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 8 LOG CABIN REPUBLICANS

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

12 LOG CABIN REPUBLICANS,
 13 Plaintiff,
 14 v.
 15 UNITED STATES OF AMERICA and
 16 ROBERT M. GATES, SECRETARY
 17 OF DEFENSE, in his official capacity,
 18 Defendants.

No. CV 04-8425 VAP (Ex)
 PLAINTIFF’S RESPONSE TO
 DEFENDANTS’ EVIDENTIARY
 OBJECTIONS TO PLAINTIFF’S
 APPENDIX AND STATEMENT OF
 GENUINE ISSUES IN OPPOSITION
 TO DEFENDANTS’ MOTION FOR
 SUMMARY JUDGMENT

19 Plaintiff Log Cabin Republicans (“Log Cabin”) respectfully submits the
 20 following responses to Defendants’ “Evidentiary Objections to Plaintiff’s Appendix
 21 and Statement of Genuine Issues in Opposition to Defendants’ Motion for Summary
 22 Judgment” (“Defendants’ Evidentiary Objections”).

23 Log Cabin responds to each of Defendants’ objections document-by-
 24 document, below. For each row of the chart below: the first column is Defendants’
 25 “Reasons the Document is Inadmissible,” quoted verbatim from Defendants’
 26 Evidentiary Objections; the second column is the “Genuine Issues that Cite to this
 27 Document” (according to Defendants’ Evidentiary Objections); and the third
 28 column is Log Cabin’s response.

1 **Documents Included in Plaintiff's Appendix**

2 App. 0839-0887: PERSEREC Report Entitled: "Nonconforming Sexual Orientation
3 and Military Suitability"

4 This report constitutes an
5 out-of-court statement
6 offered in evidence to
7 prove the truth of the
8 matter asserted and is,
9 therefore, inadmissible
10 hearsay. In addition, this
11 document is a draft that
12 was never adopted by the
13 Department of Defense
14 ("DoD") because Dod
15 personnel found the
16 report to be flawed and
outside the scope of the
approved research. See
App. 1293-1294.
Accordingly, this report
is not an admission by a
party-opponent.

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The PERSEREC Report is admissible as a party admission and therefore non-hearsay. Even if the PERSEREC Report were not a party admission, it would be admissible under several hearsay exceptions. First, the report is admissible pursuant to Federal Rule of Evidence ("FRE") 803(18), the "learned treatise" exception. One or more of Log Cabin's expert witnesses, whose opinions Defendants have not objected to, rely upon the PERSEREC Report and have established that it is a reliable authority. In addition, the PERSEREC Report is admissible pursuant to FRE 803(16), the "ancient document" exception, as it is more than 20 years old. Finally, the PERSEREC Report should be admitted pursuant to FRE 807, the residual hearsay exception.

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| App. 1100-1128: Homosexuality and the Israel Defense Force | | |
| This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. | 43, 46 | The report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants’ prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. <u>See, e.g.</u> , Admiral Mullen’s statements before the Senate Armed Services Committee that his counterparts in countries that allow gays and lesbians to serve openly report “no impact on military effectiveness.” Plaintiff’s Statement of Genuine Issues, # 44. |
| App. 1129-1280: Gays in Foreign Militaries 2010: A Global Primer | | |
| This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. | 40 | The report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants’ prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. <u>See, e.g.</u> , Admiral Mullen’s statements before the Senate Armed Services Committee that his counterparts in countries that allow gays and lesbians to serve openly report “no impact on military effectiveness.” Plaintiff’s Statement of Genuine Issues, # 44. |

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App: 1281-1292: Attitudes of Iraq and Afghanistan Veterans Toward Gay and Lesbian Service Members

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| <p>This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.</p> | <p>35</p> | <p>The report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception.</p> |
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App: 1330-1359: Draft of PERSEREC report by Michael McDaniel

