forces are, and properly should be, anti-gay.
- Lieutenant Colonel Robert Lee Maginnis was an advisor to the Military Working Group, and subsequently became a vice president at the Family Research Council. Maginnis wrote a 1993 paper entitled, “The Homosexual Subculture,” which indicted the mental health of gays and lesbians. “Homosexuals are a very unstable group,” he wrote, whose lifestyle “breeds enormous amounts of guilt” over their promiscuity, dishonesty, and failed relationships. “They are restless in their contacts, lonely, jealous, and neurotic depressive.” He concluded that, “as a category of people, homosexuals have a greater indiscipline problem than heterosexuals.”
- Retired Marine Brigadier General William Weise released a report in 1993 saying that “the real goal of gays and lesbians in the military fight was to change society’s behavior, indoctrinate children, stop HIV screening, repeal age-of-consent laws, secure federal funding for explicitly sexual art, and protect abortion rights.” Weise was allowed to testify before Congress about the gay ban, where he said that letting gays serve would turn the military into a “wishy-washy force” that would “needlessly cost thousands of American lives,” because militant

- activists were demanding “special rights.” He said that his report found there was “much higher criminal activity among the homosexual than the heterosexual population in the military,” even though his evidence consisted exclusively of homosexual court-martial records and a made-up figure for how large the gay population was in the military.
- Commander Eugene Gomulka argued in a 1992 position paper distributed by the senior leadership of the Marine Corps that the government had a “legitimate role to play in checking the spread of homosexual behavior,” especially among “innocent” young soldiers, whose minds are still in their “formative stages,” and thus especially vulnerable to the sexual predations of gays and lesbians.
  - The Chaplaincy of Full Gospel Churches wrote a letter to President Clinton in January 1993, which said letting gays in the military “would do more than just undermine discipline and morale, although they would do that as well. Homosexuals are notoriously promiscuous.” They are “perverted,” “aggressive recruiters,” and “going for the young—pedophiles.” Should “innocent soldiers” be forced to serve “with someone lusting after them?” Should they be required to aid injured comrades “whose body fluids may be spilling out, without the benefit of latex gloves?”
  - In his book, *Military Necessity and Homosexuality*, retired Colonel Ronald Ray contended that gays were addicted to sex, that they engaged in practices that “are inherently degrading or humiliating and are rarely practiced by heterosexuals,” that pedophilia was “close to the heart of homosexuality,” and that gays acted compulsively to obtain sex, especially once they come out of the closet. “The gay community,” he wrote, was “seized by a deadly fatalism that sees life as absurd and short.” They do not care about the future or about others, only about the pleasures of the moment. “They have no direct links with the next generation, no reason to invest in the future, no reason to defer gratification. Their lives consist of little more than having an exciting time while life lasts and seeking ‘self-fulfillment,’ a modern euphemism for selfish gratification and ambition.”
  - Representative Robert Dornan of California said in Congress, “You gentleman all know that the best of your troops can never respect and thereby follow orders totally from someone who likes taking it up the bum, no matter how secret he keeps it. Once it leaks out, they think this person is abnormal, perverted, and deviant from the norm.”
  - Colonel John Ripley, a retired marine, called gay people “walking depositories of disease.” Under the “queers, cowards, and thieves” rule, which according to Ripley was a mainstay of the Marine Corps, anyone falling into any of these categories would be alienated from the group and possibly thrown overboard.
  - Brigadier General James Hutchens, the associate director of the National Association of Evangelicals’ Commission on Chaplains, testified before the House of Representatives that homosexuality was a dangerous “moral virus” that must be stopped. He left Congress with a list summarizing the Bible’s views on homosexuality: 1. The wrath of God is being revealed against it. 2. It is based on a refusal to honor God. 3. It is based on ingratitude toward God. 4. It is based on a willful choice. 5. God has lifted his restraining hand. 6. What starts as a choice becomes all-consuming. 7. Those who practice it know full well God’s decree,

- yet continue to aggressively promote this behavior. 8. Condoning homosexuality is wrong, and is a further step away from God.
- General Peter Pace, then chairman of the Joint Chiefs of Staff, said in March 2007, “I believe homosexual acts between two individuals are immoral and that we should not condone immoral acts.” Six months later, he was forced to step down.

### III. MORAL ANIMUS AS BASIS OF POLICY (PART 2 OF 2)

My opinion that the policy was rooted in animus is also based on conversations (my own and others’) with military officials and experts who have indicated that their own participation in helping craft the policy took moral and personal concerns into consideration rather than incorporating empirical research. Examples include the following:

- Religious military officials say they were told by political allies not to discuss the moral basis of their position because the “unit cohesion” argument would be more effective. They decided to focus on secular research for what one referred to as “political reasons” which they viewed as being more compelling in political debate than anchoring their argument in morality or religion. General Colin Powell, then chairman of the Joint Chiefs of Staff, was reported to have been very concerned by the “moral argument” about gay service, and General Carl Mundy, then a member of the Joint Chiefs of Staff, praised and circulated an inflammatory anti-gay video and essay produced by leaders of the religious right that perpetuated the most egregious stereotypes about gays taken from footage of gay pride parades.
- Admiral John Hutson, former Judge Advocate General of the Navy and a supporter of the gay ban in the internal Navy debates over gay service in 1993, has said that senior military officers exaggerated the risks to unit cohesion while minimizing the true religious and cultural basis of their opposition to gay service. He says Navy leaders “declined” to discuss the issue in terms of morality even though moral animus against homosexuality was the real reason they resisted the change. Hutson, who now opposes “don’t ask, don’t tell,” called the policy a “moral passing of the buck” because senior military and political leaders tried to blame the supposed intolerance of young recruits for the ban. None of the Navy officials responsible for helping formulate the policy “had much of a sense of what was going on,” he says, and “decisions were based on nothing. It wasn’t empirical. It wasn’t studied, it was completely visceral, intuitive.” The policy was created entirely “by the seat of our pants.”
- General Robert Alexander, the first head of the Military Working Group, acknowledged that its members did not understand what “sexual orientation” meant, and “had to define in the first few sessions what we figured they were talking about.” When Alexander warmed to the idea of letting gays serve, he was removed from his position. Alexander admits that the Military Working Group “thought they knew the results of what was going to happen” before they met, and that it was “going to be very difficult to get an objective, rational review” of the



- policy. “Passion leads and rationale follows,” he says, adding that his group “didn’t have any empirical data” about gay service and the Military Working Group position was based on fear, politics and prejudice.
- Vince Patton, the highest-ranking enlisted person in the Coast Guard in 1993, and then a member of the Military Working Group staff, has said that the group “had already made a decision about what they were going to do” before the meetings. He says the group’s leaders did not weigh research and instead met “behind closed doors” and made decisions based on “anti-gay stereotypes and resistance to any outside forces that challenged military tradition.”

