

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Sergeant Perry J. Watkins,
Plaintiff-Appellant,
v.
United States Army, et al.,
Defendants-Appellees.

No. 85-4006

BRIEF OF AMICUS CURIAE
AMERICAN PSYCHOLOGICAL ASSOCIATION
IN SUPPORT OF PLAINTIFF-APPELLANT

Donald N. Bersoff
David W. Ogden
JENNER & BLOCK
21 Dupont Circle, N.W.
Washington, D.C. 20036
(202) 223-4400

Of Counsel:

Simon Heller
531A Sixth Avenue
Brooklyn, New York 11215
(718) 965-9304

Mary C. Dunlap
1599 Dolores Street
San Francisco, California 94110
(415) 282-6555

Attorneys For Amicus Curiae

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	i
INTEREST OF <u>AMICUS CURIAE</u>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.	1
ARGUMENT.	4
I. THE PANEL'S DECISION THAT HOMOSEXUAL PEOPLE CONSTITUTE "A DISCRETE AND INSULAR MINORITY" REQUIRING THE PROTECTION OF HEIGHTENED SCRUTINY UNDER THE EQUAL PROTECTION CLAUSE IS SUPPORTED BY SCIENTIFIC RESEARCH AND OPINION.	6
A. <u>Sexual Orientation Does Not Affect a Person's Ability to Contribute to Society</u>	8
B. <u>Discrimination Against Gay People Is Substantially Based on Erroneous Stereotypes</u>	12
C. <u>Sexual Orientation is Highly Resistant to Change, and it is Therefore Abhorrent for Government to Penalize Homosexual Status</u>	18
D. <u>The Army's Regulations Stigmatize Homosexuals and Encourage Gay Soldiers to Conceal Their Homosexuality, Which May Be Harmful to Their Mental Health</u>	21
II. THE ARMY'S SELF-DECLARED RATIONALE FOR EXCLUDING LESBIANS AND GAY MEN IS CONTRADICTED BY SCIENTIFIC RESEARCH.	23
A. <u>The Government May Not Penalize A Group Solely Because Others Are Prejudiced Against It</u>	23
B. <u>Prejudice Against Lesbians and Gay Men in the Army is Likely to Be Reduced By Encouraging Contact Between Homosexuals and Hetero- sexuals</u>	25
C. <u>There Is No Rational Basis For the Army's Counterproductive Exclusion of Gay People</u>	30
CONCLUSION.	31

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Bowers v. Hardwick</u> , 92 L. Ed. 2d 140 (1986).....	21
<u>Brown v. Board of Education</u> , 347 U.S. 483 (1954).....	3, 28
<u>City of Cleburne v. Cleburne Living Center</u> , 473 U.S. 432 (1985).....	3, 25
<u>Frontiero v. Richardson</u> , 411 U.S. 677 (1973).....	2, 3
<u>Lyng v. Castillo</u> , 91 L. Ed. 2d 527 (1986).....	2, 18
<u>Mathews v. Lucas</u> , 427 U.S. 495 (1976).....	2, 19
<u>Palmore v. Sidoti</u> , 466 U.S. 429 (1984).....	23
<u>Regents of the University of California v. Bakke</u> , 438 U.S. 265 (1978).....	5
<u>San Antonio Indep. School Dist. v. Rodriguez</u> , 411 U.S. 1 (1973).....	2
<u>Terminiello v. Chicago</u> , 337 U.S. 1 (1948).....	24
<u>Watkins v. United States Army</u> , 837 F.2d 1428 (9th Cir. 1988).....	passim
<u>REGULATIONS</u>	
Army Regulations 635-200, Chapter 15.....	passim
Army Regulations 601-280, Chapter 2.....	passim
<u>MONOGRAPHS AND ARTICLES</u>	
Allport et al., <u>The Effects of Segregation and the Consequences of Desegregation</u> , 37 Minn. L. Rev. 413 (1953).....	27
G. Allport, <u>The Nature of Prejudice</u> (1954).....	22
Ambrose, <u>Blacks in the Army in Two World Wars</u> , in Ambrose & Barber, <u>The Military and American Society</u> (1972).....	16, 29

TABLE OF AUTHORITIES
(Continued)

<u>CASES</u>	<u>PAGE</u>
Amir, <u>The Role of Intergroup Contact in Change Of Prejudice and Ethnic Relations</u> , in Katz, <u>Towards the Elimination of Racism</u> (1976).....	13, 26
Ashmore & Del Boca, <u>Psychological Approaches to Understanding Intergroup Conflicts</u> , in Katz, <u>Towards the Elimination of Racism</u> (1976).....	26
H. Becker, <u>Outsiders: Studies in the Sociology of Deviance</u> (1963).....	22
A. Bell & M. Weinberg, <u>Homosexualities: A Study of Diversity Among Men and Women</u> (1978).....	11, 15 21, 22
A. Bell, M. Weinberg & S. Hammersmith, <u>Sexual Preference: Its Development in Men and Women</u> (1981).....	19
Coleman, <u>Changing Approaches to the Treatment of Homosexuality: A Review</u> , in <u>Homosexuality Social, Psychological, and Biological Issues</u> (Paul et al. eds.) (1982).....	20
Davison, <u>Politics, Ethics and Therapy for Homosexuality</u> , in <u>Homosexuality, Social, Psychological, and Biological Issues</u> (Paul et al. eds.) (1982).....	20, 21
M. Freedman, <u>Homosexuality and Psychological Functioning</u> (1971).....	10
K. Gergen & M. Gergen, <u>Social Psychology</u> (1981).....	12
Gonsiorek, <u>Psychotherapeutic Issues With Gay and Lesbian Clients</u> , in <u>3 Innovations in Clinical Practice: A Sourcebook</u> (Keller et al. eds. 1984).....	23
Gonsiorek, <u>Results of Psychological Testing on Homosexual Populations</u> , 25 Am. Behavioral Sci. 385 (1982).....	11

TABLE OF AUTHORITIES
(Continued)