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| <p>This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. In addition, as this document is clearly marked as a draft, it is not a statement from a party-opponent.</p> | <p>8</p> | <p>The PERSEREC Report is admissible as a party admission and therefore non-hearsay. Even if the PERSEREC Report were not a party admission, it would be admissible under several hearsay exceptions. First, the report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the PERSEREC Report and have established that it is a reliable authority. In addition, the PERSEREC Report is admissible pursuant to FRE 803(16), the “ancient document” exception, as it is more than 20 years old. Finally, the PERSEREC Report should be admitted pursuant to FRE 807, the residual hearsay exception.</p> |
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| App: 1360-1405: PERSEREC report entitled "Homosexuality and Personnel Security" | | |
| This document states explicitly that it does not address the military's homosexual conduct policy, and it is, therefore, not relevant to Plaintiffs' claims: "This work does not deal with the Department of Defense policy that excludes homosexuals from military service. The exclusion policy is separate from those policies that apply to a civilian being investigated for a clearance." App. 1366 | | The PERSEREC Report is admissible as a party admission and therefore non-hearsay. Even if the PERSEREC Report were not a party admission, it would be admissible under several hearsay exceptions. First, the report is admissible pursuant to FRE 803(18), the "learned treatise" exception. One or more of Log Cabin's expert witnesses, whose opinions Defendants have not objected to, rely upon the PERSEREC Report and have established that it is a reliable authority. Finally, the PERSEREC Report should be admitted pursuant to FRE 807, the residual hearsay exception. |

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App. 1406-1491: Successful Integration of Stigmatized Minorities Into The U.S. Army

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| <p>This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay.</p> | | <p>The report is admissible. First, the report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception.</p> |
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App. 1492-1558: U.S. Army Research Institute (AIR) Research Report 1657

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| <p>This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. In addition, this document states on its face that it does not represent the position of the Department of the Army: “Note, The findings in this report are not to be construed as an official Department of the Army position, unless so designated by other authorized documents.” App. 1493</p> | <p>49</p> | <p>The report is admissible. First, the report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants’ prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. <u>See, e.g.</u>, Admiral Mullen’s statements before the Senate Armed Services Committee that his counterparts in countries that allow gays and lesbians to serve openly report “no impact on military effectiveness.” Plaintiff’s Statement of Genuine Issues, # 44.</p> |
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| App. 1730-1754: Comparative International Military Personnel Policies | | |
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| This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. | 53 | The report is admissible. First, the report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants’ prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. <u>See, e.g.</u> , Admiral Mullen’s statements before the Senate Armed Services Committee that his counterparts in countries that allow gays and lesbians to serve openly report “no impact on military effectiveness.” Plaintiff’s Statement of Genuine Issues, # 44. |

1 App. 1791-1806: February 2, 2010 transcript of Admiral Mike Mullen’s and
2 Secretary of Defense Robert Gates’s testimony before the Senate Armed Services
3 Committee

4 In his testimony, Admiral
5 Mullen prefaced his
6 comments with the
7 following statement: “Mr.
8 Chairman, speaking for
9 myself and myself only ...
10 .” App. 1795. Because he
11 was not speaking on
12 behalf of the Government,
13 Admiral Mullen’s
14 testimony from that point
15 forward is not an
16 admission by a party-
17 opponent and constitutes
18 inadmissible hearsay.
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9, 44, 88

False. A full quote of Admiral Mullen’s statement with the language quoted by defendants follows: “Mr. Chairman, speaking for myself and myself only, it is my personal belief that allowing gays and lesbians to serve openly would be the right thing to do. No matter how I look at this issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens. For me personally, it comes down to integrity – theirs as individuals and ours as an institution. I also believe that the great young men and women of our military can and would accommodate such a change. I never underestimate their ability to adapt.” (emphasis added)

None of Admiral Mullen’s responses to the **factual** questions posed by the Committee regarding the policy, the lack of a factual record supporting the policy, or other countries’ experiences regarding allowing military service by openly gay individuals were “prefaced” by any such limitation, nor were Secretary Gates’ comments limited in any such manner.

