

APPENDIX M

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Expert Testimony Report

Major Margaret Witt v. United States Department of the Air Force
Nathaniel Frank, Ph.D.

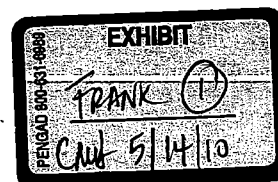
March 16, 2010

I. NO SOCIAL SCIENTIFIC EVIDENCE TIES OPENLY GAY SERVICE TO IMPAIRED UNIT COHESION

No research has ever shown that service by open homosexuals impairs military readiness. This fact has been acknowledged by the Government Accountability Office as well as by 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 opinion that the return of Major Witt to her unit would not, by virtue of her sexual identity itself, cause disruptions to the unit's cohesion.

- 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.
- 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

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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."

- The Palm Center at the University of California, Santa Barbara, conducted four studies in 2000 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."
- 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.
- A 2009 study by the University of Florida professor Bonnie Moradi and the Rand researcher Laura Miller, entitled "Attitudes of Iraq and Afghanistan War Veterans toward Gay and Lesbian Service Members," and published in *Armed Forces & Society*, assessed the relationship between units in which service members reported knowing or suspecting they were serving with gays, and the impact on the cohesion of those units. The authors found that knowledge of suspicion that one is serving with a gay or lesbian unit member has no bearing on the unit's cohesion, concluding that "the data indicated no associations between knowing a lesbian or gay unit member and ratings of perceived unit cohesion or readiness."

II. MAJOR WITT'S UNIT MATES APPEAR TO SUPPORT AND ACCEPT HER EVEN THOUGH THEY KNOW SHE IS GAY, WHICH REFLECTS CLEAR TRENDS TOWARD ACCEPTANCE OVER PAST TWO DECADES

Based on the declarations I have read from others in Major Witt's unit, there is no substantiation for the assumption that her presence would disrupt unit cohesion.

Declarations said, for instance, that her unit mates, even with the suspicion or assumption that Major Witt is a lesbian, "have utmost trust and confidence in her abilities," believe she is a "highly valuable, well-liked and well-respected member" of the unit, and believe that even if her sexuality was announced to the whole unit, retaining her "would not have

any negative impact upon unit morale, discipline, or combat readiness.” The support and acceptance these declarations illustrate for an out gay officer are buttressed by data showing that over the past twenty years, opposition to and discomfort with gay people have dropped both within and outside the military, while familiarity with, and tolerance and acceptance of, homosexuality have grown. The ban on openly gay service is considered by some to be necessary in large part because of the presumed anti-homosexual sentiment in the culture and particularly in the military community; yet the presence of data showing a substantial softening of that sentiment, and widespread knowledge that gays already serve in most units, undercuts this rationale by showing substantially great acceptance of gay people than when the Congressional findings supporting the current policy were formulated. These specific and general data suggest there is no reason to believe the return of Major Witt to her unit would cause any disruption. Below are the polls and remarks that comprise the general data informing 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.
- A 2005 poll conducted by the University of New Hampshire Survey Center found that 79% of the public believed gays should be allowed to serve openly in the military. The poll found that “large majorities” of Republicans, regular churchgoers, and people with negative attitudes toward gays supported allowing gays to serve openly.
- In May 2007, 79% of adults nationwide said in a CNN/Opinion Research Corporation poll that they believed openly gay individuals should be allowed to serve in the military. A year and a half later the percentage in favor had increased to 81%.
- In 2008, a *Washington Post*-ABC News poll found that 75% of Americans thought that gays who publicly disclosed their sexual orientation should be allowed to serve. This included a majority of white evangelicals, veterans, and Republicans, whose support doubled since 1993. Nearly two-thirds of Republicans, as well as 82% of white Catholics, supported letting open gays serve.
- An April 2009 Quinnipiac University Poll found that 56% of American voters think the military ban on openly gay service should be repealed, including 50% of voters who have a household member in the military.
- Gallup conducted a poll in May 2009 and compared it to the results of a poll it had conducted five years earlier, in November 2004. Not only did the poll demonstrate that more Americans supported repeal of DADT than ever before, but it showed that the biggest increase in support had taken place among conservatives and weekly churchgoers—up 12 and 11 percentage points,

respectively. Such data show that traditionally conservative groups have begun to shift on the issue, and they are shifting more on the issue of openly gay service than on legalizing gay marriage.

