

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Legislative Affairs
Series/Staff Member: Pat Griffin; Susan Brophy; Howard Paster
Subseries:

OA/ID Number: 11004
FolderID:

Folder Title:
Gays in the Military

Stack:	Row:	Section:	Shelf:	Position:
S	26	2	3	2

THE WHITE HOUSE
WASHINGTON

Handwritten initials and a large circular mark.

DATE: 3/12

NOTE FOR: *Harold, Mack, V.P.*

The President has reviewed the attached, and it is forwarded to you
for your:

Information

☒

Action

☐

Thank you.

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
(x2702)

cc:

He - Nunn - is amenable to
changing the date a bit.
I have so informed but
we need (?!)

THE WHITE HOUSE
WASHINGTON

MARCH 5, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: Howard Paster *HP*

The Vice President has secured an agreement from Chairman Dellums to postpone his hearings on gays in the military if Senator Nunn will do the same. The Vice President is rightly concerned that those hearings will, if held this month, undermine our work on the economic plan.

It is the Vice President's view that it will be necessary for you to call Senator Nunn to get him to postpone the hearings. As you know, Senator Nunn did speak out today on the defense budget, and it is fair to say he modulated the tone of his remarks. Also, he has signed the Brown letter on the stimulus package.

While I do not dispute the Vice President's view that you may have to ask to have the hearings postponed, I am not certain it is worth the potential price. My recommendation is that Mack call Senator Nunn and make the effort but I felt it appropriate to make you aware of the Vice President's view.

cc: Mack McLarty

Mack
He - Nunn & Cummings
to changing the date a bit
I have so informed Paster but
we need confirmed Paster but

January 28, 1993

Statement of the Secretary of Defense

While the Department of Defense is conducting the review directed by the President, current policies will remain in effect subject to the following guidance --

First, the Joint Chiefs have agreed that the question regarding orientation should and will be removed from future versions of the induction application, and will not be asked in the interim.

Second, the Department of Justice is joining plaintiff's in seeking continuances in pending court cases involving reinstatement to freeze those cases pending the completion of the review directed by the President.

Third, to be consistent with the Justice Department action, commanding officers will continue to process cases that would come up under the current policy. However, administrative separation under current Department of Defense policies based on status alone, will be stayed pending completion of this review.

*plus reference to briefing
new recruits on UCMJ
a statement that commanders
can transfer to protect
individual or unit morale*

CLOSE HOLD

Document No. 000545

WHITE HOUSE STAFFING MEMORANDUM

DATE: 01/26/93 ACTION/CONCURRENCE/COMMENT DUE BY: 7:45 A.M. 01/27
PRESIDENTIAL MEMO TO THE SECRETARY OF DEFENSE RE
ENDING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION
SUBJECT: IN THE ARMED FORCES

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	PASTER	☒	☐
McLARTY	☒	☐	RASCO	☐	☐
GEARAN	☒	☐	RUBIN	☐	☐
PANETTA	☒	☐	SEGAL	☐	☐
EMMANUEL	☐	☒	STEPHANOPOULOS	☒	☐
GIBBONS	☐	☐	VARNEY	☐	☒
HALE	☐	☐	WATKINS	☐	☐
HERMAN	☐	☒	WILLIAMS	☒	☐
LAKE	☒	☐	CLERK	☐	☒
LINDSEY	☒	☐		☐	☐
MONTOYA	☐	☐		☐	☐
NUSSBAUM	☒	☐		☐	☐

REMARKS:

Please provide any comments directly to this office NO LATER THAN 7:45 a.m. on Wednesday, 01/27. Thanks.

RESPONSE:

CLOSE HOLD

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

MEMORANDUM FOR THE PRESIDENT

From: vince Foster
Date: January 26, 1993
Subject: Gays in the Military

By the attached Presidential Memorandum, you direct the Secretary of Defense to submit to you prior to July 15, 1993 a draft Executive order ending discrimination in the military on the basis of sexual orientation.

The memorandum also directs the Secretary, in preparing the draft, to consult fully with the Joint Chiefs of Staff and other concerned governmental and private interests.

Attachment

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Ending Discrimination on the Basis of
Sexual Orientation in the Armed Forces

I hereby direct you to submit to me prior to July 15, 1993 a draft for my approval of an Executive order ending discrimination on the basis of sexual orientation in determining who may serve in the Armed Forces of the United States.

Does
this
cover
conduct

In preparing the draft, I direct you to consult fully with the Joint Chiefs of Staff and the Military Services, with other Departments affected by the order, and with concerned individuals and organizations outside the Executive Branch.

THE WHITE HOUSE.

DRAFT SECOND-DEGREE AMENDMENT

RE MILITARY POLICY WITH RESPECT TO HOMOSEXUALS

It is the sense of the Senate that --

(a) the Secretary of Defense, in close consultation with the civilian and military leadership of the Department of Defense, shall conduct a comprehensive review of current Departmental policy with respect to the service of homosexuals in the armed forces;

(b) such review shall include the basis for the current policy of mandatory separation; the rights of all service men and women, regardless of sexual orientation, and the effects of any change in policy on morale, discipline, and military effectiveness;

(c) the Secretary shall report the results of such review and consultations and his recommendations to the Congress no later than June 1, 1993, and to the President, no later than July 15, 1993;

(d) the Senate Committee on Armed Services shall conduct comprehensive hearings on the current military policy with respect to the retention of homosexuals in the military services; and shall conduct oversight hearings on the Secretary's recommendations as such are reported.

EYES ONLY

URGENT

January 27, 1993

MEMORANDUM FOR HOWARD PASTER
GEORGE STEPHANOPOLOUS
DAVID DREYER

FROM: SANDY BERGER

Here is the draft Aspin statement.

Call Rudy de Leon at 703-697-8388 with comments ASAP.

cc: Rudy de Leon

DRAFT LANGUAGE OF SENSE OF SENATE RESOLUTION

(POSS. SECOND-DEGREE RE MILITARY POLICY ON GAYS)

INCLUDES DECONCINI LANGUAGE AND NUNN HEARINGS

It is the sense of the Senate that the Secretary of Defense, in consultation with the civilian and military leadership of the United States Armed Services, should determine the most appropriate and advisable means by which the existing military policy respecting sexual orientation may most effectively be altered without adverse effects on effectiveness of military mission, morale, preparedness, discipline and safety, and with maximum preservation of the rights of all service men and women, regardless of their sexual orientation; and that

Such consultation shall incorporate such facts as are developed in full, open hearings on this subject matter by the Senate Armed Services Committee; and that

The Secretary of Defense shall report the findings and recommendations of the service chiefs to the President no later than July 15, 1993.

MARSHALL (House AMN) SCHAALIT WITH

MOON-216 RUSSIAN

ARMED - NOT WITHHOLDING JUDGMENT -
WITHHOLDING JUDGMENT -

NOT FINAL DECISION

- ✓ BAN IN EFFECT
- ✓ SECDEF REVIEW
- ✓ QUITS ASKED OUTLINE
- ✓ CONSENSUS PROCESSING AT MEMBERS
- ✓ REACTIONARY CMT - UP TO DISCUSS
NOT NEW CONSIDERATION

BOARD OF JUDICIAL → 2 STAGE

- 1) CONSENSUS REFUSAL BOARD
- 2)

DON'T DISCHARGE
NO PROSECUTION ACTION

WILL COME BACK TO ISSUE

DOOR

DOOR

☐

Senator Robb

☐

Senator Graham

☐

Senator Glenn

☐

Senator Bingaman

☐

Senator Nunn

☐

Senator Exon

☐

The President

☐

The Vice President

☐

Secretary Aspin

☐

Senator Levin

☐

Senator Kennedy

☐

Senator Shelby

☐

Senator Byrd

☐

Senator Lieberman

☐

The Roosevelt Room

☐

Mr. McLarty

DOOR

EYES ONLY

URGENT

January 27, 1993

MEMORANDUM FOR HOWARD PASTER
GEORGE STEPHANOPOLOUS
DAVID DREYER

FROM: SANDY BERGER

Here is the draft Aspin statement.

Call Rudy de Leon at 703-697-8388 with comments ASAP.

cc: Rudy de Leon

01-27-1985 10:10 1000570131 SECRET / TABLES P.02

DRAFT STATEMENT OF THE SECRETARY OF DEFENSE

While the Department of Defense is conducting the review directed by the President, current policies will remain in effect. There will, however, be a number of agreed actions in the interim.

Firstly, there is agreement that the question regarding status should and will be removed from future versions of the enlistment application, and will not be asked in the interim. This is being done at the initiative of the Joint Chiefs of Staff. No change in policy is required since there is no Department of Defense or Armed Service policy which mandates the asking of this question.

Secondly, existing Armed Services policy provides that investigations relating to homosexuality occur only when there are allegations of criminal assaults or on-base activity. This policy is reaffirmed.

Thirdly, the Justice Department is seeking a continuance in all pending court cases to freeze those cases pending the completion of the review directed by the President..

Finally, to be consistent with the Justice Department action, recommendations for separation based solely on status will simply remain in recommendation status and will not be acted on by senior civilian officials of the Armed Services pending the completion of the review.

#

Likely Questions

1. What will the Executive Order direct the Secretary of Defense to do?

- Will it use neutral terms: "to review current policy and prepare an appropriate Executive Order" or will it use terms that presume the outcome "prepare an executive order to end the policy of excluding homosexuals from military service"?

2. What will the Executive order eliminate the pre-accession question about homosexuality?

-- what should a recruiter say if a prospective recruit asks if homosexuals can enlist?

-- what should a recruiter do if a prospective recruit discloses his or her homosexuality?

3. Will the current DoD Directive, which sets forth the exclusionary policy, remain in effect during the period of the review?

4. During the period of the review, what will be the effect on pending cases (described in point 5 below) in terms of the following category of cases:

a. Cases solely involving admission of homosexual status without evidence of acts?

b. Cases involving consensual homosexual acts in which there is no military connection?

c. Cases involving consensual homosexual acts in which there is a military connection (e.g., with another military member; with a civilian on-post)?

d. Cases involving conduct that would otherwise be improper (fraternization, harassment, or conduct with a minor)?

e. Cases in which the individual denies homosexuality (or maintains silence) and there is circumstantial evidence (e.g., physical contact)?

5. Types of cases:

a. What will be the effect on cases now in civil litigation? (These are primarily cases in which an individual has been discharged and is now asking the federal civilian courts for reinstatement or other relief?)

b. What will be the effect on cases now before the Boards for Correction of Military Records or Discharge Review Boards? (These are cases in which an individual has been discharged and

is seeking reinstatement or change in reason for or character of discharge).

c. What will be the effect on cases in which a discharge has been recommended by a board or subordinate authority but not yet executed by a military department?

d. What will be the effect on cases in which administrative proceedings are underway at this time?

e. What will be the effect on new cases that arise during the period of review?

6. If the execution of administrative discharges is suspended:

a. Will this apply only in cases of admissions unaccompanied by homosexual acts?

b. Will this be the result of a decision made by DoD or DOJ?

01-27-1955 10:10 1000870151 SECRET / TABLES P. 02

DRAFT STATEMENT OF THE SECRETARY OF DEFENSE

While the Department of Defense is conducting the review directed by the President, current policies will remain in effect. There will, however, be a number of agreed actions in the interim.

Firstly, there is agreement that the question regarding status should and will be removed from future versions of the enlistment application, and will not be asked in the interim. This is being done at the initiative of the Joint Chiefs of Staff. No change in policy is required since there is no Department of Defense or Armed Service policy which mandates the asking of this question.

Secondly, existing Armed Services policy provides that investigations relating to homosexuality occur only when there are allegations of criminal assaults or on-base activity. This policy is reaffirmed.

Thirdly, the Justice Department is seeking a continuance in all pending court cases to freeze those cases pending the completion of the review directed by the President..

Finally, to be consistent with the Justice Department action, recommendations for separation based solely on status will simply remain in recommendation status and will not be acted on by senior civilian officials of the Armed Services pending the completion of the review.

#

~~There will be no changes made in Department of Defense policy as a result of the presidential statement on homosexuals in the military.~~ While the Department of Defense is conducting the review directed by the President, current policies will remain in effect. However, there will be three changes in practice:

1. The question regarding status will be removed from the enlistment application. This is being done at the initiative of the Joint Chiefs of Staff. No change in policy is required since there is no DOD or Service policy which mandates the asking of this question.

2. Recommendations for separations based solely on status now pending will simply remain in that status and will not be reviewed by Senior officials who must approve any separation. No discharges based on status will occur during the period of the review. The people involved will remain at their regular duty station. Again no change in policy is required since there is no mandated time limit for acting on such recommendations, and no requirement to reassign persons pending completion of a review.

3. Current policy provides that investigations relating to homosexuality occur only when there are allegations of relations with a minor, rape, or on-base activity. This policy will remain in force and will prevent any feared "witch hunts."

The Justice Department is seeking a continuance in all pending cases to await the outcome of the review directed by the President.

Q. Is repeal of the sodomy laws part of the planned review?

A. No. It will deal only with discrimination on the basis of status. No change is contemplated in the UCMJ or of the procedures now in place dictating when investigations should take place of alleged violations of the UCMJ. (These procedures permit investigations of alleged sexual misconduct, heterosexual or homosexual only when there are allegations of relations with minors, rape, or on base activity.)

Q. Will military personnel who claim to be married to a person of the same sex be entitled to medical and other benefits on that basis?

A. No. The review will deal only with ending discrimination not the creation of new rights.

Q. What kinds of issues will be reviewed?

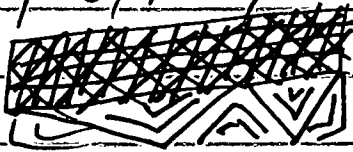
A. For example, one question often raised is whether a person who does not want to bunk with an acknowledged homosexual should be entitled to a new room. Other questions relate to appropriate conduct on a military base.

Q. What is the appropriate role of Congress?

A. There is no question that Congress has the constitutional power to alter any new rule that the President might institute. Such Congressional action would, of course, be subject to constitutional challenge in the courts. The President and the Secretary of Defense have asked members of Congress to put off any votes on the substance until the Defense Department has had a chance to work out the answers to the many legitimate questions raised by the military. Once the President has received a draft

order from the Secretary and reviewed the text, the draft will be provided to the Congress for any review or hearings that the Congress might want to conduct before the President makes a final decision. In the end the President hopes that Congress will support his action. The administration will be fighting hard to prevent the Congress from over riding his decision.

Policy



NOT SURE CAN AVOID VOTE

2nd degree

6/11

Sense of SENATE

- A) Sec Def in close consultation w/ CIVILIAN & MILITARY LEADERSHIP of DoD SHALL CONDUCT A COMPREHENSIVE REVIEW of the Dept's current policy of excluding homosexuals from military service;
- B) Such Review SHALL EXAMINE THE BASIS FOR THE CURRENT POLICY, the rights of the service members RELATIVE to SEXUAL ORIENTATION & THE IMPACT of any CHANGE in morale, discipline, & mission effectiveness;

C) The SEC shall also
the results of ~~the~~ his
review & his
recommendation to the President
& the Congress; and

D) The Commission on
Armed Services should
conduct comprehensive
HRLS on the current
policy & the
SEC's recommendation

To: Marcia Hale
From: Howard Paster
Date: January 26, 1993

I recommend we add two meetings to the President's schedule for tomorrow:

2-3 SB 1) Mid-afternoon - Senate Armed Service Democrats: Nunn, Exon, Levin, Kennedy, Bingaman, Glenn, Shelby, Byrd, Graham, Robb and Lieberman - The purpose of the meeting would be to redefine any immediate Senate vote on gays in the military as a process vote by asking these Senators -- regardless of their position on the issue -- to join in tabling partisan amendments. This would give the Committee time to proceed with its hearings and Secretary Aspin time to act on the President's memorandum. We could prepare allies among the invitees to respond positively to the President's appeal and lessen the risk of losing a policy-based vote within the next week. This does have the risk of elevating the stakes, but success would give us positive momentum. Secretary Aspin, Sandy Berger and George all agree with the recommendation. SR SB SR SR SR SB SR SB SR

6-7 SR 2) Late afternoon/early evening in the residence - Reps. Foley, Gephardt, Natcher, Rostenkowski and Sabo, and Sens. Mitchell, Pryor, Moynihan, Sasser and Byrd - The purpose of this informal get together would be to assure the leaders on economic issues that no decisions have been made on the economic plan, and to test their reactions to various ideas in a relaxed setting. Regardless of what ultimately gets into the plan this would constitute a legitimate opening effort to consult with key Democrats. Bob Rubin and George agree with this recommendation. SB SR SB

*PRE 2 ✓
*UP ✓
*SEC - HP
LACE - HP
BERNARD - Machine Bros - HP
GEORGE - HP
McClarty - HP

*PNE ✓
RUBIN HP ✓
GEO HP ✓
*UP ✓
*BERNARD HP ✓
*PASTOR HP ✓
McClarty HP ✓

CONTRADICTIONS —

De facto same as de jure
if cannot process out

1) DO CHAIRS AGREE on JUSTICE?

