

FOIA MARKER

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Folder Title:

Don't Ask, Don't Tell

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117

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4

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12/21/99 10:01 AM FAX 202-512-2000
U.S. SENATE SECRETARIAT

United States Senate

WASHINGTON, DC 20510

Beth -
FYI

December 20, 1999

The Honorable William Jefferson Clinton
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

The world knows the story of a mother who gave her life to protect her child and give him freedom. Along with his stepfather and several other people, she joined her young son in a small boat and entered dangerous waters. In all, this young six-year-old boy's story of how he arrived on our shores for freedom is a story for the ages. It is a story of the steps people will take to find and secure freedom.

Throughout our long history, people throughout the world have found freedom on our shores. Countless people through the years have fled the brutality of communism. In this young boy, Elian Gonzalez, hanging on to an inner-tube for his life is indeed a miracle. It should be recognized as such.

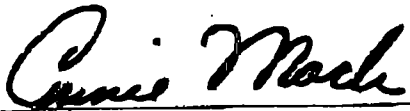
Therefore, when the Congress returns from the current recess, we intend to move to consider a measure granting United States citizenship to Elian Gonzalez.

Mr. President, there has been much too much debate; we should make this simple. Elian's mother, Elizabeth Rodriguez, gave her life so that her son would have the full protection of America's freedom. We undertake this initiative in honor of his mother and in recognition of the danger the boy faces. We in the Senate understand this young man has a right to freedom.

There is talk that the INS will simply send Elian back to the clutches of Castro's communist dictatorship. To return him without American citizenship would be a tragedy and a travesty. To ensure he gets a fair hearing in court by people who treasure liberty and honor and respect the rule of law, we hope the United States will bestow citizenship on him. At this point, Elian's future should be decided by his family and the courts. But later in life as an American citizen, he will have the freedom to choose where he wishes to live. His future will no longer be a political decision, but a decision based upon the best interests of the child. By confirming citizenship, we will be preserving the father's rights to see and be with his son. But most importantly, we will be preserving the boy's rights to live in freedom.

Since citizenship would also prevent the INS from forcefully removing Elian, we request that you take no action to deliver this boy to Cuba before we can act on his citizenship measure. Any act to do so would stand in conflict with the spirit of the season and the memory of Elian's mother.

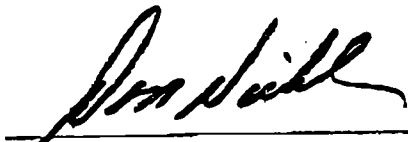
Sincerely,



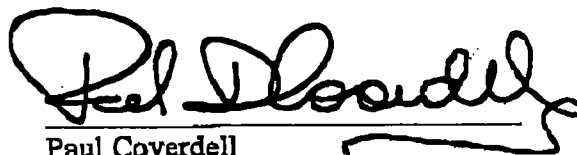
Connie Mack
United States Senator



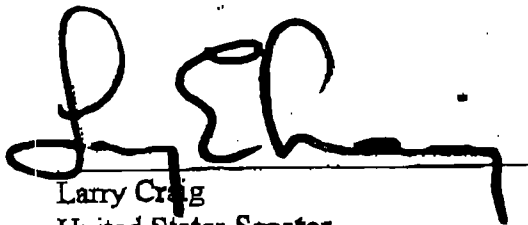
Trent Lott
United States Senator



Don Nickles
United States Senator



Paul Coverdell
United States Senator



Larry Craig
United States Senator

Commentary on EOP Recommendations for Improving DOD Implementation

- *NSC: Ensure prompt and complete Service implementation of the August 1999 guidelines. & Conduct more vigorous anti-harassment training since current training appears inadequate. Eddie: Prohibit harassment of service members.*

Secretary Cohen and his staff have reviewed and approved the individual Services' DADT and anti-harassment training plans which are now being implemented. All of the plans provide detailed explanations of the DADT policy and their application. The Army and Air Force plans are the most robust, explaining why harassment of any individual is counter to their core values. The Navy and Marine Corps plans are more mechanical and do not contain strong statements of support from the most senior leadership. All are a step toward implementing our recommendations.

- *NSC: Take appropriate steps to hold commanders accountable for inappropriately "asking or pursuing" and for condoning an environment conducive to harassment. Eddie: More effective enforcement of the "Don't Ask" provision.*

This follows the robust training requirement very well. The goal is to change the thinking of the conservative military culture. Holding service members accountable for complying with the policy is the next logical step. All leaders, officers and enlisted, receive evaluation reports. Services could require specific comments in these reports on the individual's contribution to a positive command climate (not just DADT). A bad evaluation will affect promotion and retention - a way to weed out those that don't comply with policy. We won't be able to easily measure the affect of this initiative, but it will have a great long-term impact on changing the conservative culture. A person either complies or is eventually out.