- A February 2010 Quinnipiac University poll found that 57% of Americans support openly gay service, with 66% believing the current policy is discriminatory. Moreover, 82% favor ending the military's practice of pursuing disciplinary action against gay service members whose orientation is revealed against their will. Of additional note, 65% of those polled disagree with the notion that ending DADT will negatively impact military effectiveness, including 57% of voters in military families. However, by 54% to 38%, voters believe gays in the military should face some restriction on exhibiting their sexuality while on the job.
- A February 2010 *Washington Post*-ABC News poll found that three-quarters of Americans support letting gays serve openly in the military; 83% believe that homosexuals who do not publicly disclose their sexual orientation should be allowed to serve.
- The latest CNN/Opinion Research Corporation poll, conducted in February 2010, found that 69% of Americans favor permitting openly gay or lesbian people to serve in the military.

Military Opinion Data

- A 1993 *Los Angeles Times* poll which found that 76 percent of service men and 55 percent of service women disapproved of lifting the gay ban.
- 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.
- From Nov 11- Nov 30, 2009, the *Military Times* conducted a survey of its readers on "don't ask, don't tell." Survey data were filtered to include responses from active-duty service-members only (3,030 respondents). According to the *Military Times*' statement on methodology, respondents were on average older and more senior in rank than the overall military population. 51% opposed allowing gays

and lesbians to serve openly in the military, down from 58% the previous year. 29.5% favored allowing gays and lesbians to serve openly.

Opinion of High-Level Military Officers and Officials

- 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. In 2010, he said he supported the plan of President Obama to end the “don’t ask, don’t tell” policy entirely.
- 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.
- Over 100 retired officers 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 the 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.
- On February 2, 2010, Adm. Michael Mullen, Chairman of the Joint Chiefs of Staff, said he believed the ban on openly gay service should be lifted, since it undermined the integrity of the force.
- Secretary of Defense, Robert Gates, also said that day that he supported the President's plan to repeal "don't ask, don't tell."
- Gen. David Petraeus, chief of U.S. Central Command, said in 2010 that he supports the President's plan to move ahead with repeal cautiously, and said he was not sure that troops on the ground care about sexual orientation. He also commented that skill matters more than sexual orientation: "You say, 'how's his shooting,' or, 'how's her analysis?'"
- General Raymond Odierno, the top commander in Iraq, said in 2010 that he believed gays should be allowed to serve, saying, "My opinion is everyone should be allowed to serve, as long as we're still able to fight our wars and we're able to have forces that are capable of doing whatever we're asked to do."

III. WHILE MAJOR WITT'S UNIT MATES APPEAR TO ACCEPT HER, SOCIAL ACCEPTANCE OF HOMOSEXUALITY IS NOT NECESSARY FOR AN EFFECTIVE POLICY OF INCLUSION

Both research and the experience of other nations and domestic analogs to the U.S. military show that, while tolerant attitudes toward homosexuality play a helpful role politically in bringing about non-discrimination policies, widespread acceptance of homosexuality is not essential for operational effectiveness. Some level of homophobia can and does persist in these organizations without undermining overall cohesion, just as negative attitudes toward women and other minorities remain in the armed forces at levels that are considered manageable. Further, discomfort around the privacy

implications of serving with known gays does not automatically translate into disruptions of cohesion or readiness, and indeed the military and Congress already acknowledge that sacrificing comfort and privacy are expected as part of military service. The data points on which this conclusion are based are as follows:

- Many of the nations that ended their gay bans since the early 1990s faced enormous resistance beforehand, reflecting widespread homophobia, but none of the negative scenarios that were predicted came true after the bans were lifted. In Britain and Canada, polls showed that roughly two thirds of respondents said they would or might leave if gays were allowed to serve, but when the bans were lifted almost no one resigned as a result.
- 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.
- Research shows that non-discrimination policies in police and fire departments did not impair effectiveness even though many departments were characterized as highly homophobic. Research also shows that heterosexual responses to gay service in police and fire departments were more likely to be positive when expressed privately than in front of their peers, reflecting the institutional pressure that exists to express anti-gay attitudes even when individuals themselves do not feel homophobic. These data are revealing: they show there is a widespread belief that homosexuality is viewed negatively, but when individuals are asked their own views in private, they express a more tolerant attitude.
- Joking and banter that express hostility to homosexuality should not be confused with virulent homophobia that automatically translates into disruptions. Instead, such attitudes are part of a range of tools that service members use to challenge each other’s limits, prove their strength, and even strengthen bonds of trust as a result of surviving these rituals.
- Many of the same arguments and fears claimed by those who oppose openly gay service were also expressed by those who opposed racial integration in the military following World War II. 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. Yet despite

widespread racism, integration proceeded successfully once the military leadership threw their support behind the process.

