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Gays in the Military, 1993-1999 Part II [3]

Staff Office-Individual:

Defense Policy-Beardsworth, Richard

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## INTRODUCTION

On February 28, 1994, after extensive hearings in Congress, the enactment of a federal statute, and coordination with Congressional Oversight Committees, the Department of Defense instituted its current policy on homosexual conduct in the military. As required by the federal statute (10 U.S.C. § 654), the DoD policy provides that engaging in homosexual conduct is grounds for discharge from the military. Congress expressly found that service by those who have a propensity to engage in homosexual conduct creates an unacceptable risk to morale, good order and discipline, and unit cohesion, and that the long-standing prohibition of homosexual conduct therefore continues to be necessary in the unique circumstances of military service.

The DoD policy also provides, however, that sexual orientation is a personal and private matter that is not a bar to military service unless manifested by homosexual conduct. It was the sense of Congress that applicants should not be asked about homosexuality as part of the processing of individuals for accession into the Armed Forces. Consequently, under the policy, applicants for military service may no longer be asked about their sexual orientation. Moreover, the services may not initiate investigations solely to determine a member's sexual orientation. Commanders may initiate an investigation only upon receipt of credible information that a service member has engaged in homosexual conduct, i.e., stated his or her homosexuality, committed a homosexual act, or entered into a homosexual marriage.

In April 1997, the Secretary of Defense tasked the Under Secretary of Defense for Personnel and Readiness to conduct a review of how well the Department's policies on homosexual conduct in the military are being applied and enforced. The Department of Defense periodically reviews many of its personnel policies. Since the homosexual conduct policy had been in place for three years, a review was appropriate. Part of the tasking was to review the issues raised in a 1997 report by the Servicemembers Legal Defense Network and issues which members of Congress and others had brought to the Department's attention. The purpose of the review was to assure ourselves that we are doing all we can to ensure that our policy is faithfully executed.

The Under Secretary of Defense directed the Principal Deputy Assistant Secretary of Defense for Force Management Policy to head the review. A working group was formed consisting of legal and personnel representatives from each of the Military Services and from the Office of the Secretary of Defense. The working group met several times to evaluate the range of matters raised concerning application and enforcement of the Department's policy on homosexual conduct in the military.

Subsequently, senior representatives from each of the Services met with senior legal and personnel officials in the Office of the Secretary of Defense on several occasions to discuss policy implementation details. In addition, discussions were held on the Services' handling of individual incidents, their conduct of individual investigations and their processing of individual separation cases which were cited to the Department of Defense as possibly non-compliant with

the Department's policy. The Services provided Office of the Secretary of Defense staff with selected case files, including commander directed investigations, records of administrative discharge hearings, and Inspector General investigations. Each such matter was carefully reviewed. New issues and cases brought to the attention of the Department between April 1997 and February 1998 were also reviewed.

The Defense Manpower Data Center was also tasked to provide various statistics about discharges based on homosexual conduct for Fiscal Years 1980 through 1997. The complete Fiscal Year 1997 statistics provided in this report were not available and verified by the Services until February 1998.

Proper implementation of the policy on homosexual conduct has been a high priority at the Department of Defense since the policy was instituted. The balance that the policy strikes between the prohibition of homosexual conduct in the military and the privacy rights of our service members has posed a challenge to the Services. Commanders must enforce the statutory ban on homosexual conduct while at the same time respecting the limits that the policy imposes on investigations of such conduct. Secretary Cohen has strongly stated that harassment or threats of violence against service members will not be tolerated; that fact finding inquiries into homosexual conduct may be initiated only when a commander has received credible information that there is a basis for discharge; that fact finding inquiries must be limited to the factual circumstances directly relevant to specific credible information received; and that fact finding inquiries must not be unduly intrusive.

This report presents the major conclusions of the review as well as a discussion of many of the matters considered in reaching those conclusions. In order to protect the privacy of current and former service members, this report does not discuss individual cases by name.

## SUMMARY OF FINDINGS

### I. Data on Discharges for Homosexual Conduct

The review examined the available statistical data concerning homosexual conduct discharges and found that the number of service members discharged for homosexual conduct has in fact risen since the new policy became effective in 1994. We believe that this increase is cause for some concern, although it continues to be an extremely small percentage of the total force. The review did not provide a complete explanation for the increase, but several facts did emerge upon closer analysis of the discharge data.

First, we found that the large majority of the discharges for homosexual conduct are based on the statements of service members who identify themselves as homosexual, as opposed to cases involving homosexual acts. The Services believe that most of these statement cases -- although not all of them -- involve service members who voluntarily elected to disclose their sexual orientation to their peers, supervisors or commanders. The increase in the number of

discharges for homosexual conduct since Fiscal Year 1994 is attributable to this increase in statement cases. Discharges for homosexual acts and marriages have declined by 20 percent over the past three years. Second, most of those discharged under the policy are junior personnel with very little time in the military, and most of the increase in discharges for homosexual conduct has occurred in this sector. The number of cases involving career service members is relatively small. Third, the great majority of discharges for homosexual conduct are uncontested and are processed administratively. Finally, more than 98 percent of all members discharged in Fiscal Year 1997 under the policy received honorable discharges, general discharges under honorable conditions or uncharacterized discharges. (Separations of enlisted members in their first 180 days of military service are generally uncharacterized.) Discharges under other than honorable conditions or courts-martial for consensual homosexual conduct are infrequent and have invariably involved aggravating circumstances or additional charges.

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-20%  
for  
acts

## II. Application and Enforcement of the Homosexual Conduct Policy

As noted above, Department of Defense policy specifies that commanders may initiate investigations of suspected homosexual conduct only after receiving specific, credible information concerning the conduct of the service member in question. In the cases reviewed, we identified only isolated instances in which inquiries were made without the requisite factual basis, or in which the scope of an investigation was expanded in a way that was inconsistent either with the express terms of the policy or with its spirit. We concluded that concerns that there have been widespread "witch hunts" against suspected homosexuals and that there have been numerous other abuses in the course of investigations are unfounded, and Secretary Cohen has strongly emphasized that such abuses will not be tolerated.