#### IV. RELIANCE ON PERSONAL VIEWS OF INFLUENTIAL LEADERS

It is my opinion that three influential leaders in the military, political, and academic realm who opposed homosexuals in the military relied on their credentials to argue against lifting the ban for what were actually personal, not military reasons. These three men were uniquely influential in shaping the outcome of the policy, all enjoying the ear of the president and the political and military establishment.

- General Colin Powell, chairman of the Joint Chiefs of Staff, said repeatedly that the service of open gays would harm “order and discipline,” and would be “difficult to accommodate,” although he never provided any evidence to support his claims. While some observers compared the gay ban to racial segregation in the military, Powell forcefully rejected the analogy, leaning on his stature as a top African-American general to bolster his moral authority. Rear Admiral John Hutson, the JAG official who was part of the talks over whether to lift the gay ban, recalled that “Powell put a hole in the analogy to racial integration, not particularly logically, but just by force of his personality and who he was.” Hutson said it allowed the rest of the military leadership to “hide” behind Powell. It allowed other champions of the gay ban to say, “this isn’t the same as racial integration. This is different, and General Powell says so.”
- Senator Sam Nunn, who oversaw Congressional hearings on gay troops as chairman of the Senate Armed Services Committee, has a record of anti-gay actions and sentiment. He backed Senator John Glenn’s bid for the White House in 1984 citing his “courage” in expressing his “strongly held moral belief that homosexuals should not be the role models for our children.” Nunn also dismissed two political aides because they were gay. In a television appearance in 1993, Nunn said it was important not to “put individual rights above the mission,” thus framing months of hearings as if gay service was an inherent trade-off with military effectiveness, despite a total absence of evidence to that effect. He said the government should not “endorse the sex behavior of people that are lesbian and gay” even though the current separate standard for straight soldiers does precisely that, while a policy of equal treatment would be the opposite of endorsing one kind of behavior over another. Asked if he believed that heterosexuality was “morally superior to the homosexual lifestyle,” Nunn answered that he was “not only saying that,” but that “the American family deterioration is one of the biggest problems we face in our culture, and

government programs cannot solve that,” implying homosexuality was somehow responsible for this decline. At field hearings, Nunn directed hostile questioning to a gay naval officer, saying, “you decided that you had to come out in the open. Could you tell us why you felt that you had to come out in the open. And did you take into account by doing so, whether they are right or wrong, you were really making an awful lot of other people feel very uncomfortable in their surroundings?”

- Professor Charles Moskos, known as the academic architect of the policy, acknowledged that he defended his policy in part because he worried he would disappoint his friends if he “turncoated.” Moskos also admitted that “unit cohesion” was not the real reason he opposed openly gay service, saying “fuck unit cohesion; I don’t care about that.” Despite rooting his public opposition to openly gay service in unit cohesion, he said the real reason is the “moral right” of straights not to serve with known gays. Moskos told lawmakers that the principal reason for the gay ban is to repress the homoerotic desire that is an inherent part of military culture. Recalling the hearings, a colleague of Moskos’ claimed they were “all rigged. Moskos and Nunn had already found an agreement” and the hearings proceeded in an effort to bolster the pre-determined conclusion that a ban ought to remain in place.

#### IV. RACIAL ANALOGIES

The arguments and fears of those who have opposed openly gay service over the past twenty years has precisely echoed the arguments and fears of those who opposed racial integration in the military following World War II. While the experience of being an African-American soldier is distinct from that of being a gay or lesbian soldier, the similarity of sentiment shared by those who have opposed each suggests that resistance is rooted in prejudice and fear of the unfamiliar, rather than in relevant evidence of how either group would impact military effectiveness. In the 1940s, it was frequently said that whites would not respect or obey commands by an African-American; that integration would prompt violence against a despised minority that the military would be helpless to stop; that integration would lower public acceptance of the military and the federal government; that the military should not be used for “social experimentation”; that military integration was being used to further a larger minority rights agenda, which would ultimately break the armed forces; that the military is unique, and is not a democracy; and that God’s plan was to keep whites above blacks, and thus integration would thwart God’s will. As illustrated below, each of these arguments was also used to oppose letting gays serve openly.

- In 1993, a general testified that gays might sexually assault straights, who would be “physically coerced to engage in [homosexual] acts.” In 1948, Senator Richard Russell said racial integration would “increase the rate of crime committed by servicemen,” since “Negro troops” committed rape thirteen times more often than whites.
- In 1993, opponents of gay service complained that lifting the ban could spread AIDS and other STD’s. Likewise, Russell cast African-Americans as disease-

- riddled outsiders who threatened innocent young white boys with sexually transmitted diseases. Syphilis, gonorrhea, chancre and tuberculosis, he said, are “appallingly higher among the members of the Negro race than among the members of the white race.”
- In 1992, a four-star general insisted “good people will leave the military in droves” if gays were allowed to serve. In 1942, a captain testified that “the minute the negro is introduced in to general service... the high type of man that we have been getting for the last twenty years will go elsewhere and we will get the type of man who will lie in bed with a negro.”
  - A colonel claimed in 1993 that “it has been proven in the scientific literature that homosexuals are not able-bodied.” In 1942 a Naval officer insisted that “the white man is more adaptable and more efficient in the various conditions which are involved in the making of an effective man-of-war.”
  - Sen. Sam Nunn said in 1993 that, “when the interests of some individuals bear upon the cohesion and effectiveness of an institution upon which our national security depends, we must, in my view, move very cautiously. This caution is not prejudice; it is prudence.” Decades earlier, a Korean War commander said that racial integration would weaken the armed forces and that “there is no question in my mind of the inherent difference in races. This is not racism—it is common sense and understanding.”

## V. ABSENCE OF SOCIAL SCIENTIFIC EVIDENCE

It is my opinion that the ban on openly gay service is unnecessary, as no research has ever shown that open homosexuality impairs military readiness. This latter fact has been acknowledged by the Government Accountability Office and the Pentagon, when a spokesperson for the latter said that its policy is “inherently subjective in nature” and is the result of “professional Military judgment, not scientific or sociological analysis.” Research on openly gay service is extensive, and includes over half a century of evidence gathered by independent researchers and the U.S. military itself, as well as study of the experience of foreign militaries. Many research studies that showed or suggested that openly gay service could work without problems were initially suppressed or blocked from release by military officials who opposed these conclusions. Below are the major research studies on service by gays and lesbians. Based on this research, it is my judgment that there is no link between openly gay service and impairment of military effectiveness; that assertions to the contrary are not rooted in empirical evidence; and that there is no rational basis for continued discrimination against open gays and lesbians in the military.

