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THE SECRETARY OF DEFENSE
WASHINGTON, THE DISTRICT OF COLUMBIA

July 15, 1993

The President
The White House
Washington, DC 20500

Dear Mr. President:

The enclosed draft policy memorandum, "Policy on Homosexual Conduct in the Armed Forces" is provided in accordance with your memorandum of January 29, 1993.

In preparing this policy memorandum, I have consulted fully with the Joint Chiefs of Staff and the military services, with the Secretary of the Department of Transportation as to the effect on the United States Coast Guard, with the Congress, and with concerned individuals and organizations outside the executive branch.

To effect this policy, I am directing that we no longer ask applicants for military service questions regarding sexual orientation and am ending any requirement that military personnel reveal their sexual orientation while in military service. To assist in the implementation of this policy, I will also issue an investigative policy that will govern allegations of homosexual conduct so that inquiries are conducted only when there is credible information that a basis for discharge or disciplinary action exists. Finally, I have reiterated that harassment or violence against other servicemembers will not be tolerated.

Sincerely,

A large, bold, handwritten signature in black ink, likely belonging to the Secretary of Defense, is written over the "Sincerely," and extends down towards the bottom of the page.

Enclosure

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VERSION X.4

MEMORANDUM FOR THE SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE
CHAIRMAN, JOINT CHIEFS OF STAFF

SUBJECT: Policy on Homosexual Conduct in the Armed Forces

On January 29, 1993, the President directed me to review DoD policy on homosexuals in the military. The President further directed that the DoD policy be "practical, realistic, and consistent with the high standards of combat effectiveness and unit cohesion our armed forces must maintain."

An extensive review was conducted. I have paid careful attention to the hearings that have been held by both the House and Senate Armed Services Committees, conferred with the Joint Chiefs and acting Secretaries of the Military Departments and considered recommendations of a working group of senior officers in the Department of Defense and those of the Rand Corporation.

x { The Department of Defense has long believed that, as a general rule, homosexuality is incompatible with military service because it interferes with the factors critical to combat effectiveness, including unit morale, unit cohesion and individual privacy. Nevertheless, the Department of Defense also recognizes that individuals with a homosexual orientation have served with distinction in the armed services of the United States.

Therefore, it is the policy of the Department of Defense to judge the suitability of persons to serve in the armed forces on the basis of their conduct. Homosexual conduct will be grounds for separation from the military services. Sexual orientation is considered a personal and private matter, and sexual orientation alone is not a bar to service entry or continued service.

Homosexual conduct is a homosexual act, a statement by the member that he or she is homosexual or bisexual, or a homosexual marriage or attempted marriage. A homosexual act includes any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires or any bodily contact which a reasonable person would understand to be an acknowledgment of homosexuality, e.g., handholding, kissing. Sexual orientation is a sexual attraction to individuals of a particular gender.

I direct the following:

Servicemembers will be separated for homosexual conduct.

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Applicants for military service will not be asked or required to reveal their sexual orientation. Applicants will be informed of accession and separation policy.

Commanders and investigating agencies will not initiate inquiries or investigations solely to determine a member's sexual orientation. Servicemembers will not be asked or required to reveal their sexual orientation. However, commanders will continue to initiate inquiries or investigations, as appropriate, when credible information that a basis for discharge or disciplinary action exists. Authority to initiate inquiries and investigations involving homosexual conduct shall be limited to commanders. Commanders will consider, in allocating scarce investigative resources, that sexual orientation is a personal and private matter. They will treat allegations of violations of the Uniform Code of Military Justice in an even-handed manner without regard to whether the conduct alleged is heterosexual or homosexual or whether it occurs on-base or off-base. Commanders are responsible for ensuring that investigations are conducted properly and that any abuse of authority is addressed.

The constraints of military service require servicemembers to keep certain aspects of their personal lives private for the benefit of the group. Our personnel policies will be clearly stated and implemented in accordance with due process of law.

Commanders are responsible for maintaining good order and discipline. Harassment or violence against other servicemembers will not be tolerated.

The interim policy and administrative separation procedures that I established on February 3, 1993, will remain in effect until October 1, 1993. Secretaries of the Military Departments and responsible officials within the Office of the Secretary of Defense shall, by October 1, 1993, take such actions as may be necessary to carry out the purposes of this directive. Secretaries of the Military Departments will ensure that all members of the armed forces are aware of their specific responsibilities in carrying out this new policy. This memorandum creates no substantive or procedural rights. Any changes to existing policies shall be prospective only.

Policy Guidelines are attached.

cc: Secretary of Transportation

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ADDENDUM
POLICY GUIDELINES ON POLICY ON HOMOSEXUAL CONDUCT
IN THE ARMED FORCES

Summary of Changes

The new policy changes past practice in three areas:

- Accession Policy
 - Applicants for military service will no longer be asked or required to reveal if they are homosexual or bisexual or if they intend to engage in homosexual acts. Applicants will be informed of the conduct that is proscribed for members of the armed forces, including homosexual conduct. DoD policies that govern physical standards for enlistment, appointment and induction will be amended to reflect that homosexuality is no longer classified as a mental disorder.
- Discharge Policy
 - Sexual orientation will not be a bar to service entry or continued service unless manifested by homosexual conduct. The military will discharge members who engage in homosexual conduct, which is defined as a homosexual act, a statement that the member is a homosexual or bisexual, or a marriage or attempted marriage to someone of the same gender.
- Investigations Policy
 - No investigations or inquiries will be conducted solely to determine a servicemember's sexual orientation. Sexual behavior, absent credible information that a crime has been committed, will not be the subject of a criminal investigation. An allegation or statement by another that a servicemember is a homosexual, alone, is not grounds for either a criminal investigation or a commander's inquiry.

Permitted Activities

- Association with known homosexuals, presence at a gay bar, possessing or reading homosexual publications, or marching in a gay rights rally in civilian clothes will not constitute credible information that would provide a basis for investigation or serve as the basis for an administrative discharge. On the other hand, bodily contact between servicemembers of the same gender which a reasonable person would understand to be an

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acknowledgment of homosexuality (e.g. handholding, kissing) will be sufficient to initiate separation.

- The listing by a servicemember of someone of the same gender as the person to be contacted in case of emergency, as an insurance beneficiary or in a similar context, does not provide a basis for separation or further investigation.
- Speech within the context of priest-penitent, husband-wife or attorney-client communications remains privileged.

Off-Base Conduct

- No distinction will be made between off-base and on-base conduct.
- From the time a member joins the service until discharge, the servicemember's duty and commitment to the unit is a 24 hour-a-day, seven-day-a-week obligation. Military members are required to comply with both the UCMJ, which is federal law, and military regulations at all times and in all places. Unacceptable conduct, homosexual or heterosexual, is not excused because the servicemember is not "at work."

Investigations

- The policy on investigations reflects a "bright-line" test for initiating either commanders' inquiries or criminal investigations into allegations of proscribed homosexual conduct. The new policy states that commanders will direct inquiries into alleged homosexual conduct only when there is credible information of homosexual acts, a statement by a member that he or she is a homosexual or bisexual, or a homosexual marriage.
- Commanders will continue to exercise sound discretion regarding when credible information exists, and will evaluate the information's source and all attendant circumstances to assess whether the information supports a reasonable belief that a servicemember has engaged in proscribed homosexual conduct. Commanders, and not investigators, determine when sufficient credible information exists to justify detail of investigative resources to look into allegations. The mere suspicion that an individual is a homosexual, without credible information of proscribed conduct will not constitute sufficient basis for initiating an inquiry or investigation.

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- Military law enforcement agencies will not conduct investigations solely to determine an individual's sexual orientation. Neither military commanders nor law enforcement agencies will conduct inquiries concerning private consensual sexual acts without credible information that a basis for discharge or disciplinary action exists and such inquiry is a logical and necessary step in the fact-finding process.
- We expect commanders to distinguish rumor, suspicion and innuendo from credible information and to base their actions only on the latter. The new policy states that commanders will direct inquiries into alleged homosexual conduct only when there is credible information of homosexual acts, a statement by a member that he or she is a homosexual or bisexual, or a homosexual marriage. They will not take action against members based on rumor, suspicion or capricious allegations.

Credible Information

- Credible information of proscribed homosexual conduct exists when the evidence, considered in light of its source and all attendant circumstances, supports a ~~reasonable~~ belief that a servicemember has engaged in such conduct. It requires a determination based on articulable facts not just a belief or suspicion.

Security Clearances

- Questions pertaining to an individual's sexual orientation are not permitted on personnel security questionnaires. An individual's sexual conduct, whether homosexual or heterosexual, may be a legitimate security concern if it could make an individual susceptible to exploitation or coercion, or indicate a lack of trustworthiness, reliability, or good judgment that is required of anyone with access to classified information.

The Threat of Extortion

- As long as servicemembers continue to be separated from military service for engaging in homosexual conduct, credible information of such behavior can be a basis for extortion. Although the military cannot eliminate the potential for the victimization of homosexuals through blackmail, the policy tends to reduce the risk to homosexuals by making certain categories of information largely immaterial to the military's discharge procedures.

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- Only credible information that a servicemember engaged in proscribed conduct will form the basis for initiating an inquiry or investigation of a servicemember; suspicion of an individual's sexual orientation is not a basis, by itself, for official inquiry.
- Extortion is a federal criminal offense, under both the UCMJ and United States Code, and we will prosecute offenders aggressively. A servicemember convicted of extortion may be dishonorably discharged and may be punished by three years of confinement. Civilians found guilty of blackmail under the U.S. Code may be subject to a \$2000 fine and one-year imprisonment. We intend to address the risk of blackmail by educating all servicemembers on the policy and by emphasizing the significant criminal sanctions facing convicted extortionists.

Outing

- [A mere allegation or statement by another that a servicemember is a homosexual is not grounds for official action. Sexual behavior, absent credible information that a crime has been committed, should not be the subject of either commanders' inquiries or criminal investigations. Neither will commanders take official action against members based on rumor, suspicion or capricious allegations.
- However, if a "jilted lover" provides credible information that a member has committed a crime or act that warrants discharge, e.g., engages in homosexual conduct, the military commander may, based on the totality of the circumstances, conduct an investigation or inquiry, and take non-judicial or administrative action or recommend judicial action, as appropriate.
- Commanders are responsible for initiating an investigation when credible information exists that a crime or basis for discharge has been committed. The commander examines the information and decides whether an investigation by the Service investigative agency or a commander inquiry is warranted, or if no action should be taken.

Harassment

- It is our policy that all servicemembers will be treated with dignity and respect. Hostile treatment of a servicemember based on a perception of his or her sexual orientation will not be tolerated.

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The Prohibition of Statements

- If a servicemember states that he or she is a homosexual or bisexual, the member will be separated from military service. The only exception will be if a further finding is made that the member has not engaged in and does not desire or intend to engage in homosexual acts.
- As under past policy, a statement by a member that he or she is homosexual creates a "rebuttable presumption" that the servicemember engages in, or desires or intends to engage in homosexual acts.
- The servicemember has the opportunity to prove that he does not.

The Premises of the Policy

- The Department of Defense has long believed that, as a general rule, homosexuality is incompatible with military service because it interferes with the factors critical to combat effectiveness, including unit morale, unit cohesion and individual privacy. Nevertheless, the Department also recognizes that individuals with a homosexual orientation have served with distinction in the armed forces of the United States. Therefore, it is the policy to judge members' suitability to serve in the armed forces on the basis of their conduct.

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THE QUESTION OF WHETHER THE BAN ON THE SERVICE OF HOMOSEXUALS IN THE MILITARY SHOULD BE LIFTED PUBLICLY AROSE IN 1991 WHEN THE SECRETARY OF DEFENSE DICK CHENEY WAS ASKED ABOUT REPORTS THAT THE DEFENSE DEPARTMENT SPENT ABOUT \$500 MILLION TO SEPARATE AND REPLACE UNDER 17,000 HOMOSEXUALS FROM MILITARY SERVICE DURING THE 1980S, INSPITE OF THE FACT THAT A GOVERNMENT REPORT SAID THAT THERE WAS NO REASON TO BELIEVE THAT HOMOSEXUALS COULD NOT SERVE EFFECTIVELY AND WITH DISTINCTION.

SHORTLY THEREAFTER, WHILE GIVING A SPEECH AT THE KENNEDY SCHOOL OF GOVERNMENT AT HARVARD, I WAS ASKED WHAT I THOUGHT ABOUT LIFTING THE GAY BAN. I STATED THAT I THOUGHT THERE OUGHT TO BE A PRESUMPTION THAT PEOPLE SHOULD BE ABLE TO SERVE THEIR COUNTRY IF THEY CONFORM TO HIGH STANDARDS, AND THAT THE EMPHASIS SHOULD BE ON ON PEOPLE'S CONDUCT, NOT THEIR STATUS. THEREFORE, I WOULD FAVOR LIFTING THE BAN.

THE ISSUE LATER BECAME A PART OF THE 1992 PRESIDENTIAL CAMPAIGN, WITH

GAY RIGHTS GROUPS ADVOCATING LIFTING THE BAN AND OTHERS SAYING IT WOULD BE BAD FOR THE MILITARY BECAUSE IT WOULD UNDERMINE UNIT COHESION AND MILITARY READINESS, INVADE THE PRIVACY OF HETEROSEXUAL SOLDIERS AND BE AGAINST TRADITIONAL AMERICAN VALUES.

FOR ME, THIS ISSUE HAS NEVER BEEN ONE OF GROUP RIGHTS, BUT OF INDIVIDUAL ONES -- THE OPPORTUNITY TO SERVE AND THE RESPONSIBILITY TO SERVE IN A WAY THE MILITARY RULES REQUIRE. I THINK PEOPLE WHO WANT TO SERVE AND WHO ARE QUALIFIED AND WHO ARE WILLING TO PLAY BY THE RULES SHOULD BE ABLE TO DO SO.

THE CENTRAL FACTS OF THIS ISSUE ARE NOT MUCH IN DISPUTE. FIRST, NOTWITHSTANDING THE BAN, THERE HAVE BEEN AND ARE HOMOSEXUALS IN THE MILITARY WHO SERVE WITH DISTINCTION.

SECOND, NO STUDY SHOWS THEM TO BE LESS CAPABLE OR MORE PRONE TO MISCONDUCT THAN HETEROSEXUAL SOLDIERS. INDEED, ALL THE INFORMATION WE HAVE INDICATES THAT THEY ARE NOT LESS CAPABLE AND NOT MORE PRONE TO MISCONDUCT.

THREE, IN TERMS OF MISCONDUCT, THAT IS ALREADY COVERED BY THE LAWS

AND RULES WHICH ALSO APPLY TO HETEROSEXUALS.

FOUR, THE BAN HAS BEEN LIFTED IN OTHER NATIONS AND IN POLICE AND FIRE DEPARTMENTS IN THIS COUNTRY WITH NO DISCERNIBLE NEGATIVE IMPACT ON UNIT COHESION OR CAPACITY TO DO THE JOB, THOUGH THERE IS, ADMITTEDLY, NO ABSOLUTE ANALOGY TO THE SITUATION WE FACE.

FIVE, EVEN IF THE BAN WERE LIFTED, THE EXPERIENCE OF OTHER NATIONS AND POLICE AND FIRE DEPARTMENTS IN THE UNITED STATES INDICATES THAT MOST HOMOSEXUALS WOULD PROBABLY NOT BARE THEMSELVES OPENLY, THUS MAKING A HARD LIFE EVEN MORE DIFFICULT IN MANY WAYS.

SIX, THE AMERICAN PEOPLE ARE DEEPLY DIVIDED ON THIS ISSUE WITH MOST MILITARY PEOPLE AGAINST LIFTING THE BAN BECAUSE OF THIS FEARED IMPACT ON UNIT COHESION, ROOTED IN THE DISAPPROVAL OF HOMOSEXUAL LIFESTYLES AND A FEAR OF INVASION OF PRIVACY BY HETEROSEXUAL SOLDIERS LIVING AND WORKING IN CLOSE QUARTERS WITH HOMOSEXUAL MILITARY PEOPLE.

