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MAJOR WITT

vs. C06-5195 RBL

THE US DEPT OF THE AIR FORCE et al.,

EXHIBIT LIST OF BENCH TRIAL

II. EXHIBITS

A. Admissibility stipulated:

✓ Plaintiff's Exhibits All stipulated Exhibits Admitted 9/13

- 1. Award
- 2. Memorandum from Colonel Walker to Plaintiff, Nov. 5, 2004
- 3. Torem Report, Oct. 20, 2004
- 4. 1988 Officer Effectiveness Report for Plaintiff
- 5. 1987 Officer Effectiveness Report for Plaintiff

Revised Joint Witness and Exhibit List
(Case No. C06-5195) - 7

ACLU OF WASHINGTON FOUNDATION
901 Fifth Avenue 630
Seattle, Washington 98164
(206) 624-2184

All admitted 9/13

- 1 6. July 12, 2007 Reserve Order
- 2 7. 2005-06 Officer Performance Report
- 3 8. 2004-05 Officer Performance Report
- 4 9. 2003-04 Officer Performance Report
- 5 10. 2002-03 Officer Performance Report
- 6 11. 2001-02 Officer Performance Report
- 7 12. 2000-01 Officer Performance Report
- 8 13. 1999-2000 Officer Performance Report
- 9 14. 1998-99 Officer Performance Report
- 10 15. 1997-98 Officer Performance Report
- 11 16. 1994-95 Officer Performance Report
- 12 17. 1993-94 Officer Performance Report
- 13 18. 1992-93 Officer Performance Report
- 14 19. 1991-92 Officer Performance Report
- 15 20. 1990-91 Officer Performance Report
- 16 21. 1989-1990 Officer Performance Report
- 17 22. 1988-89 Officer Performance Report
- 18 23. April 1988 to October 1988 Officer Performance Report
- 19 24. 1991-92 Officer Performance Report
- 20 25. 1990-91 Officer Performance Report
- 21 26. Supplemental Evaluation Sheet
- 22 27. Record of Board Proceedings
- 23 28. NDRI Rand Report
- 24 29. July 21, 2000 Memorandum from Under Secretary of Defense
- 25 30. 1993 GAO Report to Congress
- 26 31. 1992 GAO Report to Congress
32. December 22, 2004 Department of Defense Memo

All admitted 9/13

- 1 33. August 30, 2005 Department of Defense – DOAF Memo
- 2 35. September 14, 2004 Torem Memo
- 3 36. July 7, 2004 Memo to Torem from Crabtree
- 4 37. July 7, 2004 Memo from Duignan
- 5 40. Air Force Instruction 36-3209 February 1998
- 6 41. Photograph of 446th Unit Members
- 7 42. Photograph of 446th Unit Members
- 8 43. Photograph of 446th Unit Members
- 9 44. Photograph of 446th Unit Members
- 10 45. Photograph of 446th Unit Members
- 11 46. Photograph of 446th Unit Members
- 12 47. Photograph of 446th Unit Members
- 13 48. Photograph of 446th Unit Members
- 14 49. Photograph of Plaintiff
- 15 50. Photograph of Plaintiff
- 16 51. Photograph of 446th Unit Members
- 17 52. Photograph of 446th Unit Members
- 18 53. Photograph of 446th Unit Members
- 19 56. Elizabeth Kier CV
- 20 57. Nathaniel Frank CV
- 21 58. Anthony Greenwald CV
- 22 59. February 2005 GAO Report
- 23 66. May 2, 2010 email
- 24 67. Retirement Ceremony Invitation
- 25 68. Photograph of C-17 and C-141
- 26 69. June 21, 2010 Memo from Swint to Plaintiff
73. July 26, 2010 Retirement Ceremony Invitation

All admitted 9/13

- 1 75. May 5, 2008 Memo from General Brady
- 2 76. October 1, 2004 Memo from Crabtree to Torem
- 3 77. Memo from Duignan
- 4 78. July 13, 2004 Memo from Crabtree to Torem
- 5 79. November 6, 2004 Memo
- 6 87. 1996-97 Officer Performance Report
- 7 88. 1995-96 Officer Performance Report
- 8 89. April 1995 to November 1995 Officer Performance Report
- 9 104. January 10, 2000 Memo from Ryan to Peters
- 10 106. Photograph of Plaintiff
- 11 107. Photograph of Plaintiff
- 12 108. March 17, 2010 Edmond Hrivnak Video produced during deposition
- 13 109. Organization charts
- 14 110. July 21, 2000 Memo
- 15 113. December 8, 2004 Memo from Geringer
- 16 114. February 1, 2006 email
- 17 117. Air Force Instruction 36-3209
- 18 119. April 29, 2008 email
- 19 120. September 1, 2003 Walker Memo
- 20 122. July 10, 2007 Action by Secretary of Air Force
- 21 123. Awards
- 22 125. Air Force Brochure