Although we conclude that the Department's policy on homosexual conduct is generally being implemented properly, a number of areas were identified in which the policy could be usefully clarified or implementation could be otherwise enhanced. Steps have already been taken to address some of these issues. For example, last March, former Under Secretary of Defense Dorn issued a directive providing guidance on how threats against alleged homosexuals in the Armed Forces should be investigated. As explained below, this guidance made clear that the report of a threat should result in the prompt investigation of the threat itself, that investigators must not solicit allegations concerning the sexual orientation of the threatened member, and that the report of a threat alone is not credible information and is not a basis to initiate an investigation against the victim. The Department has also eliminated obsolete enlistment forms that could have resulted in improper questions by military recruiters.

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## III. Recommendations

We recommend that the Department take action in several areas to address other concerns that have been raised with the implementation of the policy. These areas include:

- the use of pretrial agreements, or "plea bargains," to obtain evidence of consensual homosexual conduct;
- the scope of investigations in "coming out" cases, including cases where recoupment of financial benefits is at issue;
- the importance of consultation with higher headquarters before initiating investigations into alleged homosexual conduct;
- the need to reissue and expand the directive guidance issued by former Under Secretary Dorn concerning threats against service members based on their alleged homosexuality; and
- the need to ensure that the training of those charged with enforcing the Department's homosexual conduct policy is effective.

We believe that these are areas in which clear guidance to the field will be of significant benefit in ensuring a fair and even-handed application of our policies.

## DISCUSSION

### I. Statistics on Homosexual Conduct Discharges

#### A. General Statistics

Statistics on homosexual conduct discharges both before and after the current policy was instituted were studied in detail. Table No. 1 sets out the total number of service members discharged for homosexual conduct in each year since 1980, and the percentage of the personnel strength of the Armed Forces that these numbers represent. Although the trend from the early 1980s to the early 1990s reflected gradually decreasing numbers and rates of discharges, culminating in a historic low in Fiscal Year 1994, both the number and rate of discharges for homosexual conduct have increased each year since that time. Whereas 597 service members were discharged for homosexual conduct in 1994, representing 0.037 percent of the total force, 997 members were discharged in Fiscal Year 1997, which represented 0.069 percent of the total force. While these numbers still remain much lower than the numbers prevalent in the early 1980s and represent a smaller percentage of the total military population than in the 1980s, the consistent upward trend from 1994 to 1997 raises questions about how our policy is working in practice.

Some of the increase in the number of individuals discharged for homosexual conduct, as compared to the pre-1993 numbers, is attributable to changes in counting methods instituted by the Air Force since the new policy was implemented. Under the former policy, Air Force recruits who answered "no" when asked if they were homosexual on the enlistment forms in use at that

time, and then subsequently declared their homosexuality early in their service, were discharged for "fraudulent enlistment" rather than for homosexual conduct. Under the new policy, however, questions concerning homosexuality are no longer permissible and are no longer included on enlistment forms. Thus, Air Force members who during their first six months of military service, state that they are homosexual are now discharged on the basis of homosexual conduct, rather than on the basis of a "fraudulent enlistment." This change in counting methods by the Air Force makes the post-1993 numbers higher than they would have been under the old system. This change, however, does not explain the increase in homosexual discharges that has occurred since 1993.

In an effort to gain a better understanding of this issue, we closely studied the available information concerning the nature of homosexual discharge cases last year. This review revealed that more than 80 percent of the discharges for homosexual conduct in Fiscal Year 1997 were "statement" cases, i.e., cases where the service member made a statement that he or she was homosexual, as opposed to homosexual act or marriage cases. (See Table No. 2.) The Services believe that a large majority of the "statements" cases involve service members who voluntarily identify themselves to their commanders, supervisors or peers as homosexual. Moreover, 58 percent of those discharged for homosexual conduct in 1997 were junior enlisted personnel with less than one year of military service. (See Table No. 3.) The early discharges occurred most frequently in the Air Force, where 212 of the 309 discharges for homosexual conduct occurred in basic training. Only 68 of the 309 discharges involved members who had completed their first year of service. Across all the Services, more than 80 percent of those discharged had less than four years of service. Finally, most of the increase in the number of service members discharged for homosexual conduct in recent years has occurred among service members who are discharged early in their first term of service.

>80%  
"statement  
cases"

Thus, in the most common case, a discharge under the homosexual conduct policy involves a junior enlisted member who makes a statement declaring his or her homosexuality to a commander, supervisor or peer relatively early in the member's first term of service. This is the type of discharge that has been increasing in recent years. Because extensive inquiries or investigations are not conducted in most of these cases, the reasons for this increase are not known and would be difficult to ascertain. It is possible that the number of discharges could have increased somewhat as a result of the fact that applicants are no longer asked about their sexual orientation when enlisting in the Armed Forces.

It bears mentioning that notwithstanding the recent increases, the number of discharges for homosexual conduct is a very small percentage of total discharges. For example, in the first year of military service, where discharge for homosexual conduct is most frequent, such discharges represented only seven tenths of one percent of the total discharges of members in their first year of service in Fiscal Year 1997. Increasing involuntary discharge rates -- whether for homosexual conduct or for any other reason -- are a cause for concern. We saw no evidence, however, that the increases that have occurred in separations based on homosexual conduct indicate that our policy is not being properly or fairly implemented.

## B. Statistics on Women

The statistics on homosexual conduct discharges indicate that women have been discharged under the policy at rates that exceed their representation in the force. Women made up just over 13 percent of the military strength of the Services but accounted for 29 percent of homosexual conduct discharges in Fiscal Year 1996. In Fiscal Year 1997, the relative number of women discharged for homosexual conduct was down to 22 percent of the total, with the representation of women increasing to nearly 14 percent of the force.