- Research shows that, while unit cohesion is important to combat effectiveness, it is “task cohesion” rather than “social cohesion” that is important. While people may not enjoy mutual affection or share the same values or backgrounds in a unit, the training and focus on a common mission is capable of creating the “task cohesion” necessary to become a ready fighting force. Indeed the purpose of basic training is to take a diverse group of people who don’t know each other and may not share the same values, and mold them into a cohesive unit, something the military is highly capable of doing. Research also suggests that too much “social cohesion” can be dangerous to the mission, and has in the past been responsible for fraternization, fragging and other indiscipline problems that result from cliques or very strong social ties.

IV. THE SUCCESS OF POLICIES OF EQUAL TREATMENT IN 25 FOREIGN MILITARIES AND RELATED ANALOGOUS INSTITUTIONS SUGGESTS THAT OPENLY GAY SERVICE DOES NOT IMPAIR COHESION AND THAT FAR LESS INTRUSIVE OPTIONS EXIST TO PROTECT UNIT COHESION

The experiences of foreign militaries show that openly gay service works well without disrupting cohesion. While each military is distinct, the variables that made openly gay service successful in foreign countries are easily reproducible in the U.S. and the concerns that have been raised in the U.S. were also raised elsewhere and were found to be manageable. The data informing this position are as follows:

- 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.”
- 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.

- 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."
- In 2002, the MOD revisited its new policy on sexual orientation and the new Code of Social Conduct that had been implemented as part of the new policy. Officials concluded that, after assessing the new rules "in light of thirty months' experience," "there has been no discernible impact on operational effectiveness," that the code had been "well received," and that "no further review of the Armed Forces policy on homosexuality" was necessary.
- Evidence from other countries suggests that lifting bans on openly gay service contributed to improving the command climate in foreign militaries, including increased focus on behavior and mission rather than identity and difference, greater respect for rules and policies that reflect the modern military, a decrease in harassment, retention of critical personnel, and enhanced respect for privacy.

V. THE LESSONS FROM THESE SUCCESSFUL POLICIES IN FOREIGN COUNTRIES OFFER SPECIFIC GUIDELINES FOR A LESS DISRUPTIVE WAY TO PRESERVE UNIT COHESION THAN DISQUALIFYING ALL THOSE WHO ENGAGE IN HOMOSEXUAL CONDUCT

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:

- Clear, consistent rules governing behavior is what makes gay inclusion work. Research suggests 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." Focus on uniform rules and expectations surrounding behavior, rather than identity, helped improve the command climate in Britain and Australia and elsewhere, by use of a code of social conduct. This code minimizes intrusions into service members' privacy, while keeping the focus on common standards of behavior instead of rumors or suspicions about who might be gay.
- One of the most important lessons from foreign militaries is the centrality of leadership, particularly support from those at the very top of the military hierarchy. 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.
- Given what the research says about signals from top leaders, support for repeal by Chairman of the Joint Chiefs of Staff, Adm. Mike Mullen, the highest-ranking uniformed person in the U.S., is a significant development, and can be expected to help ensure that a shift to openly gay service is implemented smoothly. It could also help ensure that the return of Major Witt to her unit is taken in stride by her unit mates, without undue concern that her sexual identity would cause disruptions.
- Most countries which lift their gay bans implement repeal either immediately or within four months of the decision to end discrimination. These experiences confirm research findings which show that a quick, simple implementation process is helpful to ensuring success. Swift, decisive implementation signals the support of top leadership and confidence that the process will go smoothly. This research suggests a roadmap to ending discrimination which would be a less intrusive means of ensuring unit cohesion than separating a well-regarded member of the unit because of her sexual orientation or her propensity to engage in homosexual conduct.
- The Palm Center research on foreign militaries found that even in countries where "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.