<u>CASES</u>	<u>PAGE</u>
Hammersmith & Weinberg, <u>Homosexual Identity: Commitment, Adjustment, and Significant Others</u> , 36 Sociometry 56 (1973).....	22
Harry, <u>Homosexual Men & Women Who Served Their Country</u> , 10 J. Homosexuality 117 (1984).....	17, 27
Hart, Roback, Tittler, Weitz, Walston & McKee, <u>Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature</u> , 39 J. Clinical Psychiatry 604 (1978).....	11
Herek, <u>Beyond "Homophobia": A Social Psychological Perspective on Attitudes Toward Lesbians and Gay Men</u> , 10 J. Homosexuality 1 (1984).....	13, 29
Herek, <u>Can Functions Be Measured?</u> , 50 Soc. Psychology Q. 285 (1987).....	12
Herek, <u>On Heterosexual Masculinity</u> , 29 Am. Beh. Scientist 563 (1986).....	5
Herek, <u>Religious Orientation and Prejudice: A Comparison of Racial and Sexual Attitudes</u> , 13 Personality and Social Psychology Bull. 34 (1987).....	12
Hooker, <u>The Adjustment of the Male Overt Homosexual</u> , 21 J. Projective Techniques 17 (1957).....	10
Malyon, <u>Psychotherapeutic Implications of Internalized Homophobia in Gay Men</u> , in Homosexuality and Psychotherapy: A Practitioner's Handbook of Affirmative Models 59 (Gonsiorek ed. 1982).....	21, 23
Marmor, <u>Clinical Aspects of Homosexuality</u> , in Homosexual Behavior: A Modern Reappraisal (Marmor ed. 1980).....	20
A. D. Martin, <u>The Emperor's New Clothes: Modern Attempts to Change Sexual Orientation</u> , in Innovations in Psychotherapy With Homosexuals (Hetrick & Stein eds. 1984).....	20, 23

TABLE OF AUTHORITIES
(Continued)

<u>CASES</u>	<u>PAGE</u>
D. McWhirter & A. Mattison, <u>The Male Couple: How Relationships Develop</u> (1984).....	12
Meyer-Bahlberg, <u>Homosexual Orientation in Women and Men: A Hormonal Basis, in the Psychology of Sex Differences and Sex Roles</u> (Parsons ed. 1980).....	19
Money, <u>Sin, Sickness, or Status? Homosexual Gender Identity and Psycho-neuroendocrinology</u> , 42 Am. Psychologist 384 (1987).....	5
Pilard, <u>Psychotherapeutic Treatment for the Invisible Minority, in Homosexuality Social, Psychological, and Biological Issues</u> (Paul et al. eds.) (1982).....	23
Reiss, <u>Psychological Tests in Homosexuality, in Homosexual Behavior: A Modern Reappraisal</u> (Marmor ed. 1980).....	11
Ricketts, <u>Biological Research on Homosexuality: Ansell's Cow or Occam's Razor?</u> , 9 J. Homosexuality 65 (1984).....	19
J. Rudolph, <u>The Effects of a Multimodal Seminar on Mental Health Practitioners' Attitudes Toward Homosexuality, Authoritarianism, and Counseling Effectiveness</u> (unpublished dissertation, Lehigh University 1988).....	29
Schneider & Lewis, <u>The Straight Story on Homosexuality and Gay Rights, Pub. Opinion</u> 16-20 (Feb./March 1984).....	13, 29
Shively, Jones and DeCecco, <u>Research on Sexual Orientation: Definitions and Methods</u> , 9 J. Homosexuality 127 (1983-1984).....	5
Snyder & Nyberg, <u>Guys and the Military: An Emerging Policy Issue</u> , 8 J. Pol. & Military Soc. 71 (1980).....	11
Stephan, <u>Intergroup Relations</u> , in II Handbook of Social Psychology (Gardner et al. eds. 1985).....	27

TABLE OF AUTHORITIES
(Continued)

<u>CASES</u>	<u>PAGE</u>
Stillman, <u>Negroes in the Armed Forces</u> , 30 Phylon 139 (1969).....	29
Storm, <u>Theories of Sexual Orientation</u> , 38 J. Personality and Soc. Pathology 783 (1980).....	19
Stouffer, et al., <u>The American Soldier</u> (1949).....	28
Sullivan, <u>A Bibliographic Guide to Government Hearings and Reports, Legislative Action, and Speeches Made in the House and Senate of the United States Congress on the Subject of Homosexuality</u> , 10 J. Homosexuality 135 (1984), <u>reprinted in</u> DeCecco, Bashers, Baiters and Bigots: Homophobia in American Society (1985)	7
M. Weinberg & C. Williams, <u>Male Homosexuals: Their Problems and Adaptations</u> (1974).....	23
Weinrich, <u>Task Force Findings: Overview and Prospect</u> , in <u>Homosexuality: Social, Psychological, and Biological Issues</u> (Paul et al. eds.) (1982).....	10, 15
Williams & Weinberg, <u>Homosexuals and the Military</u> (1971).....	16, 18
 <u>OTHER AUTHORITIES</u>	
American Psychiatric Association, <u>Diagnostic And Statistical Manual</u> (3d Ed. 1980).....	8, 9
Resolution of the Council of Representatives of the American Psychological Association, 30 Am. Psychologist 633 (1975).....	9
Resolution of the American Psychiatric Association, December 15, 1973.....	8

BRIEF OF AMICUS CURIAE
AMERICAN PSYCHOLOGICAL ASSOCIATION
IN SUPPORT OF PLAINTIFF

INTEREST OF AMICUS CURIAE

The American Psychological Association (hereafter "APA"), a nonprofit, scientific, and professional organization founded in 1892, is the major association of psychologists in the United States. APA has more than 70,000 members, including the vast majority of psychologists holding doctoral degrees from accredited universities in the United States. Among APA's major functions are promoting psychological research, improving research methods, and promulgating information regarding human psychological behavior. A substantial number of APA's members are concerned with the collection of data, development of research, and provision of therapy pertaining to human sexuality.

INTRODUCTION AND SUMMARY OF ARGUMENT

Army Regulations require the discharge of lesbians and gay men, and bar them from reenlisting in the Army. Army Regulations 635-200, Chapter 15 (discharge), 601-280, Chapter 2, ¶2-24 (reenlistment). In 1982, pursuant to these regulations, Sergeant Perry Watkins was refused reenlistment after having served as an exemplary soldier since his induction in 1968. Watkins never attempted to conceal his sexual orientation, which he first stated in 1967 on an Army medical history report and reiterated on several occasions

at official Army proceedings. The questions in this case are whether gay people, who have suffered invidious discrimination throughout this nation's history without protection from the political branches of government, constitute a suspect class under the Fourteenth Amendment's equal protection clause, and whether the Army regulations resulting in the refusal of Sergeant Watkins' application for reenlistment fail to survive constitutional scrutiny.