IN WRITING — WITH WITH
HAPPEN IF ADMISSION
IN INQUIRY

WHAT IS now-previous course
How much FLEXIBILITY?

More WHAT QUESTIONS

Statement of Senator Sam Nunn
Chairman, Senate Armed Services Committee
January 27, 1993
Remarks prepared for delivery

HEARINGS ON THE DEPARTMENT OF DEFENSE POLICY
EXCLUDING HOMOSEXUALS FROM SERVICE IN THE ARMED FORCES

Mr. President, there has been a crescendo of interest building in recent weeks on the issue of homosexuals serving in the armed forces. Current Department of Defense policy prohibits homosexuals from serving in the armed forces.

During the Presidential campaign, President Clinton made it very clear that he intended to change the current policy. No one should be surprised that his administration is currently developing a plan to change this policy.

Contrary to some media reports, I have had the opportunity to discuss this and other important national security issues on several occasions with President Clinton. I have also had the opportunity to discuss these issues with Secretary of Defense Aspin.

I have advised both President Clinton and Secretary Aspin to seek the advice and views of a broad range of military personnel -- the people who would be most directly affected by any change in the current policy on service by homosexuals -- before making any changes.

This is certainly an appropriate issue for an initiative by the Commander-in-Chief, and executive orders are well within his constitutional powers. The Constitution, however, also clearly gives Congress the responsibility to deal with matters of this nature affecting the armed forces.

Under Article I, section 8 of the Constitution, the Congress has the responsibility to "raise and support armies ... to provide and maintain a Navy ... [and] to make rules for the government and regulation of the land and naval forces." It is the responsibility of Congress to ensure that policies of the Defense Department enhance good order and discipline, while providing for fair and equitable personnel policies.

So the question of whether homosexuals should serve in the military is an issue on which Congress and the President share constitutional responsibility. Secretary Aspin has emphasized the need for the Congress and the Executive Branch to work together on this issue, and he is absolutely right. It is in everyone's interest to see if we can resolve this issue through consensus rather than confrontation.

In recent days, I have heard a number of commentators suggest that the policy of excluding homosexuals from the military dates only from 1982. One of the issues that we will explore in our hearings is the historical development of the current policy. At this time, however, I would like to provide a brief summary of the historical development because the suggestion that the policy only dates from 1982 is inaccurate and misleading.

Until the post-World War II period, military regulations on administrative separation were drafted in a manner that gave commanders broad discretion to separate servicemembers. During World War II, for example, Army commanders were authorized to separate individuals for "inaptness or undesirable habits or traits of character." This regulation, which formed the basis for the discharge of homosexuals during World War II, did not list any specific traits.

In 1944, the Army in Circular No. 3 endeavored to distinguish between homosexuals who were discharged because they were "not deemed reclaimable" and those who were retained because their conduct was not aggravated by independent offenses. In 1945, a greater emphasis was placed on "reclamation" of homosexual soldiers. If a homosexual soldier was deemed "rehabilitated", the soldier was returned to service.

In 1947, the policy was revised to discharge individuals who had "homosexual tendencies" even if they had not committed homosexual acts. Those who committed homosexual acts were subject to court-martial or administrative discharge, with the character of discharge depending on the nature of the act.

The Uniform Code of Military Justice, enacted in 1950, included consensual sodomy as a criminal offense.

In 1950 the Army adopted a mandatory separation policy, which stated: "True, confirmed, or habitual homosexual personnel, irrespective of sex, will not be permitted to serve in the Army in any capacity and prompt separation of known homosexuals from the Army is mandatory." This policy was somewhat relaxed in 1955, permitting a soldier to be deemed "reclaimable" when they "inadvertently" participated in homosexual acts. This policy was reversed in 1958, when the mandatory separation policy was reinstated.

In 1970, DoD-wide policy was issued, authorizing separation on the basis of homosexual acts and "homosexual tendencies". There was no definition of the term "homosexual tendencies". Under the Directive, the final decision on separation of an individual soldier was a matter of command discretion rather than mandatory policy.

In the 1970s, there was increasing litigation concerning the procedures and basis for the DoD policies on the separation of homosexuals. The extent to which the authority to retain was exercised is unclear. In several court cases, the Department was asked to provide detailed reasons for not exercising the discretion to retain. This was one of the factors leading to a detailed review of the DoD policy in the late 1970s during President Carter's administration.

As a result of that review, the Department of Defense made two significant changes in policy which were set forth in a memorandum issued by then-Deputy Secretary of Defense Graham Claytor on January 16, 1981. First, the policy was liberalized by eliminating "homosexual tendencies" as a reason for separation. Second, the mandatory separation policy, which had been used in the 1950s, was reinstated. This policy incorporated without substantive change in DoD Directive 1332.14, which governs enlisted administrative separations, in 1982.

In short, the authority to separate homosexuals has been in effect over a lengthy period of time, although the manner in which this policy has been implemented has varied. The current policy dates from President Carter's administration. There has not been a thorough review of this policy in recent years by either the executive branch or the legislative branch. During the Senate's debate last year on the National Defense Authorization Act, I engaged in a colloquy with Senator Metzenbaum in which I pledged to him that the Armed Services Committee would hold hearings on the military's policy this year.

Our hearings on this issue will begin in March. We will receive testimony from the senior civilian and military leadership of the Department of Defense. I also want to hear directly from the people who would be most affected by any change in the current policy: the men and women serving in the ranks of all of the military services. We will make every effort to hear from those who support a change in the current policy as well as those who favor retention of the current policy.

Mr. President, I start from the premise that we should encourage every American to serve his or her country in some capacity. I am a strong supporter of national service, and I am delighted that we have a President who is making national service a top priority of his administration.

I applaud the patriotism of all persons, including homosexuals, who desire to serve our nation in the military. I have no doubt that homosexuals have served and are today serving in the armed forces with distinction, but most of them are not openly disclosing their sexual orientation.

I also believe that we should give very careful consideration to the advice of our military commanders on this subject. Although we have a volunteer force, there are still important and clear differences between civilian life and military service.

Our national security requires that the armed forces maintain a high level of good order and discipline. In order to maintain military effectiveness, members of the armed forces give up many of the constitutional rights that their civilian counterparts take for granted.

Military personnel are subject to involuntary assignment to any place in the world, often on short notice, often to places of grave danger. The requirements of discipline, including adherence to the chain of command, means that their first amendment rights of speech and association are limited.

Military trials and administrative procedures have procedural safeguards, but they are not the same as the rights that apply in a civilian setting. Servicemembers are subject to searches and command inspections in living quarters that would not meet the privacy standards and warrant requirements of the fourth amendment that we take for granted in civilian society.

Members of the armed forces are subject to involuntary assignment to units, duties, and living quarters, that require living and working in close proximity with others under conditions that afford little or no privacy. Particularly when military units deploy, living conditions are frequently spartan and primitive, from foxholes to cramped quarters on ships.

In recent years, we have made important improvements in the quality of life in the military and in the rights afforded to servicemembers, but the basic nature of military service -- preparation for, and participation in combat -- means that servicemembers must continue to live in a closely regulated, highly regimented environment. General Colin Powell, Chairman of the Joint Chiefs of Staff, has stated that, in view of the unique conditions of military service, active and open homosexuality by members of the armed forces would have a very negative effect on military morale and discipline.

I agree with General Powell. I also believe, however, that there are other views that ought to be heard. The Armed Services Committee will be hearing from all points of view. My final judgment on this issue will be affected by the testimony we receive from a wide range of witnesses.

Mr. President, our hearings will explore a large number of issues, including the following:

1. Should the armed forces retain the policy of excluding homosexuals from military service?

a. What is the historical basis for the policy?

b. What is the basis for the policy in light of contemporary trends in American society?

c. What has been the experience of our NATO allies and other nations on this issue -- not just in terms of the letter of the laws and rules but the actual practice -- recruiting, retention, promotion, and leadership of military members?

d. What would be the impact of changing the current policy on recruiting, retention, morale, discipline, and military effectiveness?

2. If the current exclusionary policy is retained, should there be an exception for persons whose record of service would otherwise warrant retention on military duty?

a. If so, is it possible to draft legally defensible criteria for determining whether the exception should be applied in specific cases?

b. If such individuals are retained, what restrictions, if any, should be placed on their sexual conduct?

3. If the general exclusionary policy is retained, should the armed services eliminate pre-enlistment questions about homosexuality?

a. If so, should the exclusionary policy be limited to those who actually engage in homosexual conduct after entering the service?

b. If such a policy is adopted, what policy should apply to those who openly declare their homosexuality after entering military service?

4. Before determining whether the policy should be changed, should there first be an effort to determine whether it is possible to draft a practical and legally defensible code of conduct regulating homosexuality in the military setting?

a. Should the military have a single code of conduct that applies to conduct between members of the same sex as well as members of the opposite sex, or should there be a separate code for each group?

b. Should there be limitations as to whether a servicemember may engage in homosexual acts --

(1) at any location, on- or off-post, where a heterosexual act would otherwise be appropriate?

(2) only off-post?

(3) with other military personnel?

(4) only with nonmilitary personnel?

c. What restrictions, if any, should be placed on conduct between members of the same sex? Should such restrictions apply in circumstances in which such conduct would not be prohibited if engaged in between members of the opposite sex; that is, where such conduct would not constitute sexual harassment, fraternization, or prohibited displays of affection in uniform -- such as:

(1) A request to engage in sexual activity -- for example, spending the night together in a motel?

(2) displays of affection while out of uniform?

(3) displays of affection that are otherwise permissible while in uniform, such as dancing at a formal event?

5. If the current exclusionary policy is changed, should there be a code of conduct regulating behavior towards homosexuals in the military?

a. What rules, if any, should be adopted to prohibit harassment on the basis of sexual orientation?

b. What rules, if any, should be adopted to prohibit discrimination on the basis of sexual orientation?

(1) If discrimination is prohibited, how would a nondiscriminatory policy affect pay, benefits, and entitlements?

(2) Should homosexual couples receive the same benefits as legally married couples? For example, nonmilitary spouses now are entitled to housing, medical care, exchange and commissary privileges, and similar benefits. Military spouses also benefit from policies that accommodate marriages, such as joint assignment programs.

(3) If homosexual couples are given such benefits, will they also have to be granted to unmarried heterosexual couples?

(4) If discrimination is prohibited, will this require express guidance in personnel actions -- such as in instructions to promotion boards?

(5) If discrimination is prohibited, will there be a related requirement for affirmative action in recruiting, retention, and promotion to compensate for past discrimination?

(6) If discrimination is prohibited, will there be a need for extensive sensitivity training for members of the armed forces?

6. The military currently endeavors to respect sexual privacy by establishing, to the maximum extent practicable, separate living and bathroom arrangements for men and women. If the policy is changed, should separate arrangements also be made for those who are declared homosexuals?

7. If the policy is changed, what accommodation, if any, should be made to a heterosexual who objects to rooming or sharing bathroom facilities with a homosexual?

8. If the current exclusionary policy is changed, what are the implications of tolerating homosexual acts among military members in light of the statutory prohibition against homosexual acts under the Uniform Code of Military Justice?

a. If the exclusionary policy is changed, is there a need to change the law?

b. If the exclusionary policy is changed but the statutory prohibition remains, can the President in the Manual for Courts-Martial specifically exempt from prosecution actions that would not be prohibited under a revised DoD Directive?

c. If so, is there also a need to address heterosexual, consensual sodomy?

d. Regardless of whether the policy is changed, should the President, who has the authority under the Uniform Code of Military Justice to establish maximum punishments, revise the current 5-year maximum punishment for consensual sodomy?

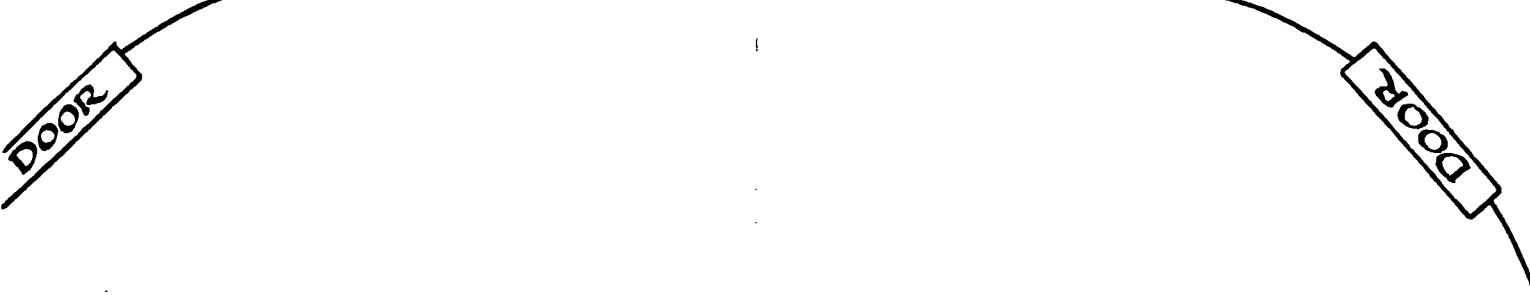
9. If the current exclusionary policy is changed, what

will be the effect on pending court-martial and administrative discharge cases?

10. If the current exclusionary policy is changed, what will be the effect on the tens of thousands of past cases, particularly in terms of claims for back pay, reinstatement, promotions, and similar forms of relief?

Mr. President, these are difficult and emotional issues, but they must be addressed. Every man and woman in this country has a right to be respected. Our Constitution enshrines individual rights and liberties. Our Constitution also underscores the essential role of government in providing for the common defense. When the interests of some individuals bear upon the cohesion and effectiveness of an institution on which our national security depends, we must move very cautiously. This caution is prudence, not prejudice.

A thorough airing of these matters is essential before any final action is taken by the Department of Defense or the Congress. It is my intent that the Armed Services Committee's hearings will provide a comprehensive discussion of these issues by persons knowledgeable in military affairs, personnel management, and human relations.



DOOR

DOOR

☐

Senator Robb

☐

Senator Graham

☐

Senator Glenn

☐

Senator Bingaman

☐

Senator Nunn

☐

Senator Exon

☐

The President

☐

The Vice President

☐

Secretary Aspin

☐

Senator Levin

☐

Senator Kennedy

☐

Senator Shelby

☐

Senator Byrd

☐

Senator Lieberman

☐☐

Mr. McLarty

DOOR

DOOR

DOOR



Robb



Graham

Glenn



Bingham

Don Norman



Sen Dixon

The Pres



The V.P.

Rosen



Sen Leim

Sen Kennedy



Shelby

Sen Byrd



Greberman

McLeaty



DOOR

DOOR

The Roosevelt Room

Congresswoman

ELEANOR HOLMES

NORTON

District of Columbia

NEWS

FOR IMMEDIATE RELEASE
January 27, 1993

CONTACT: DONNA BRAZILE
(202) 225-8050

**STATEMENT OF CONGRESSWOMAN ELEANOR HOLMES NORTON
IN SUPPORT OF LIFTING THE BAN ON
MILITARY SERVICE BY GAY MEN AND LESBIANS**
Congressional Press Conference, House Triangle, 9:15 a.m.
January 27, 1993

Barring people from serving their country because of their sexual orientation is unadulterated discrimination. How to bar discrimination is always open to discussion. It is too late in our history to argue whether to abolish discrimination.

All of the arguments we hear today resonate painfully from our history -- division in the country, morale of the services, apocalyptic forecasts of resistance. Then the subject was blacks. Today the subjects are gay men and lesbians. Then the stimulus was a war against racism that had been fought by segregated troops. Today the stimulus must be our own sense of right and wrong.

Armed with the formidable weapon of military discipline, the services have often rapidly integrated Americans who had never before experienced equal treatment in civilian or military life. Today as well military discipline must be used to reinforce equality, not discrimination.

The military has the best institutional record in the country of eliminating discrimination. Despite problems still encountered by women and people of color, the services have steadfastly refused to give in to bigotry. They must not do so now.