VI. WOMEN ARE GENERALLY LESS CONCERNED ABOUT HOMOSEXUALITY THAN MEN, SUGGESTING THAT MAJOR WITT'S PRESENCE WOULD NOT CAUSE DISRUPTIONS IN HER UNIT

Major, reliable polls of service members on their attitudes toward gay service have been infrequent in recent years. But data that does exist, both inside and outside the military, shows that women care less about homosexuality than men, and are less bothered by proximity to gay people:

- In 1992 and 1993, the late military sociologist, Charles Moskos, conducted large polls of Army personnel with a Northwestern University research team. His surveys found that that 75 percent of Army men, but only 43 percent of women, supported the gay ban.
- The Air Force also administered a poll in 1003, by telephone, and found that 67 percent of men and, again, 43 percent of women supported the ban.
- Between 1992 and 1998, the percentage of Army women who “strongly opposed” gays serving in the military dropped from 32 to just 16 percent.
- Surveys and focus groups find that men generally (i.e. non-military) hold more negative attitudes toward homosexuality than do women, and especially when the particular gay person being discussed in a male rather than a female.
- 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.” While not divided up by gender, it is likely that an even smaller percentage of women felt uncomfortable around gays than did men, given the data mentioned above.
- 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. While not divided up by gender, it is likely that an even larger percentage of women felt comfortable around gays than did men, given the data mentioned above.

VII. CONCERNS THAT MAJOR WITT’S PRESENCE WOULD UNDERMINE UNIT COHESION ARE NOT ROOTED IN FACT, BUT REFLECT LONGSTANDING ANIMUS AGAINST HOMOSEXUALITY IN THE MILITARY

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.
- 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.”
- 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.

VIII. THE PRACTICE OF SEPARATING PEOPLE ON THE BASIS OF HOMOSEXUAL ORIENTATION OR CONDUCT APPEARS TO HAVE COSTS TO MORALE, READINESS, AND COHESION

According to several declarations by unit mates, Major Witt was a “knowledgeable resource” who was sought out for her leadership capabilities by unit mates. She enjoyed “strong working relationships” and helped “ensure the safety” of the unit and the “effective chain of command” in the Squadron. Several declarations mentioned that the investigation and suspension of Major Witt themselves caused harm to the morale and cohesion of the unit. For instance, one unit mate wrote that “I believe that the morale of the member [sic] of the 446th have been severely damaged because Major Witt is not allowed to continue to serve with our Squadron” and that “discharging Major Witt from the U.S. Air Force would be detrimental” and that morale, cohesion, and good order “would be severely jeopardized even further.” Another wrote that “Major Witt played an important role in ensuring the good order, morale and cohesion of our Unit,” suggesting that her discharge, absent compelling other benefits, would itself harm the unit. Another said that the separation proceedings have made many unit members “upset and angry.” Evaluations said that Major Witt’s leadership contributed to “increasing overall worldwide capabilities and mission readiness of each squadron member,” suggesting that removing her, absent other substantial benefits, would undercut the readiness of her unit.

These observations from Major Witt's unit mates and superiors reflect general findings about the damage caused by the policy that calls for separation of gay and lesbian service members when findings are made involving homosexual conduct. As shown in the case of Major Witt, the policy strikes at the heart of unit cohesion by breaking apart integrated fighting teams, and depriving units of highly valued and valuable members of the team. Following are the general findings that show the costs to morale and cohesion of separations for homosexual conduct:

General Research

- In a 2004 report I authored based on in-depth interviews with over 30 gay or lesbian service members who served in Iraq or Afghanistan, nearly all the subjects reported that "don't ask, don't tell" impeded their capacity to bond with their peers, to develop trust within their units, to discuss basic personal matters, and to achieve maximum productivity in their working lives as fighters and support personnel. Reported hardships were exacerbated during deployment, when support networks and resources outside the military are less accessible. Many reported that, due to the policy's strictures on expression, they sometimes avoided socializing with their comrades, and were perceived by others as anti-social.
- In the same report, none of the gay and lesbian interviewees reported any impairment of unit cohesion as a result of their homosexual identity being known during deployment. Some reported that the "don't tell" clause of the policy undermined unit cohesion and impeded their ability to reach their potential. Some members reported minor disruptions resulting from anti-gay sentiment which were comparable to other kinds of tension resulting from gender- or race-based interpersonal conflicts.
- The report concluded that the policy frequently deprives gay and lesbian service members of access to support services, including medical care, psychological assistance and religious consultations, because they have no guarantee that personnel in these offices will hold their words in confidence.
- A 2009 study published in the journal, *Military Psychology*, found that real damage may result when gay or lesbian troops are forced to conceal their orientation. The study marks the first empirical analysis of the relationship between sexual orientation concealment and unit cohesion in the military. It found that sexual orientation disclosure is positively related to unit cohesion, while concealment and harassment are related negatively, meaning that forcing troops to conceal their sexual orientation appears to reduce cohesion.