- In 1957, the secretary of the navy appointed a panel to investigate its homosexual exclusion policy. The outcome, known as the Crittenden report, stated that “the number of cases of blackmail as a result of past investigations of homosexuals is negligible” and “no factual data exist to support the contention that homosexuals are a greater risk than heterosexuals.”
- In 1988, the military’s Personnel Security Research and Education Center commissioned two studies that found no evidence showing that gays were

- unsuitable for military service and suggested that the gay ban was unnecessary and damaging. The first report pointed to growing tolerance of homosexuality and concluded that “the military cannot indefinitely isolate itself from the changes occurring in the wider society, or which it is an integral part.” It found that “having a same-gender or an opposite gender orientation is unrelated to job performance in the same way as being left- or right-handed.” The second report found that “the preponderance of the evidence presented indicates that homosexuals show pre-service suitability-related adjustment that is as good [as] or better than the average heterosexual,” a result that appeared to “conflict with conceptions of homosexuals as unstable, maladjusted persons.”
- In 1992, the Government Accountability Office conducted its own study of the gay exclusion policy. Its researchers looked at seventeen different countries and eight police and fire departments in four U.S. cities and reviewed military and nonmilitary polls, studies, legal decisions, and scholarly research on homosexual service. The GAO recommended in an early draft that Congress “may wish to direct the Secretary of Defense to reconsider the basis” for gay exclusion.
  - In 1993, the GAO reported its findings from its study of twenty-five foreign militaries, with special focus on Israel, Canada, Germany, and Sweden. According to its final report, “military officials in all four countries said that the presence of homosexuals in the military is not an issue and has not created problems in the functioning of military units.” A key factor, said the report, was that homosexuals are reluctant to openly admit their sexual orientation, even once the ban is lifted.
  - In July 1993, Rand researchers at the National Defense Research Institute, a think tank founded by the Air Force, completed a study commissioned by then Defense Secretary Les Aspin. Prepared by over 70 social scientists based on evidence from six countries and data analyses from hundreds of studies of cohesion, concluded that sexual orientation alone was “not germane” in determining who should serve. Rand found that “none of the militaries studied for this report believe their effectiveness as an organization has been impaired or reduced as a result of the inclusion of homosexuals.” In Canada, where the ban had just ended, Rand found “no resignations (despite previous threats to quit), no problems with recruitment, and no diminution of cohesion, morale, or organizational effectiveness.” The same conclusions were reached about Israel. The study reported that even in those countries where gays were allowed to serve, “in none of these societies is homosexuality widely accepted by a majority of the population.”
  - Part of the Rand study examined police and fire departments in several U.S. cities, which it regarded as “the closest possible domestic analog” to the military setting. Rand found that the integration of open gays and lesbians—the status of most departments in the United States—actually enhanced cohesion and improved the police department’s community standing and organizational effectiveness. A Palm Center study of the San Diego Police Department in 2001 echoed the finding, adding that nondiscrimination policies in police and fire departments did not impair effectiveness even though many departments were characterized as highly homophobic.

- The U.S. Army Research Institute for the Behavioral and Social Sciences studied the situation and concluded in a report released in 1994 that anticipated damage to readiness never materialized after the ban was lifted: “Negative consequences predicted in the areas of recruitment, employment, attrition, retention, and cohesion and morale have not occurred since the policy was changed.”
- A 2000 report from the UK Ministry of Defence said the lifting of the ban was “hailed as a solid achievement” that was “introduced smoothly with fewer problems than might have been expected.” The changes had “no discernible impact” on recruitment. There was “widespread acceptance of the new policy,” and military members generally “demonstrated a mature and pragmatic approach” to the change. There were no reported problems with homosexuals harassing heterosexuals, and there were “no reported difficulties of note concerning homophobic behavior amongst Service Personnel.” The report concluded that “there has been a marked lack of reaction” to the change.
- In 2000, after Britain lifted its ban, the Palm Center at the University of California, Santa Barbara, conducted exhaustive studies to assess the effects of openly gay service in Britain, Israel, Canada, and Australia. Researchers there reviewed over six hundred documents and contacted every identifiable professional with expertise on the policy change, including military officers, government leaders, academic researchers, journalists who covered the issue, veterans, and nongovernmental observers. Palm found that not one person had observed any impact or any effect at all that “undermined military performance, readiness, or cohesion, led to increased difficulties in recruiting or retention, or increased the rate of HIV infection among the troops.” Palm researchers found that, “in each case, although many heterosexual soldiers continued to object to homosexuality, the military’s emphasis on conduct and equal standards was sufficient for encouraging service members to work together as a team” without undermining cohesion.
- In July 2008, a bipartisan panel of retired flag officers released a report that represented what John Shalikashvili called “one of the most comprehensive evaluations of the issue of gays in the military since the Rand study” in 1993. The panel found that lifting the ban is “unlikely to pose any significant risk to morale, good order, discipline, or cohesion.”
- In October 2009, *Joint Force Quarterly*, the military journal published for the chairman of the Joint Chiefs of Staff, released a study entitled, “The Efficacy of ‘Don’t Ask, Don’t Tell’” written by Colonel Om Prakash, an active duty officer in the Air Force. The report found “there is no scientific evidence to support the claim that unit cohesion will be negatively affected if homosexuals serve openly.” Based on this research, it concludes that “it is not time for the administration to reexamine the issue; rather it is time for the administration to examine how to implement the repeal of the ban.” The study was selected as the first-place winner of the Secretary of Defense National Security Essay competition.

## VI. LESSONS LEARNED

The evidence from foreign militaries along with social scientific research of analogous domestic institutions in the U.S. suggest several lessons for how to transition to an effective policy of equal treatment without discriminating on the basis of sexual orientation. The lessons learned from this research are the foundation of my opinion that the ban on openly gay service in the U.S. is unnecessary, and that the U.S. is capable of doing successfully what twenty-five other nations have done in lifting their bans. The lessons are as follows:

- Twenty-five nations now allow gays and lesbians to serve in their armed forces; none has seen any impairment to cohesion, recruitment, or fighting ability.
- In closely allied nations such as Britain and Israel, gays actually do serve openly in the highest positions. Even in those situations where gays received unequal treatment in practice, the differences were rare and inconsequential. There was no evidence that these infrequent and minor cases of differential treatment undermined performance, cohesion, or morale.
- The nations that allow open gays to serve have a wide range of different cultures and deployment obligations. Thus some countries are more socially liberal than the United States, but some, like Israel, are not.
- Social tolerance is not required for such a change to work effectively. Many of the nations that ended their gay bans since the early 1990s faced enormous resistance beforehand, reflecting widespread homophobia, but none of the doomsday scenarios that were predicted came true after the bans were lifted. The military's hierarchical, bureaucratic organizational structure makes it the ideal institution to implement this controversial policy, despite pockets of continued intolerance around homosexuality.
- The attitudes people express about homosexuality frequently do not predict how they will actually behave. This discrepancy is consistent with social science data that show a poor correlation between stated intentions and actual behavior in paramilitary organizations. Polls on attitudes toward gays in the military show that most respondents believe their peers are less tolerant of gay service than they, themselves, are. An article in *Armed Forces and Society* concludes from this data that there is a "cultural-organizational pressure within the armed forces to appear as though one is either uncomfortable or intolerant of homosexuality" and indeed to "pretend to be uncomfortable" with gays, which belies greater actual comfort than what is stated.
- Despite fears that gays could turn fighting forces into gay pride floats, the majority of gays serving in foreign militaries and American police and fire departments conform to expected norms of their organization. This means either they do not come out, or they come out to selected peers or supervisors but succeed at fitting in with their units in dress, appearance, and comportment.
- Clear, consistent rules governing behavior is what makes gay inclusion work. Palm researchers concluded that if people are seen as working hard and contributing to the team effort, "individual differences in opinion or in their personal lives are not considered relevant." During racial integration of the U.S. military, researchers found that the sensitivity training and educational programs