✓ *Defendants' Exhibits All stipulated Exhibits Admitted 9/13*

- 24 A-1 Witt Certificate of Honorable Discharge
- 25 A-4 Memorandum from General Duignan to Colonel Crabtree, July 7, 2007
- 26 A-5 Memorandum from Colonel Crabtree to Major Torem, July 7, 2004
- A-6 Torem Report, Oct. 20, 2004

All admitted 9/13

- 1 A-7 Memorandum from Colonel Mary Walker to HQ/AFRC re: Recommendation for Action
2 under AFI 36-3209, Nov. 6, 2004
- 3 A-9 Memorandum from Colonel Mary Walker to Margaret Witt re: Denial of Participation,
4 Nov. 10, 2004
- 5 A-10 Dec. 8, 2004 Legal Review of Commander's Recommendation
- 6 A-11 Memorandum from Colonel Crabtre to HQ AFRC, Dec. 22, 2004
- 7 A-13 Memorandum from AFRC to 446MSS, Aug. 30, 2005
- 8 A-14 Notification of Separation Action, Feb. 23, 2006
- 9 A-15 Request for Board Hearing, March 15, 2006
- 10 A-16 Memorandum from Lt. General John Bradley to AFRC/CC, Mar. 21, 2007
- 11 A-17 Memorandum from HQ AFRC to Margaret Witt, April 13, 2007
- 12 A-18 Memorandum from Margaret Witt to HQ AFRC, May 5, 2007
- 13 A-20 Record of Air Force Personnel Recommendation Board
- 14 A-21 Action of the Secretary of the Air Force, July 10, 2007
- 15 A-22 E-mail from Margaret Witt to Deena Harris, Sept. 21, 2006
- 16 A-23 E-mail from Margaret Witt to Craig Mason, Oct. 3, 2006
- 17 A-24 E-mail from Margaret Witt to Ken ?, Oct. 7, 2006
- 18 A-25 E-mail from Margaret Witt to Grethe Cammermeyer, Dec. 10, 2008
- 19 A-26 E-mail from Margaret Witt to Heidi ?, July 10, 2009
- 20 A-27 Memorandum from Eddie Swint Attaching Amendment to Separation Order,
21 June 21, 2010
- 22 A-28 E-Mail from Margaret Witt to Elizabeth Wurtz, June 26, 2007
- 23 A-29 E-mail from Margaret Witt to Nancy Royse, Sept. 21, 2006
- 24 A-30 Senate Hearing 103-845
- 25 A-31 Discharge Board Record
- 26 A-32 July 12, 2007 Discharge Order
- A-33 Designated portions of the Deposition Transcript for Margaret Witt

Admitted 9/13

- 1 A-34 Designated portions of the Deposition Transcript for Mary Walker
- 2 A-37 Text of 10 U.S.C. § 654
- 3 A-38 Plaintiff's answers to RFAs 1-7
- 4 A-39 Plaintiff's answer to Int. 10
- 5 A-40 Plaintiff's answer to RFA 34

B. Authenticity stipulated; admissibility disputed:

Plaintiff's Exhibits

- 9 38. August 30, 2008 Stenner speech
- 10 39. August 31, 2008 Stenner speech
- 11 54. Efficacy of Don't Ask Don't Tell by Colonel Om Prakash
- 12 55. Sexual Orientation Disclosure, Concealment, Harassment, and Military Cohesion:
- 13 Perceptions of LGBT Military Veterans
- 14 9/20 60. Attitude of Iraq and Afghanistan War Veterans toward Gay and Lesbian Service
- 15 Members by Bonnie Moradi and Laura Miller
- 16 9/20 61. Homosexuals in the U.S. Military by Elizabeth Kier
- 17 9/20 62. Rights and Fights: Sexual Orientation and Military Effectiveness by Tarak Barkawi,
- 18 Christopher Dandeker, Melissa Wells-Petry, and Elizabeth Kier
- 19 9/13 63. February 2, 2010 Hearing of Senate Armed Services Committee
- 20 64. February 3, 2010 Hearing of House Armed Services Committee
- 21 65. March 25, 2010 Briefing
- 22 70. Certificate of Release or Discharge from Active Duty
- 23 71. June Memo from Liggett
- 24 9/13 72. 2001-02 Fitness Report and Counseling Record
- 25 74. Tacoma Police Department Report
- 26 9/13 80. March 25, 2010 Transcript
- 9/21 81. April 4, 2008 email from Loverde to Welch