The reasons for the gender disparity in homosexual conduct discharges are unknown. It has been argued that women are sometimes accused of being homosexual in retaliation for their reporting of sexual harassment or other misconduct, and therefore are discharged in greater numbers than men. In reviewing the complaints that were received last year, we found very few specific instances in which women were reportedly accused of being homosexual in retaliation for their reporting of sexual harassment or other misconduct, but could not substantiate any instance where a commander's investigation improperly targeted the victim of sexual harassment rather than the perpetrator.

Nonetheless, it is critical that military service women feel free to report sexual harassment or threats without fear of reprisal or inappropriate governmental response. As discussed below, we recommend that the Department reissue guidance to make clear that when sexual harassment is reported, the focus of the investigation must be on the harassment or threat.

## II. Investigations of Homosexual Conduct

Although extensive investigations of homosexual conduct are the exception rather than the rule, there are a significant number of cases in which such investigations have been conducted. Based on the cases reviewed, we concluded that the vast majority of investigations that have occurred have been properly initiated, i.e., an investigation has been opened only after the commander had determined that there was credible information that the member had engaged in homosexual conduct.

We concluded that many of the criticisms made last year about improper initiation of investigations reflect a misunderstanding of the Department's policy. In practice, credible information has sometimes been provided to commanders in ways that service members might not have expected would occur, or has been based on communications or behavior that the service member might have expected would remain private. For example, current or former partners, roommates, or unrelated third parties have sometimes come forward on their own to report information or evidence of homosexual conduct to commanders against the wishes of the service member in question. Photographs or written communications that evidence homosexual conduct have sometimes been revealed to civilians who then brought this evidence to the attention of a commander, without any inquiry having been conducted by the commander. Credible information has also been incidentally discovered in the course of proper, entirely

unrelated criminal or disciplinary investigations of the member or of others. It is not a violation of Department policy for a commander to initiate an investigation when information has been reported in any of these circumstances, provided that the information received is credible. Indeed, because federal law requires that those who engage in homosexual conduct must be discharged from the military, commanders are obligated to investigate whenever they receive credible evidence of homosexual conduct.



We also concluded that, for the most part, the investigations that have been initiated have been conducted properly. Allegations of widespread abusive investigatory practices have not been substantiated.

However, in reviewing the cases referred to our attention, we concluded that three investigations did not fully comply with Department policy. In two of those cases investigators asked service members questions concerning their sexual orientation without credible information or without the requisite determination by a commander that credible information was present or an investigation against a service member was improperly expanded because investigators asked for the identities of others who may have engaged in homosexual conduct. In one of these cases, there was a failure to properly advise service members of their rights prior to being questioned. The recommendations set out below pertaining to consultation and to the training of investigators and others charged with implementing the homosexual conduct policy should help to preclude further errors of the type we noted.

3 only cases identified

We concluded, however, that the instances in which improper practices have been identified in homosexual conduct investigations were isolated occurrences. The few errors that were made were generally committed by investigators rather than by commanders. Still, such situations are unacceptable. The Services are committed to proper implementation of the policy and are working hard to ensure that both commanders and investigators understand and abide by the limits on homosexual conduct investigations.

The Military Service representatives on the working group indicated that it has become common practice for installation judge advocates to consult with more senior, more experienced judge advocates in higher headquarters legal offices for advice in those cases involving more complex issues or investigations. As noted, the Services reported that the vast majority of homosexual discharge cases involved no or minimal investigation. In many cases, where a service member had informed his or her commander or supervisor of his or her homosexuality, any ensuing investigation usually consisted of only limited questioning of the service member. As a result, installation-level attorneys have had little opportunity to build practical expertise in providing advice on more complex investigations related to the homosexual conduct policy. We recommend that the Department issue guidance clarifying that consultation with higher headquarters legal offices is recommended before initiating investigations into alleged homosexual conduct.

### III. Threats Against Suspected Homosexuals

Perhaps the most troubling allegation addressed by the working group was reported threats against, or harassment of, suspected homosexuals in the military. Concerns have been expressed that suspected homosexuals in the Services have been harassed or threatened with violence by other service members and that service members have been reluctant to report such harassment or threats for fear that their commanders would launch investigations against them for homosexual conduct.

Of the cases we reviewed, we found four cases in which anti-gay threats or harassment directed towards specific individuals were reported by service members. We found that, in those cases in which service members complained to their commanders, the commanders promptly took appropriate actions in response to the reported threat or harassment and did not target the victim. In two cases the threats took the form of anonymous notes and investigators could not identify those who were responsible.

The Department has been concerned about the possibility that service members may sometimes not report anti-gay threats or harassment for fear of being targeted with an investigation. In March 1997, the Under Secretary of Defense for Personnel and Readiness issued directive guidance designed to make clear that service members must be able to report harassment or threats free from fear of harm, reprisal, or inappropriate or inadequate governmental response. The guidance provides that the report of harassment or a threat should result in the prompt investigation of the threat itself, and that investigators should not solicit allegations concerning the sexual orientation or conduct of the threatened person. If, during the course of an investigation, information is received that the service member has engaged in homosexual conduct, commanders are directed to consider carefully the source of that information and the circumstances under which it was provided in assessing its credibility. The fact that a service member reports being threatened because he or she is alleged to be a homosexual shall not in itself constitute credible information justifying an investigation of that service member. During the course of the review, it was discovered that there were instances where the effective dissemination of the Under Secretary's directive guidance could not be documented. Also, the Under Secretary's directive does not expressly make clear that, in addition to threats, harassment of service members based on their alleged or presumed sexual orientation is unacceptable, and that service members who engage in such conduct will be held accountable. Since harassment or threats of violence against our service members will not be tolerated, we recommend that the memorandum be reissued by the Under Secretary and widely distributed to the field.