The resolution of these questions turns to a substantial degree on the answers to empirical questions about sexual orientation and the dynamics of prejudice. For example, equal protection doctrine accords "suspect" or "quasi-suspect" classification status to groups that have suffered from a history of prejudice or unjust stereotyping and stigmatization, due, at least in part to an "immutable" or largely involuntary characteristic or one difficult to change, where that characteristic bears little or no relation to the individual's ability to contribute to society.^{1/} To determine whether homosexuality meets these

^{1/} See, e.g., San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 28 (1973) (among "traditional indicia of suspectness" is that class have been "subjected to . . . a history of purposeful unequal treatment"); Frontiero v. Richardson, 411 U.S. 677, 684-95, 686 (1973) (plurality opinion) (discussing stereotyping and stigma; ability to contribute to society); City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) (discussing criteria for suspectness); Lynq v. Castillo, 91 L. Ed. 2d 527, 533 (1986) (same); Mathews v. Lucas, 427 U.S. 495, 505 (1976) (same).

largely empirical criteria, the Court should take into account scientific research, much of it conducted by psychologists, and expert scientific opinion concerning these very issues.^{2/}

The Army regulations concerning homosexuality under which Sergeant Watkins was refused reenlistment are based on outmoded, empirically discredited conceptions of homosexuality, and are in conflict with the modern scientific understanding of sexual orientation. Such discrimination is harmful in at least three distinct ways: first, it is seriously detrimental both psychologically and otherwise to gay people; second, it deprives our institutions of government of well-qualified people such as Sergeant Watkins; and third, it encourages people who hold negative attitudes to persist in holding those attitudes by giving them official approval. Such harms are the classic consequences of invidious discrimination. Cf. Brown v. Board of Education, 347 U.S. 483 (1954) (racial discrimination); Frontiero v. Richardson, 411 U.S. 677 (1973) (plurality opinion) (gender discrimination).

In this brief, amicus will outline the scientific evidence and opinion about sexual orientation and

^{2/} The Supreme Court has relied on social science evidence in interpreting the Equal Protection Clause. See, e.g., Brown v. Board of Education, 347 U.S. 483, at 494-495 & n. 11 (citing psychological literature concerning the effects of prejudice).

homosexuality as it bears upon the legal issues before the Court. Specifically, amicus will show that homosexual people constitute a "discrete and insular minority" deserving of heightened equal protection scrutiny. Point I. Specifically, homosexuality has been shown not to impair the ability of individuals to contribute to society, Point I.A.; to be the subject of prejudicial stereotypes, Point I.B. and I.D.; and in most cases to be involuntarily acquired and highly resistant or impervious to attempts to change it, Point I.C. Furthermore, the Army regulations at issue do no more than give effect to those stereotypes, attempting to resolve the problems caused by prejudice by further penalizing the victims of that prejudice. This is forbidden by the equal protection clause. Point II.A. Moreover, the regulations are irrational and counterproductive, and do not survive any meaningful level of equal protection scrutiny. Point II.B. and II.C.

ARGUMENT

The three-judge panel concluded, based on several factors, that any governmental burden imposed specially upon the class of people with a homosexual orientation is subject to heightened scrutiny under the equal protection clause. Watkins v. United States Army, 837 F.2d 1428, 1448 (9th Cir. 1988). Experts on human sexuality have defined "sexual orientation" in various ways. Most definitions agree that an individual's sexual orientation is determined by the biological sex of the people to whom he or she is sexually

attracted, the people with whom he or she shares affectional attachments, and his or her sexual partners.^{3/} Sexual orientation is distinct from sexual conduct, although it may be indicated by such conduct. It refers to a pattern of sexual and affectional preferences for persons of a particular biological sex.^{4/}

Army regulations also distinguish between sexual orientation and sexual conduct, defining a "homosexual" as "a person, regardless of sex, who desires bodily contact between persons of the same sex . . . with the intent to obtain or give sexual gratification." AR 601-280, ¶ 20-21(c) and note (emphasis added); AR 635-200, ¶ 15(2)(a). They authorize the exclusion of persons who have this desire, whether or not they have ever engaged in homosexual acts. Moreover, although a non-homosexual soldier may be excused for engaging in homosexual acts, a homosexual soldier may not. AR 601-280, ¶ 2-21, note. Sergeant Watkins was deprived of the opportunity to seek reenlistment under this provision solely due to his sexual orientation. See Regents of the University of California v. Bakke, 438

^{3/} Shively, Jones, and DeCecco, Research on Sexual Orientation: Definitions and Methods, 9 J. Homosexuality 127-136 (1983-84).

^{4/} See Money, Sin, Sickness, or Status? Homosexual Gender Identity and Psycho-neuroendocrinology, 42 Am. Psychologist 384, 385 (1987); Herek, On Heterosexual Masculinity, 29 Am. Beh. Scientist 563 (1986).

U.S. 265, 280, n. 14 (1978) (opinion of Powell, J., in this portion for the Court). Amicus urges this Court to affirm the panel's thoughtful opinion holding that a classification based upon sexual orientation is subject to heightened constitutional scrutiny, and that the regulations cannot survive such scrutiny.^{5/}

I. THE PANEL'S DECISION THAT HOMOSEXUAL PEOPLE CONSTITUTE "A DISCRETE AND INSULAR MINORITY" REQUIRING THE PROTECTION OF HEIGHTENED SCRUTINY UNDER THE EQUAL PROTECTION CLAUSE IS SUPPORTED BY SCIENTIFIC RESEARCH AND OPINION

In reaching its conclusion that sexual orientation should be a suspect classification, the panel considered each of the factors that traditionally have guided this Court and the Supreme Court in suspect class jurisprudence: whether there has been a history of discrimination against the class in question; whether that discrimination is "invidious" as that concept has been developed; and whether the class suffers from political disempowerment. 837 F.2d at 1444-1447.

Amicus submits that the panel's conclusions that gay people have been subjected to a history of adverse treatment and that they are unable effectively to use the

^{5/} Amicus believes that these regulations cannot survive even rational basis scrutiny. See Point II, infra.

political process to obtain redress are indisputable.^{6/} In this brief, however, amicus wishes to address matters within its special expertise, and to provide an outline of the scientific evidence bearing on the second factor outlined by the panel: whether discrimination against gay people has been "invidious." This inquiry, as the panel accurately observed, is generally comprised of three sub-inquiries, each of which has been the subject of a body of scientific research. Application of these factors in light of that research can leave little doubt that the widespread discrimination existing in our society against homosexuals is "invidious."