- designed to achieve the goal of reducing discriminatory behavior against blacks caused resentment and even hostility and so failed to solve the problems. Instead, better results were achieved when outward behavior, rather than attitudes, was the focus. These changes amounted to an endorsement of fair and equal treatment as a principle embraced by the larger group.
- Perhaps the single most important lesson is the centrality of leadership. Michael Codner, the assistant director for military sciences at the Royal United Services Institute in the U.K., noted that one reason for the British military's success was that those at the very top lined up behind the policy change. Research shows that controversial new rules are most effective when top leaders make their genuine support absolutely clear so that the next level of leaders, those who actually must implement the new rules, come to identify their enforcement of the new policy with their own self-interest as leaders of the institution.

## VII. COSTS OF THE CURRENT POLICY/BASIS OF FAILURE

It is my opinion that “don’t ask, don’t tell” has failed to achieve its objective of allowing discreet service by gays and lesbians, retaining critical talent, ensuring respect and dignity to gay and lesbian troops, and preserving the privacy and unit cohesion of the U.S. military. To the contrary, the policy has had the opposite effect: it has resulted in skyrocketing discharges, causing wasteful losses in critical talent; it has struck at the heart of unit cohesion by breaking apart integrated fighting teams, and undermining trust and honesty between soldiers; it has hamstrung tens of thousands of gay and lesbian soldiers from doing their best, and deterred countless others from joining in the first place; it has cost hundreds of millions of taxpayer dollars; and it has embarrassed the military, widening the “civil-military gap” and hampering recruitment efforts by alienating Americans who view the military as out of touch. “Don’t ask, don’t tell” has also invaded the privacy of all service members—gay and straight—by casting a cloud of suspicion and uncertainty over the intimate lives of everyone in the armed forces. Under the policy, the military investigated, threatened and even discharged straight service members, turned some into informants against their friends and co-workers and turned them into objects of deception by gay peers forced to lie or keep their distance to survive. The military under the policy also saw reports of anti-gay harassment mushroom, targeting not only gays but straights—often women who did not conform to male expectations of proper gender behavior, or who rebuffed or complained about unwanted male attention. The resulting atmosphere could be one of veritable witch hunts, accompanied by fear and uncertainty that impairs, by definition, morale and readiness.

In addition to the fact that the current policy has failed to achieve the objectives originally championed by its advocates, my opinion that “don’t ask, don’t tell” has failed is based in part on the litany of costs, sometimes not well-known to the public, that have been incurred due to the policy. Below is a summary of some of the costs to the military of “don’t ask, don’t tell.” The impact on gay and lesbian personnel specifically is chronicled afterwards.

### Financial Costs

- In February 2005, the Government Accountability Office (GAO) released a report that found that during its first ten years, the “don’t ask, don’t tell” policy cost the military \$190.5 million: \$95.4 million to recruit replacements for service members separated under the policy and \$95.1 million to train them. However, the GAO acknowledged that it had difficulties in coming up with its estimate. In its estimate the GAO did not offset any of these costs with the value recovered by the military through the time troops served prior to their discharge. This likely resulted in a higher cost estimate than the actual number. GAO also appeared to underestimate costs by not including, for instance, the amount spent to train replacement officers, and by using inconsistent figures for the training costs they did include.
- In response to the GAO report, the Palm Center at the University of California at Santa Barbara organized a Blue Ribbon Commission to study the GAO’s report. The Commission comprised high-level military officials and academic experts in military affairs and finance. The Commission found that errors in GAO’s methodology, including its failure to include length-of-training data and its misrepresentation of cost-of-training data, led to both over- and under-estimations of the total cost of implementing “don’t ask, don’t tell.” When these over- and under-estimations were reconciled, the Commission found that the “don’t ask, don’t tell” policy cost the Pentagon at least \$363.8 million to implement during its first ten years, or 91 percent more than originally reported by GAO. Because the Commission used conservative assumptions, even these finding should be seen as a lower-bound estimate.

### National Security Costs: Loss of Critical Skills and Qualified Personnel

- According to the 2005 GAO report on “don’t ask, don’t tell,” 757 troops with “critical occupations” were fired under the policy between fiscal years 1994 and 2003. These included voice interceptors, interrogators, translators, explosive ordnance disposal specialists, signal intelligence analysts, and missile and cryptologic technicians.
- Three hundred and twenty-two fired service members had skills in what the military deemed “an important foreign language.” In the two years after 9/11 alone, 37 language experts with skills in Arabic, Korean, Farsi, Chinese, or Russian were discharged under the policy. All together, more than 58 Arabic language specialists were discharged as of 2003 because they were gay, and no doubt many more since then.
- The military has also expelled hundreds of other gay troops with additional needed skills: 268 in intelligence, 57 in combat engineering, 331 in medical treatment, 255 in administration, 292 in transportation, 232 in military police and security, and 420 in supply and logistics between 1998 and 2003. It also ousted 49 nuclear, biological and chemical warfare experts; 52 missile guidance and control operators; and 150 rocket, missile and other artillery specialists.
- In the first ten years of the policy, 244 medical specialists were fired, including physicians, nurses, biomedical laboratory technicians and other highly trained healthcare personnel. The military acknowledged it has struggled with shortfalls



- in recruitment and retention of medical personnel for the wars in Iraq and Afghanistan. The consequence of shortfalls in military medical specialists are particularly grave. According to a Senate report issued in 2003 by Senators Christopher Bond and Patrick Leahy, hundreds of injured National Guard and Army reserve soldiers received “inadequate medical attention” while housed at Fort Stewart because of a lack of preparedness that included “an insufficient number of medical clinicians and specialists, which has caused excessive delays in the delivery of care” and a “negative impact on morale.”
- Troop shortages result in the overtaxing of current forces, an over-reliance on the National Guard and reserves (who on average have less training, higher stress levels, and lower morale than full-time soldiers), extended deployments, stop-loss orders delaying discharges, more frequent rotations, and forced recalls.
  - In the years preceding and following 9/11, all four major service branches were plagued with recruitment and retention shortfalls. This problem was exacerbated by the fact that recruiters’ access to schools and universities was hampered because of the military’s discriminatory policy and by the fact that thousands of troops had been expelled or never enlisted because of the gay ban.
  - According to the Williams Institute at the UCLA School of Law, an additional 41,000 gay Americans might join the military if the ban were lifted, and an additional 4,000 personnel might remain in uniform each year if they could do so without having to lie about their identities.