The armed services have set their own high standard. Congress and the President must hold them to it.

###

AMANDA

U.S. SENATOR

Al D'Amato

NEW YORK

**News
Release**

Contacts: Washington • Frank Coleman • 202/224-6498 New York • Zenia Mucha • 212/736-3865

FOR IMMEDIATE RELEASE: Tuesday, January 26, 1993

D'AMATO ANNOUNCES SUPPORT FOR LIFTING BAN ON GAYS IN THE MILITARY

WASHINGTON -- U.S. Senator Alfonse M. D'Amato (R-NY) today announced his support for President Clinton's decision to overturn the ban on gays in the military. Text follows:

"Mr. President, I rise to make a short and direct statement. I am compelled to do so because I believe in its correctness.

"No government has the right to discriminate against any of its own people.

"Gays and heterosexuals have served in the military in the past with honor. And they will continue to serve honorably together in the future.

"Private behavior should not be the issue - the manner in which the job is performed should be the guiding criteria.

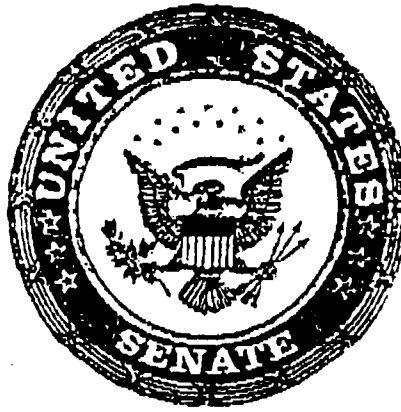
"I know my position will be a controversial one. I support allowing gays in the military. It's that simple. Thank you Mr. President."

-END-

(12)

Send to
Howard

(C2)



** SENATE ARMED SERVICES COMMITTEE **

Telefax Cover Sheet

UK

TO: Steve Ricchetti

TELECOPIER PHONE NO: 202-456-4072

OFFICE PHONE NO: _____

COMMENTS:

FROM: Arnold Punaro
(Name)

OFFICE PHONE NO: 202-2249537

COPY SENT: 11:40a ne. 1/26/93
(Date and Time)

THIS TRANSMISSION CONSISTS OF 2 PAGE, INCLUDING
COVER SHEET

Q Senator, what's your own vote?

Q How would you support it?

SEN. NUNN: I support the current policy, and I've said that on a number of occasions. I do believe we ought to have hearings.

The Constitution of the United States provides that the Congress of the United States shall raise and support armies. And we have a clear, specific duty to provide in statutes for the well-being and the overall provision for those armies and navies and air forces. There's not any question about our constitutional duty. And I think Congress is going to have to address this policy.

It's fine for the President to give his views. It's fine for him to decide what he's going to do in Executive Orders. But, the fundamental policy dealing with our military is a shared responsibility, and the Congress of the United States needs to speak to it.

I'm going to be having hearings on this subject. I promised Senator Metzenbaum last year, on the floor of the Senate, that we would have hearings on this subject. And we will have hearings on the subject sometime beginning in the month of March.

It may take some weeks, and it may take months. So, I'm not saying we'll wrap everything up in March. There are many complicated questions on the subject, and I plan to -- probably tomorrow -- make a speech on the floor where I will enumerate those questions that we will be going into in March.

I think our committee ought to go into the hearings with a view of hearing from everyone. All of us have our own individual views. But, I think we ought to all be willing for those views to be shaped after we have heard from the President and his team, Secretary Aspin, and also after we've heard from many members of the military on both sides of the issue.

I think something's fundamentally flawed when the people -- the men and women in the military -- have an issue that is as vital to them that affects them, and they never have been heard from. And I believe they ought to be heard from. And I can assure the men and women in the military that they will be heard from whatever their views.

We'll have not only top-ranking officers and members of the Joint Chiefs -- we'll want to hear from them -- but I'll also have some enlisted people and some young officers so that we can get a view of the military. This is an important issue of the military. And before we make decision on it in the Congress -- and I would also hope in the White House -- that we would have their thorough views.

Q In the -- (inaudible) -- memo, it says that -- (inaudible) -- your leadership. -- (inaudible) -- keeping the ban in place, does that

mean it's -- (inaudible) --

SEN. NUNN: I just -- I really don't want to comment on a memo that I haven't read. I haven't seen the memo. I read it in the paper. And I don't want to -- I can't conclude where the votes are. I can't conclude what the Congress should -- is going to do. I can conclude the Constitution of the United States puts this responsibility on the Congress of the United States as well as the President of the United States and Command-in-Chief.

[It's not simply a presidential prerogative.]

Q Senator, -- (inaudible) -- your mind is made up. You said the other time that you should be open -- open to what comes out of the hearings. Does this suggest that --

SEN. NUNN: I didn't -- I said I had a current position. That is my current position. That is my strong -- strongly held view that the current policy has a good reason for it. But, I also think there are other views that ought to be heard. And our committee will hear those views.

Whether I change my mind or not will depend on the testimony we have, and the views of an awful lot of other people. So, yes. I have a view on it. I don't have -- I'm not equivocal on the subject. I think the current policy should be adhered to.

But, I also recognize there are court cases. There are challenges. There are many people who are in the military today who are not disclosed as homosexuals, but who probably either are or have those tendencies.

We have a whole series of questions about whether this is a state of mind, or whether we will basically be governing conduct. So, it's a complicated, complex issue.

Anyone who thinks that you can just make a decision, sign an Executive Order, and that's it, hasn't looked at the underlying questions there. There are an awful lot of question on this subject, and I'll be going into those on the floor, probably some time tomorrow.

Q Senator, is the President -- (inaudible) --

Q -- (inaudible) -- the situation now?

SEN. NUNN: I have no -- I have no vote count. I don't purport to try to speak for anyone other than myself on the subject. We do have a lot of interest in the subject. Senator Metzenbaum raised it on the floor last year. He did not push for a vote. And I pled to have hearings on it. And I'm telling you here today that we will have hearings beginning some time in March.

Q -- (inaudible) --

SEN. NUNN: Absolutely. We'll hear from -- we'll hear from all points of view on the subject. We certainly will have people in gay groups that will be invited to be heard, both in the military and, certainly, from some organizations outside the military.

Q -- (inaudible) -- have handled it so far?

SEN. NUNN: Will I comment on it?

Q Are you concerned about the way -- the manner in which -- (inaudible) --

SEN. NUNN: We'll I'll just say that if there's a strategy there, that it hasn't been explained to me. (Laughter.)

Q Does that mean you're dissatisfied?

SEN. NUNN: No. It just means what I said. I just am not part of the strategy. I haven't been -- I haven't --

Q -- (inaudible) -- on the Congress concerning Zoe Baird last week, and now --

SEN. NUNN: I didn't get the question. I heard the references, but --

Q How would you describe the beginning of the relationship between the Clinton White House and Congress with the Zoe Baird -- (inaudible) -- of last week, and now this coming up Monday morning?

SEN. NUNN: Well, I didn't view that as a contest -- the Zoe Baird nomination as a contest between the Congress and the President. I think the people in the White House concluded -- as the people in the Congress and the Senate concluded as the week went on -- that this was not a nomination that could be sustained.

And I think that she was -- probably qualified for other positions, but the nature of her mistakes were basically -- went right to the heart of her job. And that's what you look at in this situation. And she would have been charged for carrying out the very laws that she had admitted she breached with knowledge.

When I first heard about the subject of Zoe Baird, I did not know whether she understood the implications of the law and had gone forward even understanding that she was violating the law. When she admitted that, then I didn't make any public statement, but it was clear to me that that went to the heart of her job.

So, I didn't see this as a contest between the President and the Congress. I don't see this as a contest -- this whole homosexual issue

between the President and the Congress. It may get down to that. We may have differences of opinion when we conclude.

But, one thing we all know is that the military of the United States is important. The morale of the military of the United States is important. We also have certain constitutional protections for every individual in this country.

We have to reconcile those things, and we have to take into account not only the views of homosexuals which are important -- many of them have served ably, and I'm sure many of them continue to -- but also the rights of privacy of those men and women in the military that are not homosexual. Both have to be heard from.

We also have a very important consideration about the military being different from any other walk of life. Almost any other job you describe, when you get through with the job, you go home at night. You have your privacy of your home. In the military, that's just not the case.

And people in the military -- who have served in the military -- understand that and understand it well. When you go into the military of the United States, you give up a certain amount of privacy. And that makes the military unique and different from almost every other aspect of life.

And we have to consider that in looking at the cohesion of the military, and looking at the morale of the military, and in determining if changes should be made; and if they are going to be made, how to make those changes.

Q Senator, as a matter of national priority, do you think that this issue at this time prevents things from the military when there are troops in Somalia, when the administration is trying to come up with an alternative policy perhaps, or continuation of the policy in Iraq -- (inaudible) -- about the former Yugoslavia? Is this the time for this issue when there are so many other military matters to consider?

SEN. NUNN: If I had my way, we would wait the hearings of the Congress, and probably even have a presidential commission that would deliberate on this matter. And, therefore, we would take any action that came out of those hearings and came out of that presidential commission recommendations some time much later this year.

But, that is my personal view, and the President of the United States got elected on the platform. He has his view. And we will certainly take that into account.

Q Senator, -- (inaudible) --

SEN. NUNN: No disrespect, David. Excuse me. (Laughter.)

Q Have you and Mr. Aspin -- (inaudible) --

SEN. NUNN: I had breakfast with Secretary Aspin on Friday morning. We had many things we discussed. This was one of them. This was certainly not --

Q -- (inaudible) -- had a conversation with him prior to the Friday -- (inaudible) --

SEN. NUNN: I don't know. Friday morning is when I had breakfast with him. I'm not sure when the memo was written. I don't know the date of the memo. I had breakfast with him on Friday morning, but I've had discussions

Q -- (inaudible) --

SEN. NUNN: I've had several -- a number of conversations with Secretary Aspin. And there have been several occasions where this subject has come up, so it was not limited to Friday. We've had several conversations. And I've had several conversations with President Clinton.

Q Senator, it seems to me that you're the best qualified person probably in the Congress to assess the mood of the Congress. And if you don't know if -- number one: it's surprising. But, -- (inaudible) -- has to do with surprising.

SEN. NUNN: I never pretend to know the mood of Congress until we vote. I've seen Congress change it's mind on a dime.

We saw last week how quickly the Senate of the United States can react to public opinion. The ultimate question will be what the American public thinks about it.

I think until you have a thorough set of hearings, until the Congress of the United States has a chance to focus on it. Most people have been concerned about taxes or education or health. Most people haven't sat around and focused on this one issue.

So, I don't think the Congress of the United States has made up its mind on the issue. If they have, I don't know what the count is. And I think the American people are closely divided. I think a thorough set of hearings, perhaps a presidential commission, should precede any kind of definitive final action.

Q And do you feel there should be a recorded vote in the Congress on this?

SEN. NUNN: Well, it's -- it's just like any other vote. If it's controversial, there will be a recorded vote. If it's not -- if we were to come to some amazing consensus that had no controversy, then I would not object, per se, to a voice vote. I'd be very shocked if that happens.

United States Senate

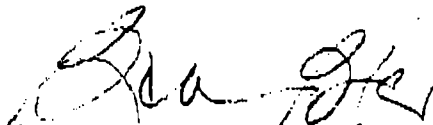
WASHINGTON, DC 20510

STATEMENT SUPPORTING PRESIDENT CLINTON'S EFFORTS TO REMOVE THE BAN ON GAYS AND LESBIANS IN THE MILITARY January 28, 1993

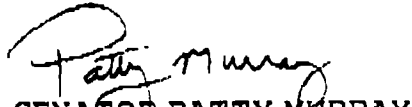
We, the Democratic women of the United States Senate, support President Clinton's efforts to end the discrimination against gays and lesbians serving in the military.

The United States military is filled with brave men and women who risk their lives to defend their country. Competence, courage and a willingness to serve one's country -- not sexual orientation -- should be the criteria for those wishing to enlist.

Forty years ago, President Truman had the courage to end racial segregation in the military. Today, President Clinton has the same courage to extend our nation's highest standards of democracy to the military and ensure equality and opportunity for all women and men wishing to enlist and serve in our armed forces.


SENATOR BARBARA BOXER


SENATOR BARBARA MIKULSKI


SENATOR PATTY MURRAY


SENATOR DIANNE FEINSTEIN


SENATOR CAROL MOSELEY BRAUN

DOOR

DOOR

Congressman: Swift

Congressman Rose

Senator Boren

Senator Glenn

Congressman
Fazio

Congressman
Gephardt

Senator
Mitchell

The Vice President

The President

Senator Ford

The Speaker

Congressman
Bonior

Senator
Levin

Senator Kerry

Senator
Graham

Congressman
Gejdenson

DOOR

7:00



DOOR



DOOR

Rep Swift



Rep Rose



DOOR

Sen Boren



Rep Fazio



Sen Mitchell



The President

The Speaker



Sen Levin



Sen. Graham



Rep. Reid



~~The Vice President~~

Sen Ford

Rep Bonior

Sen Kerry

Camp for Rfm

2/3

THE WHITE HOUSE

WASHINGTON

MARCH 5, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: Howard Paster 

The Vice President has secured an agreement from Chairman Dellums to postpone his hearings on gays in the military if Senator Nunn will do the same. The Vice President is rightly concerned that those hearings will, if held this month, undermine our work on the economic plan.

It is the Vice President's view that it will be necessary for you to call Senator Nunn to get him to postpone the hearings. As you know, Senator Nunn did speak out today on the defense budget, and it is fair to say he modulated the tone of his remarks. Also, he has signed the Brown letter on the stimulus package.

While I do not dispute the Vice President's view that you may have to ask to have the hearings postponed, I am not certain it is worth the potential price. My recommendation is that Mack call Senator Nunn and make the effort but I felt it appropriate to make you aware of the Vice President's view.

cc: Mack McLarty

FR: GEORGE STEPHANOPOULOS

DATE: 6/18/93

TO:

RICKI SEIDMAN
DEE DEE MYERS
JEFF ELLER
DAVID DREYER
BOB BOORSTIN
MICHAEL WALDMAN
KEITH BOYKIN
ANN WALKER
DAVID KUSNET
RAHM EMANUEL
MACK McLARTY
MARK GEARAN
TONY LAKE
BRUCE LINDSEY
HOWARD PASTER
BERNIE NUSBAUM
JOHN PODESTA
CAROL RASCO
MAGGIE WILLIAMS
MARCIA HALE
BOB RUBIN

FOR YOUR:

INFORMATION
ACTION
COMMENTS

X
=
=
=

File
GAGS
in
MURKIN

EXECUTIVE ORDER XXXX

SERVICE IN THE ARMED SERVICES

WHEREAS it is essential that there be maintained in the armed services of the United States the highest standards of democracy and military efficiency:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, by the Constitution and the statutes of the United States, and as Commander in Chief of the armed services, it is hereby ordered as follows:

1. It is the policy of the President that individuals shall be allowed to serve in the armed services without regard to their sexual orientation.

2. The Secretary of Defense shall establish such rules and regulations as are necessary to carry out this policy in a manner that does not impair military efficiency or morale.

**THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-1000**

[DATE]

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

SUBJECT: IMPLEMENTATION OF EXECUTIVE ORDER XXXX

1. GENERAL RULE: Pursuant to Executive Order No. XXXX, Regular and Reserve military personnel who are homosexual or bisexual shall not be disqualified, excluded, or denied promotion in rank based solely on sexual orientation.

2. DEFINITIONS: For purposes of implementation of this Executive Order, the definition of "homosexual," "bisexual" and "homosexual act" shall be the same as the definitions used in DOD Directive 1332.14 (Jan. 28, 1982). The definitions are as follows:

(a) "Homosexual" means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts;

(b) "Bisexual" means a person who engages in, desires to engage in, or intends to engage in homosexual or heterosexual acts; and

(c) A "homosexual act" means bodily contact between members of the same sex for the purpose of satisfying sexual desires. A "heterosexual act" means bodily contact between members of the opposite sex for the purpose of satisfying sexual desires.

3. RESTRICTIONS: The following restrictions shall be placed on homosexual and bisexual members of the armed services:

(a) No public homosexual act between service members shall be permitted on military installations. No public homosexual act shall be permitted between service members off-base, while in uniform.

(b) Base commanders shall retain discretion to prohibit additional public contact displaying affection between homosexual members of the armed services if the commander believes such public contact will be detrimental to good order and morale.