AS THE SOCIOLOGIST, CHARLES MASCOS, NOTED, THE ISSUE IS TOUGHER IN THE UNITED STATES THAN IN OTHER NATIONS BECAUSE OF THE PRESENCE IN OUR COUNTRY OF BOTH VOCAL GAY RIGHTS GROUPS AND VOCAL ANITGAY RIGHTS GROUPS, INCLUDING RELIGIOUS GROUPS ALLEGING THAT LIFTING THE BAN

AMOUNTS TO ENDORSING A GAY LIFESTYLE.

SEVEN, OPINION POLLS SHOW THAT ROUGHLY HALF OF THE AMERICAN PEOPLE WHO ARE AWARE OF KNOWING A HOMOSEXUAL AND THAT OF THIS HALF, TWO -THIRDS OF THEM SUPPORT LIFTING THE BAN, I BELIEVE BECAUSE THESE AMERICANS SEE THE QUESTION AS A MATTER OF INDIVIDUAL RIGHTS, NOT OF GROUP BEHAVIOR.

SHORTLY AFTER I TOOK OFFICE, THE FOES OF LIFTING THE BAN IN CONGRESS MOVED TO ENSHRINE THE BAN IN THE LAW. I ASKED THAT CONGRESSIONAL ACTION BE DELAYED FOR SIX MONTHS WHILE THE SECRETARY OF DEFENSE WORKED WITH THE JOINT CHIEFS TO COME UP WITH A PROPOSAL FOR CHANGING CURRENT POLICY. I THEN MET WITH THE JOINT CHIEFS TO HEAR THEIR CONCERNS AND ASKED THEM TO TRY TO WORK THROUGH THIS ISSUE WITH SECRETARY ASPIN.

I WANTED TO HANDLE THE MATTER THIS WAY ON GROUNDS OF PRINCIPLE AND PRACTICALITY. AS A MATTER OF PRINCIPLE, IT IS MY DUTY AS COMMANDER IN CHIEF TO UPHOLD THE HIGH STANDARDS OF COMBAT READINESS AND UNIT COHESION OF THE WORLD'S FINEST FIGHTING FORCE, WHILE DOING MY DUTY AS PRESIDENT TO PROTECT THE RIGHTS OF INDIVIDUAL AMERICANS TO SERVE AND

TO PUT TO USE THE ABILITIES OF ALL OF OUR PEOPLE.

AS A PRACTICAL MATTER, WHILE THE COMMANDER IN CHIEF AND THE SECRETARY OF DEFENSE CAN ORDER CHANGES IN PERSONNEL POLICY, CONGRESS CAN REVERSE THEM BY LAW IN WAYS THAT ARE DIFFICULT, IF NOT IMPOSSIBLE TO VETO.

FOR MONTHS THE SECRETARY OF DEFENSE AND THE CHIEFS HAVE WORKED THROUGH THIS ISSUE IN A HIGHLY-CHARGED ENVIRONMENT, STRUGGLING TO COME TO TERMS WITH COMPETING CONSIDERATIONS AND PRESSURES, AND TO WORK THROUGH THEIR OWN IDEAS AND FEELINGS. DURING THIS TIME, MANY DEDICATED AMERICANS HAVE COME FORWARD TO EXPRESS THEIR VIEWS. MOST, BUT NOT ALL, MILITARY TESTIMONY HAS BEEN AGAINST LIFTING THE BAN. BUT SUPPORT FOR CHANGING THE POLICY HAS COME FROM DISTINGUISHED COMBAT VETERANS LIKE SENATOR JOHN KERRY, SENATOR BOB KERREY, AND SENATOR CHUCK ROBB. FROM LAWRENCE KORB*, WHO ENFORCED THE GAY BAN IN THE REAGAN ADMINISTRATION, AND FROM SENATOR BARRY GOLDWATER.

SENATOR GOLDWATER'S STATEMENT MADE IT CRYSTAL CLEAR THAT WHEN VIEWED AS AN ISSUE OF INDIVIDUAL OPPORTUNITY AND RESPONSIBILITY, RATHER THAN

GROUP RIGHTS, THIS IS NOT A CALL FOR CULTURAL LIBERALISM BUT A REAFFIRMATION OF THE AMERICAN VALUE OF EXTENDING OPPORTUNITY TO RESPONSIBLE INDIVIDUALS AND OF LIMITING THE ROLE OF GOVERNMENT OVER PRIVATE LIVES.

ON THE OTHER HAND, THOSE WHO OPPOSE LIFTING THE BAN ARE CLEARLY FOCUSED NOT ON THE CONDUCT OF INDIVIDUAL GAY SERVICE MEMBERS, BUT ON HOW NONGAY SERVICE MEMBERS FEEL ABOUT GAYS IN GENERAL.

THESE PAST FEW DAYS I HAVE BEEN IN CONTACT WITH SECRETARY OF DEFENSE AS HE HAS WORKED THROUGH THE FINAL STAGES OF THE POLICY CHANGES WITH THE JOINT CHIEFS. WE NOW HAVE A POLICY THAT IS A SUBSTANTIAL ADVANCE OVER THE ONE IN EFFECT WHEN I TOOK OFFICE. ITS ESSENTIAL ELEMENTS ARE AS FOLLOWS:

ONE, SERVICEMEN AND WOMEN WILL BE EVALUATED ON THEIR CONDUCT, NOT THEIR SEXUAL ORIENTATION.

TWO, THEREFORE, THE SIX-MONTHS OLD PRACTICE OF NOT ASKING ABOUT SEXUAL ORIENTATION IN THE ENLISTMENT PROCEDURE WILL CONTINUE.

THREE, AN OPEN STATEMENT BY A SERVICE MEMBER THAT HE OR SHE IS A HOMOSEXUAL WILL CREATE A REBUTABLE PRESUMPTION THAT HE OR SHE INTENDS

TO ENGAGE IN PROHIBITIVE CONDUCT, BUT THE SERVICE MEMBER WILL BE GIVEN AN OPPORTUNITY TO REFUTE THAT PRESUMPTION.

FOUR, ALL PROVISIONS OF THE UNIFORM CODE OF MILITARY JUSTICE WILL BE ENFORCED IN AN EVENHANDED MANNER AS REGARDS BOTH HETEROSEXUALS AND HOMOSEXUALS, AND THERE WILL BE A DECENT REGARD TO THE LEGITIMATE PRIVACY AND ASSOCIATIONAL RIGHTS OF ALL SERVICE MEMBERS.

LORRAINE

Floor Remarks as Prepared for Delivery
Senator Sam Nunn
July 16, 1993

Mr. President, the media is filled with accounts as to what may or may not be happening in the Executive Branch with respect to the issues of the restrictions on the service of gay men and lesbians in the armed forces. As my colleagues will recall, the President issued an interim policy on January 29, 1993, which basically retained the longstanding restrictions on the service of gays and lesbians, while eliminating questions on sexual orientation from the enlistment application. The President directed the Secretary of Defense to prepare a draft policy on this issue by July 15, 1993. It is my understanding that the Secretary, after detailed review and consultation with the civilian and military leadership of the Department of Defense, has presented a proposal to the President and it is now under review.

On February 4, 1993, the Senate agreed to an amendment which directed the Armed Services Committee to conduct hearings on this issue. In addition, the Senate agreed to an order which precluded amendments on this issue until July 15, 1993. I believe that moratorium was most helpful in providing an opportunity for the committee to have fair, objective, and thorough hearings without the disruption of constant amendments.

It is my hope that any order issued by the President on this subject will have a delayed effective date of sufficient length to permit Congressional review and action. Therefore, I urge my colleagues on both sides of the aisle to withhold any amendments on this issue until the Armed Services Committee has completed its action on this most important issue. Whatever your perspective, I believe that all interests will be best served if we deal with this issue through the normal, established Committee process, with legislation that contains detailed findings and carefully considered procedures.

Next week, the Armed Services Committee will mark up the National Defense Authorization Act for Fiscal Year 1994. I am hopeful that the Administration will issue a policy that I can support, that a majority of our Committee can support, and that we can adopt in our mark up. Regardless of what action is taken in the Executive Branch, however, we will have to consider and act on this issue because our bill is expected to be considered by the Senate prior to the August recess. I believe that it is essential that Congress codify the policies regarding homosexuality in the armed forces by adopting legislative findings and providing clear legislative direction to the Executive Branch.

Based upon the hearings held in our Committee, it is my view that any policy issued by the Executive Branch, and any

legislation enacted by Congress, must -- at a minimum -- be consistent with the following principles:

1. Military service is a unique calling which has no counterpart in civilian society. The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise. The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, to provide for the defense of our nation.

2. The foundation of combat capability is unit cohesion. Unlike our civilian society, in the military the mission is the number one priority, the unit is the second priority, and the individual is the third priority. In society the individual comes first; in the military the mission comes first.

3. Military personnel policies must facilitate the assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy.

4. Because of these factors, the presence in military units of persons who, by their acts or statements, demonstrate a propensity to engage in homosexual acts, would cause an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are essential to effective combat capability. There should be no change in the current grounds for discharge -- homosexual acts, statements, and marriages.

5. While DoD policies on investigations may be subject to common sense limitations because of the need to allocate scarce resources and to establish investigative priorities, these policies should not preclude investigations based upon any information relevant to an administrative or disciplinary proceeding.

Despite recent media stories attributing statements to the Justice Department about the constitutionality of various proposals, -- and I have no idea whether the stories are accurate -- I am convinced that the principles I have enunciated are constitutionally sound and will be upheld by the U.S. Supreme Court. The Supreme Court repeatedly has held that the application of constitutional rights to members of the armed forces is necessarily different from the rights of persons in civilian society. The federal courts have ruled on numerous occasions that restrictions on the service of gay men and lesbians, including restrictions on acts and statements, do not violate the constitutional rights of military personnel.

Mr. President, I have come to these conclusions based upon the Committee's extensive review of this matter over the last six months. During the Armed Services Committee's mark up next week of the National Defense Authorization Act for Fiscal Year 1994, I will propose legislation that embodies these principles.

CLINTON COMMENTS ON GAYS IN THE MILITARY:

October 30, 1991

A student at Harvard University's Kennedy School of Government asked Governor Clinton, "As President, would you sign an executive order banning discrimination in the military based on sexual orientation?" The President responded: "Yes. I would."

January 1992

Asked in a January questionnaire whether he would 'sign an executive order' ending the policy, he replied: 'Yes, I believe patriotic Americans should have the right to serve the country as a member of the armed forces, without regard to sexual or affectional orientation.' A subsequent position paper distributed under a Clinton campaign letterhead called for 'an immediate repeal of the ban on gays and lesbians serving in the United States Armed Forces.'

-- Washington Post, 11/13/92

May 18, 1992

In a speech to gays and lesbians at a Los Angeles Palace Hotel fundraiser honoring David Mixner, Governor Clinton said "I have a vision and you are part of it."

June 9, 1992

"I believe we have to have a tolerant, but not a permissive society...to use the talents of all Americans. There ought to be a presumption that people are able to serve their country...in the military or any other way. We cannot afford to waste the talents of any Americans."

-- UPI, 6/9/92

September 9, 1992

"My own view on that is that simple status alone should not be enough for excluding somebody from the military. We spent \$500 million in tax money in the last 10 years to get about 16,300 homosexual men and women out of the military, in the absence of any proof that they'd done anything wrong--that there was any behavior that was objectionable. So my position would be that behavior alone should not be enough and that people should be considered for reentry on a case by case basis."

--The Reuter Transcript Report, 9/9/92

November 11, 1992

"We've got a study that says a lot of gays perform with great distinction in the military...I don't think status alone in the absence of some destructive behavior should disqualify people...How to do it, the mechanics of doing it, I want to consult with military leaders about that. There'll be time to do that. My position is that we need everybody in America that's

got a contribution to make that's willing to obey the law and work hard and play by the rules. That's the way I feel."

-- Washington Times, New York Times, 11/12/92

November 12, 1992

"My concern here is to do it in a way that is most appropriate for the management of the whole national security and military interest of the country...I want to consult with a lot of people about what our options are, including people who may disagree with me about the ultimate merits...What I want to do is come up with an appropriate response that will focus sharply on the fact that we do have people who are homosexuals who've served our country with distinction, who were never kicked out of the military, others who have been kicked out of the military and one of whom has been just reinstated by a court...The issue ought to be conduct."

-- Washington Times, 11/13/92

He said he wanted 'to put together a group of people and let them advise me about how we might best do this'...but he made clear that he was 'not going to change my position' on the ultimate question...the issue should be whether they have 'done anything which would disqualify them' from service. He did not elaborate."

-- Washington Post, 11/13/92

January 25, 1993

Following the signing of an Executive Order establishing the National Economic Council, the President was asked if he would "still go ahead" with the gays in the military proposal if the Joint Chiefs oppose it. The President: "I'm going to meet with them and discuss it this afternoon. But I intend to keep my commitment. I want their input on how we should do it, however. I think they're entitled to really be listened to on a lot of the practical issues."

-- Presidential Documents, 1/25/92

"The President and the Joint Chiefs of Staff had a cordial, honest, and respectful meeting. They covered a range of issues but focused primarily on gays in the military. The President reiterated his commitment to ending discrimination against homosexuals in the military solely on the basis of status and to maintaining morale and cohesion in the military. The Joint Chiefs of Staff expressed their concerns and difficulties with the President's commitment but also expressed their respect for his decisionmaking power as Commander in Chief."

-- Statement by Communications Director, 1/25/93

January 26, 1993

Asked by reporters about his meeting with the Joint Chiefs the day before, the President said, "It was a very good meeting. I was very impressed by them. The country's well served."

January 28, 1993

Prior to his meeting with Federal Reserve Chairman Greenspan, the President was asked why he was "sticking with" his plan for gays in the military. The President: "I came here to talk about the economy today with Mr. Greenspan. If he wants to express his opinion on that subject, I'll be glad to hear it. [Laughter] Most people with whom I talk, except you folks, never discuss that."

-- Presidential Documents, 1/28/93

At a meeting with members of Congress, the President was again asked about gays in the military. The President said, "Well, we're working on the resolution in the Senate, as you know. And I've been working mostly on economic issues today, so I just heard from my staff. But they seem to think we're pretty close to...I think the Joint Chiefs should have 6 months to deal with the practical issues involved. This is not the issue. This is not free of difficulty. There are certain factual problems involved. But the principle...behind this for me is that Americans who are willing to conform to the requirements of conduct -- military services in my judgment, should be able to serve in the military and that people should be disqualified from serving in the military based on something they do, not based on who they are. That is the elemental principle. There is actually an enormous amount of agreement on this. The Joint Chiefs agree, for example, that we should not anymore ask people about their sexual orientation when they enlist. And I believe that any sort of improper conduct should result in severance. ~~The narrow issue on which there is disagreement is whether people should be able to say that they're homosexual without being -- and do nothing else -- without being severed.~~ But there are a whole lot of very complicated practical questions that flow from that very narrow issue. And that's what I want to have 6 months to give them a chance to work on. So, I hope we can.

January 29, 1993

"Well, we're waiting for an analysis of the [Meinhold] court decision now and how it affects what we would have to do anyway...we were here, as you know, last night with Senator Nunn, and I thought it was quite close to an agreement that would give the military what I think ought to be done without anybody agreeing to change their position now--give them a chance to look in to what the practical problems are. But this court decision may change that, and we are looking at it..." When asked whether he was concerned that the controversy "has given the American people the wrong idea of what your priorities are," the President said: "Yes, I do. Of course, I didn't bring it up; people in the Senate did. I just tried -- I have not, frankly, spent very much time on it compared to the time I'm spending on the economy, which is what I was elected to do."

-- Presidential Documents, 1/29/93

Later that day, the President appeared at a news conference to announce his policy on gays in the military.

"The debate over whether to lift the ban on homosexuals in the military has, to put it mildly, sparked a great deal of interest over the last few days. Today, as you know, I have reached an agreement, as least with Senator Nunn and Senator Mitchell, about how we will proceed in the next few days. But first I would like to explain what I believe about this issue and why, and what I have decided to do after a long conversation, and a very good one, with the Joint Chiefs of Staff and discussions with several Members of Congress.

The issue is not whether there should be homosexuals in the military. Everyone concedes that there are. The issue is whether men and women, who can and have served with real distinction, should be excluded from military service solely on the basis of their status. And I believe they should not.

The principle on which I base this position is this: I believe that American citizens who want to serve their country should be able to do so unless their conduct disqualifies them from doing so. Military life is fundamentally different from civilian society; it necessarily has a different and stricter code of conduct, even a different code of justice. Nonetheless, individuals who are prepared to accept all necessary restrictions on their behavior, many of which would be intolerable in civilian society, should be able to serve their country honorably and well.

