

1 DAN WOODS (State Bar No. 78638)  
 EARLE MILLER (State Bar No. 116864)  
 2 AARON KAHN (State Bar No. 238505)  
 WHITE & CASE LLP  
 3 633 W. Fifth Street, Suite 1900  
 Los Angeles, CA 90071-2007  
 4 Telephone: (213) 620-7700  
 Facsimile: (213) 452-2329  
 5 Email: dwoods@whitecase.com  
 Email: emiller@whitecase.com  
 6 Email: aakahn@whitecase.com

7 Attorneys for Plaintiff  
 Log Cabin Republicans

8

9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA

11

12 LOG CABIN REPUBLICANS, a non-  
 13 profit corporation,

14 Plaintiff,

15 vs.

16 UNITED STATES OF AMERICA and  
 ROBERT M. GATES (substituted for  
 17 Donald H. Rumsfeld pursuant to FRCP  
 25(d)), SECRETARY OF DEFENSE,  
 18 in his official capacity,

19 Defendants.

20

Case No. CV 04-8425 VAP (Ex)

**DECLARATION OF JENNY L.  
 KOPFSTEIN IN SUPPORT OF  
 PLAINTIFF LOG CABIN  
 REPUBLICANS' SUPPLEMENTAL  
 BRIEF ON APPLICATION OF WITT  
 STANDARD OF REVIEW**

Judge: Hon. Virginia A. Phillips

Complaint filed: October 12, 2004  
 Trial: July 13, 2010

21

**DECLARATION OF JENNY L. KOPFSTEIN**

22

I, Jenny L. Kopfstein, declare as follows:

23

1. I am over 18 years old and, if called as a witness, I would be able to  
 24 testify competently, of my own personal knowledge, to the truth of the matters  
 25 contained in this declaration.

26

27

28

DECLARATION OF JENNY L. KOPFSTEIN IN SUPPORT OF PLAINTIFF LOG  
 CABIN REPUBLICANS' SUPPLEMENTAL BRIEF ON APPLICATION OF  
WITT STANDARD OF REVIEW

1           2.     I am a U.S. Navy veteran and U.S. Naval Academy graduate who  
2 served openly as a lesbian officer for almost 2½ years before I was discharged  
3 under Don't Ask, Don't Tell in 2002.

4           3.     I joined the Navy in June 1995 when I enrolled in the U.S. Naval  
5 Academy. At the Naval Academy, I majored in physics.

6           4.     The Naval Academy teaches you about honor and integrity. It places a  
7 special emphasis on these values. On a midshipmen's first day at the Naval  
8 Academy, you are given uniforms, shoe polish and metal polish, and you are taught  
9 the Naval Academy's Honor Concept. The Honor Concept starts out, "Midshipmen  
10 are persons of integrity: they do not lie, cheat, or steal."

11          5.     Midshipmen are considered the guardians of the Honor Concept.  
12 Midshipmen honor representatives serve on an Honor Committee and oversee the  
13 honor system by conducting education classes and investigating possible honor  
14 incidents.

15          6.     When I was a senior midshipman, I interviewed for the position of and  
16 was selected to serve as an investigator for the Honor Staff, which is a subset of the  
17 Honor Committee. I investigated midshipmen who were accused of violating the  
18 Honor Concept. This experience brought home to me the importance of integrity  
19 and just what it means not to lie.

20          7.     During my senior year at the Naval Academy, I was notified that I  
21 would eventually be serving on the USS SHILOH, a guided missile cruiser named  
22 in remembrance of the Battle of Shiloh in the American Civil War.

23          8.     In May 1999, I graduated from the Naval Academy and was  
24 commissioned as a Surface Warfare Officer. For approximately three months after  
25 graduation, I remained at the Naval Academy to teach sailing to junior midshipmen.

26          9.     From approximately September 1999 to February 2000, I attended the  
27 Surface Warfare Officer School in Newport, Rhode Island.

28          10.    On March 15, 2000, I reported for duty on the USS SHILOH.

1           11. While on board the ship, I found it difficult to have to lie, or tell half-  
2 truths, to my shipmates. Under Don't Ask, Don't Tell, answering a simple question  
3 could lead to a homosexual servicemember being either investigated or, ultimately,  
4 discharged from the military. For example, if a shipmate asks what you did last  
5 weekend, a homosexual servicemember can't react like a normal human being and  
6 say, "Hey, I went to a great new restaurant with my partner. You should try it out."  
7 An answer like that would have gotten me kicked out of the Navy. But if you don't  
8 interact like that with your shipmates, they think you are weird, and it undermines  
9 working together as a team.

10           12. When I was closeted, the pain ate away at the core of my being. The  
11 crew of my ship was my extended family, and being in the military is not a 9 to 5  
12 job. A lot of the time when stationed on board a ship, going home is not even an  
13 option. I lived, worked, ate and slept with my crew. Keeping parts of my life  
14 secret, and separate, was an incredible burden. It is an unnecessary burden, and no  
15 American sailor or soldier should be forced to bear it.

16           13. After being on the ship for approximately four months, on July 17,  
17 2000, I wrote a letter to my commanding officer and told him I am a lesbian  
18 because I felt like I was being forced to lie.

19           14. The next day, my commanding officer called me into his office. He  
20 told me he did not believe me and thought I was just trying to get out of the Navy.  
21 I told him that I did not write the letter as part of an effort to get out of the Navy,  
22 and that I wanted to stay and serve honorably, and to maintain my integrity by not  
23 lying about who I am.

24           15. After our conversation, my commanding officer wrote a letter to the  
25 Pentagon saying that an investigation should be started.