(c) Base commanders shall have the discretion to prohibit speech about sexual orientation that is made in a public setting, with the intent of presenting a public, political statement or with the intent of being intrusive or disruptive, by servicemembers in a military setting, in uniform, or on-duty.

(d) Initial violations of provisions (a) - (c) shall be punished through appropriate reprimands. Persistent violations of provisions (a) - (c), after appropriate warnings in writing and an opportunity to be heard, shall be grounds for further discipline.

4. BENEFITS: (a) Housing which is designated for married couples in the armed services shall not be provided to homosexual individuals who present themselves as homosexual couples.

(b) Health and other insurance benefits which are provided to spouses of members of the armed services shall not be provided to those who present themselves as partners of homosexual servicemembers.

5. COUNSELING, DISCIPLINE AND TRANSFERS: Base commanders shall continue to apply rules and regulations that are necessary for the maintenance of military efficiency, good order, and morale. These rules may include the following:

(a) Counseling and discipline of individuals who refuse to comply with the requirements of Executive Order xxxx and these implementing regulations;

(b) Transfer of individuals from unit assignments or housing arrangements if such transfer is found to be necessary and appropriate by the commanding officer.

6. SEXUAL HARASSMENT RULES: Armed services rules prohibiting sexual harassment shall be strictly enforced with regard to heterosexual, homosexual, and bisexual servicemembers. The prohibition on sexual harassment shall include a prohibition on propositioning another servicemember for sexual favors.

7. UNIFORM CODE OF MILITARY JUSTICE: Allegations of violations of the Uniform Code of Military Justice shall be investigated and prosecuted in an even-handed manner with regard to homosexual, bisexual and heterosexual servicemembers.

8. EDUCATION AND NON-ENDORSEMENT: The armed services shall include a component in its training with regard to the presence of homosexuals and bisexuals in the armed

services. Such education shall not include an endorsement by the armed services of homosexuality or bisexuality.

9. REINSTATEMENT OF CERTAIN INDIVIDUALS: Individuals who were discharged or placed in stand-by reserve since November 5, 1993 shall be, if they desire, reinstated to their previous positions, with appropriate seniority and backpay. Individuals who have current litigation pending against the military because of discharges based on homosexuality or bisexuality shall be treated in the same manner. This relief shall not apply to any individual whose discharge was based on circumstances other than those allowed under these implementing regulations.

10. PAST DISCHARGES: (a) Individuals who were discharged prior to November 5, 1993, and individuals who do not have pending litigation based on their discharges, shall be entitled to re-enlist in the armed services, if they meet the qualifications for re-enlistment. Such individuals shall not receive backpay or back benefits.

(b) Individuals who were discharged based on circumstances allowed under these implementing regulations shall have their discharges upgraded to "honorable" and all attendant veteran benefits shall accrue to such individuals.

11. DIRECTIVE NO. : All prior Department of Defense Directives regarding the service of homosexuals and bisexuals in the armed services are hereby revoked. This memorandum shall be codified as Department of Defense Directive No. ____.

GUIDANCE TO ACCOMPANY THE IMPLEMENTING DIRECTIVE

I. ISSUES REGARDING SPEECH

- 1. Q. Can a person serve in the armed services if he or she says that he or she is a homosexual or a bisexual?**

A. Yes. The Executive Order provides that individuals may serve in the armed services without regard to their sexual orientation. This means that a person can tell someone else that he or she is homosexual or bisexual.

- 2. Q. Does it matter to whom that information is given? Can a person tell a co-worker? Can a person tell a superior? Can a person tell a subordinate?**

A. It does not matter to whom the information is given. It is not practical to develop fine-line distinctions regarding who can hear this information and to require military officials to police these distinctions. Once we accept that the presence of a gay person in a unit will not harm unit cohesion with proper military leadership (see RAND Corporation data), it is irrelevant to whom such individual tells such information.

- 3. Q. Can a person announce in a public setting, in a very public manner, that he or she is homosexual or bisexual?**

A. Probably not. Base commanders may prohibit speech about sexual orientation that is made in a public setting, with the intent of presenting a public, political statement or with the intent of being intrusive or disruptive, by servicemembers in a military setting, in uniform, or on-duty.

- 4. Q. Can a person own books on gay issues and display them on his or her bookshelf?**

A. Yes. A person can own books, magazines and other literature on gay issues. In light of the fact that a unit can function well with a gay member, there is no reason to restrict the reading (or display of reading) by that member.

- 5. Q. Can a gay person have a picture of his or her lover on the person's desk?**

A. Yes. A display of a picture is analogous to a simple, non-intrusive statement that the person is gay. That statement is not disruptive.

6. **Q. Can a person place pin-ups of gay men in sexually suggestive positions in the barracks?**

No. Under this Directive, the base commander retains discretion to prohibit the public placement of homosexual materials that the commander believes would be disturbing to other members of the armed services. Thus, strict rules can be applied to restrict placement of materials in barracks.

7. **Q. Can a member of the armed services attend a gay pride day parade or a dinner hosted by a gay rights group, not in uniform?**

A. Yes. There is no reason to restrict the associational rights of such individuals off-base and during off-duty hours.

8. **Q. Can a member of the armed services attend a gay pride day parade or a dinner hosted by a gay rights group and speak at the parade or dinner, again not in uniform?**

A. Yes. This is no different from the individual saying that he or she is gay.

9. **Q. Can a member of the armed services attend a gay pride day parade or a dinner hosted by a gay rights group in uniform and/or speak at the parade or dinner in uniform?**

A. Restrictions may be placed on what servicemembers do in uniform. Such restrictions already exist and should be applied across the board.

II. ISSUES REGARDING CONDUCT

1. **Q. Can a homosexual or bisexual person be restricted in his or her conduct in military settings?**

A. Yes. A separate, specified code of conduct will apply to homosexuals and bisexuals in military settings. Under these rules, individuals will be prohibited from engaging in any public homosexual acts. Under pre-existing DOD Directives, a homosexual act is defined as bodily contact between members of the same sex, actively undertaken or passively permitted, for the purpose of satisfying sexual desires.

2. **Q. Will homosexuals and bisexuals be prohibited from kissing each other in public in military settings?**

A. Yes. Kissing is ordinarily undertaken for the purpose of satisfying a sexual desire. Such kissing would be prohibited.

3. **Q. Will homosexuals and bisexuals be prohibited from hugging each other in public in military settings?**

A. Yes. Hugging is often undertaken for the purpose of satisfying a sexual desire. Such hugging would be prohibited.

4. **Q. Will homosexuals and bisexuals be prohibited from holding hands in public in military settings?**

A. Holding hands may be undertaken to satisfy sexual desires and therefore may be prohibited. In addition, under this Directive, the base commander also has discretion to prohibit any public contact displaying affection between homosexual members of the armed forces if the commander believes such contact will be detrimental to good order and morale. Holding hands can be prohibited under this provision.

5. **Q. Will homosexuals and bisexuals be prohibited from dancing with each other at military dances?**

A. Yes. As noted, the base commander has discretion to prohibit any public contact displaying affection between homosexual members of the armed forces if the commander believes such contact will be detrimental to good order and morale. Dancing can be prohibited under this provision.

6. **Q. What will be the disciplinary results for a person who violates the provisions regarding inappropriate public homosexual acts or other inappropriate homosexual displays of affection?**

A. Initial violations of these provisions shall be punished through appropriate reprimands. Persistent violations, after the servicemember has been warned, shall be punished with further discipline. Consistent refusal to obey these requirements may result in dismissal.

III. ISSUES REGARDING HOUSING AND UNIT ASSIGNMENTS

1. **Q. Can an NCO or a commander transfer a heterosexual person out of a unit, or out of a housing setting, if the person objects to serving with or living with a homosexual servicemember?**

A. Yes. Under the Directive, NCOs and commanders will retain their traditional discretion to handle personnel matters within their units and their commands. If a heterosexual person is experiencing difficulties working with, or living with, a homosexual servicemember, the NCO should counsel that individual to determine if the difficulties can be resolved. If the NCO determines that the difficulties cannot be resolved, he or she shall have the discretion to transfer the heterosexual servicemember.

IV. BENEFITS

1. **Q. Will housing traditionally provided to married couples be provided to homosexual servicemembers who present themselves as homosexual couples?**

A. No. Benefits that are reserved for married couples, including housing, will not be provided to homosexual couples.

2. **Q. Will other benefits provided to married couples, such as health and insurance benefits, be provided to homosexual couples?**

A. No. Benefits that are reserved for married couples, including health and insurance benefits, will not be provided to homosexual couples.

V. SEXUAL HARASSMENT

1. **Q. Will heterosexual servicemembers be protected from unwarranted sexual advances from homosexual servicemembers?**

A. Yes. Under the Directive, armed services rules prohibiting sexual harassment are to be strictly enforced with regard to heterosexual, bisexual, and homosexual servicemembers. This includes unwarranted sexual advances, such as direct propositioning of another servicemember for sexual favors or making inappropriate sexual comments towards another individual.

VII. UNIFORM CODE OF MILITARY JUSTICE

1. **Q. How will Article 125 of the Uniform Code of Military Justice (UCMJ), the provision that prohibits sodomy, be applied against homosexual and bisexual servicemembers in the military?**

A. Article 125 will be applied against homosexual and bisexual servicemembers in the same way that it is currently applied against heterosexual servicemembers. In accordance with

accepted prosecutorial tradition, private, consensual conduct between adults will not be investigated or prosecuted. By contrast, private conduct with aggravating circumstances, such as sex with a minor or nonconsensual sex, will continue to be investigated and prosecuted against both heterosexual and homosexual members of the armed services.

In addition, cases involving fraternization and sexual harassment, off-base and not in uniform, will continue to be prosecuted against both heterosexual and homosexual members of the armed services.

VIII. EDUCATIONAL TRAINING

1. **Q. Will heterosexual servicemembers be required to participate in sensitivity training sessions that endorse homosexuality?**

A. No. The Department will incorporate in its DAOMI training a component that deals with the presence of homosexuals and bisexuals in the armed services. This component will focus on viewing sexual orientation as a private matter that is not the business of other individuals. The educational component will not endorse homosexuality.

IX. PRIOR DISCHARGES

1. **Q. What rights will individuals have who were discharged prior to this change in policy?**

Individuals who were discharged or placed in stand-by reserve since November 5, 1993 shall be, if they desire, reinstated to their previous positions, with appropriate seniority and backpay. Individuals who have current litigation pending against the military because of discharges based on homosexuality or bisexuality shall be treated in the same manner. This relief shall not apply to any individual whose discharge was based on circumstances other than those allowed under this Directive.

Individuals who were discharged prior to November 5, 1993, and individuals who do not have pending litigation based on their discharges, shall be entitled to re-enlist in the armed services, if they meet the qualifications for re-enlistment. Such individuals shall not receive backpay or back benefits.

Individuals who were discharged based on circumstances allowed under these implementing regulations shall have their discharges upgraded to "honorable" and all attendant veteran benefits shall accrue to such individuals.

COMPARISON OF CAMPAIGN FOR MILITARY SERVICE, CONGRESSMAN FRANK, AND SENATOR NUNN PROPOSALS REGARDING GAY MEN, LESBIANS AND BISEXUALS IN THE MILITARY

Proposal	Questions Regarding Sexual Orientation	Speech	Conduct/Misconduct	Ban Lifted?
Campaign for Military Service	Policy: Individuals entering the armed services, or undergoing security clearances, would not be asked if they were gay. Off-duty conduct, such as going to a gay bar or being seen with another gay person, would not permit a question regarding the person's homosexuality. On base, gay literature and photographs of partners would also not trigger questions. Result: This is a true "don't ask" policy. That is, there are no inadvertent actions that a gay person could take on-base (e.g., writing in a letter or a journal that he or she is gay), and no intentional actions taken off-base (e.g., throwing a party with a gay lover) that would permissibly trigger a question regarding the person's homosexuality.	Policy: A person could tell anyone that he or she is gay, on-base or off-base, privately or publicly. Result: This approach allows gay people to live honestly and with dignity in the military and will provide them with real and effective security. As a practical matter, most gay people in the military will share information about themselves discreetly. There is no evidence that knowledge that a person is gay (either through private or public speech) will affect unit cohesion.	Policy: Would allow private, consensual sex between gay adults, off-base. Would have strict rules against misconduct, such as sexual harassment and fraternization. Would apply current rules against public manifestations of affection, on-base or in uniform, even-handedly between gay and straight people, with traditional discretion allowed to commanding officers. Result: This allows gay people to have private, fulfilling lives, just like straight people. This approach does not condone misconduct, such as sexual harassment, nor does it establish an unnecessary separate behavioral code for gay displays of affection.	YES, because gay people cannot be discharged for acknowledging they are gay or for engaging in private gay conduct. Gay people, like straight people, can be discharged for sexual misconduct, such as harassment, nonconsensual sex, or fraternization.
Frank	Policy: Similar to the CMS proposal. Individuals entering the armed services, or undergoing security clearances, would not be asked if they were gay. Off-duty conduct would also not trigger questions regarding the person's homosexuality. On base, gay literature and photographs of partners would also not trigger questions. Result: Like the CMS approach, this is a true "don't ask" policy.	Policy: A person could privately tell a co-worker that he or she is gay. The person could also act in a manner off-base that made it clear the person is gay (e.g., appear at a gay event with a lover). But the person could not announce in a very "public" manner on base that he or she is gay. Result: Personal honesty is somewhat advanced by this approach because people can be honest with their coworkers. But an atmosphere of fear will still be maintained: when will a commander consider the speech too "public" and punish the gay person? Any restriction on saying that one is gay reduces the basic dignity of that person and leaves open the potential for abuse of power.	Policy: Would allow private, consensual sex between gay adults, off-base. Probable Policy: Would not allow public manifestations of affection between gay people on base or in uniform. (May have separate rules to this effect.) Would have strict rules against misconduct, such as sexual harassment and fraternization. Result: This allows gay people to have private, off-duty lives, like straight people have. This approach does not condone misconduct, such as sexual harassment. A separate behavioral code regarding gay displays of affection, however, is problematic because it is unnecessary given existing rules.	UNCLEAR, because although gay people cannot be discharged for privately acknowledging they are gay or for engaging in private, off-base gay conduct, they may be disciplined for "public" statements or conduct while on base, on duty or in uniform.
Nunn	Policy: Individuals entering the armed services would not be asked whether they are homosexual. Possible Policy: Perhaps people would not be asked during security clearances whether they are homosexual. It is unclear if going to a gay bar, reading a gay magazine, or attending a gay rights activity would trigger an investigation of whether the person is gay. Result: A commanding officer could always still ask a servicemember if he or she were gay. If the person were gay and chose to answer honestly, the person would be discharged. There would be no discretion to this discharge.	Policy: A person could not tell any co-worker, superior or subordinate that he or she is gay. A person could not engage in any action, on-base or off-base, that would indicate the person is gay. Result: In most cases, gay people in the military have not told others they are gay. Instead, other people have told on them — based on an overheard conversation, reading the person's letters, or just suspecting the person. This approach forces people to live an ongoing lie, directly contrary to the military values of integrity and honesty, and maintains an ongoing fear of disclosure for gay people.	Policy: Would not allow any private, consensual sex between gay adults, on-base or off-base. Any homosexual sex would be grounds for administrative discharge; homosexual sodomy (oral or anal sex) would be grounds for criminal prosecution under the Uniform Code of Military Justice (UCMJ). Result: This effectively maintains the ban for everyone other than celibate gay people, which is unacceptable. This approach also ignores the fact that straight people engage in oral sex at the same incidence as gay people (which is equally prohibited by the UCMJ as sodomy) but such acts are not currently criminally prosecuted by the military.	NO, because gay people can still be discharged for acknowledging they are gay or if found to have engaged in private, consensual gay sex.

**ESSENTIAL ASPECTS OF A DOD/CLINTON PROPOSAL
THAT WOULD BE NECESSARY IN ORDER NOT TO BREAK
THE PRESIDENT'S BASIC COMMITMENT
OF NON-DISCRIMINATION IN THE ARMED SERVICES**

A.K.A. "DEAL-BREAKERS"

1. The policy must state that there will no longer be discharges based on gay status.

- * The policy cannot state that homosexuality is incompatible with military service.
- * The policy cannot allow discharging a person who states that he or she is gay.

2. The policy must state that there will be equal enforcement and punishment with regard to homosexual and heterosexual sexual conduct and sexual misconduct.