As amicus will explain below, the research shows: first, that being gay "bears no relation to ability to perform or contribute to society"; second, that gay people have been subjected to prejudice and inaccurate stereotypes; and third, that sexual orientation is formed in childhood, constitutes a very important element of individual identity, is highly resistant to change, and therefore always or

^{6/} See, e.g., Sullivan, A Bibliographic Guide to Government Hearings and Reports, Legislative Action, and Speeches Made in the House and Senate of the United States Congress on the Subject of Homosexuality, 10 J. Homosexuality 135 (1984), reprinted in DeCecco, Bashers, Baiters & Bigots: Homophobia in American Society 135 (1985) (outlining Congressional documents concerning gay men and lesbians from 1920-1983, and indicating both level of animus against gay people by many in Congress and failure of Congress to enact legislation of any kind protecting gay people).

almost always is a characteristic over which individuals lack a substantial degree of control. See Watkins, 837 F.2d at 1444-1445 (collecting sources) (citations omitted).

A. Sexual Orientation Does Not Affect a Person's Ability to Contribute to Society.

The vast majority of mental health professionals no longer consider homosexuality to be a disorder. A disorder is defined as "a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is typically associated with either a painful symptom (distress) or impairment in one or more important areas of functioning (disability)."^{7/} In 1973, the American Psychiatric Association removed homosexuality from its list of mental disorders, declaring that "homosexuality per se implies no impairment in judgment, stability, reliability or general social or vocational capabilities," and concluded that "[i]n the reasoned judgment of most American psychiatrists today, homosexuality per se does not constitute any form of mental disease."^{8/} As the Psychiatric Association explains in DSM-III, "[a] significant proportion of homosexuals . . . show no significant signs of manifest psychopathology . . . and are

^{7/} American Psychiatric Association, Diagnostic And Statistical Manual 6 (3d Ed. 1980) [hereafter DSM-III].

^{8/} Resolution of the American Psychiatric Association, December 15, 1973.

able to function socially and occupationally with no impairment. If one uses the criteria of distress or disability, homosexuality per se is not a mental disorder."^{9/}

In 1975, amicus APA, based upon a review of the scientific data regarding homosexuality, passed a resolution supporting the Psychiatric Association's determination that homosexuality is not a mental disorder, and urging all mental health professionals to help dispel the stigma of mental illness that long had been associated with homosexual orientation. APA specifically resolved as follows:

Homosexuality per se implies no impairment in judgment, stability, reliability, or general social and vocational capabilities;

Further, the American Psychological Association urges all mental health professionals to take the lead in removing the stigma of mental illness that has long been associated with homosexual orientations.^{10/}

APA further resolved to oppose and "deplore" all public and private discrimination based on homosexuality; that the prejudice and stigma to which gay people are subjected is essentially the same as that encountered by other minorities; and that "no proof of . . . judgment, capacity, or

^{9/} DSM-III at 380 (emphasis in original).

^{10/} Resolution of the Council of Representatives of the American Psychological Association, 30 Am. Psychologist 633 (1975) [hereafter APA Resolution].

reliability shall be placed upon [homosexual persons] greater than that imposed upon any other persons." ^{11/}

The declassification of homosexuality as a mental disease was the result of a long reevaluation of the "illness model" of homosexuality and was based on extensive scientific findings by a large number of independent researchers.^{12/} The first major challenge to the illness model came in 1957 when Dr. Evelyn Hooker determined that homosexual and heterosexual men could not be distinguished from each other on the basis of standard psychological tests, and that a similar majority of the two groups appeared to be free of psychopathology.^{13/} Of course, some homosexuals, like some heterosexuals, are psychologically disturbed. But extensive psychological research conducted over almost three decades has conclusively established that homosexuality is not related to psychological adjustment or

^{11/} APA Resolution, supra n. 10.

^{12/} According to amicus APA's Task Force on Sexual Orientation, the research that had supported the "illness model" of homosexuality was "influenced by poorly founded stereotypes and social prejudice." Weinrich, Task Force Findings: Overview and Prospect, in Homosexuality: Social, Psychological, and Biological Issues 377 (Paul et al. eds. 1982) (hereafter "Homosexuality").

^{13/} Hooker, The Adjustment of the Male Overt Homosexual, 21 J. Projective Techniques 17 (1957). Subsequent studies have replicated these findings with female samples. See, e.g. M. Freedman, Homosexuality and Psychological Functioning (1971).

maladjustment.^{14/} One commentator who has reviewed the extensive psychological literature on the subject concluded that "theories contending that the existence of differences between homosexuals and heterosexuals implies maladjustment are irresponsible, uninformed or both."^{15/}

As is suggested by the resolutions of the Psychological and Psychiatric Associations, research has also demonstrated the natural corollary of these findings: gay people have an overall potential to contribute to society similar to that of heterosexual people, including in the workplace.^{16/}

^{14/} See Gonsiorek, Results of Psychological Testing on Homosexual Populations, 25 Am. Behavioral Sci. 385, 394 (1982) [hereafter Psychological Testing]; Reiss, Psychological Tests in Homosexuality, in Homosexual Behavior: A Modern Reappraisal 296-311 (Marmor ed. 1980); Hart, Roback, Tittler, Weitz, Walston & McKee, Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature, 39 J. Clinical Psychiatry 604 (1978) (concluding that "findings to date have not demonstrated that the homosexual individual is any less psychologically adjusted than his heterosexual counterpart").

^{15/} Psychological Testing, supra note 14, at 394; see Reiss, supra n. 14, at 308.

^{16/} See, e.g., Snyder & Nyberg, Gays and the Military: An Emerging Policy Issue, 8 J. Pol. & Military Soc. 71, 77-79 (1980) (summarizing research and finding that homosexuals and heterosexuals score about the same in job stability and job satisfaction); A. Bell & M. Weinberg, Homosexualities: A Study of Diversity Among Men and Women 141-148 (1978) (hereafter "Bell & Weinberg") ("it appears that for the majority of our homosexual respondents, male and female, the fact that they happened to be homosexual had little to do with their experiences at work or the satisfaction they

(Footnote Continued)

The facts underlying this litigation are a dramatic case in point: the Army has rejected Sergeant Watkins despite his outstanding contributions, without any showing -- even an allegation -- that his homosexuality interfered with his job performance, or that his job performance was otherwise less than satisfactory.