#### IV. Special Issues Concerning the Homosexual Conduct Policy

##### A. Selective Prosecution

It has been alleged that the Services have criminally prosecuted service members for consensual homosexual misconduct but have not prosecuted consensual heterosexual misconduct. We found no evidence to support this allegation.

The Department's policy is that administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial, when appropriate. In accordance with this policy, the vast majority of homosexual conduct discharges have been processed administratively. Most cases have been uncontested and resulted in honorable discharges. According to the Services, the cases in which service members have been criminally prosecuted for homosexual conduct have involved aggravating circumstances such as fraternization, sex with minors or sex for compensation, lack of consent, or additional charges against the individual.

##### B. Pretrial Agreements

One issue that has arisen concerns the use of pretrial agreements to obtain information concerning homosexual conduct. In what is, to our knowledge, a unique case a service member who was being prosecuted for homosexual rape offered, in exchange for a limitation on his sentence, to provide the names of others in the Armed Forces with whom he had engaged in consensual homosexual acts. The service member claimed to have information concerning an officer who had been engaging in homosexual acts with a number of young enlisted men under circumstances which also constituted fraternization. Both fraternization and the commission of the sexual acts are violations of the UCMJ. The convening authority accepted the offer of a pretrial agreement and obtained evidence concerning the officer as well as several others with whom the service member had engaged in homosexual acts. Investigations ensued, and the officer who had been identified resigned in lieu of facing a court-martial for fraternization and conduct unbecoming an officer. Other enlisted personnel were administratively discharged.

Complaints were made that this incident was a violation of the Department's policy limiting investigations of homosexual conduct. An inspector general investigation was conducted which concluded that no Department of Defense regulation or policy prohibited the convening authority from entering into a pretrial agreement and subsequently investigating those members who were alleged to have had engaged in homosexual acts.

Nonetheless, we concluded that agreeing to limit or reduce the sentence of a service member charged with serious criminal offenses in return for information concerning the consensual homosexual conduct of others is inappropriate in most cases. Pursuant to Department of Defense regulations, homosexual conduct cases are generally processed administratively and do not warrant criminal prosecution. Under our policy, we believe that it is generally

inappropriate to agree to limit or reduce the sentence of a criminal defendant in order to obtain information that will not result in a court-martial. Moreover, Department of Defense regulations provide that criminal investigations of any type of adult private consensual sexual misconduct should be limited to the factual circumstances directly relevant to the specific allegations. Reducing a criminal sentence in order to obtain more allegations and thereby expand an investigation is inconsistent with the spirit of this policy.

For these reasons, we recommend that the Department issue additional guidance to make clear that pretrial agreements should generally not be used to obtain information on consensual sexual conduct. Our view is that such agreements should not be employed unless the conduct that the accused offers to report would warrant criminal prosecution. In determining whether to accept such an agreement, the convening authority should take into account the seriousness of the crime with which the accused has been charged.

### C. Health Care Providers/Chaplains

Another matter we considered was the use of statements made by service members to military health care providers and chaplains. It has been alleged that Department of Defense doctors, psychotherapists and chaplains are required to, and do, disclose confidential communications concerning homosexual conduct to commanders.

We found that none of the Services require health care professionals to report information provided by their patients unless, in the judgment of the health care professional, it is necessary to do so in order to protect the patient or to ensure the safety or security of military personnel or the accomplishment of the military mission. Moreover, Service representatives were able to identify only one case in which a military doctor may have, without the patient's consent, reported to a commander that one of his patients had stated that he was homosexual.

It is, however, important to bear in mind that there is a fundamental distinction between the physician/patient relationship in the military context and that in the civilian context. There is currently no physician-patient privilege for communications of any kind between service members and their military doctors because military doctors must remain free to report information on military necessity grounds. Of course, the lack of a privilege does not mean that doctors must report information provided by their patients (including information concerning homosexual statements or acts) to commanders, but that they may do so if they deem it appropriate under the circumstances. Also, we note that the Department has proposed the issuance of an Executive Order that would change the Manual for Courts-Martial to recognize, for the first time, a limited psychotherapist-patient privilege in proceedings under the UCMJ, with exceptions for military necessity and other special circumstances.

A military chaplain's privilege already exists; we are aware of no case in which a military chaplain has improperly reported homosexual conduct of a service member in violation of the privilege.

#### D. Recoupment/"Coming Out" Cases

We also considered the matter of the recoupment of benefits from service members who are discharged for homosexual conduct. It has been alleged that service members who acknowledged to their commanders that they were gay and were subsequently discharged were unfairly required to repay benefits that had been provided to them in connection with their service.

Several different statutes authorize recoupment when a service member does not serve the full period of active duty that he or she had agreed to as a condition of receipt of financial assistance or benefits. Pursuant to these statutes, the Services may seek to recover educational assistance (e.g., ROTC, military academy, or law or medical school tuition), bonuses (e.g., reenlistment bonuses), or special pays (e.g., for medical officers) from service members who, for whatever reason, fail to complete obligated terms of service. These statutes authorize recoupment of funds from service members who are discharged for a wide variety of reasons, not just those processed under the homosexual conduct policy.

As a matter of policy, the Department has stated that homosexual conduct constitutes a basis for recoupment if it is punishable under the UCMJ or if an other than honorable discharge is authorized under the circumstances. Statements acknowledging homosexual orientation generally do not provide a basis for recoupment unless it is expressly determined that the service member made the statement for the purpose of seeking separation from the military. For example, there have been cases in which medical and law school students, whose education had been financed by the government in return for a commitment to military service, made statements of homosexuality shortly after graduation. In such circumstances, if it is determined that the service members who had received taxpayer funds were not acting in good faith, our policy authorizes recoupment in order to protect the public purse from abuse.