- * The policy must clearly state that there will be equal enforcement of the UCMJ provision, Article 125, with regard to private, consensual adult sex -- homosexual or heterosexual.
- * I.e., the policy may not have separate grounds for discharge based on private, consensual gay sex, different from straight sex.
- * Sexual misconduct (sexual harassment, fraternization, nonconsensual sex, sex with minors and sex in public places) must be equally punished for homosexuals and heterosexuals.

3. There must be no restrictions on private speech.

- * Individuals must be allowed to acknowledge their sexual orientation to co-workers, superiors and subordinates. This is an essential aspect of gay identity.

Overall Principle

At all costs, the policy cannot be premised on **continued allowable discharges** based on status or conduct, and then simply be "**papered over**" with supposed restrictions on grounds for investigation. That is like having a statute say "x", the legislative history say "not x" and believing that the legislative history will prevail over the statute. **That will not work.**

THE CAMPAIGN FOR MILITARY SERVICE

2027 Massachusetts Avenue N.W. ▼ Washington, D.C. 20036 ▼ 202.265.6666 ▼ 202.265.7393 Fax

ENDORISING AND PARTICIPATING ORGANIZATIONS

AFL-CIO
AIDS Project Los Angeles
American Association of
University Women
American Civil Liberties Union*
American Ethical Union
Washington Ethical Action Office
American Jewish Committee
American Jewish Congress
American Psychiatric Association
American Psychological
Association
American Public Health
Association
Americans for Democratic Action
Black Gay and Lesbian
Leadership Forum*
Black Lesbian Support Group
Citizen Soldier
Gay and Lesbian Alliance Against
Defamation
Gay and Lesbian Victory Fund*
Gay, Lesbian & Bisexual Veterans
of America*
Gay Men's Health Crisis
Hollywood Policy Center
Hollywood Women's Political
Committee
Human Rights Campaign Fund*
Japanese American Citizens League
Jewish Labor Committee
Lambda Legal Defense and
Education Fund
Mexican American National
Women's Association
National Association of Social
Workers
National Black Caucus of State
Legislators
National Council of Jewish Women
National Gay and Lesbian Task
Force*
National Lesbian and Gay Law
Association
National Lesbian, Gay and
Bisexual Student Caucus
National Organization for Women*
National Urban Coalition
NOW Legal Defense and Education
Fund
Parents and Friends of Lesbians
and Gays, Inc.
People For the American Way
Action Fund*
Sex Information and Education
Council of the U.S.
Southern Christian Leadership
Conference
Stonewall 25, NCBLG
Union of American Hebrew
Congregations
Unitarian Universalist Association
of Congregations in North America
United Church of Christ Office
for Church in Society
United States Student Association
Universal Fellowship of Metropolitan
Community Churches
Women of Reformed Judaism
Women's Law Project
Women's Policy Group
YWCA of the USA
(partial list)

*Executive Committee

COMPREHENSIVE PROPOSAL FOR LIFTING THE BAN ON GAY, LESBIAN AND BISEXUAL SERVICEMEMBERS IN THE UNITED STATES MILITARY

PROPOSAL SUMMARY

1. **No Discrimination Based Upon Status:** The mere acknowledgment of being a gay person should not be a basis for precluding that individual from serving in the armed forces, even when the person's gay status is known to others in the military.
2. **No Discrimination Based Upon Private, Consensual Conduct:** Private, consensual gay conduct should not be a basis for discharge. It is disingenuous to allow people to stay in the military if they "say" they are gay, but to discharge them if they live out that fact in their private lives.
3. **No Prosecution of Private, Consensual Sodomy by Gay or Straight Personnel:** Article 125 of the Uniform Code of Military Justice (UCMJ) prohibits sodomy (oral or anal sex) between people of the same or opposite sex.

The military traditionally has not prosecuted private, consensual sodomy between heterosexual adults under Article 125. The same approach should be followed with regard to gay personnel and the Military Prosecutor's Manual should be amended to reflect this approach. Articles 133 and 134 of the UCMJ should also be applied in an evenhanded manner.
4. **Apply Sexual Misconduct Regulations in an Even-handed Manner:** A strict code regulating sexual misconduct should be developed and enforced across the board. All inappropriate sexual conduct -- such as sexual harassment, fraternization or sex in the barracks -- is detrimental to the military mission, whether practiced by gay or straight personnel.

The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

5. **Continue to Discourage Public Displays of Affection On Base and/or in Uniform:** Public displays of affection, on base and/or in uniform, have long been prohibited by the military, sometimes by tradition and custom and sometimes by service policy or regulation. This prohibition should continue, with discretion in application left to the base commander as has traditionally been the case. A special rule prohibiting public displays of affection by gay personnel is unnecessary and should not be established.
6. **Make "Whole" Any Service Person Discharged or Disciplined for Gay Status or Private Gay Conduct During the Clinton Administration:** President Clinton stated that such individuals would be "made whole." Reliance on such a position led some persons to acknowledge their gay status or to admit to private gay conduct. Such individuals, as well as individuals currently in litigation, should be reinstated to their positions with seniority and receive backpay, if no aggravating circumstances existed in their discharges.
7. **Personnel Who Were Discharged, or Resigned in Lieu of Separation (Without Aggravating Circumstances) Prior to the Clinton Administration Should Have the Right to be Reinstated:** Compensation of these individuals for the injury suffered should occur through the application of maximum good-faith efforts to place these individuals in desirable positions for which they are qualified.
8. **Non-discrimination in the Application of Privacy Rights:** All military personnel have a legitimate right not to be harassed or threatened with inappropriate sexual conduct. Sexual harassment, including sexual propositioning, should be severely restricted, whether engaged in by gay or straight personnel. Discomfort in living arrangements, while felt by some straight personnel, is not a sufficient factor to prohibit an entire class of individuals from serving in the military. Such discomfort should be managed and mitigated by good military leadership.
9. **Base Commander Discretion Should Continue to be Applied with Regard to First Amendment Rights:** Gay support groups may be permitted to organize in the military to the extent that other support groups have been permitted to organize, subject to the discretion of the base commander. The courts have consistently allowed the military to limit speech deemed detrimental to good order and morale.
10. **Provision of Benefits Should Follow Existing Federal Agency Policies:** No federal agency currently provides benefits to partners of gay employees. No changes in military benefits will occur upon the lifting of the ban. Realistically, any benefit changes will occur only if such changes are made for the federal workforce as a whole.

THE CAMPAIGN FOR MILITARY SERVICE

2027 Massachusetts Avenue N.W. ▼ Washington, D.C. 20036 ▼ 202.265.6666 ▼ 202.265.7393 Fax

ENDORISING AND PARTICIPATING ORGANIZATIONS

AFL-CIO
AIDS Project Los Angeles
American Association of
University Women
American Civil Liberties Union*
American Ethical Union
Washington Ethical Action Office
American Jewish Committee
American Jewish Congress
American Psychiatric Association
American Psychological
Association
American Public Health
Association
Americans for Democratic Action
Black Gay and Lesbian
Leadership Forum*
Lesbian Support Group
Citizen Soldier
Gay and Lesbian Alliance Against
Defamation
Gay and Lesbian Victory Fund*
Gay, Lesbian & Bisexual Veterans
of America*
Gay Men's Health Crisis
Hollywood Policy Center
Hollywood Women's Political
Committee
Human Rights Campaign Fund*
Japanese American Citizens League
Jewish Labor Committee
Lambda Legal Defense and
Education Fund
Mexican American National
Women's Association
National Abortion Rights
Action League
National Association of Social
Workers
National Council of Jewish Women
National Gay and Lesbian Task
Force*
National Lesbian and Gay Law
Association
National Lesbian, Gay and
Bisexual Student Caucus
National Organization for Women*
National Urban Coalition
NOW Legal Defense and Education
Fund
Parents and Friends of Lesbians
and Gays, Inc.
People For the American Way
Action Fund*
Sex Information and Education
Council of the U.S.
Southern Christian Leadership
Conference
Stonewall 25, NCBGL
Union of American Hebrew
Congregations
Unitarian Universalist Association
of Congregations in North America
United Church of Christ Office
for Church in Society
United States Student Association
Universal Fellowship of Metropolitan
Community Churches
Women of Reformed Judaism
Women's Law Project
Women's Policy Group
YWCA of the USA
(partial list)

*Executive Committee

PROPOSAL FOR LIFTING THE BAN ON GAY, LESBIAN AND BISEXUAL SERVICEMEMBERS IN THE UNITED STATES MILITARY

"DON'T ASK; DON'T PUNISH"

The United States military must be ready at all times to defend the nation, to go to the defense of its allies, to protect vital national security interests and to carry out the orders of the Commander-in-Chief. To achieve that constant state of readiness requires high levels of training, order and discipline. In turn, those levels can only be maintained in the presence of high morale, strong esprit de corps and an unquestioning willingness to sacrifice individual needs for the sake of the common good.

These values, held by the United States military, are also the values of the Campaign for Military Service. The following proposal to lift the ban prohibiting gay men, lesbians and bisexuals from serving in the United States military is intended to be, above all, workable. Furthermore, it is designed to ensure that the United States military will continue to be the best trained and best disciplined -- the readiest -- military force in the world.

The components of this proposal include the following elements:

I. NO DISCRIMINATION BASED ON GAY STATUS

The military should not ask any recruit or servicemember about his or her sexual orientation. This is a personal matter that individuals should disclose when and if they choose to do so.

Any member of the armed services should, however, be allowed to acknowledge his or her sexual orientation without the threat of discharge on that basis. The mere status of being a gay person should not be a basis for precluding that individual from serving in the armed forces.

By contrast, the "don't ask; don't tell" approach is inconsistent with this basic anti-discrimination principle. One of the major psychological harms caused by the current ban is that it forces thousands of young men and women, many of whom discover their sexual orientation only **after** they enter the military, to live a constant, **ongoing** lie -- a lie which is contrary to the military's code of integrity and honesty. This lie is lived inevitably everyday

The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

because of commonplace questions that people are asked about their daily lives. The "don't tell" policy is also unworkable at its very core: under this policy, gay people still must live in constant fear that someone else will "tell on them"-- thus causing discharges and the end of distinguished careers. "Don't ask, don't tell -- won't work." It is not a "compromise." It maintains the essence of the current ban.

II. NO DISCRIMINATION BASED ON PRIVATE, CONSENSUAL GAY CONDUCT

It is not sufficient for the military to prohibit discrimination based solely on gay status. The military cannot allow people to stay in the military who simply "state" they are gay, but continue to discharge individuals who engage in private, consensual gay conduct. This is disingenuous and absurd.

Obviously, not all people who say "I am gay" have recently engaged, or will soon engage, in sex with a person of the same gender. Similarly, not all people who say "I am straight" have recently engaged, or will soon engage, in sex with the opposite gender. The fact is, however, that **most** people who say they are gay or who say they are straight have engaged, or will engage at some point, in sexual activity. As far as we have been able to determine, this is part of the human condition.

When it comes to private, consensual conduct, the military should treat all servicemembers the same. A policy ending the exclusion of gay, lesbian, and bisexual people from service in the military cannot be combined with a policy of excluding such individuals when they engage in private, consensual gay conduct. Otherwise, the change promised by President Clinton will become a mere facade of equality.

Some individuals have raised concerns that the statement that one has engaged in gay sexual conduct amounts to an admission that one has violated Article 125 of the Uniform Code of Military Justice (UCMJ), thus necessitating a criminal proceeding against that individual. This is wrong. Retention of individuals in the military who engage in gay sexual conduct, and retention of Article 125 of the UCMJ, can co-exist.

The potential Article 125 problem exists **solely** because the law is currently enforced differently for gay servicemembers and for straight servicemembers. The adoption of an even-handed enforcement policy would eliminate any potential conflicts.

Article 125 of the UCMJ prohibits "sodomy" between people of the same or opposite sex. The Executive branch (in the Manual for Courts Martial) defines sodomy as "oral or anal sex." When a person states that he or she has engaged in sex with a person of the same gender, it is possible -- although not necessarily true -- that the person has engaged in oral or anal sex. Similarly, when a person states that he or she has engaged in sex with a person of the opposite gender, it is equally possible -- although also not necessarily true -- that the person

has engaged in oral or anal sex. The fact is that based on all the surveys that have been done, there appears to be **very little difference** between gay and straight people with regard to the incidence of oral sex.

The military has dealt with this anomaly between a sodomy provision passed in 1951 and the current realities of heterosexual sexual life with the following approach: if straight servicemembers engage in sex that is **consensual and between adults**, the military does not investigate to determine whether that sex has included oral or anal sex. If a straight servicemember states that he or she has a girlfriend or a boyfriend, the military does not investigate to determine if the person is engaging in oral sex with that person. If another servicemember reports to a commander that he believes a co-worker is having oral sex with a consenting, adult girlfriend, the commander does not usually begin an investigation of the co-worker.

Thus, the policy is simple: **Consenting, private heterosexual sex between adults is not prosecuted by the military, although much of that activity probably violates Article 125.** By contrast, Article 125 does serve a function in prosecuting cases involving sex with minors or nonconsensual sex -- and it is used for that function with regard to straight servicemembers.

The military could choose to start enforcing Article 125 across the board, thus causing havoc in the personal lives of the vast majority of their servicemembers and quickly filling up their military jails. Alternatively, the military could continue the approach it has adopted thus far and essentially refuse to prosecute Article 125 with regard to private, consensual sex between adults.

If the military adopts the latter approach, it can easily apply this approach **evenhandedly** with regard to **both** gay and straight servicemembers. Indeed, given the fact that some chains of command will still harbor anti-gay sentiments after the ban is lifted, it is **essential** that the **military prosecutor's manual** be **amended to withhold the authority to prosecute sodomy cases in the absence of aggravating circumstances**, such as use of force or the minor age of one of the participants. In addition, the manual should provide that Articles 133 and 134 of the UCMJ be applied in an even-handed manner.

In the future, the military should consider proposing to the Congress changes in the UCMJ that would bring the code in line with current sexual practices of both gay and straight servicemembers, while maintaining prohibitions on nonconsensual sex and sex with minors. This would be consistent with reforms instituted in over half of the States in this country. The ban, however, can be lifted in an effective manner even before such reforms are instituted.

III. PROHIBITED SEXUAL CONDUCT: GAY OR STRAIGHT

Although the military should not discriminate against people who acknowledge they are gay, or against people who engage in private, consensual gay conduct, that does not mean that the military may not proscribe and punish certain forms of sexual conduct, including gay conduct. The touchstone in this area is **parity** between gay conduct and straight conduct.

For example, the military currently prohibits sexual harassment -- and, indeed, clearly needs to enforce its current policies more vigorously. The inappropriate sexual conduct of harassment should be prohibited in the military -- whether practiced by straight servicemembers or gay servicemembers.

Similarly, the military currently prohibits fraternization because it is concerned that problems may arise if sexual relations develop between servicemembers working together in the same chain of command. Fraternization should continue to be prohibited in the military - - whether practiced by straight servicemembers or gay servicemembers.

The military also prohibits other forms of sexual conduct, such as having sex in the barracks, because it views such conduct as likely to create problems for the military unit. Such sexual conduct should continue to be prohibited by the military -- whether practiced by straight servicemembers or gay servicemembers.

The key in all of these situations is **parity**. If a particular form of sexual behavior is deemed by the military to create problems for military effectiveness, it will have that effect whether it is practiced by gay servicemembers or straight servicemembers. Therefore, inappropriate types of sexual conduct should be strictly prohibited for both gay and straight members of the military -- and punishment for that form of behavior should be the same for both gay and straight servicemembers.

IV. PUBLIC DISPLAYS OF AFFECTION

Public displays of affection, in uniform and on-base, and in uniform and off-base, have traditionally been prohibited by the military services -- usually by custom and tradition and sometimes by service policy or regulation. This policy of discouraging inappropriate public displays of affection should be continued and need not be changed in the event the ban against gay people in the military is lifted. Moreover, the way in which these rules are enforced should continue to be a matter left to the province of the base commander.

The guiding principle in this area should be continued reliance on the base commander to prohibit public displays of affection. It is unnecessary for the military to develop a separate code of conduct regulating public displays of affection for gay servicemembers. If it does so, it will perpetuate an unacceptable form of second-class citizenship for gay individuals that could undermine unit cohesion by sending a message to straight servicemembers that gay

people are inferior and unworthy of their respect.

Indeed, the very idea that the military needs to develop a separate code of behavioral conduct for gay people is misplaced and a tremendous waste of energy. The idea reflects a profound misunderstanding about how gay people currently conduct themselves in today's society. **Much** more than straight people, gay people have learned to restrain themselves from displaying even simple manifestations of affection in public. Unfortunately, this restraint has been the result of a learned reaction to a hostile society. The fact is, however, that this self-restraint is a reality for gay people -- both inside the military and outside.