B. Discrimination Against Gay People Is Substantially Based on Erroneous Stereotypes.

As the findings noted in the foregoing section would suggest, research confirms that those holding negative attitudes about gay people are likely to have based those attitudes on false stereotypes. Based upon such evidence, psychologists generally conceptualize anti-gay prejudice as manifesting the same social psychological dynamics as racial and other ethnic prejudice.^{17/}

This conclusion is reinforced by studies in which it was found that people holding negative attitudes toward homosexual people (encapsulized by the term "homophobia") "are less likely to have had personal contact with lesbians or gay men," and, hence, are basing their attitudes on

(Footnote Continued)

derived from them"). Cf. D. McWhirter and A. Mattison, The Male Couple: How Relationships Develop 286 (1984) (regarding gay couples).

^{17/} See, e.g., K. Gergen & M. Gergen, Social Psychology, 140-141 (1981); Herek, Religious Orientation and Prejudice: A Comparison of Racial and Sexual Attitudes, 13 Personality and Social Psychology Bull. 34 (1987); Herek, Can Functions Be Measured?, 50 Soc. Psychology Q. 285 (1987).

popular beliefs and misconceptions.^{18/} Similarly, several studies indicate that exposure to truthful information about lesbians and gay men often leads to a reduction in anti-gay attitudes.^{19/} Public opinion research also demonstrates that people who are acquainted with someone who does not conceal her or his homosexual orientation have, in general, significantly more favorable attitudes toward gay men and lesbians.^{20/}

One leading researcher has summarized succinctly these negative stereotypes:

Most common stereotypes [about homosexual people] are related to cross-sex characteristics. Additionally, significant numbers of individuals characterize male homosexuals as mentally ill, promiscuous, lonely, insecure, and likely to be child molesters, while lesbians have been described as aggressive and hostile toward men.^{21/}

The same researcher explains that "[l]abeling itself can lead people to perceive stereotypical behaviors, whether or

^{18/} Herek, Beyond "Homophobia": A Social Psychological Perspective on Attitudes Toward Lesbians and Gay Men, 10 J. Homosexuality 1, 6 (1984) (summarizing research).

^{19/} See Herek, Beyond "Homophobia", supra n. 18, at 13; cf. Amir, The Role of Intergroup Contact in Change of Prejudice and Ethnic Relations, in Katz, Towards the Elimination of Racism 73 (1976).

^{20/} Schneider & Lewis, The Straight Story on Homosexuality and Gay Rights, Pub. Opinion 16-20, 59-60 (Feb./March 1984).

^{21/} Herek, Beyond "Homophobia", supra n. 18, at 9 (citations omitted).

not they occur," and that stereotypes of gay people can be so influential that those gay people "who violate stereotypical expectations (e.g., masculine gay men and feminine lesbians) may actually be disliked" for that reason.^{22/}

A second researcher reached stark conclusions about the inaccuracy of the stereotypes popularly held about gay people:

Until now, almost without exception, people in general, . . . have been outraged, fearful, or despairing toward homosexuality because of the stereotypes they hold. Not only have they believed that homosexuals are pretty much alike, but that this similarity necessarily involves irresponsible sexual conduct, a contribution to social decay, and, of course, psychological pain and maladjustment. Given such a stereotype, it is little wonder that the heterosexual majority has seen fit to discourage the acceptance of homosexuality by criminalizing homosexual behaviors and ferreting out people who engage in them, refusing to employ homosexuals, withholding from homosexual men and women the civil rights enjoyed by the majority and by a growing number of other minority groups. . . .

The present investigation, however, amply demonstrates that relatively few homosexual men and women conform to the hideous stereotypes people have of them. For example, it is reasonable to suppose that objectionable sexual advances are far more apt to be made by a heterosexual (usually, by a man toward a woman) than a homosexual. . . .

^{22/} Id.

As for homosexuals' social and psychological adjustment, we have found that much depends upon the type of homosexual being considered. Many could very well serve as models of social comportment and psychological maturity. Most are indistinguishable from the heterosexual majority with respect to the nonsexual aspects of their lives and whatever differences there are between homosexuals' and heterosexuals' social adjustment certainly do not reflect any malevolent influence on society on the part of the homosexuals concerned.^{23/}

The Army's exclusion of lesbians and gay men (by means both of the enlistment regulations at issue in this case as well as the Army's discharge regulations) is based in large part on these same irrational stereotypes, which also led to "the illness model" of homosexuality that prevailed until the Psychological and Psychiatric Associations repudiated it in the early 1970s. As amicus APA's Task Force on Sexual Orientation found, that model was "influenced by poorly founded stereotypes and social prejudice."^{24/} The same is plainly true of these Army regulations.

As with Army policies that enforced a regime of racial segregation prior to President Truman's Executive Order in 1948, the history of the Army's exclusions of gay people is

^{23/} Bell & Weinberg, supra n. 16, at 229-231 (emphasis supplied).

^{24/} Weinrich, Task Force Findings: Overview and Prospect, in Homosexuality, supra note 12, at 377.

rife with open expressions of unfounded prejudice. In 1966, for example, the Army described its policy toward gay men and women this way:

The Army considers homosexuals to be unfit for military service because their presence impairs the morals and discipline of the Army, and that homosexuality is a manifestation of a severe personality defect which appreciably limits the ability of such individuals to function effectively in society.^{25/}

Two false stereotypes are contained in this statement.

First, as noted, the notion that being gay represents a "severe personality defect," or that gay people are limited in their ability "to function effectively in society," has been flatly rejected by the vast majority of mental health

^{25/} Williams & Weinberg, *Homosexuals and the Military* 24 (1971), quoting Army testimony before Senate Committee on the Judiciary, Subcommittee on Constitutional Rights, 89th Congress, 2nd Session (1966). Compare this to a report prepared in 1937 "by senior officers at the U.S. Army War College," expressing the Army's stereotyped view of blacks:

As an individual the Negro is docile, tractable, lighthearted, care free and good natured. If unjustly treated he is likely to become surly and stubborn, though this is usually a temporary phase. He is careless, shiftless, irresponsible and secretive. He resents censure and is best handled with praise and by ridicule. He is unmoral, untruthful, and his sense of right doing is relatively inferior.

quoted in Ambrose, *Blacks in the Army in Two World Wars*, in Ambrose & Barber, *The Military and American Society* 177 (1972).

professionals and scientists, as expressed in the resolutions of the two major professional associations. Similarly, there is absolutely no evidence for the further proposition that the presence of gay people in the military "impairs the morals and discipline" thereof, and there is significant evidence to the contrary.^{26/} And that claim certainly reflects the false view of homosexuality as a disease and disorder expressed in the remainder of the quotation.