#### National Security Costs: Reliance on Less-Qualified Troops

- To meet recruitment targets, the Pentagon in 2004 began issuing mandatory recalls to thousands of troops for deployment to Iraq and Afghanistan. The Pentagon's recalls targeted specialists with needed skills in intelligence, engineering, medicine, administration, transportation, and security, the very same areas that were being drained by the discharge of capable gay and lesbian troops. Hence the military could have avoided these involuntary recalls if it had not previously expelled competent gay troops in the very same fields: from 1998-2003 the military recalled 72 soldiers in communication and navigation but expelled 115 gay troops in that category; 33 in operational intelligence but expelled 50 gays; 33 in combat operations control but expelled 106. In total, while the Army announced in 2004 it would recall 5,674 troops from the Individual Ready Reserve, 6,273 troops had been discharged for being gay, lesbian or bisexual since 1998. Further, IRR units are less well-prepared and less cohesive because their personnel have not been training together while not on active-duty.
- Rather than hiring or retaining competent gay troops, the military began to hire less competent recruits, including those who scored poorly on military aptitude test and enlistees who were granted “moral waivers”—invitations to enlist despite a prior record of criminal activity or substance abuse that would normally prohibit entry, including murder, kidnapping, and “making terrorist threats.” In 2005 the army increased by nearly 50 percent the number of new recruits it granted moral waivers. Between 2003 and 2006, 4,230 convicted felons, 43,977 individuals convicted of serious misdemeanors, including assault, and 58,561 illegal drug abusers were allowed to enlist.

- In the spring of 2005, the army reported it was recruiting higher numbers of ex-convicts, drug addicts, and high school dropouts, acknowledging that they were being advanced even when they had failed basic training, “performed poorly,” and become a “liability.” In 2005, the army hired 667 soldiers who scored in the lowest third of the military aptitude test—14 more than the military discharged the previous year under “don’t ask, don’t tell.” Evidence shows that high school dropouts also have higher dropout rates from the service, are more difficult to train, are more prone to disciplinary problems, and are less likely to serve out their contracts. According to one GAO study, those soldiers who are granted moral waivers are more likely to be discharged for misconduct than those who are not.
- In 2006 Private Steven Green shot and killed the parents and sister of a young Iraqi girl in Mahmudiya, Iraq, unprovoked. He raped and murdered the girl, and then set her body on fire. Nineteen-year-old Green was a high-school dropout with three misdemeanor convictions and a history of drug and alcohol abuse. He had been admitted into the army on a moral waiver.

#### Impact on Morale and Readiness of Gay, Lesbian, and Bisexual Troops

Following are examples of the negative impact of “don’t ask, don’t tell” on individual service members, whose impaired morale and readiness can further undercut the effectiveness of their units. Among other things, this list shows that, contrary to promises by advocates of “don’t ask, don’t tell,” the policy does not only punish people who make voluntary statements about their homosexuality, but can also affect or ruin the careers of those who remain discreet but are outed by personal effects, third parties, intercepted communications, improper investigations, etc.

- **West Point witch hunt**  
A witch hunt started at West Point when an academy counselor read and the army seized Cadet Nikki Galvan’s journal, in which Galvan had confided private emotions about her sexuality. Feeling “violated and humiliated,” and facing a discharge, Galvan resigned. The investigation expanded to over thirty other women at West Point.
- **South Korea soldier**  
After assaulting and threatening to rape a female soldier, a group of male soldiers spread lies that she was a lesbian. Her commander threatened to imprison her if she did not admit being gay and identify other service members suspected of being gay. Even after a military judge dismissed the case for lack of evidence, her commander continued to pursue her discharge until the SLDN intervened and she obtained a transfer.
- **Airman Bryan Harris**  
Accused of rape of another man and other charges, Harris faced life in prison. Air force lawyers reduced his sentence in exchange for the names of all of the men he had had sex with in the military. These men were promptly investigated, and the five who served in the Air Force were fired or court-martialed.
- **Midshipman Robert Gaige**  
In 1998, Midshipman Robert Gaige wore a red ribbon in solidarity with AIDS victims, a gesture that is supposed to be entirely protected under DADT. Gaige’s

instructor, Major Richard Stickel, began to harass him and encouraged others to do so as well. Eventually Gaige acknowledged his sexual orientation and was fired.

- Senior Chief Officer Timothy McVeigh  
After a shipmate's wife discovered McVeigh's sexuality through his AOL profile, investigators sought and obtained private information from AOL. A federal judge concluded that the navy had deliberately violated federal law and stopped McVeigh's discharge; McVeigh was allowed to retire with benefits intact.
- Alex Nicholson, human intelligence collector  
A friend saw Nicholson's letter to an ex-boyfriend and reported the details to his commander. His commander told him he would be investigated if he did not acknowledge he was gay and accept a discharge. Nicholson worried that vengeful superiors might seek to give him less than an honorable discharge, so he decided not to contest the charges.
- Airman Jennifer Dorsey  
After Dorsey reported an incident during which two women punched her repeatedly in the stomach while yelling, "You sick fucking dyke," her commander, Major Richard Roche, did not discipline the attackers but instead threatened an investigation into Dorsey's sexuality. Dorsey made a "voluntary" statement that she was gay and left under a "don't ask, don't tell" discharge.
- Coast Guard member  
Coworkers of the member routinely accused him of being gay. One member of his unit threatened "If I ever find out for sure you're a fag, I'll kick your ass." The victim had little recourse to end the torment besides leaving the Coast Guard.
- Airman Sean Fucci  
Fucci "voluntarily" left the air force at the end of his service after facing extreme harassment, including notes that said, "Die fag" and "You can't hide, fag." Torn between protecting his safety and facing a possible discharge investigation, Fucci reported the events. An investigation into the threats was opened, but to no avail; Fucci was unable to provide sufficient evidence for the search to go anywhere because he was still in the closet and carefully had to watch what he said.
- Private First Class Barry Winchell  
Suspecting that Winchell was gay, Calvin Glover goaded Winchell into a fist fight and lost. After suffering derision from his peers for having "his ass kicked by a faggot" (who was dating a transsexual at the time), Glover took a baseball bat to the bed of Winchell and bludgeoned him to death as he slept.
- Fred Fox, infantry soldier  
During Operation Iraqi Freedom and Operation Enduring Freedom, Fox was unable to speak openly with army counselors due to "don't ask, don't tell" and was later diagnosed with post-traumatic stress disorder.
- Captain Monica Hill  
When her partner was diagnosed with lung cancer, Hill explained the minimum details of her predicament necessary and requested a deferred report date. The air force investigated her sexual orientation and discharged her a year after her partner died, while also trying to force Hill to pay back the cost of her medical school scholarship.