We should consider now what DOD will do with the results of the IG investigations. If the reports show problems, the SLDN will call for immediate action and the conservatives will attack the results. If they don't show problems, the SLDN will claim a whitewash and the conservatives will use the results to block improvements. The first DOD meeting should consider a plan to release the results soon after they are completed and be prepared with options for response. (It took DOD over a year to release their last review of the DADT policy implementation.)

- *NSC & Eddie: Pursue a broader definition of the Service member communications for which confidentiality is protected.*

This can be done, but DOD will want to do it under very controlled conditions. Military personnel relinquish some of their personnel privacy rights in the interest of military integrity. For example, military members in contact with nuclear weapons must participate in the Personnel Reliability Program. This program insures those with access to nuclear weapons are both physically and mentally safe to have access to WMD. Care-givers are required to report *any* condition, including stress and anxiety, that would have an influence on a person's judgement.

Working papers which have not been cleared.

Security clearance procedures also investigate whether or not an individual is vulnerable to blackmail. In a military environment where admitting one's homosexuality could end one's career, the vulnerability may be especially high. This must be considered in dealing with clearances. While security clearance procedures and homosexual conduct may not be in conflict in the civilian world, the DADT policy may complicate it in the military world.

The DADT policy puts great stress on homosexuals – they are forced to stay “in the closet” and prohibited from acting on some basic human desires. It is important they have someone to talk with but we also must be sensitive to the needs of critical military security and effectiveness concerns. The Army training says, “Information provided to a chaplain or a legal assistance attorney is generally considered privileged and will not be disclosed unless the soldier approves of the disclosure.” This privileged communication status might also be expanded to medical care givers and family service providers under certain conditions. DADT policy training should be provided to all people that might have authority to receive privileged communications.

- *Eddie: Limit pre-trial agreements. Agree.*
- *Eddie: Make it easier to rebut the presumption of homosexual conduct.*

The lawyers will need to hash this out in the context of the law.

- *NSC: Ensure there is appropriate recourse to accused service members to stop improper investigations by their commanders.*

Technically, an avenue of recourse exists. Note Article 138 of the Uniform Code of Military Justice:

"Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the office exercising court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings thereon."

This section of the UCMJ could be used by anyone who feels wronged in an investigation and wants to have an impact on his/her commanding officer. The beauty of this course of action is that the incident is brought to the attention of a general officer who should know the nuances of the DADT policy. The complaint is eventually brought to the attention of the Secretary for further oversight. In reality, I've never seen this Article used but this may be a situation where it could be effective.

copied
Nolan
Marshall
Correia
Podeste

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT HAS SEEN

12-23-99

99 DEC 23 11:51 AM

December 22, 1999

MEMORANDUM FOR THE PRESIDENT

FROM:

BETH NOLAN, COUNSEL TO THE PRESIDENT
BILL MARSHALL, DEPUTY COUNSEL TO THE PRESIDENT
EDDIE CORREIA, SPECIAL COUNSEL FOR CIVIL RIGHTS

SUBJECT:

DON'T ASK/DON'T TELL

You asked if you can change the Don't Ask/Don't Tell policy by executive order since Congress has enacted it into law. The 1993 statute prohibits gays and lesbians from serving in the military if: 1) they engage in homosexual conduct; 2) they state that they are gay and they cannot rebut the presumption that they will engage in such conduct; or 3) they marry a person of the same sex. As you suggest, you cannot override these basic prohibitions by executive order.

However, there are a number of steps that the Administration can take that will improve the implementation of the policy. For example, the military services have already been directed by the Secretary of Defense to develop guidance regarding the prohibition on harassing gay service members. In addition, the services may also more effectively enforce the ban on commanding officers asking about sexual orientation. Finally, the Defense Department is also exploring the possibility of clarifying the policy to ensure that certain kinds of confidential communications about sexual orientation, e.g., to chaplains and psychotherapists, do not result in the discharge of a gay service member. These types of steps will improve the climate for gays and lesbians in the service but do not require a statutory change.

A working group within the White House, including the Counsel's Office, NSC, and the Office of Public Liaison, is developing approaches to improving implementation of the policy. This group will be working with the Department of Defense, which will have ultimate responsibility for carrying out any changes in the current enforcement of the policy. Before putting any significant reforms into effect, Defense will consult with the military services.

THE WHITE HOUSE
WASHINGTON

December 20, 1999

Dear Representative Frank:

Thank you for your letter to the President expressing your disappointment over White House Counsel Beth Nolan's response to the letter concerning the case of Arizona State Representative Stephen May.

