

FOIA MARKER

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Gays in the Military - Benefits: DOD [Department of Defense] "Secretarial Designee" Authority

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**PRINCIPAL DEPUTY GENERAL COUNSEL
DEPARTMENT OF DEFENSE
703-697-7248**

January 31, 1996

MEMORANDUM FOR MARVIN KRISLOV

SUBJECT: HIV Provisions of FY96
Authorization Act

Attached is a memo to me from John Casciotti, our health affairs guru, explaining the source of SECDEF's authority to extend medical care to persons who are not otherwise normally covered. We have no regulation in existence that would be relevant to the HIV situation. Using this authority for the HIV cases raises significant policy concerns that Ed Dorn is still trying to work out.

I am also attaching a first draft of a repealer for section 567. The savings provision is necessary to ensure that we can get people back on active duty if discharged before this would be passed. This is still in coordination here, but should be out after lunch.

A handwritten signature in cursive script, appearing to read "F. Whitten Peters".

F. Whitten Peters



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600



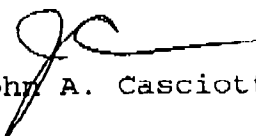
January 31, 1996

NOTE TO MR. PETERS

SUBJECT: "Secretarial Designee" Authority

10 U.S.C. § 1074(c) provides that funds appropriated to a military department "may be use to provide medical and dental care to persons entitled to such care by law or regulation." The term "or regulation" in this authority allows the Service Secretaries to establish by regulation an entitlement to care for persons who have no such entitlement by statute.

The exercise of this authority would require a sufficient nexus between a DoD activity or interest and the individuals affected. (It should be noted that this authority applies only to use of military hospitals and clinics; it does not extend to eligibility for CHAMPUS, the insurance-like program that finances health care provided to authorized beneficiaries by civilian sector providers.)


John A. Casciotti



**SECTION ____ . REPEAL OF REQUIREMENT FOR MANDATORY SEPARATION
OR RETIREMENT OF SERVICE MEMBERS WHO ARE HIV-
POSITIVE.**

(a) **REPEALER.**--Section 567 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-____) is hereby repealed and the former section 1177 of title 10, United States Code, is restored to read as it did on the day before the date of enactment of such National Defense Authorization Act for Fiscal Year 1996.

(b) **SAVINGS PROVISION.**--A member of an armed force who was separated or retired under section 1177 of such title 10, as amended by the National Defense Authorization Act for Fiscal Year 1996, may be reinstated by the Secretary concerned, with all rights and benefits as if the member were never separated and section 567 had not been enacted, provided the Secretary concerned would not have separated the HIV-positive member under the provisions of section 1177 of title 10, as it was in effect on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996.

ASAP

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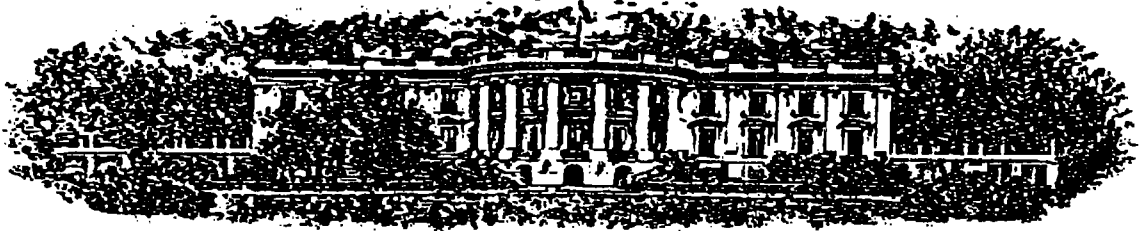
LEDERMAN

Marty Lederman
OR C-DOT

Let him know it's
coming, please

514-0563

THE WHITE HOUSE



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 1/31/96
TO: Marty Lederman
FACSIMILE NUMBER: 514-0563
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FROM: Marvin Krislov
TELEPHONE NUMBER: 456-7903
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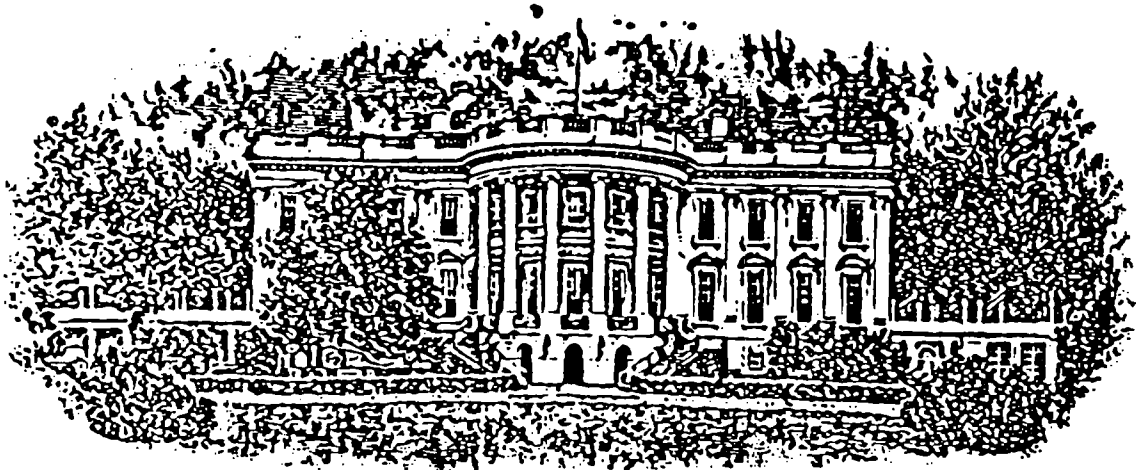
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THE WHITE HOUSE



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