The prejudices explicit in this 1966 Army statement continue to underlie the Army's current regulations. Although not as blatantly, the current regulations clearly communicate the message that homosexuality is a disease or disorder, a message completely inconsistent with current scientific understanding. For example, ¶2-24(c), ties homosexuality to several other "non-waivable" disqualifications. It renders "non-waivable" "questionable moral character, a history of antisocial behavior, sexual perversion, and/or homosexuality" (note omitted; emphasis added). Moreover, like the "and/or" of subparagraph (c), which indicates plainly a view of homosexuality as antisocial, perverted, and immoral,

^{26/} See, e.g., Harry, Homosexual Men & Women Who Served Their Country, 10 J. Homosexuality 117 (1984) (despite regulations requiring non-honorable discharge for homosexuality, large majority of gay men and lesbians in military received honorable discharges).

paragraph 2-24(a) and (b), immediately prior to the quoted passage, reveal the "rationale" of the Army's homosexuality rules: they disqualify "insane persons" and "persons having a history of psychotic disorders." The Army plainly continues to view homosexuality as a disease.

The evidence thus supports the conclusion reached by the principal social science study analyzing military policies regarding lesbians and gay men: these policies "are based on stereotypes of the homosexual that research has shown to be untenable and that result in discrimination against a minority."^{27/}

C. Sexual Orientation is Highly Resistant to Change, and it is Therefore Abhorrent for Government to Penalize Homosexual Status.

"Immutability," if defined absolutely to mean in all cases "unable to change or mask the trait defining their class," is not essential to merit treatment as a suspect classification. Watkins, 837 F.2d at 1446 (citing alienage and illegitimacy as traits that can be changed, and gender, national origin and even race as traits that can be masked). In Lyng v. Castillo, 91 L. Ed. 2d 527 (1986), the Court framed the inquiry as whether the class of people in question "exhibit[s] obvious, immutable, or distinguishing characteristics that define them as a discrete group." Id.

^{27/} Williams & Weinberg, supra n. 25, at 1987.

at 533 (emphasis added). Gay people as a group certainly meet the criterion of discreteness. See L. Tribe, American Constitutional Law 1616 (1988).

Nevertheless, the degree to which an individual controls his or her acquisition of a trait and the relative ease or difficulty with which a trait can be changed, are relevant to a determination of suspectness. See, e.g., Mathews v. Lucas, 427 U.S. 495, 505 (1976). Research indicates that sexual orientation develops at a very early age, perhaps by the age of six and certainly by early adolescence. "Causes" have not been reliably identified, and both biological^{28/} and socio-environmental^{29/} explanations have proved very elusive. Indeed, no consensus about causation has emerged. The only consistent findings are that homosexuals have many more and much stronger sexual fantasies about members of their own sex, and that these fantasies usually appear during childhood and early adolescence.^{30/}

^{28/} See Ricketts, Biological Research on Homosexuality: Ansell's Cow or Occam's Razor? 9 J. Homosexuality 65 (1984); Meyer-Bahlberg, Homosexual Orientation in Women and Men: A Hormonal Basis, in the Psychobiology of Sex Differences and Sex Roles 105-130 (Parsons ed. 1980).

^{29/} See A. Bell, M. Weinberg and S. Hammersmith, Sexual Preference: Its Development in Men and Women (1981).

^{30/} Storm, Theories of Sexual Orientation, 38 J. Personality and Soc. Pathology 783 (1980).

In such circumstances -- where sexual orientation is acquired at a very early age -- it makes little sense to argue that the trait is voluntarily acquired.

Once established, homosexual orientation is highly resistant to attempts to change it. Researchers generally agree that -- at most -- the sexual orientation of only a small fraction of homosexual people who are highly motivated to change has been or can be modified, even through extensive attempts at therapy.^{31/} "Failure" rates for such therapy are high. Moreover, the reliability of the claimed "change" over time -- even in that small group for which changes have been claimed -- has been called into question. Thus, at a minimum, the majority of homosexuals are unable to change their sexual orientation, even if they were to wish to do so.

Furthermore, it is ethically questionable, from the point of view of a practitioner, to seek to alter through therapy a trait that is not a disorder and is extremely important to individual identity.^{32/} Indeed,

31/ See A.D. Martin, The Emperor's New Clothes: Modern Attempts to Change Sexual Orientation, in Innovations in Psychotherapy With Homosexuals (Hetrick & Stein eds. 1984); Coleman, Changing Approaches to the Treatment of Homosexuality: A Review, in Homosexuality, *supra* note 12, at 81-88; Marmor, Clinical Aspects of Homosexuality, in Homosexual Behavior: A Modern Reappraisal 277 (Marmor ed. 1980).

32/ See Davison, Politics, Ethics and Therapy for
(Footnote Continued)

because psychologists generally agree that psychological adjustment is positively correlated with openness about one's sexual orientation, and maladjustment is positively correlated with masking of sexual orientation,^{33/} many clinicians also believe that "change of orientation therapy programs should be eliminated."^{34/}

Finally, as observed in the panel opinion, amicus agrees that it is abhorrent for government to penalize an individual for possessing a trait so important to her or his identity and over which the individual has little or no meaningful control. Watkins, 837 F.2d at 446.^{35/}

D. The Army's Regulations Stigmatize Homosexuals and Encourage Gay Soldiers to Conceal Their Homosexuality, Which May Be Harmful to Their Mental Health.

The regulations at issue are not merely the product of prejudice; together with other laws and

(Footnote Continued)

Homosexuality, in Homosexuality, supra n. 12, at 89-98; Malyon, Psychotherapeutic Implications of Internalized Homophobia in Gay Men, in Homosexuality and Psychotherapy: A Practitioners Handbook of Affirmative Models 59 (Gonsiorek ed. 1982).

33/ Bell & Weinberg, supra n. 16, at 217-228.

34/ Davison, supra n. 32, at 97.