- Lieutenant Colonel Peggy Laneri  
Laneri took an early retirement in order to adopt a daughter with her wife and look after the needs of her family without putting her job and future retirement benefits at risk.
- Brian Hughes, army ranger  
Hughes, who was part of the team that rescued Jessica Lynch, decided not to reenlist because of the family life, since his partner was unable to come to events or plug into support networks that others took for granted.
- Brian Muller, army staff sergeant  
After hearing other commanders say “All fags should get AIDS and die” and trying to maintain a forbidden relationship, Muller decided to come out. Muller, who had earned twenty-one medals at war in Bosnia and Afghanistan, said he was driven to leave by fear and uncertainty about the policy.
- Stephen Benjamin, cryptologic interpreter  
Benjamin, who was out to nearly everyone he worked with, was called in for questioning for making a comment on the government computer system: “That was so gay—the good gay, not the bad one.” Benjamin stated that, when he was discharged, “the only harm to unit cohesion that was caused was because I was leaving.”
- Beth Schissel, air force officer and physician  
During medical school, a male civilian began to stalk and harass Schissel, threatening to out her as a tool of vengeance against someone they both knew well. Terrified, Schissel came out in hopes of blunting the stalker’s weapon, and was discharged on September 10, 2001.

#### VIII. GAYS ALREADY SERVE OPENLY

It is my opinion that the ban on openly gay service is not necessary or helpful to maintaining morale, readiness, recruitment, cohesion or performance. This opinion is based, in part on research indicating that a substantial number of service members already serve openly, suggesting that the assumption that the current policy successfully shields troops from knowing who is gay is unsound. In addition, evidence shows that commanders relax enforcement of the ban when the nation is at war, suggesting that at the time when cohesion matters most, even the military does not believe that known gays impair the mission. Following is a summary of evidence showing that the military has frequently sent known gays to war, and that substantial numbers of service members already serve openly:

- Randy Shilts’ interviews with scores of service members reveal a Pentagon pattern of retaining gays during war, and then discharging them once peace returns. Shilts describes these stories both in numerous newspaper articles and in his book, *Conduct Unbecoming*. For published articles, see Randy Shilts, “Military May Defer Discharge of Gays,” *San Francisco Chronicle*, Jan. 11, 1991; Randy Shilts, “Army Discharges Lesbian Who Challenged Ban,” *San Francisco Chronicle*, Jan. 19, 1991; Randy Shilts, “Gay Troops in the Gulf War Can’t Come Out,” *The San Francisco Chronicle*, Feb. 18, 1991; Randy Shilts, “In

- Wake of War, Military Again Targets Gays,” *San Francisco Chronicle*, Aug 5, 1991; and see Randy Shilts, *Conduct Unbecoming: Gays and Lesbians in the U.S. Military* (Columbine-Fawcett, 1993).
- Numerous other press reports also describe the practice of letting known gays serve during wartime. See Wade Lambert, “Gay GI’s Told, Serve Now, Face Discharge Later” *Wall Street Journal*, Jan. 24, 1991, B1; Wade Lambert and Stephanie Simon, “U.S. Military Moves to Discharge Some Gay Veterans of Gulf War,” *Wall Street Journal*, July 30, 1991, B6; Doug Grow, “Captain Did her Duty, Despite Military’s Mixed Messages,” *Minneapolis Star Tribune*, March 16, 1993, 3B; David Kirby, “Think Before You Tell,” *The Advocate*, Dec. 4 2001; Joseph Giordano, “Discharged Gay Sailor is Called Back to Active Duty,” *Starts and Stripes*, May 6, 2007; Joseph Giordano, “Navy Bars Outed Gay Sailor From Return to Service,” *Starts and Stripes*, June 10, 2007.
  - The Congressional Research Service has acknowledged that suspected gays and lesbians have been sent to war, noting that, “as a result of these policies and laws, the situation that arises during a time of deployment places homosexuals in a no-win situation. They are allowed or ordered to serve at the risk of their own lives with the probability of forced discharge when hostilities end if their sexuality becomes an issue. By deploying suspected homosexuals with their units, the services bring into question their own argument that the presence of homosexuals seriously impairs the accomplishment of the military mission.” See David F. Burrelli, Analyst in National Defense, Foreign Affairs and National Defense Division, Congressional Research Service, Library of Congress, in “Policy Concerning Homosexuality in the Armed Services,” Senate Armed Services Hearings, 103d Cong, Mar. 29, 1993.
  - A 2004 Palm Center study that I authored, entitled “Gays and Lesbians at War: Military Service in Iraq and Afghanistan Under ‘Don’t Ask, Don’t Tell,’” chronicled the experiences of gay and lesbian troops who fought in Iraq and Afghanistan. It found that, among the nearly three dozen service members studied in-depth, most service members were out to some or most of their peers, often including their superiors.
  - In my 2009 book, *Unfriendly Fire*, I expand on my 2004 study by chronicling more experiences of gay and lesbian troops whose sexuality was widely known to their peers. It is my opinion that their experiences are widely representative.
  - In 2005, Palm Center researchers obtained an Army Commander’s Handbook entitled, “Regulation 500-3-3 Volume III, Reserve Component Unit Commanders Handbook.” In Table 2.1 on “Personnel actions during the mobilization process,” it says under the criterion of “homosexuality”: “if discharge is not requested prior to the unit's receipt of alert notification, discharge isn't authorized. Member will enter AD [active duty] with the unit.” See FORSCOM Regulation 500-3-3 Volume III, Reserve Component Unit Commanders Handbook, 1990, since updated.
  - In 2005, Kim Waldron, spokesperson at the U.S. Army Forces Command at Fort McPherson, acknowledged publicly that the Pentagon was sending openly gay service members into combat in Iraq: “The bottom line is some people are using sexual orientation to avoid deployment. So in this case, with the Reserve and

Guard forces, if a soldier ‘tells,’ they still have to go to war and the homosexual issue is postponed until they return to the U.S. and the unit is demobilized.” Waldron's statements were reported in the *Washington Blade*. See Lou Chibbaro Jr., “Out gay soldiers Sent to Iraq, Regulation Keeps Straights from ‘Playing Gay’ to Avoid War,” *Washington Blade*, Sept. 23, 2005; and see Palm Center press release, Sept. 23, 2005.

- A 2006 Zogby poll indicated that roughly two thirds of service members returning from Iraq or Afghanistan knew or suspected a gay person in their unit, suggesting that a significant number of gay troops are out to their peers.

## IX. CHANGING OPINION

Although in my view the policy was based on animus rather than having a rational basis, that animus is not reflected, to a great extent, among the American people and increasingly among military members the way it once was. Opinion polls and the comments of high-level military and political officials reflect a significant softening of anti-gay sentiment since “don’t ask, don’t tell” was formulated and implemented in the 1990s. While opinion polls are only one component of sound public policy, the ban on openly gay service is defended as a necessary policy in large part because of the presumed anti-homosexual sentiment in the culture and particularly in the military community; therefore the presence of data showing a substantial softening of that sentiment is a legitimate basis for concluding that the policy, to the extent that it was ever useful in mitigating unit problems, can no longer be accurately described to do so. Below are the polls and remarks that inform this conclusion.