V. BENEFITS

Various individuals have voiced concern that lifting the ban will mean that the military will immediately have to provide to the life-partners of gay people all of the benefits it currently provides to the spouses of straight servicemembers. This is wrong. Lifting the ban will not automatically require such a shift. Currently, no federal government agencies provide benefits to gay partners. Realistically, the military's policy is likely to be changed only if and when the overall federal policy changes.

The military currently provides spousal benefits only to those who are **legally married** under state law. There is no state currently in the union that permits same-sex marriages. Hawaii may become the first such state based on a pending lawsuit, although the state may still prevail in this lawsuit. In any event, no same-sex marriages are currently recognized in the United States. Therefore, as currently established in military regulations, military benefits are not required to be extended to the unmarried life-partners of either gay or straight servicemembers.

This analysis is not affected by the fact that several localities have passed "domestic partnership" laws. None of these laws designate the individuals as "married" for purposes of state law and thus none would affect a military regulation that required proof of marriage. Moreover, to the extent that some of these ordinances require the provision of some substantial benefit to partners (such as health benefits), the ordinances uniformly restrict the right to such benefits to the employees of the particular state or locality.

It should be noted, of course, that a lawsuit can be brought arguing that the denial of benefits to the life-partners of gay people (who are precluded from getting married under state law) violates the equal protection clause of the federal Constitution. Such lawsuits have not generally been successful in the past, but they might prevail at some point in the future.

It does not make a lot of sense, however, for the military to spend significant time worrying about this issue now. For purposes of a lawsuit, the military is in no different position than the rest of the federal government. The same type of equal protection challenge could be brought against the Treasury Department as against the military. Thusfar, no such

challenge has been brought against any federal agency. When and if such a suit is brought, it is likely that it will be brought against the federal workforce as a whole, and not solely against the military. As a practical matter, the military will not be forced ahead of other executive branch agencies on this issue.

VI. PAST DISCHARGES

When the military lifts its ban, it will need to decide how to address the cases of those individuals who have been discharged under the ban. These cases should be divided into two categories: those individuals discharged after President Clinton entered office and those individuals discharged before the Clinton Administration.

A. Clinton Administration Discharges

In light of the fact that President Clinton committed, during the campaign and after the election, to a policy of ending the ban, there is a sense of reliance that individuals discharged after the President took office should be "made whole" in their relief. Indeed, the President's statement in January made clear that such individuals would receive "make whole" relief. Thus, such individuals should be reinstated to their former positions, should receive backpay and any seniority rights they may have lost in the interim, and should have their records reviewed to ensure that any bad evaluations or other adverse actions taken as a result of their advocacy for lifting the ban are corrected. In addition, any individual whose case is currently in litigation should be treated in this manner.

B. Pre-Clinton Administration Discharges

Individuals who were discharged, or who resigned in lieu of separation, prior to the Clinton Administration should have the right to be reinstated. Assuming that such individuals meet the military's other criteria for reinstatement, these individuals should be accepted into the military. As a general matter, as a means of compensating these individuals for the injury they have suffered, maximum good-faith efforts should be made to place these individuals in desirable positions.

Many individuals may not wish to be reinstated, but will want to have their discharges upgraded to "honorable." Unless there was some reason other than gay status or gay conduct at issue in the discharge (e.g., fraternization or assault), such discharges should be upgraded. In addition, any reference to the fact that the discharge was originally for homosexuality should be deleted.

VII. CONCLUSION

The military's policy of excluding known gay men, lesbians or bisexuals from the armed forces is a relic of old psychiatric assumptions about homosexuality as a mental illness and a hostage to new stereotypes about the inability of straight people to work with and bond with gay people. Gay men, lesbians, and bisexuals have been excellent members of the armed forces. They have been forced, however, to live a constant lie -- a lie at odds with their military and human values of integrity and honesty. Lifting the ban will allow such individuals to finally serve their country with full dignity and honor.

Prepared by: Chai R. Feldblum, Esq.
Legal Coordinator
Campaign for Military Service

THE CAMPAIGN FOR MILITARY SERVICE

2027 Massachusetts Avenue N.W. ▼ Washington, D.C. 20036 ▼ 202.265.6666 ▼ 202.265.7393 Fax

ENDORISING AND PARTICIPATING ORGANIZATIONS

AFL-CIO
AIDS Project Los Angeles
American Association of
University Women
American Civil Liberties Union*
American Ethical Union
Washington Ethical Action Office
American Jewish Committee
American Jewish Congress
American Psychiatric Association
American Psychological
Association
American Public Health
Association
Americans for Democratic Action
Black Gay and Lesbian
Leadership Forum*
Black Lesbian Support Group
Citizen Soldier
Gay and Lesbian Alliance Against
Defamation
Gay and Lesbian Victory Fund*
Gay, Lesbian & Bisexual Veterans
of America*
Gay Men's Health Crisis
Hollywood Policy Center
Hollywood Women's Political
Committee
Human Rights Campaign Fund*
Japanese American Citizens League
Jewish Labor Committee
Lambda Legal Defense and
Education Fund
Mexican American National
Women's Association
National Association of Social
Workers
National Black Caucus of State
Legislators
National Council of Jewish Women
National Gay and Lesbian Task
Force*
National Lesbian and Gay Law
Association
National Lesbian, Gay and
Bisexual Student Caucus
National Organization for Women*
National Urban Coalition
NOW Legal Defense and Education
Fund
Parents and Friends of Lesbians
and Gays, Inc.
People For the American Way
Action Fund*
Sex Information and Education
Council of the U.S.
Southern Christian Leadership
Conference
Stonewall 25, NCBLG
Union of American Hebrew
Congregations
Unitarian Universalist Association
of Congregations in North America
United Church of Christ Office
for Church in Society
United States Student Association
Universal Fellowship of Metropolitan
Community Churches
Women of Reformed Judaism
Women's Law Project
Women's Policy Group
YWCA of the USA
(partial list)

*Executive Committee

RESPONSE TO COMMON CONCERNS ABOUT LIFTING THE BAN ON GAY, LESBIAN AND BISEXUAL SERVICEMEMBERS IN THE UNITED STATES MILITARY

The following response addresses two common concerns about lifting the ban on gay, lesbian and bisexual servicemembers in the United States military: the impact on the "right of privacy" of straight servicemembers and on first amendment rights.

I. PRIVACY RIGHTS

There are two types of "right of privacy" concerns, on the part of straight servicemembers, that have been raised. Both of these issues can be adequately addressed in a DOD policy lifting the ban.

The first right of privacy advanced by straight servicemembers is straightforward. That is the right of a straight person to be free from harassment by a gay person. No one contests this right. There should be **strict rules** governing inappropriate sexual conduct. This includes the right of straight and gay people to be free from harassment. **Everyone** has a right of privacy not to be subjected to unwarranted sexual advances. We should note for the record that all the evidence indicates that gay people actually tend not to make advances to straight people. Nevertheless, the rules should be there equally for gay and straight servicemembers.

The second right of privacy advanced by straight servicemembers is more subtle. This is the "right" of a straight servicemember not to feel **uncomfortable** by being forced to share living accommodations with a gay person. Examples of this right are primarily the "right" not to be forced to share shower or toilet facilities with a known gay person or the "right" not to be forced to sleep next to a known gay person. The argument in these situations is **not** that the gay person will "come onto" or harass the straight person -- but simply that the straight person may be **uncomfortable** being around someone whom they know is attracted to individuals of the same sex.

It is naive to assume that this discomfort does not exist among some straight people. It does. It is the result of years of socialization against gay people and the result of the lack of familiarity with gay people. While the military probably overestimates both the **level** of discomfort that exists and

The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

the **number** of straight servicepeople who actually feel this discomfort acutely -- the fact is that the discomfort exists to some degree.

The question, however, is how to shape **public policy** in response to this discomfort. It is well documented that, in the 1940s, white people were not enthusiastic about sharing showers or barracks with African-Americans. But the public policy decision made at the time was not to segregate African-Americans, but rather to require integration and then to manage or mitigate the issues that arose.

A similar solution is called for here. As noted, it is naive to assume that the discomfort does not exist. But the public policy **response** should not be to **exclude an entire category of people from military service** because of the discomfort of some individuals. Indeed, such a response is probably unconstitutional. Rather, the solution should be to manage and mitigate the discomfort.

The truth is that men grow up taking showers together their entire lives -- in school, in camp, and in gyms. In today's society, it is perfectly possible for a man or a woman to take a shower in a health club next to someone they know or suspect is gay, lesbian or bisexual, as the case may be. Straight people manage. They may be uncomfortable the first few times - - but then they realize it is no big deal. This is a process of individuals managing their own discomfort.

The military can also mitigate the discomfort. For example, for those straight people who truly cannot get over the discomfort of showering with a gay person, or for those people who just want more privacy, the military can consider setting up a few private shower stalls that anyone can use. In fact, the trend in the military over the past twenty years has been to improve the personal living standards of servicemembers, including providing more private shower and toilet facilities. There is no reason to believe this trend will not continue. (During war, when a separate shower stall is not feasible, even people opposed to lifting the ban agree that this is the last thing people worry about.)

Housing and bunking situations call for a similar solution. First, the discomfort can be managed. Some straight people think they will be uncomfortable sleeping next to a gay person. They will soon discover that it is "no big deal" and the discomfort will dissipate. In this context, it is important to remember that most gay people will **not** divulge their sexual orientation until they believe those around them will feel comfortable with the information. This will help in most housing and bunking situations.

There may be cases, of course, in which a straight person will continue to feel discomfort sleeping next to a gay person. In these cases, the commander should exercise the same discretion that he or she would exercise in other situations where there are serious personality conflicts between servicemembers, whether based on race, ethnicity, religion, or some other factor. That is, the commander should first try to work with the straight person to

help him or her deal with the situation. If that proves unworkable, the commander should have the discretion to reassign the straight servicemember to a different living arrangement.

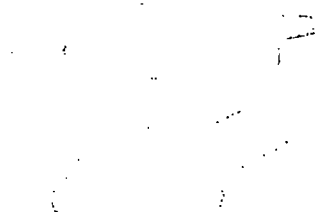
II. IMPACT ON FIRST AMENDMENT RIGHTS

Some individuals have raised concerns that lifting of the ban will mean that the military will not be able to stop radical pro-gay advocacy on military bases. Others have raised the concern that organizations such as gay groups could not be banned from military bases.

In light of the experiences of foreign militaries that have lifted their ban, many of these possible gay activities seem quite hypothetical and unlikely. Nevertheless, as a legal matter, the issue is not difficult. The courts have been consistent in their rulings that speech which the military determines is detrimental to good order and morale may be restricted. (See, e.g., Parker v. Levy, 417 U.S. 733 (1974); Brown v. Glines, 444 U.S. 348 (1980); see also Goldman v. Weinberger, 475 U.S. 503 (1986).

In practice, the military leaves decisions about a whole range of issues, including what groups can meet on military facilities, to the commander at each base. Realistically, gay people will probably choose to socialize off-base.

Prepared By: Chai Feldblum, Esq.
Legal Coordinator
Campaign for Military Service



MELLMAN-LAZARUS-LAKE

RESEARCH-BASED STRATEGY

GAYS AND LESBIANS IN THE MILITARY

Results of Focus Groups and a National Survey

Report and Analysis

MELLMAN • LAZARUS • LAKE

RESEARCH-BASED STRATEGY

Methodology

This presentation reports the findings of a comprehensive study of public attitudes toward the military policy of banning and discharging homosexuals, conducted by Mellman • Lazarus • Lake, Inc. The investigation included a series of six focus group discussions in Dayton, Ohio; New Orleans, Louisiana; and Tampa, Florida. The sessions included a diverse selection of registered voters who are still making up their minds on this issue. Thus, voters who said they were strongly committed to either side of the question were excluded from the sessions. The focus groups were moderated by Allan Rivlin of Mellman • Lazarus • Lake, Inc.

The focus groups were followed by a random survey of 1,004 registered voters conducted by telephone between the 26th and 31st of March, 1993. A random digit dialing technique was used to give every home telephone (including unlisted numbers) an equal chance of being called. The statistical margin of error for the sample as a whole is plus or minus 3.1%. The statistical margin of error for sub-samples of the survey will be larger and, of course, statistical error is just one type of error or bias that can affect survey results.

Summary

Depending on Question Phrasing a Plurality to a Large Majority Favor Lifting the Ban

Americans believe in equal rights for homosexuals

Even though most believe homosexuality is immoral

Yet some focus group participants made clear that their personal morality should not dictate the nation's law

Thus, in the most fair reading of the question, a narrow plurality support lifting the ban

A majority say homosexuals should be able to hold any job in the military for which they are qualified; the smallest number favor segregation

By the end of the survey only about a third wanted to prohibit homosexuals from serving in the military

More people are concerned about the time spent debating the issue than about the alleged harmful impact of lifting the ban

Looking at the Ban As Discrimination Leads People to Oppose It

When focus group participants thought about the ban in terms of discrimination they reject it

Nearly two-thirds of the electorate believe discharging gays from the military because of their orientation is a form of discrimination.

Yet more than six in ten voters reject the race analogy

Summary

(continued)

Specific Cases of Exemplary Dischargees Crystallizes the Discrimination Argument

Focus group participants reacted powerfully to the case histories

Discharging someone whose behavior has been otherwise exemplary is by definition discrimination

More than three quarters of the electorate say judge military personnel on performance not on sexual orientation

When arguments on both sides of the issue are presented, support for lifting the ban increases

Reminding Voters That Sexual Misconduct Would Be Cause for Discharge Clinches the Sale for Most People

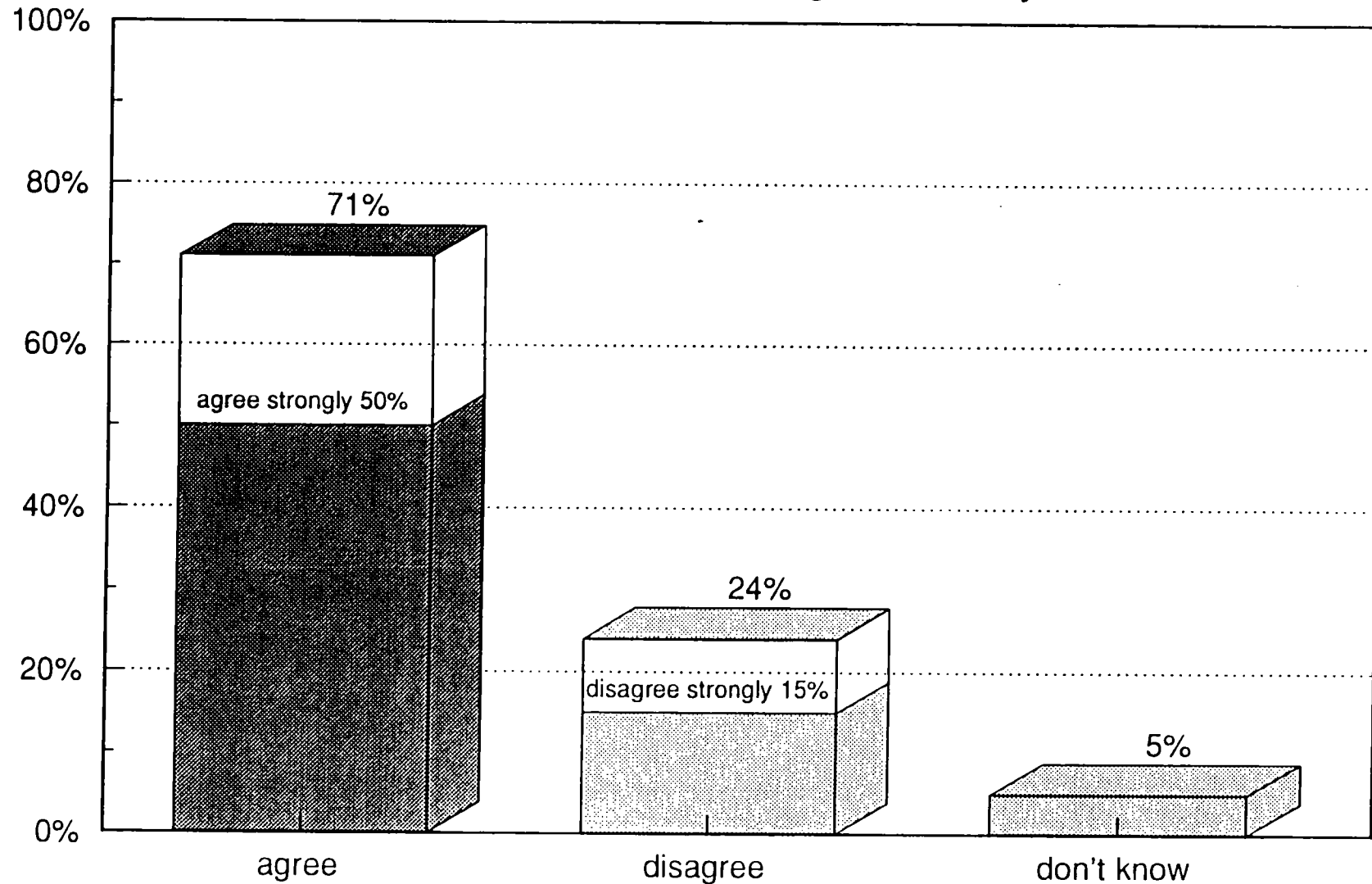
Adding this argument increases the number who think gays should hold any job in the military and brings the number who oppose discharge to nearly 7 in 10