35/ Because this case involves homosexual orientation, not sexual conduct, it differs fundamentally from Bowers v. Hardwick, 92 L. Ed. 2d 140 (1986). The comments of the dissent in that case, which recognized the important role sexuality plays in individual identity, see, e.g. id. at 155 (Blackmun, J., dissenting), are still more compelling in the present circumstances.

regulations outlawing or penalizing homosexuality they perpetuate and give rise to new prejudice and impose real social and psychological costs. In part because they are barred from service in the Nation's military, homosexuals become stigmatized as "deviants,"^{36/} and are viewed in terms of undesirable stereotypes. This process results in and reinforces prejudice -- called homophobia -- against homosexuals by many heterosexual people. Homosexuals develop coping mechanisms, which are common traits in most persecuted groups. These can include denial of membership in the group and self-hatred, hatred of others in the group, and acting out self-fulfilling prophecies about one's own inferiority.^{37/} The great majority of gay people come to terms with their sexual orientation and integrate it into their lives. Studies demonstrate that these homosexual people are the most psychologically well-adjusted. But the small group who fail to do so are more troubled and dysfunctional.^{38/}

^{36/} The term "deviant" as used in the social sciences refers to the social reaction to behavior, not to the intrinsic characteristics of the behavior itself. H. Becker, *Outsiders: Studies in the Sociology of Deviance* (1963).

^{37/} G. Allport, *The Nature of Prejudice* (1954).

^{38/} Homosexuals who have been able to express their homosexuality are psychologically healthier than those who have repressed or hidden it. Bell & Weinberg, supra n. 16; Hammersmith & Weinberg, Homosexual Identity: Commitment,
(Footnote Continued)

The regulations at issue thus stigmatize homosexuals, thereby fostering "internalized homophobia," and other negative psychological conditions.^{39/} They also give reason for gay soldiers to conceal their sexual orientation, thus interfering with their own healthy psychological development.

II. THE ARMY'S SELF-DECLARED RATIONALE FOR EXCLUDING LESBIANS AND GAY MEN IS CONTRADICTED BY SCIENTIFIC RESEARCH

A. The Government May Not Penalize A Group Solely Because Others Are Prejudiced Against It.

It is well established that government may not take action against a protected minority simply because some other group of people is antipathetic to or in disagreement with that minority, or because government fears that the consequences of that antipathy or disagreement will have disruptive effects. Palmore v. Sidoti, 466 U.S. 429, 433 (1984) ("Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them

(Footnote Continued)

Adjustment, and Significant Others, 36 Sociometry 56 (1973); M. Weinberg & C. Williams, Male Homosexuals: Their Problems and Adaptations (1974); Pilard, Psychotherapeutic Treatment for the Invisible Minority, in Homosexuality, supra n. 12, at 99; A.D. Martin, supra n. 31.

39/ See Gonsiorek, Psychotherapeutic Issues With Gay and Lesbian Clients, in 3 Innovations in Clinical Practice: A Sourcebook 73-76 (Keller et al. eds. 1984); Malyon, supra n. 32, at 59-69.

effect"); see also Terminiello v. Chicago, 337 U.S. 1, 4-5 (1948) (protecting minority speech even where that speech "stirred people to anger, invited public dispute, or brought about a condition of unrest"). Rather, it should be the responsibility of government to work to avoid those disruptive effects without penalizing the minority.

In this case, Sergeant Watkins, an exemplary Army officer who was well-liked and respected by his fellow soldiers and by his superiors, 837 F.2d at 1429-1432, and who never sought to conceal his status as a gay man, has been refused reenlistment based on an Army regulation that purports to further six interrelated government interests:

- (1) "the ability of the armed forces to maintain discipline, good order, and morale";
- (2) the "foster[ing of] mutual trust and confidence among members";
- (3) "insur[ing] the integrity of the system of rank and command";
- (4) "facilitat[ing] assignment and worldwide deployment of members who frequently must live and work under close conditions affording minimal privacy";
- (5) "recruit[ing] and retain[ing] members of the armed forces"; and
- (6) "prevent[ing] breaches of security."

Army Regulation 635-200, chapter 15, section 15-2(a) ("Policy": "Homosexuality is incompatible with military service").

But there is no evidence that the presence of Sergeant Watkins in the armed forces would adversely affect

-- or has adversely affected -- any of these interests; to the contrary, psychological evidence as well as the record in this case, refute the Army's rationale for refusing Watkins (and gay people in general) reenlistment. Absent any evidence that the exclusion of lesbians and gay men from the military actually furthers the above-mentioned government interests (except by giving effect to private prejudice), and in the face of scientific and empirical evidence to the contrary, the Army regulations at issue in this case cannot survive constitutional scrutiny. This is true, whether the Court finds that the appropriate level of scrutiny is "rational basis," see City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985), "intermediate," or "strict."

B. Prejudice Against Lesbians and Gay Men in the Army is Likely to Be Reduced By Encouraging Contact Between Homosexuals and Heterosexuals.

The Army service record of Sergeant Watkins is outstanding. Yet, despite his superb performance and excellent evaluations by his superiors, he is being excluded from the Army because the Army believes that the presence of homosexuals in the Army per se harms Army objectives. Upon closer analysis, it becomes clear that the Army is simply trying to avoid the effects of private prejudice against gay people by excluding them. Even if gay people could constitutionally be made to pay the price for the prejudice of others, however, research reveals that contact between

the "prejudiced" class and the "prejudiced-against" class, under circumstances within the control of the Army, reduces prejudice.^{40/} Removal of these regulations would, in time, also largely remove the prejudice that provides the asserted reason for them.

Since the 1940's, a large body of scientific research has been undertaken concerning racial prejudice and the effects of intergroup contact on that prejudice. Some research, discussed below, has focused on the reduction by intergroup contact of anti-gay prejudice, but the scientific literature concerning reduction of racial prejudice has established certain principles that have been shown to apply to intergroup prejudice in general.^{41/}

Scientists studying prejudice have found that under the proper circumstances, prejudice is reduced by bringing the prejudiced and prejudiced-against groups together and putting them in a situation where each group can learn more about the other and the two can develop lasting relationships.^{42/} Conversely, barriers to communication and contact, such as those created by the Army

^{40/} See, generally, Ashmore & Del Boca, Psychological Approaches to Understanding Intergroup Conflicts, in Katz, Towards the Elimination of Racism 73 (1976).

^{41/} See, e.g., Amir, supra n. 19, at 245 (review and analysis of literature).