### Public Opinion Data

- In 1992, an NBC News/*Wall Street Journal* poll found that 46 percent of the public favored lifting the gay ban, while 49 percent opposed lifting it.
- In 2003, a Fox News poll put the number of people who support gay service at 64 percent, while a Gallup poll put it at 79 percent.
- A 2003 Gallup poll showed that 91 percent of Americans between ages eighteen and twenty-nine favored lifting the ban, a key finding considering these were the people cited as the reason a ban was needed.
- According to 2005 polls, nearly 80 percent of the American public believes gays should be allowed to serve openly in the military. The respondents to the poll included majorities of Republicans, regular churchgoers, and people with negative attitudes toward gays.
- In 2008, an ABC News/*Washington Post* poll found that 75 percent of Americans favored openly gay service, including a majority of white evangelicals, veterans, and Republicans, whose support has doubled since 1993. Nearly two-thirds of conservatives as well as 82 percent of white Catholics supported letting open gays serve.

### Military Opinion Data

- Between 1992 and 1998, the percentage of male soldiers who “strongly oppose” gays serving in uniform dropped nearly in half, from 67 percent to 37 percent. The percentage of army women opposed to gay troops fell from 32 to 16 percent.
- A 2000 study conducted at the Naval Postgraduate School found that between 1994 and 1999, the percentage of U.S. Navy officers who “feel uncomfortable in the presence of homosexuals” decreased from 57.8 to 36.4 percent.”
- An October 2004 poll by the National Annenberg Election Survey found that 42 percent of service members believed that gays and lesbians should be allowed to serve openly. For the first time, 50 percent, a statistical majority, of junior enlisted service members supported gay service.
- A 2006 Zogby poll of 545 troops who served in Afghanistan and Iraq found that 72 percent of service members were personally comfortable interacting with gays and lesbians. Of those who knew of gays in their unit, the overwhelming majority stated that their presence had little or no impact on the unit’s morale. The same poll also found that nearly two thirds of service members know or suspect gays in their units, suggesting that the assumption that openly gay service is disruptive is untrue.

### Opinion of High-Level Military Officials and Experts

- Retired NATO commander Wesley Clark said in 2003 that “the temperature of the issue has changed” since 1993 and “People were much more irate about this issue in the early ‘90s than I found in the late ‘90s, for whatever reason, [perhaps because of] younger people coming into the military. It just didn’t seem to be the same emotional hot button issue by ‘98, ‘99, that it had been in ‘92, ‘93.”
- In 2003, retired Rear Admiral John Huston, who as Judge Advocate General of the navy had been responsible for enforcing “don’t ask, don’t tell,” called for the policy’s repeal. In an article in *The National Law Journal*, Huston called the gay ban “odious” and “virtually unworkable in the military.” The article argued that the policy was the “quintessential example of a bad compromise,” and that the “don’t ask, don’t tell” regulations are a “charade” that “demeans the military as an honorable institution.”
- In 2007, Colin Powell said that while the policy “was an appropriate response to the situation back in 1993,” the country “certainly has changed” since then, though he wasn’t sure if Americans were ready for openly gay service. In 2008 Powell went a step further, saying the nation “definitely should re-evaluate” the policy. “It is time for the Congress,” he said, “to have a full review” of the law.
- General Robert Alexander, the first chair of the Military Working Group, said that “don’t ask, don’t tell” was to be a temporary, transitional step to allow people to get used to serving with gays. In 2008, however, he said “fifteen years is too damned long.” The policy “is not necessarily improving readiness,” and in fact “we know it has hurt readiness and morale in some cases.” Alexander now believes the law “impedes further progress” and should be repealed.
- In January 2007, retired General John Shalikashvili, who succeeded Colin Powell as chairman of the Joint Chiefs of Staff, published an op-ed in *The New York Times* calling for the end of “don’t ask, don’t tell.” In 1993, he had supported the

- compromise as “a useful speed bump that allowed temperatures to cool for a period of time while the culture continued to evolve.” But in 2007 he said it was crucial to “consider the evidence that has emerged over the last 14 years” and that that evidence had persuaded him the policy should end.
- In April 2007, Admiral William Crowe, chairman of the Joint Chiefs of Staff under Ronald Reagan and George H. W. Bush, said that he believed that the policy was based more on “emotionalism than fact,” and that he thought it was time for the policy to end.
  - Alan Simpson, an army veteran and former republican senator from Wyoming, voted for “don’t ask, don’t tell” in 1993. But in 2007, he reversed course. For Simpson, so much had changed since his 1993 vote that it had become “critical that we review—and overturn—the ban on gay service in the military.”
  - Over 1000 retired officers signed a document in 2008 stating their opposition to lifting the ban; however, most of the signatories were too old to have served under “don’t ask, don’t tell,” and they did not base their position on any new research or data, but simply on their personal beliefs. More significant than the presence of opposition by older retired officers, which is longstanding, is the trend of support for equality by current and retired officers who have researched the issue of gay service and ended their resistance. This group includes a list of over 100 retired generals and admirals who have signed a statement urging Congress to repeal the ban. The officers said that replacing “don’t ask, don’t tell” with a policy of equal treatment “would not harm, and would indeed help, our armed forces.”
  - In November 2008, Retired Admiral Charles Larson, former Superintendent of the U.S. Naval Academy, reversed his opposition to openly gay service. “I think the time has come to find a way to let talented, young, patriotic Americans who want to serve their country serve,” he said, “and let’s enforce high standards of personal and human behavior for everyone.” Larson was in charge of U.S. and Allied submarines in the Mediterranean as a two-star admiral, and became head of the entire U.S. military command in the Pacific as a four-star admiral before retiring in 1998.
  - In October 2009, an Active Duty Air Force Officer, Col. Om Prakash, published a study of gays in the military in a military journal edited by the Chairman of the Joint Chiefs of Staff that called the current policy a failure and called for its immediate reversal. The article, which was entitled, “The Efficacy of ‘Don’t Ask, Don’t Tell,’” and appeared in *Joint Force Quarterly*, concluded that “there is no scientific evidence to support the claim that unit cohesion will be negatively affected if homosexuals serve openly.” Based on this research, Prakash wrote that “it is time for the administration to examine how to implement the repeal of the ban.”
  - In October 2009, the Secretary of the Army, John McHugh, a former Republican member of Congress, indicated that they Army is prepared to lift the ban on openly gay service. Secretary McHugh became the highest official inside the Pentagon to express such support, telling the *Army Times* that there was no reason to fear that major difficulties would result from lifting the ban, and that he would help implement the policy change when the time comes.



- In January 2009 Admiral Michael Mullen, Chairman of the Joint Chiefs of Staff, emphasized that the military would follow the President's lead on "don't ask, don't tell." On the CBS program *60 Minutes* Admiral Mullen said, "When President-elect Obama gets in and he says, 'Here's the decision,' the United States military, led by me, is going to march off and execute that decision."

