

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 446<sup>th</sup> Unit Members
- 7 42. Photograph of 446<sup>th</sup> Unit Members
- 8 43. Photograph of 446<sup>th</sup> Unit Members
- 9 44. Photograph of 446<sup>th</sup> Unit Members
- 10 45. Photograph of 446<sup>th</sup> Unit Members
- 11 46. Photograph of 446<sup>th</sup> Unit Members
- 12 47. Photograph of 446<sup>th</sup> Unit Members
- 13 48. Photograph of 446<sup>th</sup> Unit Members
- 14 49. Photograph of Plaintiff
- 15 50. Photograph of Plaintiff
- 16 51. Photograph of 446<sup>th</sup> Unit Members
- 17 52. Photograph of 446<sup>th</sup> Unit Members
- 18 53. Photograph of 446<sup>th</sup> 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

7 **B. Authenticity stipulated; admissibility disputed:**

8 *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 9/13 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.
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9/14 139. Nosek, B. A., & Hansen, J. J. (2008). The associations in our heads belong to us: Searching for attitudes and knowledge in implicit evaluation

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

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

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

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

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

*Defendants' Exhibits*

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

9/21 A-3 Email Chain

A-8 Torem Declaration, Nov. 10, 2004

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

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

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

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~~12~~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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*Attorneys for Defendants*

# United States District Court

Plff'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			
✓		145	9/14	9/21	Survey - Spouse			
✓		146	9/14	9/21	Survey - Military Personnel			
✓		148	9/21	9/21	Memo to Capt Kalsi 10/22/09			
✓		156	9/21	9/21	Excerpts of Janette Moore-Harbert Dep.			
✓		143	9/21	9/21	Excerpts Colonel Mary L. Walker Dep			
✓		144	9/21	9/21	Excerpts Maj Gen Eric W. Crabtree Dep			

\* Include a notation as to the location of any exhibit not held with the case file or not available because of size. Page 1 of \_\_\_\_\_

Deft's

## United States District Court

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	9/16	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 Kill 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.