I have asked the Secretary of Defense to submit by July the 15th a draft Executive order after full consultation with military and congressional leaders and concerned individuals outside of the Government, which would end the present policy of the exclusion from military service solely on the basis of sexual orientation and at the same time establish rigorous standards regarding sexual conduct to be applied to all military personnel.

This draft order will be accompanied by a study conducted during the next 6 months on the real, practical problems that would be involved in this revision of policy, so that we will have a practical, realistic approach consistent with the high standards of combat effectiveness and unit cohesion that our armed services must maintain.

I agree with the Joint Chiefs that the highest standards of conduct must be required. The change cannot and should not be accomplished overnight. It does require extensive consultation with the Joint Chiefs, experts in the Congress and in the legal community, joined by my administration and others. We've consulted closely to date and will do so in the future. During that process, interim measures will be placed in to effect which, I hope, again, sharpen the focus of the debate. The Joint Chiefs of Staff have agreed to remove the question regarding one's sexual orientation from future versions of the enlistment application, and it will not be asked in the interim.

We also all agree that a very high standard of conduct can and must be applied. So the single area of disagreement is this: Should someone be able to serve the country in uniform if they say they are homosexuals, but they do nothing which violates the

code of conduct or undermines unit cohesion or morale, apart from that statement? That is what all the furor of the last few days has been about. And the practical and not insignificant issues raised by that issue are what will be studied in the next 6 months.

Through this period ending July 15th, the Department of Justice will seek continuances in pending court cases involving reinstatement. And administrative separation under current Department of Defense policies based on status alone will be stayed pending completion of this review. The final discharge in cases based only on status will be suspended until the President has an opportunity to review and act upon the final recommendations of the Secretary of Defense with respect to the current policy. In the meantime, a member whose discharge has been suspended by the Attorney General will be separated from active duty and placed in standby reserve until the final report of the Secretary of Defense and the final action of the President. This is the agreement that I have reached with Senator Nunn and Senator Mitchell.

During this review process, I will work with the Congress. And I believe the compromise announced today by the Senators and by me shows that we can work together to end the gridlock that has plagued our city for too long.

This compromise is not everything I would have hoped for or everything that I have stood for, but it is plainly a substantial step in the right direction. And it will allow us to move forward on other terribly important issues affecting far more Americans...

I applaud the work that has been done in the last 2 or 3 days by Senator Nunn, Senator Mitchell, and others to enable us to move forward on a principle that is important to me without shutting the Government down and running the risk of not even addressing the family and medical leave issue...I am looking forward to getting on with this issue over the next 6 months and with these other issues which were so central to the campaign and, far more importantly, are so important to the lives of all the American people.

When asked about the Meinhold federal court decision announced the previous day, the President said, "Well, it makes one point. I think it strengthens my hand, if you will, in two ways. One, I agree with the principle embodied in the case. As I understand it -- I have not read the opinion -- but as I understand it, the opinion draws the distinction that I seek to draw between conduct and status. And secondly, it makes the practical point I have been making all along, which is that there is not insignificant chance that this matter would ultimately be resolved in the courts in a way that would open admission into the military without the opportunity to deal with this whole range of practical issues, which everyone who has ever thought about it or talked it through concedes are there. So I think it can -- it strengthens my hand on the principle as well as on the process."

Asked about accepting a compromise that doesn't meet his "real goals," the President said, "Well, I haven't given up on my real goals. I think this is a dramatic step forward. Normally, in the history of civil rights advancements, Presidents have not necessarily been in the forefront in the beginning. So I think the fact that we actually have the Joint Chiefs of Staff agreeing that it's time to take this question off the enlistment form, that there ought to be a serious examination of how this would be done, even though they haven't agreed that it should be done, even though they haven't agreed that it should be done; that the Senate, if they vote for the motion advocated by Senators Nunn and Mitchell, will agree; Senators who don't agree that the policy should be changed are agreeing that we ought to have a chance to work through this for 6 months and persuade them of that, I think, this is very, very significant.

Now, I would remind you that any President's Executive order can be overturned by an act of Congress. The President can then veto the act of Congress and try to have his veto sustained if the act stands on its own as a simple issue that could always be vetoed. But I always knew that there was a chance that Congress would disagree with my position. I can only tell you that I still think I'm right; I feel comfortable about the way we have done this; and I'm going to maintain the commitment that I have.

No, I had always planned to allow some period of time during which policies would be developed to deal with what I think are the significant practical problems. This, in effect, may reverse the process over what I intended to do, but there has to be a time in which these issues, these practical issues are developed and policies are developed to deal with them.

I don't know how I could have done that. The Joint Chiefs asked for a meeting about a number of issues, in which this was only one. We spent a lot of time talking about other things. This issue was not put forward in this context by me; it was put forward by those in the United States Senate who sought to make it an issue early on. And I don't know how I could have stopped them from doing that.

Well, I think it was pretty clear to me that we were talking about some sort of 6-month process days and days ago. And the people who wanted it debated now were not deterred by that, and probably a lot of them won't be deterred by the agreement announced today. I think that we must -- they have the perfect right to do this. But the timing of this whole issue was clearly forced by the people in the Senate who were opposed to any change of the policy no matter what the facts are. And I think that was their right to do, but they control the timing of this, not me.

When asked whether the ban would be lifted July 15th "regardless of what comes out at these [Senate] hearings," the President responded, "That is my position. My position is that I still embrace the principle, and I think it should be done. The position of those who are opposed to me is that they think that the problems will be so overwhelming everybody with good sense

will change their position. I don't expect to do that. I don't expect to change my position, no.

For one thing, I think if you look at the last 10 years of experience here, according to the reports we have, this country spent \$500 million in tax dollars to separate something under 16,500 homosexuals from the service and has dealt with complaints, at least, of sexual abuse, heterosexual abuse, largely against women, far greater volumes. But during this period, we have plainly had the best educated, best trained, most cohesive military force in the history of the United States. And everybody, ask anybody, and the Joint Chiefs will tell you that.

They agreed that we should stop asking the question. This single thing that is dividing people on this debate, I want to make it very clear that this is a very narrow issue. It is whether a person, in the absence of any other disqualifying conduct, can simply say that he or she is homosexual and stay in the service. I don not expect that to spark this kind of problem. And I certainly think in the next 6 months, as people start to work it through and talk it through, a lot of legitimate, practical issues will be raised and dealt with in a more rational environment that is less charged. That is certainly what I hope will happen."

-- Presidential Documents, 1/29/93

February 10, 1993

When asked by a participant at a town meeting in Detroit why the President had chosen "to tackle the gays in the military and the family leave bill first," the President said: "I didn't -- I did choose the family leave bill first...I tried to put off the gays in the military issue for 6 months. Senators in the other party wanted it dealt with now. They saw it as a way to delay family leave and to throw the whole Federal Government into debating that. I actually spent very little time on the issue myself. I met with the Joint Chiefs on a number of issues, including that; met with the Senate Democrats on the Armed Services Committee. But I was, frankly, appalled that we spent so much time the first week talking about that instead of how to get the economy going again. It wasn't my idea. My agreement with the Joint Chiefs was to study the issue for 6 months, so we could focus immediately on the economy. Thank goodness that's what we're now doing."

When asked later if he was surprised to hear a minister say we should keep the ban in place, the President said: "Absolutely not, because a lot of ministers of the gospel believe that homosexuality is morally wrong and, therefore, that ground alone is enough to justify the ban.

Let me tell you why I favor lifting it very briefly. We have now and everyone concedes we have always had homosexual men and women in the military service. I received a letter from a retired officer, a woman, the other day who told me she left the service because she could not be honest about her sexual orientation, even though she was a distinguished officer with a

remarkable service record, one of many such letters I have received. Your government spent \$500 million to get rid of about 16,300 homosexuals from the service in the 1980s.

Now, here's my position. If there are homosexual men and women in the service anyway, if we know they have served distinction and they have always been there, the issue is should you be able to say what you are and not be kicked out. This is not about conduct. This is about status. I believe there ought to be the strictest code of behavioral conduct applicable here. I also believe there ought to be an even stricter code applicable to sexual harassment, whether homosexual or heterosexual. The biggest sexual problem in the armed services, according to the men and women who talked to men, involves heterosexual harassment.

I think there ought to be a tough code of conduct. If people do wrong, they ought to be gotten out. But I think people should not be asked to lie if they're going to be allowed to serve, because the question is not whether they should be there or not. They are there. So the narrow question of this debate is should you be able to stay and admit it.

The military itself has admitted they should stop asking people when they join. That's the position of the Joint chiefs. So the only question here is should you be able to say that you're a homosexual if you do nothing wrong. I say yes. Others say no. The military is studying the practical problems about duty assignments and other things, and we'll revisit this in about 6 months."

-- Presidential Documents, 2/10/93

February 20, 1993

In response to a question from a girl at the Children's Town Meeting in the White House, the President said: "Well, I think what's important about that issue to me is not that Americans agree with the lifestyle but that they accept the fact that there are citizens in the United States who are homosexual, who work hard, who don't break laws, who pay their taxes, don't bother other people, who ought to have a chance to serve. And I just say that at every chance I get. And I have also been involved in giving some people the chance to serve who are homosexual, and I think that's important. I think that there are a lot of people whose religious beliefs dictate that the homosexual lifestyle is wrong. I don't ask them to give up their religious beliefs but simply to accept other people as people and give them a chance to be citizens as long as they're not doing anything wrong. That's my position on it."

-- Presidential Documents, 2/20/93

March 23, 1993

In his press conference at the White House, the President was asked about his relationship with the military and whether he had a problem in being effective as Commander in Chief. The President responded, "No, No. I don't have a problem being

Commander in Chief. You knew that a lot of the service officers disagreed with the position on gays in the military before I ever took office. The Secretary of Defense has not been in the best of health; I think he is either fully recovered now or on the verge of it. And I asked him to give me a report on June 15th [sic]. Senator Nunn said back in January that he would have hearings sometime probably in March, so I think we're at the outer limits of the time that he was going to have hearings. And his schedule to have hearings, in my view, has nothing to do with the fact that I asked the Secretary of Defense to present to me on June 15th [sic] a report, which I expect to receive

Well, I don't want to get into a constitutional debate, but if you can discriminate against people in terms of whether they get in to the service or not, based on not what they are but what they say they are, then I would think you could make appropriate distinctions on duty assignments once they're in. The courts have historically given quite wide berth to the military to make judgments of that kind in terms of duty assignments.

Asked whether he would support restrictions on duty assignments, the President said: "That depends on what the report says. That's why I'm waiting for the Secretary of Defense to issue the report. But I wouldn't rule that out, depending on what the grounds and arguments were."

-- Presidential Documents, 3/23/93

March 24, 1993

Following are comments made by the President in an interview with Dan Rather of CBS News. Q: Mr. President, at your news conference yesterday...you were asked about gays in the military.

THE PRESIDENT: Let me say I talk on a regular basis with General Powell. I have met with the Joint Chiefs. I have a whole schedule of things that I'm working through now to continue to work with the military. This is a very difficult time for them.

Q: [I]s it correct that you have reversed your position [on gays in the military]?

THE PRESIDENT: Absolutely wrong...No, I didn't misspeak myself. Nothing I said yesterday is in any way inconsistent with anything I've ever said before about this. First, let's review this issue. Half the battle is over. Half the battle is over. The Joint Chiefs agree that they should stop asking enlistees whether or not they're gay. So they have already said, we won't ask you to lie, and we won't use your forms against you. And if you get in and you perform well, that's fine.

I agree and everybody else agrees that any kind of improper sexual conduct should be grounds for dismissal or other appropriate discipline. There's no difference in opinion on that. There is a very limited argument here, which is if you do not do anything wrong but you do acknowledge that you are gay, should you be able to stay in the military and, if so, should you be able to do anything anyone else can do?

The question I was asked yesterday was as follows: Would you consider any restrictions on duty assignments? And the answer is, I am waiting for the report of the Secretary of Defense made in conjunction with the Joint Chiefs. I think they're divided among themselves on this issue. Other nations which admit gays into the military, some of them have no differences in duty assignments, and some do. What I said was if they made a recommendation to me, would I review it and consider it? Of course I would. I mean, I asked them to study this. I can't refuse then to get the results of the study and act like my mind's made up. This is not an area where I have expertise. I have to listen to what people say. I will consider the arguments. I have a presumption against any discrimination based on status alone, but I will listen to any report filed.

-- Presidential Documents, 3/24/93

April 23, 1993

The President was asked if after his meeting with gay rights leaders he would be able to meet the group members' "now-enhanced expectations." The President said: "Well, I don't know about that. And I don't know what their -- it depends on what the expectations are. But I'll tell you this: I believe that this country's policies should be heavily biased in favor of non-discrimination. I believe when you tell people they can't do certain things in this country that other people can do, there ought to be an overwhelming and compelling reason for it. I believe we need the services of all of our people, and I have said that consistently and not as a political proposition. The first time this issue came up was in 1991 when I was in Boston. I was just asked the question about it...I just have always had an almost libertarian view that we should try to protect the rights of American individual citizens to live up to the fullest of their capacities, and I'm going to stick right with that..."

April 25, 1993

In a statement read by Rep. Nancy Pelosi to participants in the National March on Washington for Gay and Lesbian Rights, the President said:

During my campaign and since my election, I have said that America does not have a person to waste. Today, I want you to know that I am still committed to that principle. I stand with you in the struggle for equality for all Americans, including gay men and lesbians. In this great country, founded on the principle that all people are created equal, no one should have to hide in shame for who they are. We must learn to put aside what divides us and focus on what we share. We all want the chance to excel in our work. We all want to be safe in our communities. We all want the support and acceptance of our friends and families.

Last November, the American people sent a message to make government more accountable to all its citizens, regardless of

race, class, gender, disability or sexual orientation. I am proud of the strides we are making in that direction.

The Pentagon has stopped asking recruits about their sexual orientation, and I have asked the Secretary of Defense to determine how to implement an executive order lifting the ban on gays and lesbians in the military by July 15...I still believe every American who works hard and plays by the rules ought to be part of the national community. Let us work together to make this vision real.

-- Presidential Documents, 4/25/93

In his speech to the Newspaper Association of America the same day in Boston, the President said: "Today in Washington, many Americans came to demonstrate against discrimination based on their sexual orientation. A lot of people think that I did a terrible political thing -- and I know I paid a terrible political price -- for saying that I thought the time had come to end the categorical ban on gays and lesbians serving in our military service and that they should not be subject to other discrimination in governmental employment.

Let me tell you what I think. This is not about embracing anybody's lifestyle. This is a question of whether if somebody is willing to live by the strict code of military conduct, if somebody is willing to die for their country, should they have the right to do it? I think the answer is yes, if somebody is willing.

But in a larger sense, I want to say to you that I think the only way our country can make it is if we can find somehow strength out of our diversity, even with people with whom we profoundly disagree, as long as we can agree on how we're going to treat each other and how we're going to conduct ourselves in public forums. That is the real issue.

It's very ironic to me to see that the traditional attacks on the position I've taken on this issue have come from conservatives saying that I am a dangerous liberal. I took on two issues like this as Governor of Arkansas, and I was attacked by liberals for what I did, and I want to tell you what they were..."

May 10, 1993

In a Question and Answer session with the Cleveland City Club, the President was asked how he expected to resolve the issue of gays in the military. The President said: "I can only tell you what I think should be done and what my guess is will be done. And I'm glad you asked this question.

Let me say one thing by way of background. The difference between my position and that of many people in the military, including most folks in the military is over a very narrow category of people, actually. That is, in the last few months, the armed services have, on their own initiative after meeting with me, stopped asking people when they join up whether they are homosexual or not. That is not being asked anymore. For many

years that question was not asked. It only started being asked in the relatively recent past. That will solve most of the problems.

I do not propose any changes in the code of military conduct. None. Zero. I do not believe that anything should be done in terms of behavior that would undermine unit cohesion or morale. Nothing.