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- 82. April 28, 2008 Memo from Nutt *refused 9/21*
- 83. April 28, 2008 Memo from Horn *refused 9/21*
- 84. June 2, 2008 Memo from Yakowenko *refused 9/21*
- 85. Certificate of Release or Discharge from Active Duty
- 86. June 2, 2008 Memo from Eslinger *refused 9/21*
- 90. December 2007 Serious Incident Report
- 91. January 2008 Serious Incident Report
- 92. February 2008 Serious Incident Report
- 93. March 2008 Serious Incident Report
- 94. April 2008 Serious Incident Report
- 95. May 2008 Serious Incident Report
- 96. June 2008 Serious Incident Report
- 97. Memo
- 98. January 24, 2008 Memo from Moore-Harbert to Kearney
- 99. February 4, 2008 Memo from Kearney
- 100. October 25, 2007 Incident Report Summary
- 101. April 2, 2010 Memo from Newton
- 102. April 1, 2010 Memo from Schwarz
- 103. April 2, 2010 Memo from Newton
- 105. March 20, 2002 BOI Record of Proceedings *9/13 refused*
- 9/16* 111. PERSEREC September 1991
- 112. October 1, 1993 Memo from Dorn *9/21 Refused*
- 115. Air Force Instruction 36-3206
- 116. Air Force Instruction 36-3207
- 9/21* 121. July 15, 1999 FORSCOM Regulation 500-3-3

- 1 9/21 126. Homosexuals in the Military -- Open Integration and Combat Effectiveness
2 by Elizabeth Kier (Fall 1998)
- 3 9/16 127. Effect of the 1992 Lifting of Restrictions on Gay and Lesbian Service in the
4 Canadian Forces: Appraising the Evidence, April, 2000, by A. Belkin and J.
5 McNichol.
- 6 9/16 128. A. Belkin & M. Levitt, Homosexuality and the Israeli Defense Forces: Did
7 Lifting the Gay Ban Undermine Military Performance? (2001)
- 8 9/16 129. A. Belkin & R.L. Evans, The Effects of Including Gay and Lesbian Soldiers
9 in the British Armed Forces: Appraising the Evidence, November, 2000.
- 10 9/16 130. Belkin & J. McNichol, The Effects of Including Gay and Lesbian Soldiers in
11 the Australian Defense Forces: Appraising the Evidence, September, 2000.
- 12 9/16 131. G. Bateman & S. Dalvi, Multinational Military Units and Homosexual
13 Personnel, February, 2004.
- 14 9/16 132. N. Frank, Gays and Lesbians at War: Military Service in Iraq and
15 Afghanistan Under "Don't Ask, Don't Tell," September 15, 2004.
- 16 9/14 133. Bowen, A. M., & Bourgeois, M. J. (2001). Attitudes toward lesbian, gay and
17 bisexual college students: The contribution of pluralistic ignorance, dynamic
18 social impact and contact theories
- 19 9/14 134. Freedman, J. L. (1969). Role playing: Psychology by consensus.
- 20 9/14 135. Gilbert, D. T., Pinel, E. C., Wilson, T. D., Blumberg, S. J., & Wheatley, T. P.
21 (1998). Immune neglect: A source of durability bias in affective forecasting
- 22 9/14 136. Kawakami, K., Dunn, E., Karmali, F., & Dovidio, J. F. (2009). Misreading
23 affective and behavioral responses to racism.
- 24 9/14 137. LaPiere, R. T. (1934). Attitudes versus actions.
- 25 9/14 138. Milgram, S. (1963). Behavioral study of obedience.
- 26

1 9/14 139. Nosek, B. A., & Hansen, J. J. (2008). The associations in our heads belong to
2 us: Searching for attitudes and knowledge in implicit evaluation

3 9/14 140. Nosek, B. A., Smyth, F. L., Hansen, J. J., Devos, T., Lindner, N. M.,
4 Ranganath, K. A., Smith, C. T., Olson, K. R., Chugh, D., Greenwald, A. G., &
5 Banaji, M. (2007). Pervasiveness and correlates of implicit attitudes and
6 stereotypes

7 9/14 141. Prentice, D. A., & Miller, D. T. (1993). Pluralistic ignorance and alcohol use
8 on campus: Some consequences of misperceiving the social norm.