## ***Vita***

### **Nathaniel Frank, Ph.D.**

Dr. Nathaniel Frank is author of *Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America* (St. Martin's Press). He is Senior Research Fellow at the Palm Center at the University of California, Santa Barbara and teaches history on the adjunct faculty at New York University's Gallatin School. He is internationally recognized as one of the top experts on the "don't ask, don't tell" policy on gays in the U.S. military. Dr. Frank's publications on this and other topics have appeared in the *New York Times*, *Washington Post*, *The New Republic*, *Slate*, *USA Today*, *Los Angeles Times*, *Huffington Post*, *Newsday*, *Philadelphia Inquirer*, *Lingua Franca* and others. He has been interviewed on numerous television and radio programs, including "The Daily Show with Jon Stewart," CNN's "Anderson Cooper 360," MSNBC's "Rachel Maddow Show," the "CBS Evening News," as well as Logo, NPR, the BBC, the *Associated Press*, *National Review* and more. Dr. Frank has consulted with ABC's "20/20" and CBS's "60 Minutes," and his research and opinions have been cited on the Congressional floor, in syndicated columns, in the blogosphere, and in college syllabi. Born and raised in Philadelphia, Dr. Frank earned his Ph.D. and M.A. in History at Brown University. He lives in Brooklyn, NY.

### Other Cases Served as Expert Witness

2006-2010

*United States v. SGT Dale A. Boldware*, July 24, 2009 (telephonic)

## **Payment Agreement**

I have been told by White & Case LLP that I will be paid for my services as an expert witness at the rate of \$350 per hour for testimony and deposition and \$200 per hour for travel, research, and preparation.

## **Publications by Nathaniel Frank, Ph.D.**

2000-present

### BOOKS

- *Unfriendly Fire: How the Gay Ban Undermines the Military and Weakens America* (St. Martin's Press, 2009)

### ARTICLES

- "Gay Rights and the Natural Law Farce," Huffington Post, December 21, 2009
- "Will Gay Troops Get to Join the Debate About Their Own Service to America?" Huffington Post, December 2, 2009
- "Christian Leaders Scapegoat Gays on Marriage," Huffington Post, November 25, 2009
- "Eviscerating Rubén Díaz on Gay Marriage," Huffington Post, November 10, 2009
- "President Obama and Gay Rights: Forgetting the Lessons of the Campaign," Huffington Post, November 5, 2009
- "Refuting the Latest Arguments Against Gay Troops," Huffington Post, October 20, 2009
- "President Obama Should Show He's Queer Like Us," Huffington Post, October 9, 2009
- "What Can Stop the Gay-Bashing in the Military?" Huffington Post, September 22, 2009
- "Why Does Obama Use Executive Power for Everything But Gay Troops?" Huffington Post, August 10, 2009
- "Can White Men Shed Their Prejudices Better Than Others?" Huffington Post, July 14, 2009
- "Will We Wait Until Another Gay Sailor Is Murdered?" Huffington Post, July 9, 2009
- "Why Other People's Marriages Are Our Business," Huffington Post, June 29, 2009
- "Fear You Can Believe In?" Huffington Post, May 25, 2009
- "Another Phony Rationale for Delay on Gay Troops," Huffington Post, May 18, 2009
- "Battle Plans: How Obama Could Avoid a Congressional War over 'Don't Ask, Don't Tell,'" *The New Republic*, May 11, 2009
- "How to End 'Don't Ask, Don't Tell'" (co-authored with Aaron Belkin, Gregory M. Herek, Elizabeth L. Hillman, Diane H. Mazur, and Bridget J. Wilson, Palm Center, May 11, 2009
- "One Hundred Days of Silence," Huffington Post, April 29, 2009
- "What to Make of #Amazonfail," Huffington Post, April 14, 2009
- "The Road to Gays in the Military Runs through Iowa," Huffington Post, April 6, 2009
- "'Don't Ask, Don't Tell' Was Always on Shaky Ground," *USA Today*, March 12, 2009

- “As Congress Moves to End Gay Ban, Don't Let History Repeat Itself,” Huffington Post, March 2, 2009
- “Should Progressives Engage Agents of Intolerance?” Huffington Post, December 23, 2008
- “Open for Service: Why, When Barack Obama Decides to Repeal ‘Don’t Ask, Don’t Tell,’ He’ll Have a Much Easier Time of it than Bill Clinton Did in 1993,” *The New Republic*, November 25, 2008
- “This Time, Hear All Opinions on Gay Troops Issue,” Huffington Post, November 18, 2008
- “Gay is a Choice? Not That Again,” *Los Angeles Times*, October 8, 2008
- “‘The Importance of Objective Analysis’ on Gays in the Military” (co-authored with Jeanne Scheper, Aaron Belkin, and Gary J Gates), *Duke Journal of Gender Law & Policy*, Volume 15:419, 2008
- “Don’t Need ‘Don’t Ask, Don’t Tell,’” *Los Angeles Times*, December 4, 2007
- “The Immorality of ‘Don’t Ask, Don’t Tell,’” *Los Angeles Times*, March 15, 2007
- “Don’t Ask: The Increasing Incoherence of the Military’s Gay Exclusion Policy,” *Slate*, March 13, 2007
- “Gays Need More than a Court’s Approval,” *Newark Star-Ledger*, October 30, 2006
- “Cut & Paste,” *The New Republic*, May 2, 2005.
- “Stonewalled: Canning Gay Linguists,” *The New Republic*, January 24, 2005
- “Ready, Willing, Disqualified,” *New York Times*, December 16, 2004
- “Gays and Lesbians at War: Military Service in Iraq and Afghanistan Under ‘Don’t Ask, Don’t Tell,’” Palm Center, September 1, 2004
- “Revolving Door for Troops,” *Washington Post*, July 12, 2004
- “Perverted: Quack Gay Marriage Science,” *The New Republic*, May 3, 2004
- “A Leader Who is Allergic to Evidence,” *Philadelphia Inquirer*, March 9, 2004
- “Joining the Debate but Missing the Point,” *New York Times*, February 29, 2004
- “Why We Need Gays in the Military,” *New York Times*, November 28, 2003
- “Santorum’s Insensitive Words Indicate the Heart of the Issue,” *Philadelphia Inquirer*, April 23, 2003
- “Real Evidence on Gays in the Military,” *Washington Post*, December 3, 2002 (reprinted in *Newsday* December 4, 2002)
- “Perverse: ‘Don’t Ask, Don’t Tell’ v. the War on Terrorism,” *The New Republic*, November 18, 2002
- “Winning the Struggle: What Works,” *Gay and Lesbian Review Worldwide*, July/August, 2002
- “Historians’ Challenge: Revive Truthfulness after Scandals,” *Philadelphia Inquirer*, Jan. 18, 2002
- “There’s Room Enough for All in the Marriage Circle,” *Los Angeles Times*, April 2, 2001
- “What’s Love Got to Do with it?” *Lingua Franca*, October, 2000
- “Giuliani’s Troubles: Private Twists on Life,” *Philadelphia Inquirer*, May 16, 2000
- “In Search of the Real Thing,” *Philadelphia Inquirer*, February 28, 2000

**Signature Page**

This report was prepared by:

A handwritten signature in black ink, appearing to read 'Nathaniel Frank'.

Nathaniel Frank, Ph.D.

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