Allegations have also been made that commanders sometimes conduct unnecessary and intrusive investigations of service members who "come out" as gay and do not contest separation. In particular, it has been argued that commanders often conduct needless investigations for the purposes of seeking recoupment, rather than taking statements of homosexuality at face value.

The decision whether to initiate an investigation when a service member acknowledges his or her homosexuality and does not contest separation has generally rested with the individual commander. We concluded that, in most of these cases, little or no investigation should be conducted. As we have noted above, however, it is appropriate in some instances for a commander to undertake an investigation to determine whether recoupment of financial benefits is warranted. In other cases, commanders may properly initiate investigations of service members who "come out" because of a concern that the service member's statement was fabricated in an effort to avoid a deployment or a service obligation.

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determined  
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We believe that the decision to initiate an investigation in a "coming out" case inevitably depends to a large extent on the facts of the individual case. To ensure appropriate review of such cases, we recommend that the Department issue guidance specifying that prior authorization for investigations in "coming out" cases will be obtained from the Service Secretaries of the Military Departments if the investigation will involve anything other than asking questions of the service member or individuals whom the member names for the purpose of corroboration. This requirement should help ensure that such investigations will not be initiated without careful review and an appropriate basis.

#### E. Enlistment Forms

There have been complaints that the Services (primarily the Coast Guard on the East Coast) continue to employ obsolete enlistment forms promulgated in 1989 that include questions on sexual orientation.

The Department had authorized the continued, temporary use of the older enlistment forms as a cost savings measure. Although recruiters were trained and instructed to mark through the questions on sexual orientation, it is possible that in some instances they neglected to do so. In August 1997, the Department promulgated new recruiting forms, also used by the Coast Guard, that do not include questions on sexual orientation and directed the Services to discard all the old forms. Thus use of obsolete recruiting forms should no longer pose a problem.

#### F. Training

It has also been alleged that the training of service members on the homosexual conduct policy is inadequate.

Each member of the Armed Forces is expressly informed of the Department's policy on homosexual conduct as part of the accession process. Moreover, each of the Services devotes substantial efforts to training their commanders and attorneys on the policy, and in particular, on the limits the policy imposes on investigations of homosexual conduct. Such training is a permanent module for judge advocate officer courses, and regular presentations are made at commander courses and the Service war colleges. It is also a part of many continuing professional military education programs for both officer and enlisted personnel.

In conjunction with the implementation of the homosexual conduct policy, the Department of Defense published training guidance to the Services to assist them in the education of personnel on the policy. The Department directed that the training focus towards commander/leader orientation programs, courses for legal and personnel staff, recruiting and accession programs and professional military education and training. The Office of the Secretary of Defense reviewed and approved the Services' training plans prior to their implementation. In April 1995, the Office of the Secretary of Defense requested Service assessments of the

implementation of training programs. The Service assessments indicated full implementation of training objectives.

Notwithstanding these efforts, we found that some commanders, attorneys and investigators report that they have not received training on the homosexual conduct policy. A lack of familiarity with the policy has likely been a contributing factor in those cases in which the policy has not been fully followed. Proper training of commanders, attorneys and investigators is essential to ensure that the privacy rights of our service members are respected in accordance with the policy. We recommend that the Service Inspectors General make the training of those charged with implementing the homosexual conduct policy--commanders, attorneys and investigators--a specific item of interest for inspection.

## CONCLUSION AND RECOMMENDATIONS

This review was conducted by the Office of the Under Secretary of Defense for Personnel and Readiness in response to the direction of Secretary of Defense Cohen. The objective, as specified by the Secretary, was to determine how well the Department's policies are being applied and enforced.

We conclude that, while the balance that the policy strikes between the prohibition of homosexual conduct in the military and the privacy rights of service members has posed a challenge to the Services, proper implementation of the policy has been a priority and that the policy has, for the most part, been properly applied and enforced. We also believe, however, that there are specific steps that are warranted to enhance the implementation of the policy. Two such steps have been taken in recent months--the directive on how threats against alleged homosexual in the military services are to be handled, and the elimination of obsolete enlistment forms that could have resulted in unwarranted questions.

We recommend the following additional actions:

- First, to help ensure that investigations fully comply with the policy, the Department should issue guidance specifying that consultation with higher headquarters legal officials is recommended before initiating investigations into alleged homosexual conduct.
- Second, the Department should issue additional guidance on the use of pretrial agreements to obtain information on consensual sexual conduct. Since Department of Defense regulations provide that criminal investigations of any type of adult private consensual sexual misconduct should be limited to the factual circumstances directly relevant to the specific allegations, reducing a criminal sentence in order to obtain more allegations and thereby expand an investigation is inconsistent with the spirit of this policy. Therefore, pretrial agreements should take into account the seriousness of the crime with which the service member has been charged and should generally not be employed unless the conduct at issue

would warrant criminal prosecution.

- Third, in response to the concern that intrusive investigations have been conducted in “coming out” cases, our policy should provide that the prior authorization for any substantial investigation in such cases should be established at the Service Secretary level in the Military Departments.
- Fourth, in reissuing the memorandum providing guidelines for investigating threats against service members based on alleged homosexuality, the Department should include language to make clear that harassment of service members based on their alleged or presumed sexual orientation is unacceptable and that service members who engage in such harassment will be held accountable.
- Finally, we recommend that the Department issue guidance directing that Service Inspectors General make the training of all those charged with implementing the homosexual conduct policy—commanders, attorneys and investigators—a specific item of interest for inspection.

As stated above, the Department's policy on homosexual conduct represents a balance of the competing interests of personal privacy and good order and discipline in our Armed Forces. The Office of the Secretary of Defense, the Military Departments and the Services must continue to monitor this policy carefully to ensure that it is implemented properly, effectively and fairly. We believe that the actions recommended above will help ensure that our policy is faithfully executed.