9 9/13 142. July 17, 2000 Memo from Kopfstein

10 143. Designated portions of the Deposition Transcript for Colonel Mary Walker

11 144. Designated portions of the Deposition Transcript for General Eric Crabtree

12 *Defendants' Exhibits*

13 ~~A-2~~ Email from Pat McChesney to General Jumper, June 14, 2004

14 9/21 A-3 Email Chain

15 A-8 Torem Declaration, Nov. 10, 2004

16 A-12 Declaration of Tiffany Jensen, May 2, 2005

17 9/21 A-19 Memorandum for the Secretary of the Air Force, July 6, 2007

18 A-35 Designated portions of the Deposition Transcript for Dennis Laich

19 A-36 Designated portions of the Deposition Transcript for Nathaniel Frank

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1 C. Authenticity and admissibility disputed:

2 *Plaintiff's Exhibits*

3 9/20/24. September 2003 Memo (199) Officer of the Quarter Award

4
5 Respectfully submitted,

6 DATED this 2nd day of September, 2010.

DATED this 2nd day of September, 2010.

7 AMERICAN CIVIL LIBERTIES UNION OF
8 WASHINGTON FOUNDATION

U.S. DEPARTMENT OF JUSTICE

9 By:

By:

10 /s/ Sarah A. Dunne
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15 Tel: (206) 624-2184
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Attorneys for Defendants

United States District Court

Plf's

DISTRICT OF _____

EXHIBIT AND WITNESS LIST

v.

CASE NUMBER: *C06-5195*

PRESIDING JUDGE					PLAINTIFF'S ATTORNEY		DEFENDANT'S ATTORNEY	
TRIAL DATE(S)					COURT REPORTER		COURTROOM DEPUTY	
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES			
✓		<i>145</i>	<i>9/14</i>	<i>9/21</i>	<i>Survey - Spouse</i>			
✓		<i>146</i>	<i>9/14</i>	<i>9/21</i>	<i>Survey - Military Personnel</i>			
✓		<i>148</i>	<i>9/21</i>	<i>9/21</i>	<i>Memo to Capt Kalsi ^{10/22/09}</i>			
✓		<i>156</i>	<i>9/21</i>	<i>9/21</i>	<i>Excerpts of Janette Moore-Harbert Dep</i>			
✓		<i>143</i>	<i>9/21</i>	<i>9/21</i>	<i>Excerpts Colonel Mary L. Walker Dep</i>			
✓		<i>144</i>	<i>9/21</i>	<i>9/21</i>	<i>Excerpts Maj Gen Eric W. Crabtree Dep</i>			

United States District Court

Deft's

DISTRICT OF

Witt

v.

Dept of Air Force

EXHIBIT AND WITNESS LIST

CASE NUMBER: C06-5195

PRESIDING JUDGE					PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
TRIAL DATE(S)					COURT REPORTER	COURTROOM DEPUTY
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
		A-42	9/13		Declaration of James Schaffer	
		A-43	Published		Deposition of Anthony Greenwald	
		A-48	9/14		Expert Report of Greenwald & Attachments	
		A-46	9/14	9/14	Zogby (Opinions of Military Personnel on Sexual Minorities in the Military)	
		A-56	9/15		Statement of Jill Robinson	
		A-57	9/15		Email from Jill Robinson to M. Witt	
		A-60	9/15		Email from Judy Krill to M. Witt	
		A-64	9/16	9/16	Military 2009 Poll on DADT	
		A-63	9/16	9/16	Flag & General Officers for the Military	
		A-75	9/20	9/20	Email to Witt 4/14/06	
		A-76	9/20	9/20	Email Witt to F. Mueller 4/15/06	
		A-77	9/20	9/20	Email to Witt 8/7/06	
		A-78	9/20	9/20	Email from Witt 7/20/06	
		A-80	9/20	9/20	Interrogatories objection/responses	
		A-81	9/20	9/20	Email 10/18/05 Witt to Greta Cammermeyer	
		A-105	—		Dep of Elizabeth Kier (Published)	

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.