Therefore, the statements of Admiral Gates proffered by Log Cabin are admissions of Defendants and non-hearsay.

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| App. 1807-1876: November 2000 report by Aaron Belkin and R. L. Evans entitled "The Effects of Including Gay and Lesbian Soldiers in the British Armed Forces" | | |
| This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. | 41, 43, 46 | The report is admissible. First, the report is admissible pursuant to FRE 803(18), the "learned treatise" exception. One or more of Log Cabin's expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants' prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. <u>See, e.g.</u> , Admiral Mullen's statements before the Senate Armed Services Committee that his counterparts in countries that allow gays and lesbians to serve openly report "no impact on military effectiveness." Plaintiff's Statement of Genuine Issues, # 44. |

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| App. 1877-1888: 2003 Report by Aaron Belkin entitled "Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity" | | |
| This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. | 41 | The report is admissible. First, the report is admissible pursuant to FRE 803(18), the "learned treatise" exception. One or more of Log Cabin's expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants' prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. <u>See, e.g.</u> , Admiral Mullen's statements before the Senate Armed Services Committee that his counterparts in countries that allow gays and lesbians to serve openly report "no impact on military effectiveness." Plaintiff's Statement of Genuine Issues, # 44. |

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| App. 1889-1928: September 2000 report by Aaron Belkin and R.L. Evans entitled "The Effects of Including Gay and Lesbian Soldiers in the Australian Armed Forces" | | |
| This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. | 43, 46 | The report is admissible. First, the report is admissible pursuant to FRE 803(18), the "learned treatise" exception. One or more of Log Cabin's expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants' prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. <u>See, e.g.</u> Admiral Mullen's statements before the Senate Armed Services Committee that his counterparts in countries that allow gays and lesbians to serve openly report "no impact on military effectiveness." Plaintiff's Statement of Genuine Issues, # 44. |

1 App. 1929-1935: 2009 article by Col. Om Prakash entitled “The Efficacy of ‘Don’t
2 Ask, Don’t Tell”

3 This report constitutes an
4 out-of-court statement
5 offered in evidence to
6 prove the truth of the
7 matter asserted and is,
8 therefore, inadmissible
9 hearsay.

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The *fact* that Colonel Prakash’s report won the Secretary of Defense National Security Essay Competition for 2009 is not hearsay.

Moreover, the report itself is admissible. First, the report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants’ prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. See, e.g., Admiral Mullen’s statements before the Senate Armed Services Committee that there “just isn’t any objective data out there” regarding the effects of the policy and its impact on military service members. Plaintiff’s Statement of Genuine Issues, # 9.

19 App. 1936-1973: 2010 report by Gary Gates entitled “Lesbian, Gay, and Bisexual
20 Men and Women in the U.S. Military: Updated Estimates”

21 This report constitutes an
22 out-of-court statement
23 offered in evidence to
24 prove the truth of the
25 matter asserted and is,
26 therefore, inadmissible
27 hearsay.

115, 116,
121, 122

The report is admissible. First, the report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception.

1 App. 1982-2013: March 24, 1995 report entitled "Conduct Unbecoming: The First
2 Annual Report on 'Don't Ask, Don't Pursue, Don't Harass'"

3 This report constitutes an
4 out-of-court statement
5 offered in evidence to
6 prove the truth of the
7 matter asserted and is,
therefore, inadmissible
hearsay.

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The report should be admitted pursuant to
FRE 807, the residual hearsay exception.

8 App. 2014-2049: 1996 report entitled "Conduct Unbecoming: The Second Annual
9 Report on 'Don't Ask, Don't Teel, Don't Pursue, Don't Harass'"

10 This report constitutes an
11 out-of-court statement
12 offered in evidence to
13 prove the truth of the
14 matter asserted and is,
therefore, inadmissible
hearsay.