Voters oppose discharging homosexuals who have not violated rules against sexual misconduct

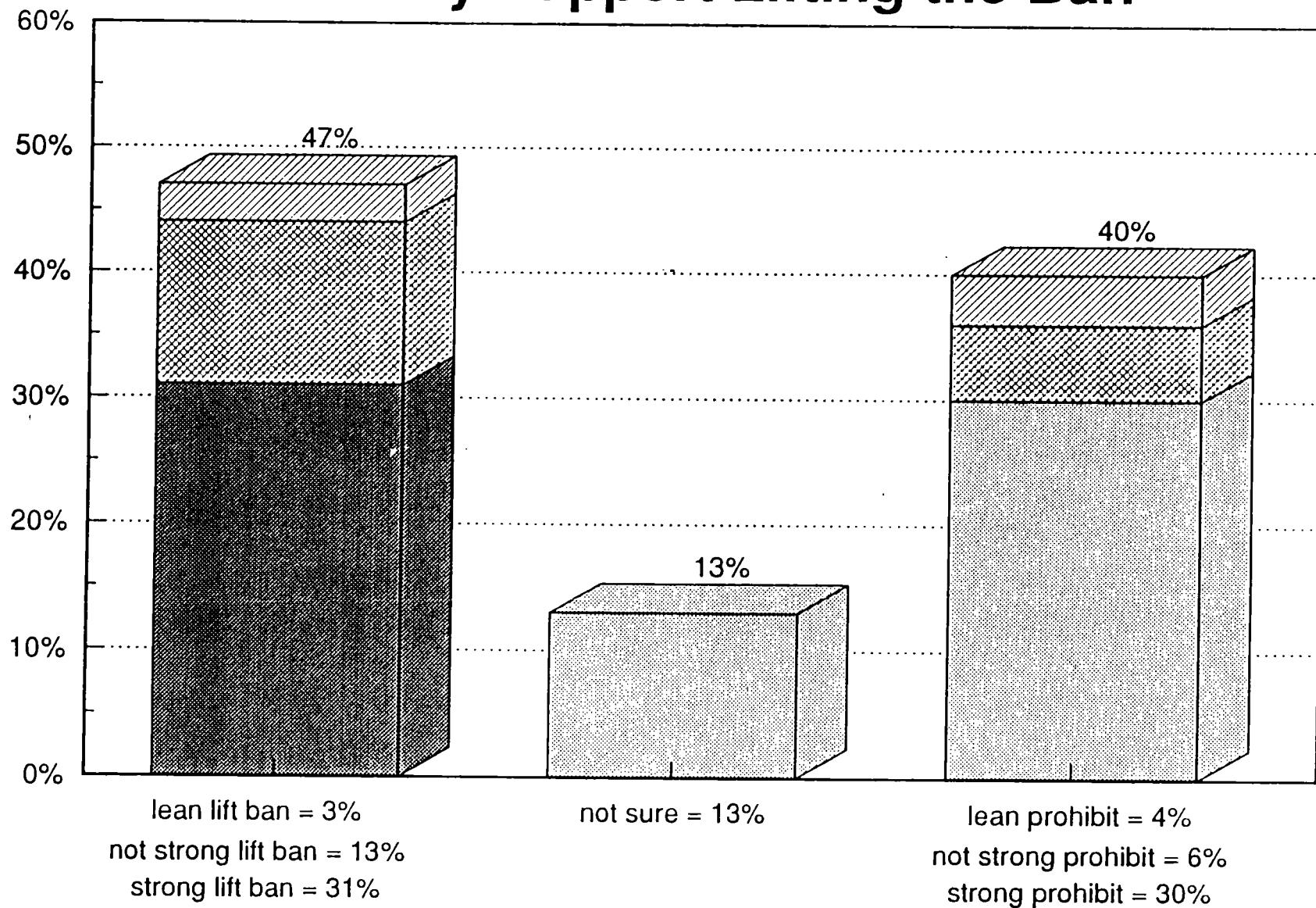
Voters Believe President Clinton Should Have His Way on This Issue

Americans Believe in Equal Rights for Homosexuals

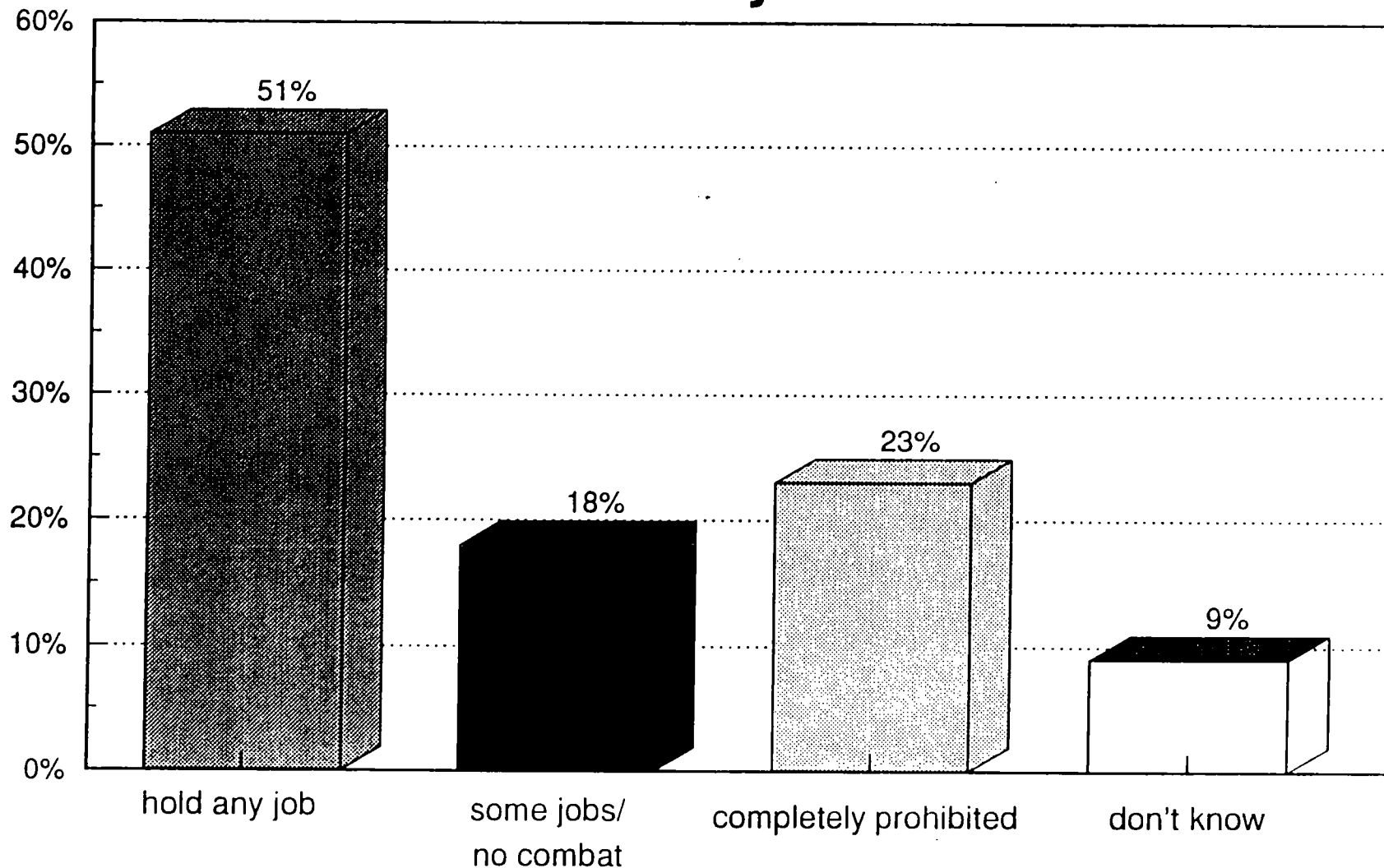
Homosexuals should have the same rights as everyone else...



A Plurality Support Lifting the Ban

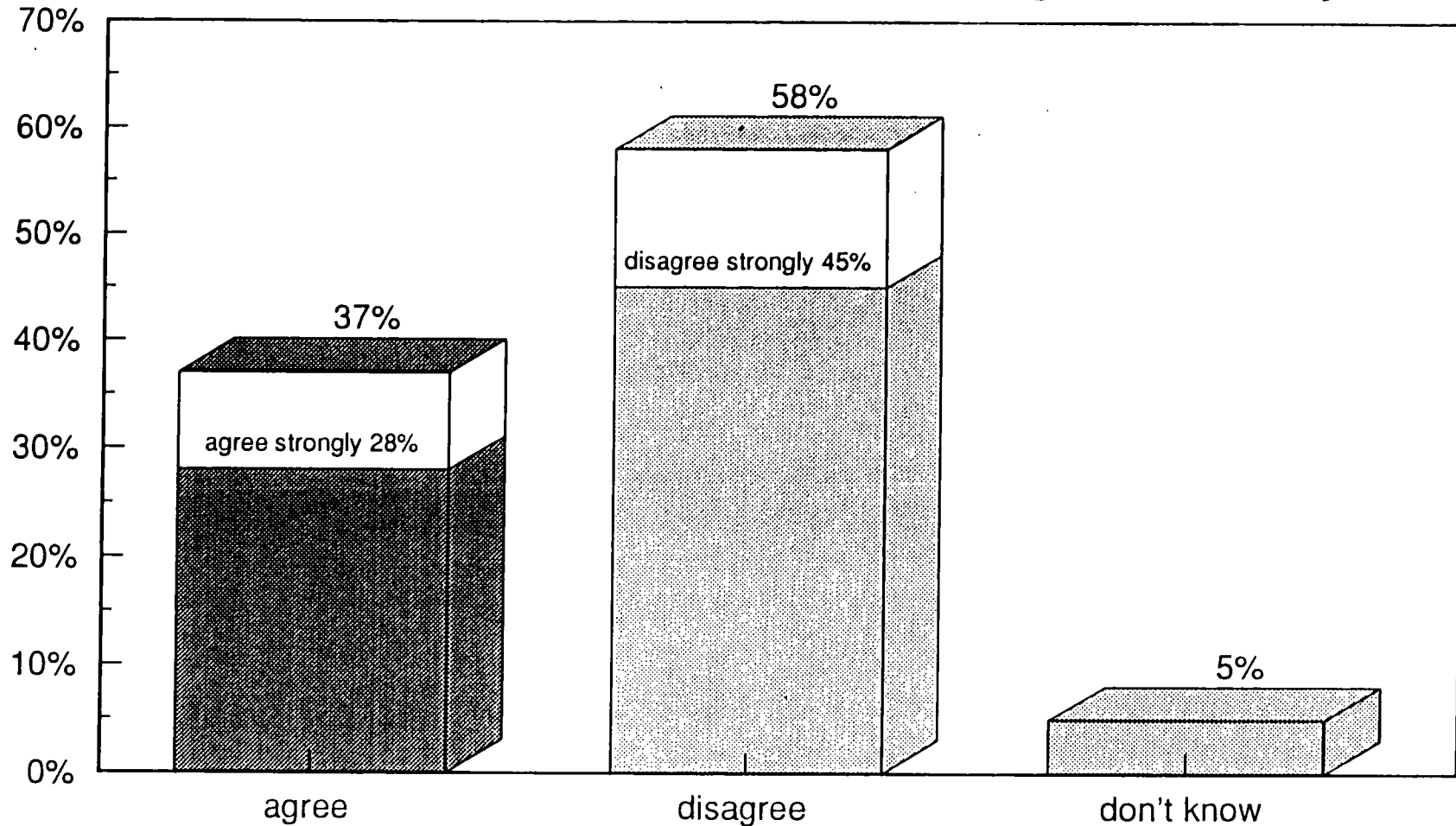


A Majority Say Gays Should Hold Any Military Job for Which They Are Qualified



By the End of the Survey Few Would Prohibit Homosexuals from Service

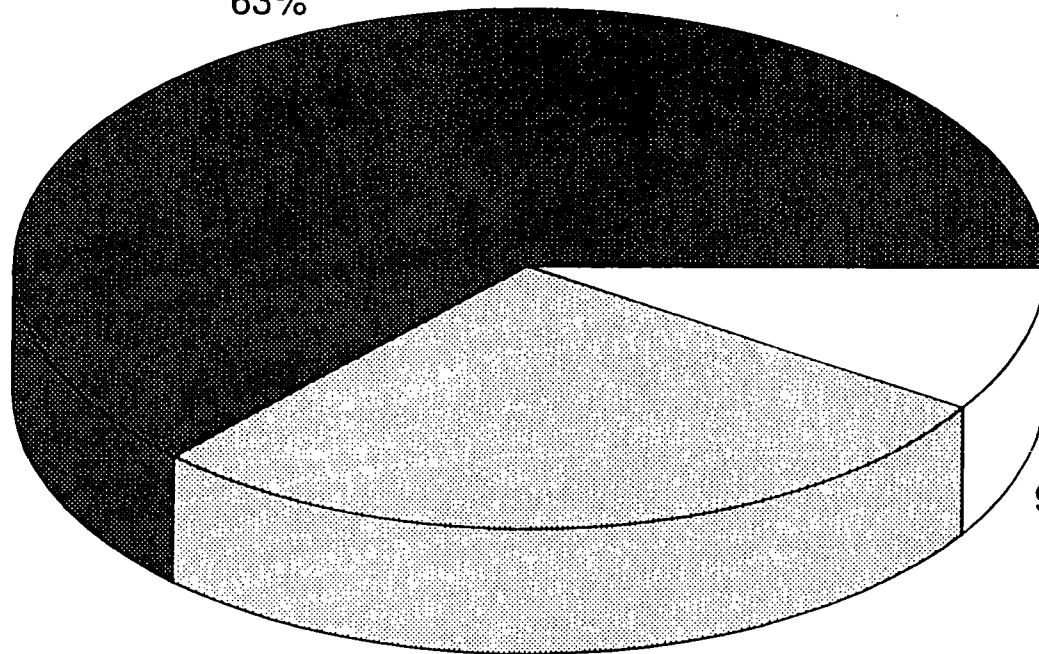
Homosexuals should be prohibited from serving in the military...