Here is what the whole debate is about. It is about whether someone should be able to acknowledge, if asked or otherwise, homosexuality and do nothing else, do nothing to violate the code of military conduct and not be kicked out of the service. And my position is yes. Others say no. Others say if you someone acknowledge it, it amounts to legitimizing a lifestyle or putting it on a par with -- I don't see it as that. I just believe that there ought to be a presumption that people ought to be able to serve their country unless they do something wrong. But you need to know, that it is not such a big difference. That is what we're arguing about. We're arguing not about any kind of conduct but about whether people can acknowledge that. Like the young man who was the 6th Army soldier of the year and who's now about to be mustered out because he acknowledged being homosexual.

It is not about asking the American people to approve a lifestyle, to embrace it, to elevate it, anything else. The question is if you accept as a fact, as we now know and as the Pentagon has said, there have been many, many thousands of homosexuals serve our country and serve it well with distinction, should we stop asking? They say yes, and I say yes. So we solved most of the issues. They say yes, and I say yes.

Should we change the code of conduct? They say no, and I say no, not at all, not on the base, not any way, no changes in the code of conduct. So the issue is over this: What will happen in this narrow category of cases? And that is what is still to be resolved. I hope my position will prevail. Frankly, I think most people believe as a practical matter, most people who have studied it, that the position I have taken can be worked out and is fairest to the good men and women who serve in the service who have done well. I think they're frankly worried about having that position look like they are embracing a lifestyle or legitimizing a lifestyle they don't agree with. And I keep saying, "That's not what I think we're about. What I think we're about is acknowledging people's right to do right and to be judged by what they do. And that's sort of my position."

May 27, 1993

In response to a question from a minister at the "CBS This Morning" Town Meeting, the President said:

"First of all, I think the military has a great moral fabric. I don't think you can over -- we know there are homosexuals in the military and always have been. We know that the Tailhook scandal occurred. I don't think Tailhook reflects on the whole Navy. I think the military has done more to give people a good, coherent set of values and a way to live and

succeed in a very complicated and disintegrating world than most of the institutions in this country have. So I think that you should not worry about that.

Here is the issue: There are and always have been homosexuals in the military. The question is whether they should be kicked out, not because of what they do but because of who they are. My view is people should be judged on their conduct. I have not called for any change in the Uniform Code of Conduct. I simply believe if people work hard, play by the rules, and serve, they ought to be able to serve. That does not imply that the rest of the society agrees with the lifestyle, but you just accept as a fact that there are in every country and always have been homosexuals who are capable of honoring their country, laying down their lives for their country, and serving. And they should be judged based on their behavior, not their lifestyle. That's my view; it's a behavior test.

Let me say this: We almost have a compromise here. Most Americans believe if you don't ask and you don't say and you're not forced to confront it, people should be able to serve. Most Americans believe that the gay lifestyle should not be promoted by the military or anybody else in this country. The issue is a narrow one: Should you be able to acknowledge, if asked, that you are homosexual? And if you don't do anything wrong, should you be booted from the military? We are trying to work this out so that our country does not -- I understand what you're saying -- so that our country does not appear to be endorsing a gay lifestyle, but we accept people as people and give them a chance to serve if they play by the rules. I think that is the tough issue for us, and I think we're very close to resolving it here."

When asked if he could support the "don't ask, don't tell" proposals, the President said, "Well, we might end up that way as long as it doesn't lead to a whole range of deliberate outings. I mean, we don't want to make it worse. I think we're very close to a compromise along those lines. And I think most Americans will agree when it works out that people are treated properly if they behave properly without the Government appearing to endorse a lifestyle. I think that's what you're concerned about, and it's a legitimate concern. But I have to deal with people as people. And I've had so many people in the come up to me and say that they have served with homosexuals who served bravely in Vietnam and other places, who were good people, who did not violate any rules. It is them that I am trying to protect."

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Date: 07/19/93 Time: 09:19

Lawmakers See Support for Nunn Bill to Codify Ban on Gays

WASHINGTON (AP) As President Clinton moved today to announce his compromise on gays in the military, Sen. Sam Nunn is preparing a bill that would write into law the current ban on service by homosexuals.

Clinton was to announce the policy at 2 p.m. in a speech at the National Defense University at Fort McNair in Washington.

White House Press Secretary Dee Dee Myers said "there won't be any surprises."

"The president said he would seek a policy that would not disqualify gays on their status alone," said Myers. "Obviously this is not everything the president had hoped for but that is not possible. ...This is a very difficult issue and this is a step forward."

She said members of Congress had been briefed on the policy "in the last few days."

Myers said Nunn "will have to take a look at it and then move forward" and decide what to do.

Legislators on both sides of the issue said Sunday that Nunn, chairman of the Senate Armed Services Committee and a leading opponent of lifting the ban, would win wide support for his bill.

"Sam Nunn sent a very strong signal Friday indicating that he basically is going to let Congress decide and he's the leader on this issue in Congress, and he's carrying a lot of clout on this issue," Rep. Dan Coats, R-Ind., who opposes allowing gays and lesbians to serve, said on NBC's "Meet the Press."

Nunn's bill, ready for subcommittee action Tuesday, follows the interim policy Clinton was forced to accept in January in saying recruits would not be questioned about their sexual orientation.

But it codifies the current policy that homosexual acts, statements or marriage are grounds for discharge and bans military service by people with a "propensity to engage in homosexual acts."

Clinton's compromise takes a "don't ask, don't tell, don't pursue" line that bars "openly practicing" homosexuals but limits investigations of discreet gays and lesbians.

Sen. Bob Kerrey, D-Neb., a Vietnam War veteran who favors lifting the ban, said on "Meet the Press:" "Whatever Senator Nunn's recommendation is, it's likely to be accepted."

Kerrey said Nunn, D-Ga., "has great credibility with myself and with other members of the Senate, and my best guess would be that Senator Nunn's legislation would pass."

Rep. Gerry Studds, D-Mass., also appearing on the news program, said that if Clinton were to lift the ban, "it is virtually a certainty that the Congress would override that and probably codify the existing policy."

Studds, one of two openly gay congressmen, urged Clinton to fulfill his campaign promise to end discrimination against gays in the military despite prospects Congress would overturn that decision.

He said the "don't ask, don't tell" compromise would perpetuate "the witch hunts which have been such a disaster for so long for so many people and such a waste of money."

But Studds said the compromise was not a betrayal by the president.

"It's probably the best thing that this Congress can be

persuaded not to override," he said. "It's a very, very marginal step forward."

APNP-07-19-93 0921EDT

June 11, 1993

MEMORANDUM FOR GEORGE STEPHANOPOULOS

FROM: KEITH BOYKIN

SUBJECT: CLINTON'S COMMENTS ON GAYS IN THE MILITARY

Attached please find an exhaustive compilation of every recorded public statement or utterance by Bill Clinton on gays in the military. The first comment I found was from October 30, 1991 at Harvard's Kennedy School of Government only a few weeks after Governor Clinton announced his candidacy for President. The most recent comment was from May 27, 1993 at CBS's Town Hall Meeting at the White House.

Please note that I have not completed the compilation of quotes by topic and that I am preparing an analysis of the President's statements that should be completed later today.

CLINTON QUOTES ON GAYS IN THE MILITARY
BY SUBJECT

Principles:

- o "we need everybody in America that's got a contribution to make that's willing to obey the law and work hard and play by the rules." -- 11/12/92
- o "I'm not going to change my position" -- 11/13/92
- o "I intend to keep my commitment." -- 1/25/93
- o "the principle...behind this for me is that Americans who are willing to conform to the requirements of conduct... should be able to serve in the military..." -- 1/28/93
- o "This compromise is not everything I would have hoped for or everything that I have stood for, but it is plainly a substantial step in the right direction." -- 1/29/93
- o "I still think I'm right...I'm going to maintain the commitment that I have." -- 1/29/93
- o "I still embrace the principle...I don't expect to change my position..." -- 1/29/93

Timing of lifting the ban:

- o "immediate repeal of the ban" -- summer 1992
- o "I want to have 6 months to give them a chance to work on." -- 1/28/93
- o "The change cannot and should not be accomplished overnight..." -- 1/29/93

Acceptable grounds for separation:

- o "proof that they'd done [something] wrong" -- 9/9/92
- o "behavior that was objectionable: -- 9/9/92
- o "simple status alone should not be enough for excluding somebody" -- 9/9/92
- o "destructive behavior" -- 9/11/92
- o "The issue ought to be conduct." -- 11/12/92
- o "People should be disqualified from serving in the military based on something they do, not based on who they are." -- 1/28/93

- o "any sort of improper conduct should result in severance."
-- 1/28/93
- o "individuals who are prepared to accept all necessary restrictions on their behavior...should be able to serve their country honorably and well." -- 1/29/93
- o "This single thing that is dividing people on this debate...is whether a person, in the absence of any other disqualifying conduct, can simply say that he or she is homosexual and stay in the service."

Method of implementation:

- o "considered for reentry on a case by case basis" -- 9/9/92
- o "I want to consult with military leaders" -- 9/11/92
- o "do it in a way that is most appropriate for the management of the whole national security and military interest of the country." -- 9/12/92
- o "I want to consult with a lot of people about what our options are, including people who may disagree with me about the ultimate merits" -- 9/12/92

Joint Chiefs:

- o "I'm going to meet with them...I want their input on how we should do it...I think they're entitled to really be listened to on a lot of the practical issues." -- 1/25/93
- o "the Joint Chiefs should have 6 months to deal with the practical issues involved."
- o "the Joint Chiefs agree...that we should not anymore ask people about their sexual orientation when they enlist."
-- 1/28/93
- o "The interim policy was reached "after a long conversation, and a very good one, with the Joint Chiefs of staff and discussions with several Members of Congress." -- 1/29/93
- o "I agree with the Joint Chiefs that the highest standards of conduct must be required." -- 1/29/93
- o "that fact that we actually have the Joint Chiefs of Staff agreeing that it's time to take this question off the enlistment form, that there ought to be serious examination of how this would be done, even though they haven't agreed that it should be done...I think, this is very, very significant." -- 1/29/93

Time spent on the issue:

- o "Most people with whom I talk, except you folks [the press], never discuss that." -- 1/28/93
- o "Of course, I didn't bring it up; people in the Senate did. I just tried -- I have not, frankly, spent very much time on it compared to the time I'm spending on the economy..." -- 1/29/93

Congressional role in decision:

- o "we're working on the resolution in the Senate." -- 1/28/93
- o "we were here...last night with Senator Nunn" -- 1/29/93
- o "Today...I have reached an agreement, at least with Senator Nunn and Senator Mitchell..." -- 1/29/93
- o The change "require[s] extensive consultation with...experts in the Congress..." -- 1/29/93
- o "The compromise announced today by the Senators and by me shows that we can work together to end the gridlock that has plagued our city for too long." -- 1/29/93
- o "I applaud the work...by Senator Nunn, Senator Mitchell, and other..." -- 1/29/93
- o "I would remind you that any President's Executive order can be overturned by an act of Congress...I always knew that there was a chance that Congress would disagree with my position."

CLINTON COMMENTS ON GAYS IN THE MILITARY:

October 30, 1991

A student at Harvard University's Kennedy School of Government asked Governor Clinton, "As President, would you sign an executive order banning discrimination in the military based on sexual orientation?" The President responded: "Yes. I would."

January 1992

Asked in a January questionnaire whether he would 'sign an executive order' ending the policy, he replied: 'Yes, I believe patriotic Americans should have the right to serve the country as a member of the armed forces, without regard to sexual or affectional orientation.' A subsequent position paper distributed under a Clinton campaign letterhead called for 'an immediate repeal of the ban on gays and lesbians serving in the United States Armed Forces.'

-- Washington Post, 11/13/92

May 18, 1992

In a speech to gays and lesbians at a Los Angeles Palace Hotel fundraiser honoring David Mixner, Governor Clinton said "I have a vision and you are part of it."

June 9, 1992

"I believe we have to have a tolerant, but not a permissive society...to use the talents of all Americans. There ought to be a presumption that people are able to serve their country...in the military or any other way. We cannot afford to waste the talents of any Americans."

-- UPI, 6/9/92

September 9, 1992

"My own view on that is that simple status alone should not be enough for excluding somebody from the military. We spent \$500 million in tax money in the last 10 years to get about 16,300 homosexual men and women out of the military, in the absence of any proof that they'd done anything wrong--that there was any behavior that was objectionable. So my position would be that behavior alone should not be enough and that people should be considered for reentry on a case by case basis."

--The Reuter Transcript Report, 9/9/92

November 11, 1992

"We've got a study that says a lot of gays perform with great distinction in the military...I don't think status alone in the absence of some destructive behavior should disqualify people...How to do it, the mechanics of doing it, I want to consult with military leaders about that. There'll be time to do that. My position is that we need everybody in America that's

got a contribution to make that's willing to obey the law and work hard and play by the rules. That's the way I feel."

-- Washington Times, New York Times, 11/12/92

November 12, 1992

"My concern here is to do it in a way that is most appropriate for the management of the whole national security and military interest of the country...I want to consult with a lot of people about what our options are, including people who may disagree with me about the ultimate merits...What I want to do is come up with an appropriate response that will focus sharply on the fact that we do have people who are homosexuals who've served our country with distinction, who were never kicked out of the military, others who have been kicked out of the military and one of whom has been just reinstated by a court...The issue ought to be conduct."

-- Washington Times, 11/13/92

He said he wanted 'to put together a group of people and let them advise me about how we might best do this'...but he made clear that he was 'not going to change my position' on the ultimate question...the issue should be whether they have 'done anything which would disqualify them' from service. He did not elaborate."

-- Washington Post, 11/13/92

January 25, 1993

Following the signing of an Executive Order establishing the National Economic Council, the President was asked if he would "still go ahead" with the gays in the military proposal if the Joint Chiefs oppose it. The President: "I'm going to meet with them and discuss it this afternoon. But I intend to keep my commitment. I want their input on how we should do it, however. I think they're entitled to really be listened to on a lot of the practical issues."

-- Presidential Documents, 1/25/92

"The President and the Joint Chiefs of Staff had a cordial, honest, and respectful meeting. They covered a range of issues but focused primarily on gays in the military. The President reiterated his commitment to ending discrimination against homosexuals in the military solely on the basis of status and to maintaining morale and cohesion in the military. The Joint Chiefs of Staff expressed their concerns and difficulties with the President's commitment but also expressed their respect for his decisionmaking power as Commander in Chief."

-- Statement by Communications Director, 1/25/93

January 26, 1993

Asked by reporters about his meeting with the Joint Chiefs the day before, the President said, "It was a very good meeting. I was very impressed by them. The country's well served."

January 28, 1993

Prior to his meeting with Federal Reserve Chairman Greenspan, the President was asked why he was "sticking with" his plan for gays in the military. The President: "I came here to talk about the economy today with Mr. Greenspan. If he wants to express his opinion on that subject, I'll be glad to hear it. [Laughter] Most people with whom I talk, except you folks, never discuss that."

-- Presidential Documents, 1/28/93

At a meeting with members of Congress, the President was again asked about gays in the military. The President said, "Well, we're working on the resolution in the Senate, as you know. And I've been working mostly on economic issues today, so I just heard from my staff. But they seem to think we're pretty close to...I think the Joint Chiefs should have 6 months to deal with the practical issues involved. This is not the issue. This is not free of difficulty. There are certain factual problems involved. But the principle...behind this for me is that Americans who are willing to conform to the requirements of conduct -- military services in my judgment, should be able to serve in the military and that people should be disqualified from serving in the military based on something they do, not based on who they are. That is the elemental principle. There is actually an enormous amount of agreement on this. The Joint Chiefs agree, for example, that we should not anymore ask people about their sexual orientation when they enlist. And I believe that any sort of improper conduct should result in severance. The narrow issue on which there is disagreement is whether people should be able to say that they're homosexual without being -- and do nothing else -- without being severed. But there are a whole lot of very complicated practical questions that flow from that very narrow issue. And that's what I want to have 6 months to give them a chance to work on. So, I hope we can."

January 29, 1993

"Well, we're waiting for an analysis of the [Meinhold] court decision now and how it affects what we would have to do anyway...we were here, as you know, last night with Senator Nunn, and I thought it was quite close to an agreement that would give the military what I think ought to be done without anybody agreeing to change their position now--give them a chance to look in to what the practical problems are. But this court decision may change that, and we are looking at it..." When asked whether he was concerned that the controversy "has given the American people the wrong idea of what your priorities are," the President said: "Yes, I do. Of course, I didn't bring it up; people in the Senate did. I just tried -- I have not, frankly, spent very much time on it compared to the time I'm spending on the economy, which is what I was elected to do."