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TABLE I

DISCHARGE FOR HOMOSEXUAL CONDUCT  
FISCAL YEAR 1980-1997

| <u>FISCAL YEAR</u> | <u>TOTAL<br/>DISCHARGED</u> | <u>PERCENT OF<br/>END STRENGTH</u> | <u>APPROXIMATE<br/>NUMBER<br/>PER 10,000</u> |
|--------------------|-----------------------------|------------------------------------|----------------------------------------------|
| 1980               | 1754                        | 0.086%                             | 9                                            |
| 1981               | 1817                        | 0.088%                             | 9                                            |
| 1982               | 1998                        | 0.095%                             | 10                                           |
| 1983               | 1815                        | 0.086%                             | 9                                            |
| 1984               | 1822                        | 0.086%                             | 9                                            |
| 1985               | 1660                        | 0.078%                             | 8                                            |
| 1986               | 1643                        | 0.076%                             | 8                                            |
| 1987               | 1380                        | 0.064%                             | 6                                            |
| 1988               | 1101                        | 0.052%                             | 5                                            |
| 1989               | 996                         | 0.047%                             | 5                                            |
| 1990               | 941                         | 0.046%                             | 5                                            |
| 1991               | 949                         | 0.047%                             | 5                                            |
| 1992               | 730                         | 0.039%                             | 4                                            |
| 1993               | 682                         | 0.040%                             | 4                                            |
| 1994               | 617                         | 0.038%                             | 4                                            |
| 1995               | 757                         | 0.050%                             | 5                                            |
| 1996               | 858                         | 0.058%                             | 6                                            |
| 1997               | 997                         | 0.069%                             | 7                                            |

TABLE II

BASIS FOR HOMOSEXUAL CONDUCT SEPARATIONS BY GENDER  
FISCAL YEAR 1997

| <u>STATEMENT</u> |               |              | <u>ACT/MARRIAGE</u> |               |              |
|------------------|---------------|--------------|---------------------|---------------|--------------|
| <u>MALE</u>      | <u>FEMALE</u> | <u>TOTAL</u> | <u>MALE</u>         | <u>FEMALE</u> | <u>TOTAL</u> |
| 626              | 194           | 820 (82%)    | 147                 | 30            | 177 (18%)    |

**TABLE III**

**SEPARATIONS IN FIRST YEAR OF SERVICE BY YEARS OF SERVICE (YOS)**  
**FISCAL YEAR 1997**

| <b><u>LESS THAN 1 YOS</u></b> | <b><u>LESS THAN 4 YOS</u></b> | <b><u>MORE THAN 4 YOS</u></b> | <b><u>TOTAL</u></b> |
|-------------------------------|-------------------------------|-------------------------------|---------------------|
| 576 (58%)                     | 816 (82%)                     | 181 (18%)                     | 997                 |

DRAFT

Charlie Curtis  
DOE

DATE 3/27/98

FROM: CDR J. DANIEL MCCARTHY, JAGC, USN  
SPECIAL ASSISTANT FOR LEGAL AND LEGISLATIVE  
AFFAIRS TO THE SECRETARY OF THE NAVY  
ROOM 4D730, THE PENTAGON, WASHINGTON, DC  
20350-1000  
TEL: 703-697-6935/614-5067  
AUTOVON: 94-227-6935/224-5067  
FAX: 703-693-5666

TO: Capt Bouchard  
NSCFAX: 202-456-9190OFC PHONE: 202-456-9191COMMENT: Attached FYI  
① Judge Sportin decision (22pp)  
② DOJ Memo re appeal (17pp)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

MAR 11 1998

HENRY MAYER-WHITTINGTON, CLERK  
U.S. DISTRICT COURT

TIMOTHY R. McVEIGH,

Plaintiff,

v.

WILLIAM S. COHEN, et al.,

Defendants.

Civil Action No. 98-116  
Judge Stanley Sporkin

MEMORANDUM OPINION

On March 5, 1998, the Court held a hearing in this case to determine the extent of compliance with this Court's Order entered on January 30, 1998, and on the reasonable award of attorneys' fees.<sup>1</sup> Plaintiff represented to this Court that Defendants are not in compliance with this Court's Order of January 30, 1998. Under this Court's Order, Defendants were "enjoined from taking any adverse action against Plaintiff, including discharging Plaintiff from the United States Navy or otherwise hindering Plaintiff's Naval Service, on the basis of his alleged sexual orientation so long as Plaintiff is in compliance with 10 U.S.C. § 654 and relevant regulations as interpreted by this Court in its January 26, 1998 opinion." Jan. 30, 1998 Order.

It is uncontested that Plaintiff has continued to be in compliance with 10 U.S.C. § 654. Plaintiff contends that "to date, more than a month after the Court's Order," the Defendants have failed to reinstate him in a position commensurate to that which he held prior to his unlawful

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<sup>1</sup> Because additional information is required from Plaintiff's counsel with regard to the reasonableness of the fees, this matter will be heard again by the Court on March 26, 1998.

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discharge. Pl's. March 6, 1998 Memorandum at 1. Plaintiff states that Defendants have, and continue to, "hinder" Plaintiff's Naval Service in violation of the Court's January 30, 1998 Order.

In response, Defendants allege that on February 13, 1998, they made available to Plaintiff three alternative positions, or in military terms, "billets," that were commensurate with Plaintiff's "qualifications, his career progression, the Order of the District Court, and the needs of the naval service." Defs'. Ex. A at 1. While Plaintiff contends that none of the three jobs offered are commensurate with his rank, years of service, and skills, Defendants maintain that they are. Moreover, Defendants allege that this dispute with Plaintiff over reinstatement is beyond the purview of this Court. As it concerns an internal military assignment of duty, Defendants rely upon Orloff v. Willoughby, 345 U.S. 83 (1953), and contend that the issue of redress in this case is a non-justiciable matter.