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The report should be admitted pursuant to
FRE 807, the residual hearsay exception.

15 App. 2050-2089: 1997 report entitled "Conduct Unbecoming: The Third Annual
16 Report on 'Don't Ask, Don't Tell, Don't Pursue, Don't Harass'"

17 This report constitutes an
18 out-of-court statement
19 offered in evidence to
20 prove the truth of the
21 matter asserted and is,
therefore, inadmissible
hearsay

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The report should be admitted pursuant to
FRE 807, the residual hearsay exception

1 App. 2090-2168: 1998 report entitled "Conduct Unbecoming: The Fourth Annual
2 Report on 'Don't Ask, Don't Tell, Don't Pursue, Don't Harass'"

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| 3 This report constitutes an 4 out-of-court statement 5 offered in evidence to 6 prove the truth of the 7 matter asserted and is, therefore, inadmissible hearsay | 23 | The report should be admitted pursuant to FRE 807, the residual hearsay exception. |
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8 App. 2169-2253: 1999 report entitled "Conduct Unbecoming: The Fifth Annual
9 Report on 'Don't Ask, Don't Tell, Don't Pursue, Don't Harass'"

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| 10 This report constitutes an 11 out-of-court statement 12 offered in evidence to 13 prove the truth of the 14 matter asserted and is, therefore, inadmissible hearsay | 24 | The report should be admitted pursuant to FRE 807, the residual hearsay exception. |
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15 App. 2254-2340: 2000 report entitled "Conduct Unbecoming: The Sixth Annual
16 Report on 'Don't Ask, Don't Tell, Don't Pursue, Don't Harass'"

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| 17 This report constitutes an 18 out-of-court statement 19 offered in evidence to 20 prove the truth of the 21 matter asserted and is, therefore, inadmissible hearsay. | 25 | The report should be admitted pursuant to FRE 807, the residual hearsay exception. |
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1 App. 2341-2443: 2001 report entitled "Conduct Unbecoming: The Seventh Annual
2 Report on 'Don't Ask, Don't Tell, Don't Pursue, Don't Harass'"

3 This report constitutes an out-of-court statement offered in evidence to
4 prove the truth of the matter asserted and is, therefore, inadmissible
5 hearsay. 26 The report should be admitted pursuant to
6 FRE 807, the residual hearsay exception.
7

8 App. 2444-2500: 2002 report entitled "Conduct Unbecoming: The Eighth Annual
9 Report on 'Don't Ask, Don't Tell, Don't Pursue, Don't Harass'"

10 This report constitutes an out-of-court statement offered in evidence to
11 prove the truth of the matter asserted and is, therefore, inadmissible
12 hearsay. 27 The report should be admitted pursuant to
13 FRE 807, the residual hearsay exception.
14

15 App. 2501-2561: 2003 report entitled "Conduct Unbecoming: The Ninth Annual
16 Report on 'Don't Ask, Don't Tell, Don't Pursue, Don't Harass'"

17 This report constitutes an out-of-court statement offered in evidence to
18 prove the truth of the matter asserted and is, therefore, inadmissible
19 hearsay. 28 The report should be admitted pursuant to
20 FRE 807, the residual hearsay exception.
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22 App. 2562-2617: 2004 report entitled "Conduct Unbecoming: The Tenth Annual
23 Report on 'Don't Ask, Don't Tell, Don't Pursue, Don't Harass'"

24 This report constitutes an out-of-court statement offered in evidence to
25 prove the truth of the matter asserted and is, therefore, inadmissible
26 hearsay. 29 The report should be admitted pursuant to
27 FRE 807, the residual hearsay exception.
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App: 2618-2621: February 24, 2010 Los Angeles Times article entitled “Navy Moves to Allow Women on Submarines”