-- Presidential Documents, 1/29/93

Later that day, the President appeared at a news conference to announce his policy on gays in the military.

"The debate over whether to lift the ban on homosexuals in the military has, to put it mildly, sparked a great deal of interest over the last few days. Today, as you know, I have reached an agreement, at least with Senator Nunn and Senator Mitchell, about how we will proceed in the next few days. But first I would like to explain what I believe about this issue and why, and what I have decided to do after a long conversation, and a very good one, with the Joint Chiefs of Staff and discussions with several Members of Congress.

The issue is not whether there should be homosexuals in the military. Everyone concedes that there are. The issue is whether men and women, who can and have served with real distinction, should be excluded from military service solely on the basis of their status. And I believe they should not.

The principle on which I base this position is this: I believe that American citizens who want to serve their country should be able to do so unless their conduct disqualifies them from doing so. Military life is fundamentally different from civilian society; it necessarily has a different and stricter code of conduct, even a different code of justice. Nonetheless, individuals who are prepared to accept all necessary restrictions on their behavior, many of which would be intolerable in civilian society, should be able to serve their country honorably and well.

I have asked the Secretary of Defense to submit by July the 15th a draft Executive order after full consultation with military and congressional leaders and concerned individuals outside of the Government, which would end the present policy of the exclusion from military service solely on the basis of sexual orientation and at the same time establish rigorous standards regarding sexual conduct to be applied to all military personnel.

This draft order will be accompanied by a study conducted during the next 6 months on the real, practical problems that would be involved in this revision of policy, so that we will have a practical, realistic approach consistent with the high standards of combat effectiveness and unit cohesion that our armed services must maintain.

I agree with the Joint Chiefs that the highest standards of conduct must be required. The change cannot and should not be accomplished overnight. It does require extensive consultation with the Joint Chiefs, experts in the Congress and in the legal community, joined by my administration and others. We've consulted closely to date and will do so in the future. During that process, interim measures will be placed in to effect which, I hope, again, sharpen the focus of the debate. The Joint Chiefs of Staff have agreed to remove the question regarding one's sexual orientation from future versions of the enlistment application, and it will not be asked in the interim.

We also all agree that a very high standard of conduct can and must be applied. So the single area of disagreement is this: Should someone be able to serve the country in uniform if they say they are homosexuals, but they do nothing which violates the

code of conduct or undermines unit cohesion or morale, apart from that statement? That is what all the furor of the last few days has been about. And the practical and not insignificant issues raised by that issue are what will be studied in the next 6 months.

Through this period ending July 15th, the Department of Justice will seek continuances in pending court cases involving reinstatement. And administrative separation under current Department of Defense policies based on status alone will be stayed pending completion of this review. The final discharge in cases based only on status will be suspended until the President has an opportunity to review and act upon the final recommendations of the Secretary of Defense with respect to the current policy. In the meantime, a member whose discharge has been suspended by the Attorney General will be separated from active duty and placed in standby reserve until the final report of the Secretary of Defense and the final action of the President. This is the agreement that I have reached with Senator Nunn and Senator Mitchell.

During this review process, I will work with the Congress. And I believe the compromise announced today by the Senators and by me shows that we can work together to end the gridlock that has plagued our city for too long.

This compromise is not everything I would have hoped for or everything that I have stood for, but it is plainly a substantial step in the right direction. And it will allow us to move forward on other terribly important issues affecting far more Americans...

I applaud the work that has been done in the last 2 or 3 days by Senator Nunn, Senator Mitchell, and others to enable us to move forward on a principle that is important to me without shutting the Government down and running the risk of not even addressing the family and medical leave issue...I am looking forward to getting on with this issue over the next 6 months and with these other issues which were so central to the campaign and, far more importantly, are so important to the lives of all the American people.

When asked about the Meinhold federal court decision announced the previous day, the President said, "Well, it makes one point. I think it strengthens my hand, if you will, in two ways. One, I agree with the principle embodied in the case. As I understand it -- I have not read the opinion -- but as I understand it, the opinion draws the distinction that I seek to draw between conduct and status. And secondly, it makes the practical point I have been making all along, which is that there is not insignificant chance that this matter would ultimately be resolved in the courts in a way that would open admission into the military without the opportunity to deal with this whole range of practical issues, which everyone who has ever thought about it or talked it through concedes are there. So I think it can -- it strengthens my hand on the principle as well as on the process."

Asked about accepting a compromise that doesn't meet his "real goals," the President said, "Well, I haven't given up on my real goals. I think this is a dramatic step forward. Normally, in the history of civil rights advancements, Presidents have not necessarily been in the forefront in the beginning. So I think the fact that we actually have the Joint Chiefs of Staff agreeing that it's time to take this question off the enlistment form, that there ought to be a serious examination of how this would be done, even though they haven't agreed that it should be done, even though they haven't agreed that it should be done; that the Senate, if they vote for the motion advocated by Senators Nunn and Mitchell, will agree; Senators who don't agree that the policy should be changed are agreeing that we ought to have a chance to work through this for 6 months and persuade them of that, I think, this is very, very significant.

Now, I would remind you that any President's Executive order can be overturned by an act of Congress. The President can then veto the act of Congress and try to have his veto sustained if the act stands on its own as a simple issue that could always be vetoed. But I always knew that there was a chance that Congress would disagree with my position. I can only tell you that I still think I'm right; I feel comfortable about the way we have done this; and I'm going to maintain the commitment that I have.

No, I had always planned to allow some period of time during which policies would be developed to deal with what I think are the significant practical problems. This, in effect, may reverse the process over what I intended to do, but there has to be a time in which these issues, these practical issues are developed and policies are developed to deal with them.

I don't know how I could have done that. The Joint Chiefs asked for a meeting about a number of issues, in which this was only one. We spent a lot of time talking about other things. This issue was not put forward in this context by me; it was put forward by those in the United States Senate who sought to make it an issue early on. And I don't know how I could have stopped them from doing that.

Well, I think it was pretty clear to me that we were talking about some sort of 6-month process days and days ago. And the people who wanted it debated now were not deterred by that, and probably a lot of them won't be deterred by the agreement announced today. I think that we must -- they have the perfect right to do this. But the timing of this whole issue was clearly forced by the people in the Senate who were opposed to any change of the policy no matter what the facts are. And I think that was their right to do, but they control the timing of this, not me.

When asked whether the ban would be lifted July 15th "regardless of what comes out at these [Senate] hearings," the President responded, "That is my position. My position is that I still embrace the principle, and I think it should be done. The position of those who are opposed to me is that they think that the problems will be so overwhelming everybody with good sense

will change their position. I don't expect to do that. I don't expect to change my position, no.

For one thing, I think if you look at the last 10 years of experience here, according to the reports we have, this country spent \$500 million in tax dollars to separate something under 16,500 homosexuals from the service and has dealt with complaints, at least, of sexual abuse, heterosexual abuse, largely against women, far greater volumes. But during this period, we have plainly had the best educated, best trained, most cohesive military force in the history of the United States. And everybody, ask anybody, and the Joint Chiefs will tell you that.

They agreed that we should stop asking the question. This single thing that is dividing people on this debate, I want to make it very clear that this is a very narrow issue. It is whether a person, in the absence of any other disqualifying conduct, can simply say that he or she is homosexual and stay in the service. I don not expect that to spark this kind of problem. And I certainly think in the next 6 months, as people start to work it through and talk it through, a lot of legitimate, practical issues will be raised and dealt with in a more rational environment that is less charged. That is certainly what I hope will happen."

-- Presidential Documents, 1/29/93

February 10, 1993

When asked by a participant at a town meeting in Detroit why the President had chosen "to tackle the gays in the military and the family leave bill first," the President said: "I didn't -- I did choose the family leave bill first...I tried to put off the gays in the military issue for 6 months. Senators in the other party wanted it dealt with now. They saw it as a way to delay family leave and to throw the whole Federal Government into debating that. I actually spent very little time on the issue myself. I met with the Joint Chiefs on a number of issues, including that; met with the Senate Democrats on the Armed Services Committee. But I was, frankly, appalled that we spent so much time the first week talking about that instead of how to get the economy going again. It wasn't my idea. My agreement with the Joint Chiefs was to study the issue for 6 months, so we could focus immediately on the economy. Thank goodness that's what we're now doing."

When asked later if he was surprised to hear a minister say we should keep the ban in place, the President said: "Absolutely not, because a lot of ministers of the gospel believe that homosexuality is morally wrong and, therefore, that ground alone is enough to justify the ban.

Let me tell you why I favor lifting it very briefly. We have now and everyone concedes we have always had homosexual men and women in the military service. I received a letter from a retired officer, a woman, the other day who told me she left the service because she could not be honest about her sexual orientation, even though she was a distinguished officer with a

remarkable service record, one of many such letters I have received. Your government spent \$500 million to get rid of about 16,300 homosexuals from the service in the 1980s.

Now, here's my position. If there are homosexual men and women in the service anyway, if we know they have served distinction and they have always been there, the issue is should you be able to say what you are and not be kicked out. This is not about conduct. This is about status. I believe there ought to be the strictest code of behavioral conduct applicable here. I also believe there ought to be an even stricter code applicable to sexual harassment, whether homosexual or heterosexual. The biggest sexual problem in the armed services, according to the men and women who talked to me, involves heterosexual harassment.

I think there ought to be a tough code of conduct. If people do wrong, they ought to be gotten out. But I think people should not be asked to lie if they're going to be allowed to serve, because the question is not whether they should be there or not. They are there. So the narrow question of this debate is should you be able to stay and admit it.

The military itself has admitted they should stop asking people when they join. That's the position of the Joint chiefs. So the only question here is should you be able to say that you're a homosexual if you do nothing wrong. I say yes. Others say no. The military is studying the practical problems about duty assignments and other things, and we'll revisit this in about 6 months."

-- Presidential Documents, 2/10/93

February 20, 1993

In response to a question from a girl at the Children's Town Meeting in the White House, the President said: "Well, I think what's important about that issue to me is not that Americans agree with the lifestyle but that they accept the fact that there are citizens in the United States who are homosexual, who work hard, who don't break laws, who pay their taxes, don't bother other people, who ought to have a chance to serve. And I just say that at every chance I get. And I have also been involved in giving some people the chance to serve who are homosexual, and I think that's important. I think that there are a lot of people whose religious beliefs dictate that the homosexual lifestyle is wrong. I don't ask them to give up their religious beliefs but simply to accept other people as people and give them a chance to be citizens as long as they're not doing anything wrong. That's my position on it."

-- Presidential Documents, 2/20/93

March 23, 1993

In his press conference at the White House, the President was asked about his relationship with the military and whether he had a problem in being effective as Commander in Chief. The President responded, "No, No. I don't have a problem being

Commander in Chief. You knew that a lot of the service officers disagreed with the position on gays in the military before I ever took office. The Secretary of Defense has not been in the best of health; I think he is either fully recovered now or on the verge of it. And I asked him to give me a report on June 15th [sic]. Senator Nunn said back in January that he would have hearings sometime probably in March, so I think we're at the outer limits of the time that he was going to have hearings. And his schedule to have hearings, in my view, has nothing to do with the fact that I asked the Secretary of Defense to present to me on June 15th [sic] a report, which I expect to receive

Well, I don't want to get into a constitutional debate, but if you can discriminate against people in terms of whether they get in to the service or not, based on not what they are but what they say they are, then I would think you could make appropriate distinctions on duty assignments once they're in. The courts have historically given quite wide berth to the military to make judgments of that kind in terms of duty assignments.

Asked whether he would support restrictions on duty assignments, the President said: "That depends on what the report says. That's why I'm waiting for the Secretary of Defense to issue the report. But I wouldn't rule that out, depending on what the grounds and arguments were."

-- Presidential Documents, 3/23/93

March 24, 1993

Following are comments made by the President in an interview with Dan Rather of CBS News. Q: Mr. President, at your news conference yesterday...you were asked about gays in the military.

THE PRESIDENT: Let me say I talk on a regular basis with General Powell. I have met with the Joint Chiefs. I have a whole schedule of things that I'm working through now to continue to work with the military. This is a very difficult time for them.

Q: [I]s it correct that you have reversed your position [on gays in the military]?

THE PRESIDENT: Absolutely wrong...No, I didn't misspeak myself. Nothing I said yesterday is in any way inconsistent with anything I've ever said before about this. First, let's review this issue. Half the battle is over. Half the battle is over. The Joint Chiefs agree that they should stop asking enlistees whether or not they're gay. So they have already said, we won't ask you to lie, and we won't use your forms against you. And if you get in and you perform well, that's fine.

I agree and everybody else agrees that any kind of improper sexual conduct should be grounds for dismissal or other appropriate discipline. There's no difference in opinion on that. There is a very limited argument here, which is if you do not do anything wrong but you do acknowledge that you are gay, should you be able to stay in the military and, if so, should you be able to do anything anyone else can do?

The question I was asked yesterday was as follows: Would you consider any restrictions on duty assignments? And the answer is, I am waiting for the report of the Secretary of Defense made in conjunction with the Joint Chiefs. I think they're divided among themselves on this issue. Other nations which admit gays into the military, some of them have no differences in duty assignments, and some do. What I said was if they made a recommendation to me, would I review it and consider it? Of course I would. I mean, I asked them to study this. I can't refuse then to get the results of the study and act like my mind's made up. This is not an area where I have expertise. I have to listen to what people say. I will consider the arguments. I have a presumption against any discrimination based on status alone, but I will listen to any report filed.

-- Presidential Documents, 3/24/93

April 23, 1993

The President was asked if after his meeting with gay rights leaders he would be able to meet the group members' "now-enhanced expectations." The President said: "Well, I don't know about that. And I don't know what their -- it depends on what the expectations are. But I'll tell you this: I believe that this country's policies should be heavily biased in favor of non-discrimination. I believe when you tell people they can't do certain things in this country that other people can do, there ought to be an overwhelming and compelling reason for it. I believe we need the services of all of our people, and I have said that consistently and not as a political proposition. The first time this issue came up was in 1991 when I was in Boston. I was just asked the question about it...I just have always had an almost libertarian view that we should try to protect the rights of American individual citizens to live up to the fullest of their capacities, and I'm going to stick right with that..."

April 25, 1993

In a statement read by Rep. Nancy Pelosi to participants in the National March on Washington for Gay and Lesbian Rights, the President said:

During my campaign and since my election, I have said that America does not have a person to waste. Today, I want you to know that I am still committed to that principle. I stand with you in the struggle for equality for all Americans, including gay men and lesbians. In this great country, founded on the principle that all people are created equal, no one should have to hide in shame for who they are. We must learn to put aside what divides us and focus on what we share. We all want the chance to excel in our work. We all want to be safe in our communities. We all want the support and acceptance of our friends and families.

Last November, the American people sent a message to make government more accountable to all its citizens, regardless of

race, class, gender, disability or sexual orientation. I am proud of the strides we are making in that direction.

The Pentagon has stopped asking recruits about their sexual orientation, and I have asked the Secretary of Defense to determine how to implement an executive order lifting the ban on gays and lesbians in the military by July 15...I still believe every American who works hard and plays by the rules ought to be part of the national community. Let us work together to make this vision real.

-- Presidential Documents, 4/25/93

In his speech to the Newspaper Association of America the same day in Boston, the President said: "Today in Washington, many Americans came to demonstrate against discrimination based on their sexual orientation. A lot of people think that I did a terrible political thing -- and I know I paid a terrible political price -- for saying that I thought the time had come to end the categorical ban on gays and lesbians serving in our military service and that they should not be subject to other discrimination in governmental employment.

Let me tell you what I think. This is not about embracing anybody's lifestyle. This is a question of whether if somebody is willing to live by the strict code of military conduct, if somebody is willing to die for their country, should they have the right to do it? I think the answer is yes, if somebody is willing.

But in a larger sense, I want to say to you that I think the only way our country can make it is if we can find somehow strength out of our diversity, even with people with whom we profoundly disagree, as long as we can agree on how we're going to treat each other and how we're going to conduct ourselves in public forums. That is the real issue.

It's very ironic to me to see that the traditional attacks on the position I've taken on this issue have come from conservatives saying that I am a dangerous liberal. I took on two issues like this as Governor of Arkansas, and I was attacked by liberals for what I did, and I want to tell you what they were..."