This Court finds that the Defendants' position is without merit. Orloff does not stand for the proposition that all military assignments of duty are beyond judicial review. Rather, the case stands for a much more narrow proposition that barring a statutory or constitutional violation, the exercise of military discretion is generally non-justiciable. In Orloff, the petitioner had not been given the specialized duties nor the commissioned rank he otherwise would have received as a physician because he failed to avow his loyalty to the United States. The petitioner alleged that he was entitled to such a position by reason of his having been drafted in a specialized category, i.e. medical. He stated that if the Army refused to commission him as a medical officer he was entitled to discharge. The Supreme Court declined to grant *habeas corpus* review on the grounds that Orloff was not entitled to the commission he claimed. The Court reasoned that since there had been no violation of petitioner's rights and since he had been lawfully inducted, it was

without subject matter jurisdiction to review the Army's otherwise discretionary assignment of duty to him.

The case now before this Court is readily distinguishable from Orloff and its progeny as cited by Defendants such as Wilson v. Walker, 777 F. 2d 427, 428 (8<sup>th</sup> Cir. 1985); Schlanger v. United States, 586 F. 2d 667, 672 (9<sup>th</sup> Cir. 1978), cert. denied, 441 U.S. 943 (1979). Unlike those cases, the Court found that Defendants in this case had violated Plaintiff's statutory rights under both 10 U.S.C. § 654 and 18 U.S.C. § 2701 *et seq.* See Jan. 26, 1998 Order. Indeed, while this Court was considering the substantive merits of Plaintiff's claim, Defendants at no time raised the issue of justiciability. If Defendants had wished to challenge the authority of this Court to review a military personnel decision, that was the proper time in which to do so. See Mindes v. Seaman, 453 F.2d 197 (5<sup>th</sup> Cir. 1971).

Given the traditional deference accorded to military affairs, courts are required to balance all competing interests in reviewing internal military determinations. See *id.* Where the military has violated a constitutional right, or as in this case, a federal statute, or its own regulations, the military is clearly subject to judicial review. See, e.g., Shaw v. Gwatney, 795 F. 2d 1351, 1357 (8<sup>th</sup> Cir. 1986) ("Determination of individual rights under military regulations is within the role envisioned for courts in Mindes"); Knehans v. Callaway, 403 F. Supp. 290, 293 (D.D.C. 1975) ("Courts will not hesitate to review military action allegedly contrary to statute or regulation," citing Mindes, 453 F. 2d 197), aff'd 566 F. 2d 312 (D.D.C. 1975). The Court was well within its authority to issue the Order it did in this case and has not only the right, but the duty to enforce its compliance.

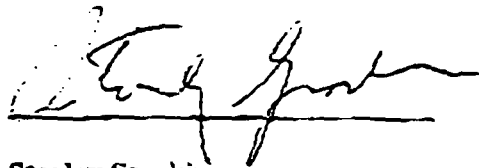
This Court's exercise of its remedial powers is not meant to suggest that deference should

not be afforded to Defendants' actions. Indeed, in the case of Taylor v. Jones, 495 F. Supp. 1285, 1292 (E.D. Ark. 1980) (Arnold, Cir. J., sitting by designation), the court in a similar set of circumstances granted the appropriate amount of deference all the while exercising its remedial authority. The court found that while reinstatement "is a normal incident of individual relief granted to successful . . . plaintiffs," the case was "unusual" because plaintiff was in an active-duty military post. "In deference to the customary leeway given by civilian courts to military authorities," the court did not require that plaintiff be reinstated in the job she previously held. *Id.* Despite its authority to do so, the court stated that it was "loath to intervene in matters of military assignment." *Id.* Nonetheless, the court found that it could well order plaintiff to be given a "comparable" position, one "roughly equivalent in pay, benefits, status, and responsibility" to the post previously held. *Id.* In essence, deference to the military does not deprive courts of their authority to grant equitable relief.

Similarly, while this Court has no intention of making purely personnel decisions for the Navy, it must take steps to ensure that Plaintiff's military service is not adversely affected by the Defendants' misconduct in this case. Accordingly, an evidentiary hearing will be held on March 26, 1998 to determine whether Defendants have complied with this Court's January 30, 1998 Order. An appropriate Order follows.

3/11/98

Date



Stanley Sporkin  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

MAR 11 1998

TIMOTHY R. McVEIGH,

Plaintiff,

v.

WILLIAM S. COHEN, et al.,

Defendants.

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

Civil Action No. 98-116  
Judge Stanley Sporkin

**ORDER**

For the reasons stated above, it is hereby

**ORDERED** that an evidentiary hearing will be conducted on March 26, 1998 at 10:00  
a.m. to determine whether Defendants have complied with this Court's January 30, 1998 Order  
and to decide any contested issues applicable to Plaintiff's application for attorneys' fees.

3/10/98  
Date

Stanley Sporkin  
Stanley Sporkin  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 30 1998

TIMOTHY R. McVEIGH

Plaintiff,

v.

WILLIAM S. COHEN, et al.,

Defendants.

NANCY MAYER-WHITTINGTON, CLERK  
U.S. DISTRICT COURTCivil Action No. 98-116  
Judge Stanley SporkinORDER

At the hearing held by this Court on January 29, 1998 to determine what further litigation would be necessary to resolve this matter, it was agreed by the parties that the present record was sufficient and that the Court could make a final determination. Accordingly, it is hereby

**ORDERED** that Defendants, their officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise, shall be permanently enjoined from taking any adverse action against Plaintiff, including discharging Plaintiff from the United States Navy or otherwise hindering Plaintiff's Naval Service, on the basis of his alleged sexual orientation so long as Plaintiff is in compliance with 10 U.S.C. § 654 and relevant regulations as interpreted by this Court in its January 26, 1998 opinion; and it is

**FURTHER ORDERED** that the parties shall appear before this Court on March 4, 1998 at 10:00 in Courtroom 6 for a status conference to rule on Plaintiff's request for attorneys' fees and costs, with the parties' submissions on these matters being filed before that date, and to

consider any other matters that may be properly before the Court at that time.