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| <p>This article constitutes inadmissible double hearsay. See e.g., Green v. Baca, 226 F.R.D. 624, 637 (C.D. Cal 2005) (“Generally, newspaper articles and television programs are considered hearsay under Rule 801(c) when offered for the truth of the matter asserted. Even when the actual statements quote in a newspaper article constitute nonhearsay, or fall within a hearsay exception, their repetition in the newspaper creates a hearsay problem. Thus, statements in newspapers often constitute double hearsay.”)</p> | <p>11</p> | <p>The article is not “double hearsay.” The statements quoted within the article from Secretary Gates are admissions and therefore non-hearsay. The article itself should be admitted pursuant to FRE 807, the residual hearsay exception. The Department of Defense has trumpeted this change in policy (including by virtue of reprinting news articles) on its own website. See, e.g., “Women to Serve on Subs, Gates Tell Congress,” American Forces Press Service, www.defense.gov/news/newsarticle.aspx?id=58066 (last visited April 20, 2010).</p> |
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App. 2773-2775: August 28, 2000 New York Times article entitled “Military Reserves are Falling Short in Funding Recruits”

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| <p>This article constitutes inadmissible double hearsay.</p> | <p>72</p> | <p>The article should be admitted pursuant to FRE 807, the residual hearsay exception.</p> |
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1 App. 2776-2777: March 31, 2010 Washington Post article entitled “A ‘Don’t Ask,
2 Don’t Tell’ Rules Complicate Survey of Troops on Policy Change”

| | | |
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| <p>3 This article 4 constitutes 5 inadmissible 6 double hearsay.</p> | <p>92</p> | <p>7 The article is not “double hearsay.” The 8 statements quoted within the article are 9 admissions and therefore non-hearsay. The 10 article itself should be admitted pursuant to FRE 11 807, the residual hearsay exception. The 12 Department of Defense has posted a web page 13 (http://www.defense.gov/home/features/2010/03/10_dadt/) regarding its current “policy review” 14 of the policy that features videotaped statements 15 by both General Carter F. Ham and the 16 Department of Defense’s General Counsel, Jeh 17 C. Johnson, in which they comment on the legal 18 difficulties the Department faces in soliciting 19 feedback regarding the policy from gay service 20 members subject to the policy.</p> |
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13 App. 2778-2820: Balancing Your Strengths Against Your Felonies: Consideration
14 for Military Recruitment of Ex-Offenders

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| <p>15 This report 16 constitutes an out- 17 of-court statement 18 offered in 19 evidence to prove 20 the truth of the 21 matter asserted 22 and is, therefore, 23 inadmissible 24 hearsay.</p> | <p>114, 117, 119, 120</p> | <p>25 The report is admissible. First, the report is 26 admissible pursuant to FRE 803(18), the 27 “learned treatise” exception. One or more of 28 Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception.</p> |
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1 App. 2821-2836: Report entitled “A Review of the Armed Forces Policy on
2 Homosexuality”

3 This report
4 constitutes an
5 out-of-court
6 statement offered
7 in evidence to
8 prove the truth of
9 the matter
10 asserted and is,
11 therefore,
12 inadmissible
13 hearsay.

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The report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants’ prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. See, e.g., Admiral Mullen’s statements before the Senate Armed Services Committee that his counterparts in countries that allow gays and lesbians to serve openly report “no impact on military effectiveness.” Plaintiff’s Statement of Genuine Issues, # 44.

14 App. 2837-2878: “Effects of the 1992 Lifting of Restrictions on Gay and Lesbian
15 Service in the Canadian Forces: Appraising the Evidence”

16 This report
17 constitutes an
18 out-of-court
19 statement offered
20 in evidence to
21 prove the truth of
22 the matter
23 asserted and is,
24 therefore,
25 inadmissible
26 hearsay.