May 10, 1993

In a Question and Answer session with the Cleveland City Club, the President was asked how he expected to resolve the issue of gays in the military. The President said: "I can only tell you what I think should be done and what my guess is will be done. And I'm glad you asked this question.

Let me say one thing by way of background. The difference between my position and that of many people in the military, including most folks in the military is over a very narrow category of people, actually. That is, in the last few months, the armed services have, on their own initiative after meeting with me, stopped asking people when they join up whether they are homosexual or not. That is not being asked anymore. For many

years that question was not asked. It only started being asked in the relatively recent past. That will solve most of the problems.

I do not propose any changes in the code of military conduct. None. Zero. I do not believe that anything should be done in terms of behavior that would undermine unit cohesion or morale. Nothing.

Here is what the whole debate is about. It is about whether someone should be able to acknowledge, if asked or otherwise, homosexuality and do nothing else, do nothing to violate the code of military conduct and not be kicked out of the service. And my position is yes. Others say no. Others say if you someone acknowledge it, it amounts to legitimizing a lifestyle or putting it on a par with -- I don't see it as that. I just believe that there ought to be a presumption that people ought to be able to serve their country unless they do something wrong. But you need to know, that it is not such a big difference. That is what we're arguing about. We're arguing not about any kind of conduct but about whether people can acknowledge that. Like the young man who was the 6th Army soldier of the year and who's now about to be mustered out because he acknowledged being homosexual.

It is not about asking the American people to approve a lifestyle, to embrace it, to elevate it, anything else. The question is if you accept as a fact, as we now know and as the Pentagon has said, there have been many, many thousands of homosexuals serve our country and serve it well with distinction, should we stop asking? They say yes, and I say yes. So we solved most of the issues. They say yes, and I say yes.

Should we change the code of conduct? They say no, and I say no, not at all, not on the base, not any way, no changes in the code of conduct. So the issue is over this: What will happen in this narrow category of cases? And that is what is still to be resolved. I hope my position will prevail. Frankly, I think most people believe as a practical matter, most people who have studied it, that the position I have taken can be worked out and is fairest to the good men and women who serve in the service who have done well. I think they're frankly worried about having that position look like they are embracing a lifestyle or legitimizing a lifestyle they don't agree with. And I keep saying, "That's not what I think we're about. What I think we're about is acknowledging people's right to do right and to be judged by what they do. And that's sort of my position."

May 27, 1993

In response to a question from a minister at the "CBS This Morning" Town Meeting, the President said:

"First of all, I think the military has a great moral fabric. I don't think you can over -- we know there are homosexuals in the military and always have been. We know that the Tailhook scandal occurred. I don't think Tailhook reflects on the whole Navy. I think the military has done more to give people a good, coherent set of values and a way to live and

succeed in a very complicated and disintegrating world than most of the institutions in this country have. So I think that you should not worry about that.

Here is the issue: There are and always have been homosexuals in the military. The question is whether they should be kicked out, not because of what they do but because of who they are. My view is people should be judged on their conduct. I have not called for any change in the Uniform Code of Conduct. I simply believe if people work hard, play by the rules, and serve, they ought to be able to serve. That does not imply that the rest of the society agrees with the lifestyle, but you just accept as a fact that there are in every country and always have been homosexuals who are capable of honoring their country, laying down their lives for their country, and serving. And they should be judged based on their behavior, not their lifestyle. That's my view; it's a behavior test.

Let me say this: We almost have a compromise here. Most Americans believe if you don't ask and you don't say and you're not forced to confront it, people should be able to serve. Most Americans believe that the gay lifestyle should not be promoted by the military or anybody else in this country. The issue is a narrow one: Should you be able to acknowledge, if asked, that you are homosexual? And if you don't do anything wrong, should you be booted from the military? We are trying to work this out so that our country does not -- I understand what you're saying -- so that our country does not appear to be endorsing a gay lifestyle, but we accept people as people and give them a chance to serve if they play by the rules. I think that is the tough issue for us, and I think we're very close to resolving it here."

When asked if he could support the "don't ask, don't tell" proposals, the President said, "Well, we might end up that way as long as it doesn't lead to a whole range of deliberate outings. I mean, we don't want to make it worse. I think we're very close to a compromise along those lines. And I think most Americans will agree when it works out that people are treated properly if they behave properly without the Government appearing to endorse a lifestyle. I think that's what you're concerned about, and it's a legitimate concern. But I have to deal with people as people. And I've had so many people in the come up to me and say that they have served with homosexuals who served bravely in Vietnam and other places, who were good people, who did not violate any rules. It is them that I am trying to protect."

c:\work\wp51\bcgay.quo

From the Office of the Chief of Staff

Phone: 202/456-6797

Fax: 202/456-1121

Date: 13 July 1993 Response needed by: N/A

COS Office Contact: Bill Burton

	Action	FYI		Action	FYI
Joan Baggett			Leon Panetta		
Rahm Emanuel			Howard Paster		X
Mark Gearan			John Podesta		
David Gergen		X	Jack Quinn		
Jack Gibbons			Carol Rasco		
Marcia Hale			Bob Rubin		
Alexis Herman			Eli Segal		
Nancy Hernreich			Ricki Seidman		
Tony Lake		X	George Stephanopoulos		X
Bruce Lindsey			Christine Varney		
Katie McGinty			David Watkins		
Regina Montoya			Maggie Williams		
Dee Dee Myers					
Roy Neel					
Bernie Nussbaum					

Remarks:

Response:

Common Cause Fax

2030 M STREET NW • WASHINGTON, D.C. 20036-3380 • PHONE: (202) 833-1200 • FAX: (202) 659-3716

DATE 8/12 TIME _____ PAGES TO FOLLOW 2

To

Mark McLary

ORGANIZATION

PHONE**FAX**

456 - 1121

FROM

Fred Weathers

PHONE

ex 233

PLEASE NOTIFY RECIPIENT PROMPTLY.

MESSAGE

[illegible]

Mr. Jergen left
this in Tony Lake's
office.

David Gergen

Common Cause

2030 M STREET, NW • WASHINGTON, D.C. 20036-3380 • PHONE: (202) 833-1200 • FAX: (202) 659-3716

EDWARD S. CABOT
Chairman

FRED WERTHEIMER
President

ARCHIBALD COX
Chairman Emeritus

JOHN W. GARDNER
Founding Chairman

July 12, 1993

President Bill Clinton
The White House
Washington, D.C.

Dear President Clinton:

We are writing to express our strong support for a complete removal of the ban on homosexuals in the military.

Common Cause has throughout its history been deeply involved in the fight for civil rights for all Americans. Consistent with this longstanding concern, on June 10, 1993, the Common Cause National Governing Board voted to endorse the principle of extending federal civil rights protections to gay and lesbian Americans and to support elimination of the ban on gays and lesbians serving in the military.

Common Cause believes the present policy on military service by gays and lesbians violates the basic civil rights to which all Americans are entitled. The military should be open to all who can meet the legitimate requirements of military service.

As you consider this issue, we strongly urge you to adopt a policy that rejects any discrimination against service in the military by gay and lesbian Americans. We urge you to reject approaches now reportedly under consideration which would prevent homosexuals in the military from declaring their sexual orientation and would preserve the existing doctrine that "homosexuality is incompatible with military service."

On June 21, 1993, former Senator Barry Goldwater wrote in an op-ed in *The Washington Post*: "With all the good this country has accomplished and stood for,

-2-

I know that we can rise to the challenge, do the right thing and lift the ban on gays in the military." We agree. It is long past time for the military to dispose of a discriminatory policy that has no place in our society.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Wertheimer", with a long horizontal flourish extending to the right.

Fred Wertheimer
President

BARNEY FRANK
4TH DISTRICT, MASSACHUSETTS

2404 RAYBURN BUILDING
WASHINGTON, DC 20515-2104
(202) 225-5931

29 CRAFTS STREET
NEWTON, MA 02458
(617) 332-3920

**Congress of the United States
House of Representatives
Washington, DC**

658 PLEASANT STREET
ROOM 308
NEW BEDFORD, MA 02740
(508) 999-6462

222 MILLIKEN PLACE
THIRD FLOOR
FALL RIVER, MA 02721
(508) 874-3661

89 MAIN STREET
BRIDGEWATER, MA 02324
(508) 897-9403

file - gays in milit.

**FAX FROM THE WASHINGTON OFFICE OF
CONGRESSMAN BARNEY FRANK**

TODAY'S DATE: 9-29-93

TO: David Gergen

FROM: Rep. Barney Frank

FAX NUMBER: _____

NUMBER OF PAGES [INCLUDING THIS ONE]: 5

If this fax does not transmit properly, please call 202-225-5931.

COMMENTS:

*For FR:
Mr. G.
Briefing
materials*

BARNEY FRANK
4TH DISTRICT, MASSACHUSETTS

2404 BAYBURN BUILDING
WASHINGTON, DC 20516-2104
(202) 225-5931

28 CRAFTS STREET
NEWTON, MA 02158
(617) 332-3920

Congress of the United States
House of Representatives
Washington, DC
MEMORANDUM

558 PLEASANT STREET
ROOM 305
NEW BEDFORD, MA 02740
(508) 898-6462

222 MILLIKEN PLACE
THIRD FLOOR
FALL RIVER, MA 02721
(508) 674-3551

89 MAIN STREET
BRIDGEWATER, MA 02324
(508) 697-9403

TO: George Stephanopoulos and David Gergen
FM: Rep. Barney Frank
DA: September 28, 1993

This memorandum is not intended for wide circulation -- although I suppose it does have very good demographics since you two and your respective staffs are the only intended readers.

These are all areas where Executive action against anti-gay and lesbian bias can be taken without any significant likelihood of Congress getting involved. They're areas where all but a few crazed ex-Admirals have conceded the point in various debates, and where in most cases we can point to various Bush administration figures -- including Dan Quayle -- to bolster our case.

Here are the issues:

1. The most promising and the most important is security clearance. We have a variety of people from the Bush administration on record that there should no connection between sexual orientation and security clearance. That was an explicit recommendation of the special commission appointed by Stickney, the head of FEMA -- a Sununu protegee -- after he got into some trouble on this issue. Among the six people who signed the unanimous recommendation was General Andrew Goodpaster, which even gives us Eisenhower cover. They explicitly said that there should be absolutely no questions asked at all in security clearance about sexual orientation and that sexual orientation and security clearance should be considered as wholly unrelated matters. Of course this does not mean that sexual behavior is always unrelated to security clearance, but it does mean that the fact that someone is gay is not to be considered a marker for making special inquiries nor should people be asked this in the general security clearance debate. In addition to the FEMA report, we have statements from both Dick Cheney and Colin Powell repudiating the notion that sexual orientation and security clearance are related. And we have the extremely important fact that during the entire debate on the military no one seriously suggested that security was a reason for dismissing gay people. And there are of course the Pentagon reports to that effect. This lays the ground work for a government wide policy that security and being gay are unrelated. This will be non-controversial in most areas, especially in one of the areas where it will have the most impact -- civilians who work for private companies which are seeking contracts with DOD, the National Security Agency, the CIA, etc. It may be a little more

controversial when we talk about openly gay CIA and FBI agents, but it shouldn't be. In this regard there is one particular case that it would be very helpful if we could have resolved in a favorable way -- an FBI agent named Frank Buttino who was asked if he was gay based on someone having sent a letter to Buttino's superior that he had written to a private individual. Buttino had first denied it, because he knew this would at that time cost him his job. A few weeks later he admitted it and was not accused of any other misconduct. Based on that one denial, however, he was fired. A District Court Judge held that this was probably not legitimate, and that there was a strong argument that it was a disproportionate type of punishment. The question is whether the government will appeal. Not appealing this case would be very helpful. And it is important that we make explicit that otherwise unblemished gay FBI, CIA and National Security Agency personnel will not be bothered.

2. George has told me that Jim King reports that there is a mechanism by which employees who are gay and who believe they have been denied their rights because of being gay can pursue a grievance short of going to federal court. It is very important that we make this clear. Here, by the way, our authority to justify this is Dan Quayle. During the campaign he -- implausibly but nonetheless explicitly -- announced that the Bush administration had adopted a policy of total non-discrimination against employees based on their sexual orientation. I've attached some relevant documents about that. All we are doing here is of course to make an honest man out of Dan Quayle. There are other statements from OPM directors under Bush and going all the way back to Carter making that same point. From what George tells me, the issue here may be unclarified but I think it is very important to do it. There is a very good, responsible set of organizations under the general title of GLOBE -- Gay, Lesbian or Bisexual Employees -- of the various executive agencies and they would be good ones to work with in this announcement.

3. I will be pursuing this one with Janet Reno but it would be helpful if you could weigh in. I've told gay groups that it is of course required for the executive branch to defend the anti-gay military policy for basic constitutional reasons. Had Reagan taken the position with the civil rights laws that he need not defend them the liberals would have been outraged. But the problem then becomes the grounds on which the policy is defended. At the most egregious level, the brief which the Justice and Defense Departments submitted in the Steffan case quoted an outrageous anti-gay bigot whose only previous source of support in Washington was Bill Dannemeyer. Quoting this man -- Paul Cameron -- is like quoting the Protocols of the Elders of Zion in the case involving claims made by very Orthodox Jews for certain rights. Even beyond not validating bigots, there is a very important thing the Justice Department should do with regard to the standard of proof involved. A key question for any minority group is the standard of proof the government has to use in defending a policy of discrimination. The strictest standard of

scrutiny is applied for racial discrimination. The least strict -- what is known as the rational basis test which means essentially if anyone is capable of stringing together a coherent sentence about the policy wins -- has traditionally covered economic rights, although Scalia would like to change that. Women are somewhere in between, with the liberal view being they should be much closer to strict scrutiny.

In the brief which DOD and the Justice Department submitted in the gay military case, they argued that with regard to the military context, the any rational basis test should be used. A case in the 9th Circuit said that gay and lesbian defendants were entitled to a somewhat higher level of scrutiny. I think it is morally, politically and socially very important for the administration to say that while it will defend discrimination against gays in the military because that is the national policy that evolved from the debate, it will do so on the basis of a higher level of scrutiny than simply any rational basis. I've asked Janet for a chance to talk to her about this but I wanted to let you know about it as well.

4. Another issue that is a Justice Department issue but one you should also know about has to do with affirming that gay men and lesbians can get asylum based on anti gay persecution. This should be a very easy one. An ALJ just decided it, and there is good congressional precedent here. In the recently passed Hate Crime Sentencing bill, which enhances sentences for people who commit hate crimes, the House included with no controversy sexual orientation along with race and sex as categories of protection. Henry Hyde at one point in fact offered an amendment to change some of the language, and in offering his amendment repeated the language of the bill which included sexual orientation when it comes to protecting people against persecution or violence. There should not be any controversy in applying this same rule in the immigration situation. The problem is that the INS in its reflexive fashion has denied that this should be a category on which people get asylum and in fact announced at one point that it would appeal a decision issued last Summer which would have given someone such asylum. Even if there is a decision to appeal based on the individual facts of the case, the INS should affirm that being gay is a valid basis for getting refugee status. (This is related to the article you may have seen in the New York Times earlier this week -- Monday I believe -- involving women.)

These are all issues which I think can be accomplished within the executive branch without a great deal of fanfare. They also gain strength from the way in which the debate was conducted over gays in the military. Even some of the more conservative defenders of the ban argued that they were not talking about discrimination against gay people in general, but were rather trying to protect the unique characteristics of military service. It is very important that gay men and lesbians understand that there are gains to be made by a thoughtful and determined pursuit of their cause within the mainstream of the political process.

BARNEY FRANK
4TH DISTRICT, MASSACHUSETTS

WASHINGTON OFFICE:
2404 RAYBURN BUILDING
WASHINGTON, DC 20515-2104
(202) 225-5931

Congress of the United States
House of Representatives
Washington, DC

DISTRICT OFFICES:
437 CHERRY STREET
WEST NEWTON, MASSACHUSETTS 02165
(617) 332-3920
10 PURCHASE STREET
FALL RIVER, MASSACHUSETTS 02722
(508) 674-3551
140 PARK STREET
ATTLEBORO, MASSACHUSETTS 02703
(508) 226-4723

September 18, 1992

The Honorable Dan Quayle
Vice President
United States of America
The White House
Washington, DC 20525

Dear Mr. Vice President:

I must acknowledge that I was surprised -- pleasantly -- to read your statement last week that the administration had implemented a non-discrimination policy concerning gay men and lesbians. As I'm sure you understand, I am from time to time the recipient of complaints from gay men and lesbians about what they believe to be mistreatment of them based solely on their sexuality.