National Security Costs: Loss of Critical Skills and Qualified Personnel

- In the first ten years of the policy, 244 medical specialists were fired, including nurses, physicians, biomedical laboratory technicians, and other highly trained healthcare personnel like Major Witt. Witt's declaration reflected this shortage, saying the Air Force Reserve had a "critical shortage" of flight nurses at the time of her discharge proceeding. The military has 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."

- 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.
- 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.

IX. GAYS ALREADY SERVE OPENLY

Many of Major Witt's unit mates say they have long believed she is a lesbian. This reflects data that show widespread knowledge or assumptions that troops are serving with gay peers in their units, suggesting that "don't ask, don't tell" has failed at its most basic objective, which was to maintain privacy and cohesion by shielding service members from the knowledge of who was gay in their unit. This reality also suggests that the

assumption that openly gay service would harm cohesion 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.

Vita

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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.

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- "Financial Analysis of 'Don't Ask, Don't Tell': How Much Does the Gay Ban Cost?" Blue Ribbon Commission Report, Palm Center, University of California, Santa Barbara, 2006
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- Col. Om Prakash, "The Efficacy of 'Don't Ask, Don't Tell,'" *Joint Force Quarterly* (4th quarter 2009): 88-94
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Public Opinion Polls

- Fox News poll, 2003, finding that the number of people who support gay service was 64 percent
- Gallup poll, 2003, finding that 91 percent of Americans between ages eighteen and twenty-nine favored lifting the ban
- Poll conducted by the University of New Hampshire Survey Center, 2005, finding that 79% of the public believed gays should be allowed to serve openly in the military, and that "large majorities" of Republicans, regular churchgoers, and people with negative attitudes toward gays supported allowing gays to serve openly
- CNN/Opinion Research Corporation poll, 2007, finding that 79% of adults nationwide said that believed openly gay individuals should be allowed to serve in the military
- *Washington Post*-ABC News poll, 2008, finding that 75% of Americans thought that gays who publicly disclosed their sexual orientation should be allowed to serve, as did a majority of white evangelicals, veterans, and Republicans, whose support doubled since 1993

- Quinnipiac University Poll, April 2009, finding that 56% of American voters think the military ban on openly gay service should be repealed, including 50% of voters who have a household member in the military
- Quinnipiac University poll, February 2010, finding that 57% of Americans support openly gay service, with 66% believing the current policy is discriminatory
- *Washington Post*-ABC News poll, February 2010, finding that three-quarters of Americans support letting gays serve openly in the military
- CNN/Opinion Research Corporation poll, February 2010, finding that 69% of Americans favor permitting openly gay or lesbian people to serve in the military.

Military Opinion Polls

- Polls of Army personnel, 1992 and 1993, conducted by sociologist Charles Moskos at Northwestern University, finding that 75 percent of Army men, and 43 percent of women, supported the gay ban
- Polls conducted by the U.S. Air Force, 1993, finding that 67 percent of men and 43 percent of women supported the ban
- 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.
- Masters Thesis written at the Naval Postgraduate School, 2000, finding 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
- National Annenberg Election Survey, October 2004, finding that 42 percent of service members believed that gays and lesbians should be allowed to serve openly and 50 percent of junior enlisted service members supported openly gay service
- Zogby poll of 545 troops who served in Afghanistan and Iraq, December 2006, finding that 72 percent of service members were personally comfortable interacting with gays and lesbians, and that, 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 poll also found that nearly two thirds of service members know or suspect gays in their units
- *Military Times* poll, conducted Nov 11- Nov 30, 2009, finding of Active Duty subscribers, finding that 51% opposed allowing gays and lesbians to serve openly

in the military, down from 58% the previous year, and 29.5% favored allowing gays and lesbians to serve openly

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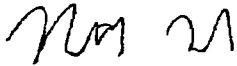
Payment Agreement

I have agreed to accept payment 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.

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Signature Page

This report was prepared by:



Nathaniel Frank, Ph.D.

March 16, 2010

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