^{42/} Amir, supra n. 19 (summarizing research).

regulations at issue in this case, tend to exacerbate intergroup hostility. Other criteria within the Army's control, in addition to mere contact, determine whether prejudice will be reduced. These include equality of status, the sharing of common goals, the success of the intergroup effort, institutional support, and the participation by members of both groups in decision-making.^{43/}

Particularly important for present purposes is "institutional support," or the attitude of those in authority toward the prejudiced-against group and discrimination against it.^{44/} If the Army chooses to oppose prejudice, it will recede; if it continues to endorse prejudice through its discriminatory and invidious regulations, it will promote the very conditions it professes it wishes to avoid. Indeed, when it is realized that gay people serve in the Army -- despite the regulations -- in large numbers at present,^{45/} the truly counterproductive quality of the Army's regulations becomes apparent.

^{43/} Id.

^{44/} Id.; Stephan, Intergroup Relations, in II Handbook of Social Psychology 643 (Gardner et al. eds. 1985); Allport, et al., The Effects of Segregation and the Consequences of Desegregation, 37 Minn. L. Rev. 413, 438 (1953).

^{45/} See Harry, supra n. 26.

Several psychological studies have used the military context to analyze the effects of racial desegregation on anti-black attitudes. Id. at 257-258. These studies concluded that racial prejudice in the United States armed forces was markedly reduced by interracial contact. For example, one study analyzed the attitudes of whites and blacks toward integrated army units.^{46/} It found that the strong anti-integration attitudes of white soldiers were markedly reduced for soldiers who served in combat in certain experimental mixed-race units.^{47/} Further, it was found that many soldiers (white and black) who commented on their attitudes toward racial separation accepted "separation out of deference to the presumed customs and prejudices of white people."^{48/} Of course, with integration of the armed forces after President Truman's Executive Order 9981, and the subsequent invalidation of racial separation by the Supreme Court beginning with Brown v. Board of Education, it has become popularly recognized that the stereotypes which underlay the Army's discrimination against blacks are

^{46/} Stouffer, et al., The American Soldier 566-599 (1949).

^{47/} Id. at 595-599.

^{48/} Id. at 572, 573-577.

utterly false and that only private prejudice caused the Army to support racial separation for so long.^{49/}

Several studies of prejudice against homosexual people suggests that the "intergroup hypothesis" -- the prejudice-reducing effect of intergroup contact -- developed with other types of intergroup prejudice is applicable to prejudice based upon sexual orientation. As noted, exposure to information about lesbians and gay men often leads to a reduction in anti-gay prejudice.^{50/} Similarly, people who know someone who is openly gay have more favorable attitudes toward gay people than people who do not.^{51/} Finally, a recent study suggests that contact with homosexual people not only lessens heterosexual's negative attitudes toward gay men and lesbians, but also significantly improves the ability of heterosexuals to work effectively with homosexual people.^{52/} The record in this case, full as it is with superiors' commendations of Sergeant Watkins with full

^{49/} See, e.g., Ambrose, supra n. 25; Stillman, Negroes in the Armed Forces, 30 Phylon 139, 142 (1969) ("Better unit morale and better unit strength were observed as well by many professional soldiers after integration").

^{50/} See Herek, Beyond "Homophobia", supra n. 18, at 13.

^{51/} Schneider & Lewis, supra n. 20, at 16-20, 59-60.

^{52/} J. Rudolph, The Effects of a Multimodal Seminar on Mental Health Practitioners' Attitudes Toward Homosexuality, Authoritarianism, and Counseling Effectiveness (unpublished dissertation, Lehigh University 1988) (on file with amicus APA - available upon request).

knowledge of his sexual orientation, stands as a compelling further witness to this principle.

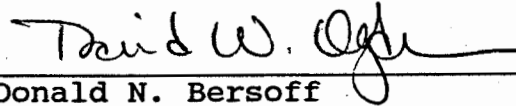
C. There Is No Rational Basis For the Army's Counterproductive Exclusion of Gay People

As with its policy of racial separation, then, the Army's blanket exclusion of gay soldiers is irrational and counterproductive. It compels the many gay men and women already in the armed forces to act in ways unbeneficial to themselves and the armed forces, and deprives the Nation of the services of fine, able citizens like Sergeant Watkins. To achieve its goal of recruiting and retaining high quality troops, the Army should base personnel decisions on merit, not sexual orientation; to reduce whatever prejudice does exist against gay soldiers, the Army should encourage contact between gay and non-gay soldiers. The history of interracial attitudes in the military, and scientific data and opinion about intergroup prejudice, suggests that such a policy will lead toward accomplishment of the Army's goals, while the present policy defeats the goals it is claimed to advance.

CONCLUSION

For the foregoing reasons, amicus respectfully urges this Court to hold the regulations at issue to be constitutionally invalid.

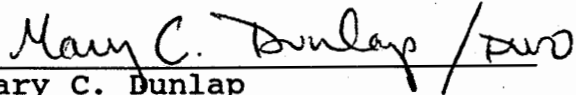
Respectfully submitted,



Donald N. Bersoff
David W. Ogden
JENNER & BLOCK
21 Dupont Circle, N.W.
Washington, D.C. 20036
(202) 223-4400

Of Counsel:

Simon Heller
531A 6th Avenue
Brooklyn, NY 11215
(718) 965-9304



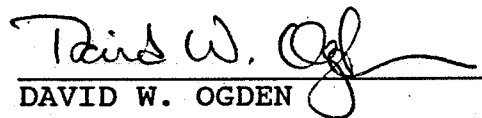
Mary C. Dunlap
Attorney at Law
1599 Dolores Street
San Francisco, CA 94110
(415) 282-6555

CERTIFICATE OF SERVICE

David W. Ogden, an attorney, certifies that he caused copies of the Motion of American Psychological Association For Leave To File Brief Amicus Curiae and the Brief of Amicus Curiae American Psychological Association In Support of Plaintiff to be served on this 30th day of August 1988, by first-class mail, postage prepaid, upon the persons listed below:

James E. Lobsenz, Esq.
Wolfe, Lobsenz & Cullen
701 Fifth Avenue
49th Floor
Columbia Center
Seattle, Washington 98104

E. Roy Hawkens, Esq.
Appellate Staff
Department of Justice
Civil Division - Room 3127
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530


DAVID W. OGDEN

Dated: August 30, 1988