Obviously I and others welcome your statement that there should be no discrimination against people based on their sexual orientation and I want to be sure that I do everything appropriate to take full advantage of this commitment.

Therefore, I would be very appreciative if you would send to me a written copy of the policy. The statements of yours which were quoted in the newspaper that I read said that the administration had implemented a non-discrimination policy for gay men and lesbians, but did not go into any specifics. For this to be useful for people who believe they have encountered discrimination, it would be very helpful if you could send me a written copy of the policy. The important points are, of course, exactly what types of discrimination are ruled out; to what decisions this applies -- hiring, promotions, contracting, etc., -- and, particularly important, what procedures are available to people who feel they have been aggrieved by the discrimination which you oppose.

Since you referred to a policy that you had implemented, I assume that it is either written down somewhere or can easily be summarized and sent along to me. I look forward to receiving your response so that I can help you in the implementation of the policy which, while you have publicly proclaimed it, remains somewhat unclear, in the minds of many who are the intended beneficiaries of it.


BARNEY FRANK

BF/meg

THE WHITE HOUSE
WASHINGTON

10/2

David --

FYI -- this is the memo George
mentioned yesterday.

-- Cliff

THE WHITE HOUSE
WASHINGTON

September 20, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: BERNARD W. NUSSBAUM
COUNSEL TO THE PRESIDENT

CLIFFORD M. SLOAN
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: New York Times editorial and op/ed
piece re: Nunn legislation on gays-
in-the-military

At George Stephanopoulos' request, we have analyzed each of the criticisms in the New York Times editorial and op/ed piece.

Despite the criticisms raised in these articles, nothing in the Nunn legislation will prevent implementation of any aspect of the July 19 policy.

I. The New York Times editorial

A copy of the September 19, 1993 editorial is attached.

Here are the specific points discussed in the editorial:

1. "[T]he Senate tepidly endorsed Mr. Clinton's order to stop asking all recruits about homosexuality, but stressed that the Secretary of Defense could reinstate the questioning at any time."

* The Nunn legislation includes a sense of Congress resolution specifying that the "don't ask" policy should be continued. It also specifies that the Secretary of Defense may reinstate questioning if he determines it necessary to do so. Under our July 19 policy, the questioning could be resumed as a matter of Executive Branch action. The Nunn legislation thus does not change the situation with regard to the "don't ask" policy.

2. "The Senate report also expressed concern that the Administration's plan to tamp down overzealous investigations might go too far; it emphasized that commanders still retain discretion to initiate investigations as they deem necessary."

* The Senate legislation is silent on investigations. Although the Senate Report expresses some concern about issues raised by application of the guidelines, the Report's bottom line

is that "[t]he committee . . . received assurances from the Department of Defense that the investigative guidance would be implemented in a manner that would provide commanders with the discretion they need to maintain good order and discipline." DOD intends to exercise its discretion in a manner that is completely consistent with the July 19 policy.

3. "The Administration has told commanders to investigate sexual conduct violations in 'an even-handed manner,' but the Senate made no mention of equal treatment and focused instead on homosexual conduct."

* The legislative silence on even-handedness will not affect DOD's implementation of the July 19 policy. DOD plans to investigate sexual conduct violations in an even-handed manner.

4. "The whole purpose of the Senate bill is to exclude homosexuals because that would create an 'unacceptable risk' to morale, discipline, and unit cohesion."

* The Nunn legislation includes a legislative finding about "unacceptable risk." ("The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the armed forces' high standards of morale, good order, and discipline, and unit cohesion that are the essence of military capability.") Although the "unacceptable risk" language is not found in the July 19 policy, the legislative finding is restricted to individuals with "a propensity or intent to engage in homosexual acts" -- which is a basis for exclusion under the July 19 policy. (DOD advises that the legislative finding is consistent with DOD testimony explaining the new policy).

5. "[T]he Administration, eager to get beyond a losing fight, has capitulated with a false statement that Mr. Nunn's language is 'fully consistent' with its own July 19 policy."

* Nothing in the Nunn legislation will prevent implementation of any aspect of the July 19 policy. The statement about the consistency of the Nunn legislation, moreover, is not a new development or "capitulation," but rather a contemporaneous assessment given on July 23.

6. "The senators want to codify into law the most repressive parts while inviting an overturn of the more liberal parts."

* Unfortunately, the Nunn legislation does codify certain restrictions in the new policy, while either maintaining silence on or leaving discretionary some improvements in the new policy. But neither legislative silence nor explicit discretion will prevent implementation of anything in the July 19 policy.

II. The Tom Stoddard op/ed piece

A copy of Stoddard's September 20, 1993 op/ed piece is attached.

Here are the specific points discussed in the piece:

1. "The proposal, drafted by Senator Sam Nunn, obliterates even the small protections contained in July's directive."

* This statement is incorrect. Nothing in the Nunn legislation will prevent implementation of a single aspect of the July 19 policy.

2. "The directive, at least, barred 'inquiries or investigations solely to determine a member's sexual orientation.' Senator Nunn's proposal wipes out any such limitation."

* This statement is incorrect. The Nunn legislation is silent on investigations. DOD plans to proceed with the investigative guidelines outlined in the July 19 policy.

3. "Indeed, the Nunn language encourages probes and purges. It contains a long list of Congressional 'findings' designed to insure the complete exclusion of gays."

* The only specific finding pointed to by Stoddard is the one about "unacceptable risk" described in #4 above. As noted, that finding refers to "a propensity or intent to engage in homosexual acts." Stoddard himself recognizes that the July 19 policy similarly addresses a propensity or intent to engage in homosexual acts (and Stoddard goes on to criticize "the President's so-called compromise" on that ground). Only one of the 14 other findings specifically addresses homosexuality. (It says: "The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.")

In sum, the most important point is that the Nunn legislation will not prevent implementation of any aspect of the July 19 policy. DOD reports that it is busily drafting directives to effectuate the July 19 policy, and that nothing in the Nunn legislation will require the Department to change its efforts to implement faithfully the July 19 policy.

WHITE HOUSE STAFFING MEMORANDUM

*gays in
milit.*DATE: 11/17/93 ACTION/CONCURRENCE/COMMENT DUE BY: _____SUBJECT: NEW GAYS-IN-THE-MILITARY DECISION

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☒	PASTER	☐	☐
McLARTY	☐	☒	RASCO	☐	☒
NEEL	☐	☐	RUBIN	☐	☐
PANETTA	☐	☐	SEGAL	☐	☐
BAGGETT	☐	☐	SEIDMAN	☐	☐
EMANUEL	☐	☐	STEPHANOPOULOS	☐	☒
GEARAN	☐	☒	TYSON	☐	☐
GERGEN	☐	☒	VARNEY	☐	☐
GIBBONS	☐	☐	WATKINS	☐	☐
HALE	☐	☐	WILLIAMS	☐	☐
HERMAN	☐	☐	_____	☐	☐
LAKE	☐	☐	_____	☐	☐
LINDSEY	☐	☒	_____	☐	☐
McGINTY	☐	☐	_____	☐	☐
MYERS	☐	☒	_____	☐	☐
NUSSBAUM	☐	☐	_____	☐	☐

REMARKS:

The attached has been forwarded to the President.

RESPONSE:

JOHN D. PODESTA
 Assistant to the President
 and Staff Secretary
 Ext. 2702

THE WHITE HOUSE

WASHINGTON

November 17, 1993

17 P6:05

MEMORANDUM FOR THE PRESIDENT

FROM: CLIFFORD M. SLOAN *CS*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: New gays-in-the-military decision

Overview

As you know, the U.S. Court of Appeals for the D.C. Circuit yesterday issued a major gays-in-the-military decision. In a decision by Chief Judge Mikva, the court held that adverse actions taken against a standout midshipman, on the basis of his statements of homosexuality, are unconstitutional.

The Steffan Decision

Joseph Steffan was an exceptional midshipman at the United States Naval Academy -- a recipient of numerous honors, a Battalion Commander (one of the Academy's ten highest ranking midshipmen), and a soloist singing the National Anthem at the Army-Navy game in his junior and senior years. In February 1987, during Steffan's senior year, the Naval Intelligence Service (NIS) received a report that Steffan had stated to another student that he was gay. Steffan was subsequently asked if he was a homosexual and twice answered, "Yes, sir." On the basis of these statements, academy officials instituted discharge proceedings, changed Steffan's ratings, and advised him to resign. Six weeks before his scheduled graduation from the Academy, he resigned.

Steffan filed suit, claiming that his constitutional right to equal protection had been violated. The D.C. Circuit agreed. It found that the military regulations in effect at the time were "not rationally related to any legitimate goal" and rejected each of the military's stated reasons for the former policy. The court concluded:

- (1) the military's former policy addresses status, not conduct;
- (2) it is unreasonable to use status as a basis for predictions about conduct or a "propensity" to conduct;
- (3) the perceived effect on morale, discipline, and recruitment of heterosexuals cannot be accepted because "[t]he Constitution does not allow Government to subordinate a class of persons simply because others do not like them";

and

(4) the "privacy" concerns are invalid -- the concerns represent either an untenable assumption that homosexuals will "stare" or an impermissible deference to "the irrational fears and stereotypes of third parties."

It should be noted that the court's panel in this case -- Mikva, Patricia Wald, and Harry Edwards -- is quite liberal and may not reflect the views of the entire D.C. Circuit.

Effect of the Steffan decision on the new policy

The court's opinion explicitly states that the new policy is "not at issue" in Steffan and that the decision applies only to the old policy. The court's view of the impermissibility of using statements of homosexuality as a ground for discharge under the old policy, however, may well have implications for the new policy. One difference, of course, is that the new policy contains the explicit rebuttable presumption. (DOJ has argued that there was an opportunity to rebut under the old policy). But it is far from clear whether the rebuttable presumption would be sufficient to overcome the decision and reasoning in Steffan.

Next steps

In consultation with DOD and DOJ, Bruce, George, and the Counsel's office will be reviewing various options. Among the possible choices are: (1) an appeal to the Supreme Court in the Steffan case; (2) a request for en banc review by the entire D.C. Circuit in the Steffan case; (3) an announcement that we will not appeal the Steffan decision because we want to focus on the new policy; and (4) possible actions to expedite judicial review of the new policy (so that the issue can be put to rest).

Talking points

Comments on the Steffan decision should be as limited as possible. It would be appropriate simply to say that we are reviewing the Steffan decision and that we have no further comment on it at this time. You may also wish to say that, in our system of government, courts are always the ultimate judges of constitutional challenges to government policies.

THE WHITE HOUSE
WASHINGTON

DATE: 12/24/93

TO: DAVID GERGEN
GEORGE STEPHANOPOULOS
BRUCE LINDSEY

FROM: JOHN D. PODESTA
Assistant to the President and
Staff Secretary

The attached has been forwarded
to the President.

File
Gays in the Military

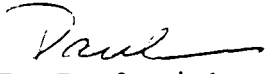
THE WHITE HOUSE
WASHINGTON

December 23, 1993

MR. PRESIDENT:

The enclosed memo from Cliff Sloan discusses the current status of Steffan case. The consensus of your advisors is to file a petition for rehearing en banc, limited to the issue of the court's order to grant Steffan his commission as an ensign.

You asked to be consulted before a final decision is reached. **Unless Counsel's office is notified to the contrary, DOJ will proceed according the agreement outlined in the memo on Thursday, December 30.**


R. Paul Richard

THE WHITE HOUSE

WASHINGTON

December 23, 1993 93 DEC 23 P4:22

048172

MEMORANDUM FOR THE PRESIDENT

FROM: CLIFFORD M. SLOAN ^{CS}
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Steffan gays-in-the-military case

Overview

As you know, DOJ and DOD have been considering whether to file a petition for rehearing en banc to the full U.S. Court of Appeals for the D.C. Circuit. (A copy of a prior memo on Steffan is attached). Until yesterday, DOD had been vigorously favoring a full appeal on all grounds, and DOJ had been resisting. At a DOD/DOJ/White House meeting yesterday, a tentative agreement was reached. Unless you disagree or have concerns, we will proceed based on this agreement.

The agreement

The meeting yesterday included DOD (Secretary Aspin, Shali, and the other Chiefs); DOJ (Webb Hubbell and Drew Days); and the White House (Tony Lake, George, Bruce, Joel Klein, and me). After considerable discussion, the following tentative agreement was reached:

First, DOJ will file a very limited petition for rehearing en banc, addressing only a narrow remedy issue regarding Steffan's commission. (The court ordered that Steffan receive his commission, along with his diploma and reinstatement. A commission, however, requires Presidential nomination and Senate confirmation. A court has no power to do away with these requirements or to order the President and the Senate to comply. The rehearing petition thus will ask the court to vacate the part of its decision ordering that Steffan be awarded his commission.)

Second, DOJ will not seek rehearing en banc on the fundamental point that the action taken against Steffan was unconstitutional, and will not seek to set aside the other relief awarded him. Instead, DOJ will explain that, although the government disagrees with the court of appeals' decision that the action under the old policy was unconstitutional, we have decided not to seek relief on anything besides the commission because the new policy is in place and the old policy has been formally superseded.

Both DOD and DOJ are satisfied with this approach. George, Bruce, Joel, and I agree that it is a sound strategy. The current

plan is to file the limited rehearing petition on Thursday, December 30. Let us know if you have any comments or concerns.

THE WHITE HOUSE
WASHINGTON

November 17, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: CLIFFORD M. SLOAN *CS*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: New gays-in-the-military decision

Overview

As you know, the U.S. Court of Appeals for the D.C. Circuit yesterday issued a major gays-in-the-military decision. In a decision by Chief Judge Mikva, the court held that adverse actions taken against a standout midshipman, on the basis of his statements of homosexuality, are unconstitutional.

The Steffan Decision

Joseph Steffan was an exceptional midshipman at the United States Naval Academy -- a recipient of numerous honors, a Battalion Commander (one of the Academy's ten highest ranking midshipmen), and a soloist singing the National Anthem at the Army-Navy game in his junior and senior years. In February 1987, during Steffan's senior year, the Naval Intelligence Service (NIS) received a report that Steffan had stated to another student that he was gay. Steffan was subsequently asked if he was a homosexual and twice answered, "Yes, sir." On the basis of these statements, academy officials instituted discharge proceedings, changed Steffan's ratings, and advised him to resign. Six weeks before his scheduled graduation from the Academy, he resigned.

Steffan filed suit, claiming that his constitutional right to equal protection had been violated. The D.C. Circuit agreed. It found that the military regulations in effect at the time were "not rationally related to any legitimate goal" and rejected each of the military's stated reasons for the former policy. The court concluded:

(1) the military's former policy addresses status, not conduct;

(2) it is unreasonable to use status as a basis for predictions about conduct or a "propensity" to conduct;

(3) the perceived effect on morale, discipline, and recruitment of heterosexuals cannot be accepted because "[t]he Constitution does not allow Government to subordinate a class of persons simply because others do not like them";

and

*I want to be
consulted before
final decision
on what to do
to make --*

*This is in
President
D. Steffan*

(4) the "privacy" concerns are invalid -- the concerns represent either an untenable assumption that homosexuals will "stare" or an impermissible deference to "the irrational fears and stereotypes of third parties."

It should be noted that the court's panel in this case -- Mikva, Patricia Wald, and Harry Edwards -- is quite liberal and may not reflect the views of the entire D.C. Circuit.

Effect of the Steffan decision on the new policy

The court's opinion explicitly states that the new policy is "not at issue" in Steffan and that the decision applies only to the old policy. The court's view of the impermissibility of using statements of homosexuality as a ground for discharge under the old policy, however, may well have implications for the new policy. One difference, of course, is that the new policy contains the explicit rebuttable presumption. (DOJ has argued that there was an opportunity to rebut under the old policy). But it is far from clear whether the rebuttable presumption would be sufficient to overcome the decision and reasoning in Steffan.