Nearly Two-Thirds Believe Discharging Gays Is Discrimination

discharging soldiers and sailors from the
armed forces because they are homosexual
is a form of discrimination

63%



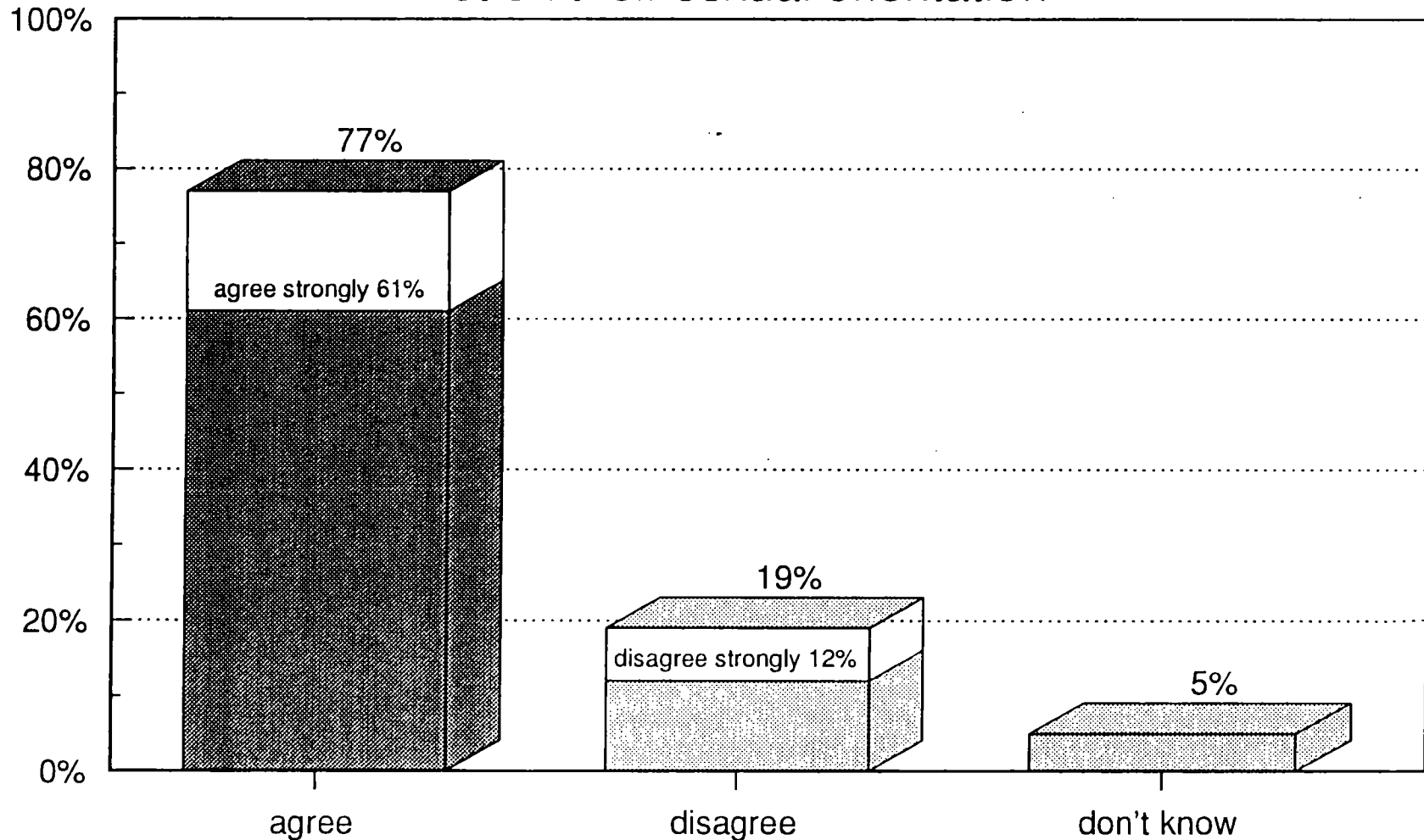
don't know
9%

28%

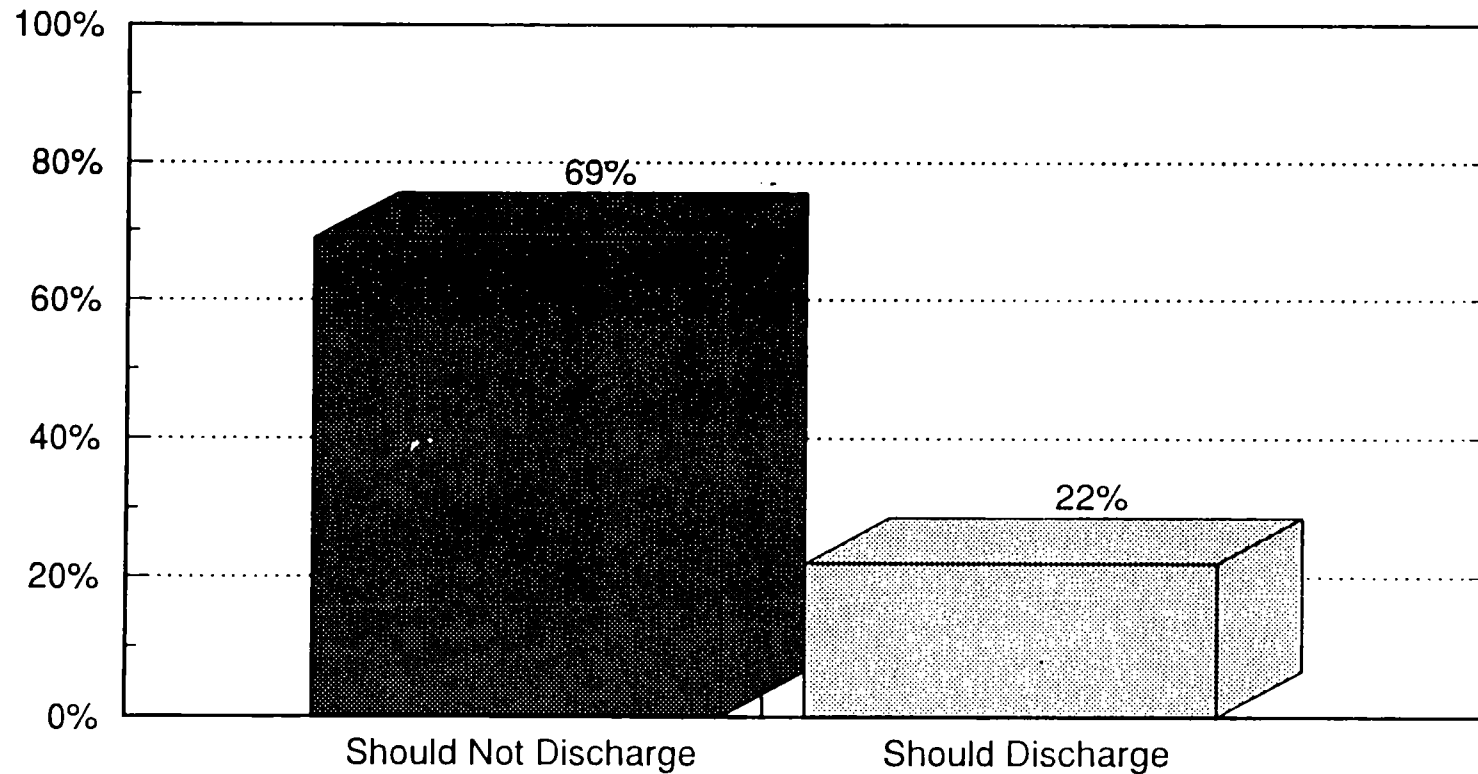
good reasons for discharging gays/ not discrimination

Three-Quarters Say Judge Military Personnel on Performance Not Sexual Orientation

We should judge soldiers and sailors on their performance not on their sexual orientation



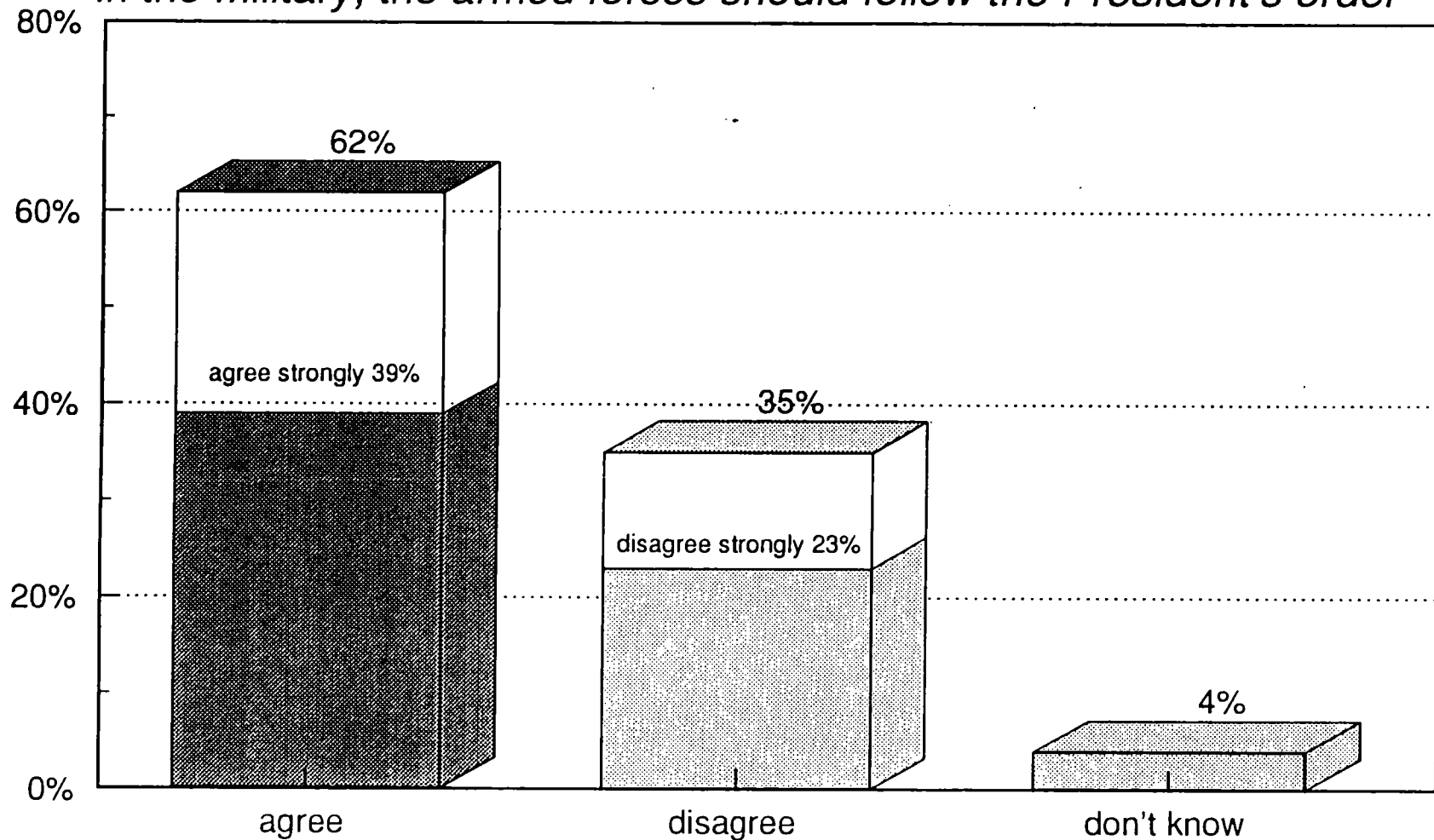
Voters Oppose Discharging Homosexuals Who have Not Violated Any Rules



consider the case of a soldier or sailor who has performed well and has never violated military rules against homosexuality but is a homosexual.

The Military Should Follow the President's Order on This Issue

If as commander in Chief, the President wants to allow homosexuals in the military, the armed forces should follow the President's order



1531 Cable Street
San Diego, California 92107
June 17, 1993

President Bill Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, D. C. 20050

Dear President Clinton,

When I joined the Navy in 1981, I hoped that enlisting would lead to my receiving an appointment to the Naval Academy, but my primary reasons were highly idealistic: I had always had a romantic fascination with American history as well as a deep love for my country; I wanted to be part of the forces that set the world right, I wanted not merely to joust with windmills, I was going to slay the evil giants. Such were the views of a young man who saw the world in black and white, possessed by a Quixotic sense of adventure. I knew the military did not allow homosexuals to serve, but that did not seem relevant. I was convinced that I could lead a monastic existence in my quest to serve the greater good. So, when I came to the questions on my enlistment contract that asked if I was homosexual, after a short pause, I answered "No". That was the beginning of a lie that would last twelve years of my life.

After graduating from Annapolis in 1986, I entered the fleet where I served until March, 1993. Because I had always envisioned that I would dedicate my life to serving my country, the decision to leave the military was very difficult. But, as I came to terms with the fact that I was gay, I no longer wanted to continue the absence of a personal life in order to serve. I realized that it was better for me to leave the Navy rather than tempt fate by remaining in the military, facing the constant fear of being prosecuted for the "crime" of living honestly while attempting to serve my country. That dedicated men and women in the military should be forced to sacrifice their personal integrity to serve this great nation; that our nation's armed forces, whose very existence is predicated upon the defense of the Constitution, should ignore these American principles in order to perpetuate institutional discrimination are among the sad ironies surrounding the issue of gays serving openly in uniform.

If there is anything that I have learned after twelve years in the Navy, it is that the typical military leader views himself as servant to a utilitarian mission. As such, he believes that he has the dutiful obligation to play outside the rules in order to serve the greater good, as he perceives it. One need look no further than Oliver North, Robert McFarlane and John Poindexter (all fellow graduates of Annapolis -- raised under a strict honor system that threatens Midshipmen with expulsion if they tell even the most innocent of white lies) to see the extremes to which our Machiavelian delusions carry us.

In a system that has suffered from decades of institutionalized discrimination against homosexuals in the ranks, it is not reasonable to believe that a simple policy of: "Don't ask, don't tell" will prevent the punishment and exclusion from service of the sailor or soldier who is attempting to live his or her private life discretely, but is somehow found out by the chain of command. The hazard of the compromise policy presently discussed is that, by maintaining the avenue of discharging homosexuals as being unfit to serve, many commanders will continue to investigate their subordinates and process them for discharge, without regard for the rule of law.

Unless the ban on gays serving openly in the military is lifted, unequivocally, nothing in the current practice will change. Loyal men and women in uniform will be able to serve their country only by sacrificing their personal lives and suffering from the constant fear of persecution.

The difference between homosexuality and other "service disqualifying characteristics" is that, unlike color blindness or physical handicap, homosexuality does not present an impediment to an individual's ability to perform. Opponents of allowing gays in the military maintain that homosexuals cannot serve openly in the ranks without severe damage to mission readiness. My experience has proven that presumption false. In the two ships on which I served, being in close contact with the troops I would always learn of sailors who were known by the crew to be homosexual. Inquiring how those individuals were treated by their shipmates, I learned that the sailor's "gayness" was not an issue so long as it was not forced it upon his peers. In short, the reaction of the sailors with whom I served was remarkably consonant with your intended policy to accept gays in the ranks, but punish sexual misconduct.

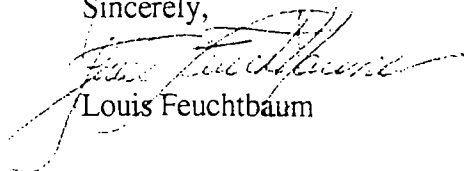
The single factor which makes the difference between acceptance from the crew and violence perpetrated against gays at other commands, is the strength demonstrated by the command's leadership in maintaining strict, non-tolerance for abusive behavior. If we invite people to behave with indifference, prejudice or bigotry toward others, we guarantee discrimination against minorities and the defenseless. To deny a homosexual's right to serve because comrades in arms may not like serving with him or her, or may beat upon them, is to sanction assault and prejudice rather than to serve justice. As a wise sea Captain once said to me: "If you acquiesce to leadership from the bottom ranks to the top, you have anarchy. If you have strong leadership from the top - down, you can accomplish anything."

I, too, have been guilty of using a utilitarian measure to guide my own conduct. In my second year at the Naval Academy I was accused of being gay. I knew that all the arguments against gays in uniform did not apply to me. I was loyal. I could never betray my country. I would never discredit my Service. I was fit to serve and wanted very badly to do so. Thus "justified", in order to quell any rumors and avoid being discharged, not only did I lie to protect myself, but I did everything I could to discredit the Midshipman who had accused me. During my last year at Annapolis, I was picked to be one of the Midshipmen responsible for administering the Honor System (I was subsequently awarded a commendation by the Admiral in charge for my zealotness in enforcing the system). I truly believed that anyone who would lie, did not possess the requisite moral character to serve as a Naval Officer and should be thrown out of the Academy. That I believed in a system which demanded absolute integrity, while I had to lie to avoid expulsion, is a contradiction which I cannot justify, even now. I was wrong. But as long as the ban exists, there will always be vulnerable young men and women, uncertain, who want to join the military, in spite of being required to lie in order to serve.

The outcome of how we decide to handle the issue of whether or not to allow homosexuals to serve openly in the military (if they so choose to openly acknowledge their homosexuality) will, in a larger sense, define our nation in terms of how we regard ourselves. If we do not defend the principle that discrimination is wrong, but instead choose to selectively persecute those citizens whose lifestyles we find personally

objectionable, we then corrupt the basic fabric of our national identity -- the ideals that we are all created equal, endowed with inalienable rights: life, liberty and the pursuit of happiness; opting instead, for the baser mode of governance with measured toleration that deprives classes of citizenry the equal protection of the law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Louis Feuchtbaum", written over a horizontal line.

Louis Feuchtbaum