26           16. After I wrote the letter, I continued to do my job on the ship to the best  
27 of my ability. Approximately one month after I wrote the letter, the USS SHILOH  
28

1 departed San Diego for a six-month deployment to the Western Pacific and Arabian  
2 Gulf.

3 17. During this deployment, I qualified as Officer of the Deck, and was  
4 chosen to be the Officer of the Deck during General Quarters, which was a great  
5 honor. General Quarters is the announcement made aboard to signal the crew to  
6 prepare for battle.

7 18. After this deployment, the USS SHILOH came back to San Diego and  
8 began to prepare for a future deployment. During this time, I remained on the ship  
9 and continued to do my job.

10 19. In total, I served on the USS SHILOH for approximately 22 months  
11 until January 2002. During all that time, I am proud to say I did not lie. I had come  
12 out in my letter officially, and I came out slowly over time to my shipmates. I  
13 expected negative responses. I got none. Everyone I talked to was positive, and the  
14 universal attitude was that Don't Ask, Don't Tell is dumb.

15 20. During my time on the USS SHILOH, the Captain chose me to  
16 represent the ship in a ship handling competition. I was the only officer chosen  
17 from the ship to compete. My sexual orientation was known to my shipmates by  
18 this time. To my knowledge, no one serving aboard the USS SHILOH complained  
19 about the Captain choosing someone being processed for discharge under Don't  
20 Ask, Don't Tell. Rather, everyone wished me luck in the competition. I won the  
21 competition.

22 21. During the time I was serving openly aboard the USS SHILOH, I  
23 earned my Sea Service Deployment ribbon and my Surface Warfare Officer pin.  
24 During my pin ceremony, the Captain took his own pin off of his chest and pinned  
25 it on mine. That was one of my proudest moments.

26 22. In addition, in approximately May 2001 – during my lengthy  
27 deployment on the USS SHILOH – I was promoted from Ensign to Lieutenant,  
28 Junior Grade.

1           23. I tried my best to do my job, and my command was pleased with my  
2 work. My June 2001 Performance Report included these assessments: A “top  
3 notch performer;” “a gifted ship handler. Shiloh’s strongest Officer of the Deck.  
4 Possesses an instinctive feel for ship control seldom seen in such a junior officer.  
5 ... When she has the deck, there is never any doubt who is in control;” an  
6 “exceptional legal officer;” “ENS Kopfstein is an outstanding officer.”

7           24. My open service had a positive impact on the ship’s morale. I was  
8 able to treat my shipmates like human beings, and we could interact on a personal  
9 level. One time I was walking down the passageway on the ship, and a Senior  
10 Chief Petty Officer stopped me and asked, “Ma’am, may I speak to you for a  
11 minute?” My first thought was, “Uh-oh, what is this going to be about?” We  
12 stepped into an empty room, and he pulled out his wallet. He showed me a picture  
13 of a teenage boy: “This is my son, and he’s gay, and I’m really proud of him.” I  
14 was so shocked, I didn’t know what to say. Finally, I said, “Wow! Thanks, Senior  
15 Chief.” We could not have had that interaction if I was not out. Normal people  
16 interact, and talk about their families.

17           25. My commanding officer wrote in my Fitness Report in 2002 that my  
18 “sexual orientation has not disrupted good order and discipline onboard USS  
19 SHILOH.”

20           26. In January 2002, after the USS SHILOH returned to port, I was  
21 assigned to the Naval Legal Services Office in San Diego, California, where I  
22 served until my discharge from the Navy in October 2002. During this assignment,  
23 my new commanding officer awarded me the Navy and Marine Corps Achievement  
24 Medal, which is an individual award. He knew about my orientation from the first  
25 moment I arrived at his command, but it made no difference to him.

26           27. During this time, I contested my discharge. I invoked my right to an  
27 administrative hearing, instead of resigning my commission.

1           28.   Nineteen months after I admitted my sexual orientation, a Board of  
2 Inquiry convened to determine whether I should be discharged under Don't Ask,  
3 Don't Tell.

4           29.   During my service on the USS SHILOH, I had two captains because  
5 there was a change of command while I was there. Even though they were four  
6 grades above me, both of them wanted to come and testify at my discharge hearing  
7 to say they were opposed to kicking me out. This is what they told the Board of  
8 Inquiry: my performance during deployment was "absolutely solid. She did a  
9 great job;" "I think this person has an awful lot to offer the Navy.... She's an  
10 incredible officer and she has a lot to offer. I think it would be a shame for the  
11 service to lose her."

12           30.   At the conclusion of the Board of Inquiry hearing, the panel elected to  
13 discharge me.

14           31.   In total, I served openly in the U.S. Navy for two years and four  
15 months, from July 1999 until I was discharged on October 31, 2002.

16           32.   During my service, I received numerous awards in addition to those  
17 already mentioned, including the Meritorious Unit Commendation, Battle "E"  
18 Ribbon, National Defense Service Medal, Armed Forces Expeditionary Medal, Sea  
19 Service Deployment Ribbon, Navy Expert Rifle Medal and the Navy Expert Pistol  
20 Shot Medal.

21           33.   I made a commitment to the Navy when I joined to serve five years  
22 after graduation from the Naval Academy. I have only gotten to serve three and a  
23 half so far. I want the opportunity to live up to my commitment, and serve out the  
24 rest of my time with honor. The way I see it, I owe the Navy a year and a half  
25 more.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

34. If Don't Ask, Don't Tell is overturned, I would rejoin the United States Navy.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 21<sup>st</sup> day of June 2010, at San Diego, California.

  
\_\_\_\_\_  
Jenny L. Kopfstein