Next steps

In consultation with DOD and DOJ, Bruce, George, and the Counsel's office will be reviewing various options. Among the possible choices are: (1) an appeal to the Supreme Court in the Steffan case; (2) a request for en banc review by the entire D.C. Circuit in the Steffan case; (3) an announcement that we will not appeal the Steffan decision because we want to focus on the new policy; and (4) possible actions to expedite judicial review of the new policy (so that the issue can be put to rest).

Talking points

Comments on the Steffan decision should be as limited as possible. It would be appropriate simply to say that we are reviewing the Steffan decision and that we have no further comment on it at this time. You may also wish to say that, in our system of government, courts are always the ultimate judges of constitutional challenges to government policies.

FACT SHEET ON POLICY ON HOMOSEXUAL CONDUCT IN THE ARMED FORCES

Summary of Changes

- Accession Policy

- Applicants for military service will no longer be asked or required to reveal if they are homosexual or bisexual or if they intend to engage in homosexual acts. Applicants will be informed of the conduct that is proscribed for members of the armed forces, including homosexual conduct. DoD policies that govern physical standards for enlistment, appointment and induction will be amended to reflect that homosexuality is no longer classified as a mental disorder.

- Discharge Policy

- Sexual orientation will not be a bar to service entry or continued service unless manifested by homosexual conduct. The military will discharge members who engage in homosexual conduct, which is defined as a homosexual act, a statement that the member is a homosexual or bisexual, or a marriage or attempted marriage to someone of the same gender.

- Investigations Policy

- No investigations or inquiries will be conducted solely to determine a servicemember's sexual orientation. Sexual behavior, absent credible evidence of a crime, will not be the subject of a criminal investigation. A mere allegation or statement by anyone that a servicemember is a homosexual is not grounds for official action, whether that action is a criminal investigation or a commander's inquiry.

Permitted Activities

- Association with known homosexuals, presence at a gay bar, possessing or reading homosexual publications, or marching in a gay rights rally in civilian clothes will not constitute credible information that would provide a basis for investigation or serve as the basis for an administrative discharge. On the other hand, bodily contact between servicemembers of the same gender which a reasonable person would understand to be an acknowledgement of homosexuality (e.g. handholding, kissing) will be sufficient to warrant separation.

- The listing by a servicemember of someone of the same gender as the person to be contacted in case of emergency, as an insurance beneficiary or in a similar context, does not provide a basis for separation or further investigation.
- Speech within the context of priest-penitent, husband-wife or attorney-client communications remains privileged.

Off-Base Conduct

- No distinction will be made between off-base and on-base conduct
- From the time a member joins the service until discharge, the servicemember's duty and commitment to the unit is a 24 hour-a-day, seven-day-a-week obligation. Military members are required to comply with both the UCMJ, which is federal law, and military regulations at all times and in all places. Unacceptable conduct, homosexual or heterosexual, is not excused because the servicemember is not "at work."

Investigations

- The policy on investigations reflects a "bright-line" test for initiating either commanders' inquiries or criminal investigations into allegations of proscribed homosexual conduct. The new policy states that commanders will direct inquiries into alleged homosexual conduct only when there is credible information of homosexual acts, homosexual marriages or statements of self-identification as a homosexual or bisexual.
- Commanders will continue to exercise sound discretion regarding when credible information exists, and will evaluate the information's source and all attendant circumstances to assess whether the information supports a reasonable belief that a servicemember has engaged in proscribed homosexual conduct. Commanders, and not investigators, determine when sufficient credible information exists to justify detail of investigative resources to look into allegations. The mere suspicion that an individual is a homosexual, without credible information of conduct proscribed by either federal law or service regulation, will not constitute sufficient basis for initiating an inquiry or investigation.

- Military law enforcement agencies will not conduct investigations solely to determine an individual's sexual orientation. Neither military commanders nor law enforcement agencies will conduct inquiries concerning private consensual sexual acts without credible information that a basis for discharge or disciplinary action exists and such inquiry is a logical and necessary step in the fact-finding process.
- We expect commanders to distinguish rumor, suspicion and innuendo from credible information and to base their actions only on the latter. The new policy states that commanders will direct inquiries into alleged homosexual conduct only when there is credible information of homosexual acts, homosexual marriages or statements of self-identification as a homosexual or bisexual. They will not take action against members based on rumor, suspicion or capricious allegations.

Security Clearances

- Questions pertaining to an individual's sexual orientation are not permitted on personnel security questionnaires. An individual's sexual conduct, whether homosexual or heterosexual, may be a legitimate security concern if it could make an individual susceptible to exploitation or coercion, or indicate a lack of trustworthiness, reliability, or good judgment that is required of anyone with access to classified information.

The Threat of Extortion

- As long as servicemembers continue to be separated from military service for engaging in homosexual conduct, credible information of such behavior can be a basis for extortion. Although the military cannot eliminate the potential for the victimization of homosexuals through blackmail, the policy tends to reduce the risk to homosexuals by making certain categories of information largely immaterial to the military's discharge procedures.
- Only credible information that a servicemember engaged in proscribed conduct will form the basis for initiating an inquiry or investigation of a servicemember; information or suspicion of an individual's sexual orientation is not a basis, by itself, for official inquiry.
- Extortion is a federal criminal offense, under both the UCMJ and United States Code, and we will prosecute

offenders aggressively. A servicemember convicted of extortion may be dishonorably discharged and may be punished by three years of confinement. Civilians found guilty of blackmail under the U.S. Code may be subject to a \$2000 fine and one-year imprisonment. We intend to address the risk of blackmail by educating all servicemembers on the policy and by emphasizing the significant criminal sanctions facing convicted extortionists.

Outing

- A mere allegation or statement by anyone that a servicemember is a homosexual is not grounds for official action. Sexual behavior, absent credible evidence of a crime or conduct proscribed by service regulations, should not be the subject of either commanders' inquiries or criminal investigations. Neither will commanders take official action against members based on rumor, suspicion or capricious allegations.
- However, if a "jilted lover" provides credible information that a member has committed a crime or act that warrants discharge, e.g., engages in homosexual conduct, the military commander may, based on the totality of the circumstances, conduct an investigation or inquiry, and take non-judicial or administrative action or recommend judicial action, as appropriate.
- Commanders are responsible for initiating an investigation when credible information exists that a crime or basis for discharge has been committed. The commander examines the information and decides whether an investigation by the Service investigative agency or a commander inquiry is warranted, or if no action should be taken.

Harassment

- It is our policy that all servicemembers will be treated with dignity and respect. Hostile treatment of a servicemember based on a perception of his or her sexual orientation will not be tolerated.

The Prohibition of Statements

- Though we will not be inquiring into sexual orientation, that does not mean that a member's statement of his or her homosexuality is consistent with our goals.

- If a servicemember states that he or she is a homosexual or bisexual, the member will be separated from military service unless a further finding is made that the member has not engaged in and does not desire or intend to engage in homosexual acts.
- The presence of open homosexuals would affect unit cohesion.
- Privacy is also an issue. Military members give up many rights, for example, some aspects of first amendment rights, when they join the military. When deployed on ships or overseas, members often work, eat, relax, bathe, and sleep together in close proximity 24 hours-a-day. Many members consider the presence of openly homosexual individuals in that environment an invasion of the little privacy that remains.
- Federal courts have held that a self-acknowledgment of homosexuality can be considered reasonably reliable evidence of a desire to engage in homosexual conduct which this policy prohibits.
- Our society is not of one view on the issue of homosexuality. The divergent views in the country reflect strongly held religious, moral, ethical, and cultural values. It is our view that the military environment, particularly given the strains of down-sizing, is not the place to establish, in the first instance, how those values and views should be reconciled.

The Premises of the Policy

- The Department of Defense has long believed that, as a general rule, homosexuality is incompatible with military service because it interferes with the factors critical to combat effectiveness, including unit morale, unit cohesion and individual privacy. Nevertheless, the Department also recognizes that individuals with a homosexual orientation have served with distinction in the armed forces of the United States. Therefore, it is the policy to judge members of the armed forces on the basis of their conduct.

The policy I am announcing today is, in my judgment, the right thing to do and the best way to do it. It is right because it provides greater protection to those happen to be homosexual and want to serve their country honorably in military uniform, obeying all of the military's rules against sexual misconduct. It is the best way to proceed because it provides a sensible balance between the rights of the individual and the needs of our military to remain the world's number one fighting force. As president of all the people, I am pledged to protecting and advancing individual rights; as commander in chief, I am pledged to protecting and advancing our security. In this policy, I believe we come closest to meeting both of those objectives.

I know that many of you in this room -- just like many others in the military -- are not enthusiastic about this new policy. Many of you would feel more comfortable if we returned to policies of the past. But it is time for all of us to move forward.

As your commander in chief, I charge all of you here to carry out this policy with fairness, with balance, and with due regard to the privacy of individuals. We must and will protect unit cohesion and troop morale; we must and will have the best fighting force in the world. But I am ordering an end to witchhunts and vigilante teams that spend millions of taxpayer dollars to ferret out individuals. Where there is sexual misconduct -- on or off base -- it should remain grounds for discharge, but let us proceed with an even hand against everyone, regardless of sexual orientation.

Executive Order No. XXXXX.

Policy Regarding Homosexual Conduct in the Armed Forces

WHEREAS, the Department of Defense has long held that, as a general rule, homosexuality is incompatible with military service because it interferes with the factors critical to combat effectiveness, including unit morale, unit cohesion and individual privacy; and

WHEREAS, the Department of Defense also recognizes that individuals with a homosexual orientation have served with distinction in the armed forces of the United States; and

WHEREAS, the constraints of military service require servicemembers to keep certain aspects of their conduct private for the benefit of the group

NOW, THEREFORE, I, WILLIAM JEFFERSON CLINTON, by the authority vested in me as President of the United States of America and Commander in Chief of the armed forces by Article II, Section 2, of the *Constitution of the United States*, do hereby order as follows:

Section 1. Members of the armed forces are to be judged on the basis of their conduct. Homosexual conduct shall be grounds for separation from the armed forces.

Homosexual conduct is a homosexual act, a statement by the member that he or she is homosexual or bisexual, or a homosexual marriage or attempted marriage. A homosexual act includes any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires or any acts which a reasonable person would understand to be an acknowledgment of homosexuality, e.g., handholding, kissing. Sexual orientation is a sexual attraction to individuals of a particular gender.

Section 2. Applicants for military service will not be asked or required to reveal their sexual orientation. Applicants will be informed of enlistment and separation policy.

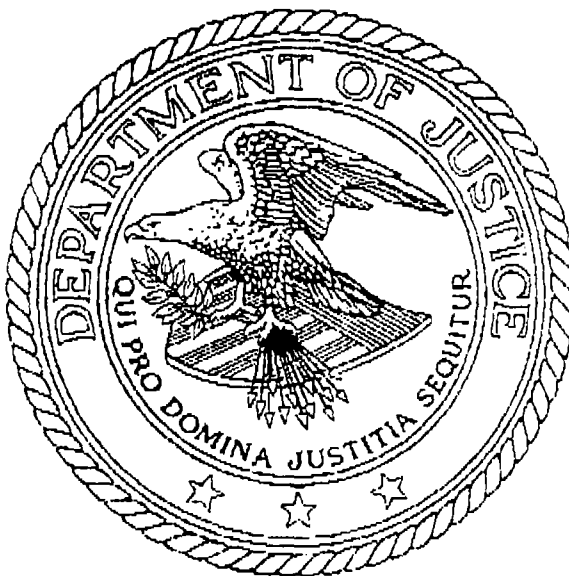
Section 3. Commanders and investigating agencies will not initiate inquiries or investigations solely to determine a servicemember's sexual orientation. Servicemembers will not be asked or required to reveal their sexual orientation. However, commanders will continue to initiate inquiries or investigations, as appropriate, when there is credible information that a basis for discharge or disciplinary action exists.

Section 4. The Secretary of Defense and the Secretary of Transportation will take such actions, including the promulgation

of rules and regulations, as may be necessary, to carry out the purposes of this order.

Section 5. This order is prospective only and does not, nor is it intended to create any right, benefit, or privilege, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers or employees, or any person. A claim that this policy has been violated is not a defense to administrative or punitive proceedings or a basis for exclusion of evidence.

Section 6. The interim procedures established by the Secretary of Defense on February 3, 1993, will remain in effect until this order becomes effective, on September 7, 1993.

**OFFICE OF THE ATTORNEY GENERAL****FACSIMILE TRANSMITTAL COVER SHEET****DATE:** July 18, 1993**TO:** Bernie Nussbaum
David Gergan**FACSIMILE NO.** 456-6279
456-6424**TELEPHONE NO.** _____**FROM:** Janet Reno**FACSIMILE NO.** _____**TELEPHONE NO.** 514-2001**NUMBER OF PAGES INCLUDING COVER SHEET** 5**COMMENTS:**

If you have any questions, Webb Hubbell is in Mack McLarty's office now.

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July 19, 1993

MEMORANDUM FOR THE PRESIDENT**FROM: THE ATTORNEY GENERAL****RE: DEFENSIBILITY OF THE NEW POLICY ON HOMOSEXUAL
CONDUCT IN THE ARMED FORCES**

The Supreme Court has repeatedly stated that the courts must review decisions by the President and by military commanders deferentially, taking into account the separate nature and special needs of military society. As a consequence, it is possible to justify in the military setting constraints on individual liberty and choice that might be invalid in civilian society. Because of the extraordinary deference paid by the courts to military service, we are reasonably confident that the new policy proposed by the Secretary of Defense will be upheld against constitutional challenge. Moreover, the proposed policy (hereafter, "the policy") that the Secretary of Defense has submitted changes earlier policy in three respects that should improve the ability of the Department of Justice to defend the policy in court.

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First, the policy changes the premises on the basis of which questions involving the service of homosexuals in the military are to be resolved. The policy reiterates the prior Defense Department view that "homosexuality is incompatible with military service because it interferes with the factors critical to combat effectiveness." However, the policy adopts a new position that sexual orientation is a private matter and is not a bar to service "unless manifested by homosexual conduct." Under the policy, therefore, the military would be directed to judge an individual's suitability for service on the basis of conduct, and homosexual conduct (but not an unmanifested orientation) would be grounds for separation from service. We can be confident that the prohibition on acts that everyone would regard as explicitly sexual would be sustained under existing case law.

Second, the policy implements the distinction between "status" and "conduct" that you drew in your January 29 directive. Most important in this regard is the treatment of statements of homosexuality or bisexuality as creating "a rebuttable presumption

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that the service member is engaging in homosexual acts or has a propensity or intent to do so." First Amendment problems would arise if the policy proscribed certain speech, in and of itself, because of disapproval of the content or the viewpoint expressed. This approach provides much clearer authority than did the pre-January policy for the argument that the Department of Justice has been making persuasively to the courts up to this point that a member who credibly disproved any intent or propensity to commit physical acts would not be subject to separation. The new policy suggests a meaningful opportunity to rebut the presumption flowing from statements of homosexuality. As a consequence, the Department of Justice will be better able to argue that the policy is not directed at speech or expression itself, and that any burdens in those respects are incidental to the achievement of an important governmental interest.

Third, the policy would substantially change pre-January investigative policies. Applicants for military service would not be questioned about their sexual orientation or behavior.

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Investigations would no longer be conducted for the sole purpose of determining an individual's sexual orientation. Commanders will initiate investigations only where there is credible evidence of "homosexual conduct." This change will make decisions made under the policy appear fairer, more even-handed, and conduct-based, and therefore easier to defend.

THE WHITE HOUSE
WASHINGTON

July 19, 1993

MEMORANDUM TO MACK McLARTY

FROM: BILL BURTON

SUBJECT: President's remarks on Gays in the Military

The following quotation by the late Justice Thurgood Marshall may be appropriate to consider for use in the President's speech regarding the lifting of the ban on gays in the Military. Retired Brigadier General Evelyn P. Foote brought the quote to our attention in a letter to the President encouraging him to lift the ban:

"The legal system can force open doors, and, sometimes, even knock down walls. But it cannot build bridges. That job belongs to you and me. We can run from each other, but we cannot escape each other. We will only attain freedom if we learn to appreciate what is different and muster the courage to discover what is fundamentally the same. Take a chance, won't you? Knock down the fences that divide. Tear apart the walls that imprison. Reach out: freedom lies just on the other side."

Justice Thurgood Marshall, quoted by Carl Rowan in Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall.

cc: David Gergen
George Stephanopoulos