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The report is admissible pursuant to FRE 803(18), the “learned treatise” exception. One or more of Log Cabin’s expert witnesses, whose opinions Defendants have not objected to, rely upon the report and have established that it is a reliable authority. Finally, the report should be admitted pursuant to FRE 807, the residual hearsay exception. Indeed, Defendants’ prior admissions confirm that the report has substantial circumstantial guarantees of trustworthiness. See, e.g., Admiral Mullen’s statements before the Senate Armed Services Committee that his counterparts in countries that allow gays and lesbians to serve openly report “no impact on military effectiveness.” Plaintiff’s Statement of Genuine Issues, # 44.

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| App. 2879-2881: March 14, 2007 Washington Post article “Bigotry That Hurts Our Military” | | |
| This article constitutes inadmissible double hearsay. | 156 | The <i>fact</i> that former Senator Simpson has changed his view regarding the Policy is not hearsay. Moreover, the article should be admitted pursuant to FRE 807, the residual hearsay exception. |
| App. 2937-2945: January 30, 2010 transcript of CNN Interview with William Cohen | | |
| This transcript of a CNN interview constitutes inadmissible double hearsay. | 157 | The <i>fact</i> that former Secretary Cohen has changed his view regarding the Policy is not hearsay. Moreover, the article should be admitted pursuant to FRE 807, the residual hearsay exception. |

1 App. 2946-2993: September 15, 2004 report by Nathaniel Frank, Ph. D. "Gays and
2 Lesbians at War: Military Service in Iraq and Afghanistan under 'Don't Ask, Don't
3 Tell'"

4 This article
5 constitutes
6 inadmissible
7 double hearsay.

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8 The report is admissible pursuant to FRE
9 803(18), the "learned treatise" exception. One
10 or more of Log Cabin's expert witnesses, whose
11 opinions Defendants have not objected to, rely
12 upon the report and have established that it is a
13 reliable authority. Finally, the report should be
14 admitted pursuant to FRE 807, the residual
15 hearsay exception. Indeed, Defendants' prior
16 admissions confirm that the report has
17 substantial circumstantial guarantees of
18 trustworthiness. See, e.g. LCR App. at 1790a-
19 1790b (characterized by the Department of
20 Defense as a "thoughtful study" in an untitled
21 memorandum produced by Defendants at pages
22 Bates stamped OSD P&R Plans 058910-11).

18 App. 2994: March 29, 2010 article in Roll Call entitled "Wesley Clark Backs
19 Cunningham in North Carolina"

20 This article
21 constitutes
22 inadmissible
23 double hearsay.

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24 The *fact* that General Clark has changed his
25 view regarding the Policy is not hearsay.
26 Moreover, the article should be admitted
27 pursuant to FRE 807, the residual hearsay
28 exception.

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| App. 2995-3093: August 1992, Update of the U.S. Army Research Institute's Longitudinal Research Data Base of Enlisted Personnel | | |
| This report constitutes an out-of-court statement offered in evidence to prove the truth of the matter asserted and is, therefore, inadmissible hearsay. | 135 | The report should be admitted pursuant to FRE 807, the residual hearsay exception. |
| App. 3094: February 3, 1020 New York Times article entitled "Powell Favors Repeal of 'Don't Ask, Don't Tell'" | | |
| This article constitutes inadmissible double hearsay. | 152 | The report should be admitted pursuant to FRE 807, the residual hearsay exception. In any event, Defendants now admit the fact Plaintiff's cited the article to establish. |

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**Documents Cited in Plaintiff's Genuine Issues
But Not Included in Its Appendix**

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| Log Cabin Military Survey of Membership, produced by Plaintiff as Bates Nos. LCR 001-017 and included as Exhibit B to the Declaration of Terry Hamilton | | |
| This "survey" is a compilation of out-of-court statements introducing as evidence to prove the truth of the matters asserted and is, therefore, inadmissible | 137 | The report should be admitted pursuant to FRE 807, the residual hearsay exception. |

Dated: April 26, 2010

WHITE & CASE LLP

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Patrick Hunnius
Counsel for Plaintiff
Log Cabin Republicans