I have shared your concerns with the President and his other advisors, and you will receive a response in the near future. In the meantime, if I can be of assistance to you, please do not hesitate to contact me.

Best wishes.

Sincerely,

Charles M. Brain
Deputy Assistant to the President
and Deputy Director for Legislative
Affairs

The Honorable Barney Frank
House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE
WASHINGTON

December 20, 1999

MEMORANDUM FOR BETH NOLAN
COUNSEL TO THE PRESIDENT

FROM: CHARLES M. BRAIN
LEGISLATIVE AFFAIRS

SUBJECT: PRESIDENTIAL CORRESPONDENCE

Attached please find a copy of a letter sent to the President from Rep. Barney Frank (D-MA).

I do not believe this letter requires a Presidential response at this time. Please review the attached letter and respond directly to the Member(s) of Congress. Please forward a copy of the response to the Office of Records Management, Room 72 Old Executive Office Building.

Thank you very much for your assistance in this matter. If you have any questions, please feel free to call Courtney Crouch, Office of Legislative Affairs, at 456-7500.

Enclosure

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

ID# 404433
PAGE 1

DATE RECEIVED:

NAME OF CORRESPONDENT: THE HONORABLE BARNEY FRANK

SUBJECT: EXPRESSES DISAPPOINTMENT OVER THE RESPONSE HE RECEIVED FROM COUNSEL BETH NOLAN TO THE LETTER SIGNED BY OVER A HUNDRED MEMBER OF CONGRESS URGING THE PRESIDENT NOT TO ALLOW ARIZONA REPRESENTATIVE STEPHEN MAY TO BE DISMISSED FROM THE MILITARY FOR COMMENTS HE

		ACTION		DISPOSITION	
ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	DATE YY/MM/DD	TYPE RESP	C D COMPLETED YY/MM/DD
LEGISLATIVE AFFAIRS	LARRY STEIN	ORG	1000		
ACTION COMMENTS					
Counsel	Beth Nolan			Counsel cc: Broderick cc: Church	/ /
ACTION COMMENTS:					
/ /					
ACTION COMMENTS:					
/ /					
ACTION COMMENTS:					

COMMENTS

ADDITIONAL CORRESPONDENTS: 0

MEDIA: LETTER

INDIVIDUAL CODES:

REPORT CODES:

USER CODES:

cc: Broderick Johnson, Chuck Brain

ACTION CODES:

A - APPROPRIATE ACTION
C - COMMENT/RECOMMENDATION
D - DRAFT RESPONSE
F - FURNISH FACT SHEET
I - INFO COPY/NO ACT NECESSARY
R - DIRECT REPLY W/ COPY
S - FOR SIGNATURE

DISPOSITION CODES:

A - ANSWERED
B - NON-SEPC-REFERRAL
C - COMPLETED
S - SUSPENDED

OUTGOING CORRESPONDENCE:

TYPE RESP = INITIALS OF SIGNER
CODE = A
COMPLETED = DATE OF OUTGOING

REFER QUESTIONS AND ROUTING UPDATES TO RECORDS MANAGEMENT (ROOM 72, OEOB) EXT-62590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

BARNEY FRANK
4TH DISTRICT, MASSACHUSETTS

2210 RAYBURN BUILDING
WASHINGTON, DC 20515-2104
(202) 225-5931

29 CRAFTS STREET
SUITE 375
NEWTON, MA 02458
(617) 332-3920

Congress of the United States
House of Representatives
Washington, DC

December 2, 1999

558 PLEASANT STREET
ROOM 309
NEW BEDFORD, MA 02740
(508) 999-6462

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

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

The Honorable William Jefferson Clinton
President
The White House
Washington, D.C. 20500



404433

Dear Mr. President,

I just received from your Counsel, Beth Nolan, a response to the letter that well over a hundred Members of Congress sent to you urging you not to allow Arizona Representative Stephen May to be dismissed from the military for comments he made during his official activities as an Arizona State Representative. I was appalled to receive from Ms. Nolan a letter in which she disclaimed on your behalf any responsibility for this decision, and told me that she had forwarded the letter to Secretary Cohen because he "is responsible for implementing the policy and conducting whatever investigation is appropriate." Heretofore, I had been under the impression that you were the Commander-in-Chief, that the policy of "Don't Ask, Don't Tell" was one that had been promulgated by you, and that you had ultimate responsibility for its enforcement. I well remember the political difficulties that arose and that led to this decision, although I disagreed with it at the time as you will remember. But none of that justifies the brush off that Ms. Nolan has given me. This continues to be your responsibility, and this effort to put that responsibility onto Secretary Cohen is baseless. I am, as I said, deeply disappointed.


BARNEY FRANK

BF/mg