11/19/98

Date

6/15 P.M

Stanley Sporkin

Stanley Sporkin  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 26 1998

Clerk, U.S. District Court  
District of Columbia

TIMOTHY R. McVEIGH,

Plaintiff,

v.

WILLIAM S. COHEN, et al.,

Defendants.

Civil Action No. 98-116  
Judge Stanley Sporkin

**MEMORANDUM OPINION**

This matter comes before the Court on Plaintiff's Motion for a Preliminary Injunction. Plaintiff Timothy R. McVeigh, who bears no relation to the Oklahoma City bombing defendant, seeks to enjoin the United States Navy from discharging him under the statutory policy colloquially known as "Don't Ask, Don't Tell, Don't Pursue." See 10 U.S.C. § 654 ("new policy"). In the course of investigating his sexual orientation, the Plaintiff contends that the Defendants violated his rights under the Electronic Communications Privacy Act ("ECPA"), 18 U.S.C. § 2701 *et seq.*, the Administrative Procedure Act ("APA") 5 U.S.C. § 706, the Department's own policy, and the Fourth and Fifth Amendments of the U.S. Constitution. Absent an injunction, the Plaintiff avers that he will suffer irreparable injury from the discharge, even if he were ultimately to prevail on the merits of his claims.

**STATEMENT OF FACTS**

The Plaintiff, Senior Chief Timothy R. McVeigh, is a highly decorated seventeen-year

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veteran of the United States Navy who has served honorably and continuously since he was nineteen years old. At the time of the Navy's decision to discharge him, he was the senior-most enlisted man aboard the United States nuclear submarine U.S.S. Chicago.

On September 2, 1997, Ms. Helen Hajne, a civilian Navy volunteer, received an electronic mail ("email") message through the America Online Service ("AOL") regarding the toy-drive that she was coordinating for the Chicago crew members' children. The message box stated that it came from the alias "boysrch," but the text of the email was signed by a "Tim." Administrative Record ("AR") at 110. Through an option available to AOL subscribers, the volunteer searched through the "member profile directory" to find the member profile for this sender. The directory specified that "boysrch" was an AOL subscriber named Tim who lived in Honolulu, Hawaii, worked in the military, and identified his marital status as "gay." See AR at 111. Although the profile included some telling interests such as "collecting pics of other young studs" and "boy watching," it did not include any further identifying information such as full name, address, or phone number. However, on other occasions, Hajne had communicated with the Plaintiff about his participation in the drive.

Ms. Hajne proceeded to forward the email and directory profile to her husband, who, like Plaintiff, was also a noncommissioned officer aboard the U.S.S. Chicago. The material eventually found its way to Commander John Mickey, the captain of the ship and Plaintiff's commanding officer. In turn, Lieutenant Karin S. Morean, the ship's principal legal adviser and a member of the Judge Advocate General's ("JAG") Corps was called in to investigate the matter. By this point, the Navy suspected the "Tim" who authored the email might be Senior Chief Timothy McVeigh. Before she spoke to the Plaintiff and without a warrant or court order,

Lieutenant Morean requested a Navy paralegal on her staff, Legalman First Class Joseph M. Kaiser, to contact AOL and obtain information from the service that could "connect" the screen name "boysteh" and accompanying user profile to McVeigh. See AR at 13. Legalman Kaiser called AOL's toll-free customer service number and talked to a representative at technical services. Legalman Kaiser did not identify himself as a Naval serviceman. According to his testimony at the administrative hearing, he stated that he was "a third party in receipt of a fax sheet and wanted to confirm the profile sheet, [and] who it belonged to." AR at 14. The AOL representative affirmatively identified Timothy R. McVeigh as the customer in question. See id at 11-15.

Upon verification from AOL, Lieutenant Morean notified Senior Chief McVeigh that the Navy had obtained "some indication[]" that he made a statement of homosexuality" in violation of § 654 (b)(2) of "Don't Ask, Don't Tell." AR at 27-28. In light of the Uniform Code of Military Justice prohibition of sodomy and indecent acts, she then advised him of his right to remain silent.<sup>1</sup> See id. at 28, 30. Shortly thereafter, in a memorandum dated September 22, 1997, the Navy advised Plaintiff that it was commencing an administrative discharge proceeding (termed by the Navy as an "administrative separation") against him. The reason stated was for "homosexual conduct, as evidenced by your statement that you are a homosexual." AR at 107.

On November 7, 1997, the Navy conducted an administrative discharge hearing before a three-member board. At the hearing, the Plaintiff made an unsworn oral statement that explained

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Plaintiff suggests that Lieutenant Morean acted inappropriately somehow when she advised Plaintiff of his rights at this time. The Court finds no merit to this claim. Given the state of the investigation against the Plaintiff, it was appropriate in all respects for Lieutenant Morean to have given Plaintiff a warning.

the substance of his email to Ms. Hajne, and thus by inference confirmed his authorship of the correspondence. See AR at 84. The Plaintiff presented evidence of a prior engagement to a woman and several other heterosexual relationships to rebut the presumption of homosexuality, pursuant to § 654(b)(2). See AR at 82-84. This evidence was rejected by the Board. At the conclusion of the administrative hearing, the board held that the government had sufficiently shown by a preponderance of the evidence that Senior Chief McVeigh had engaged in "homosexual conduct," a dischargeable offense.

The Navy accelerated Plaintiff's separation to take effect at 5:00 a.m. EST on Friday, January 16, 1998. On January 15, Plaintiff commenced this lawsuit and the government postponed his separation until Wednesday, January 20. This Court held a hearing on that Wednesday morning. There, the Navy initially declined to honor this Court's request for an additional amount of time to consider this matter. The Plaintiff was scheduled to be discharged on Friday, January 23. However, on January 22, the Navy extended the time for this Court to render a decision until Tuesday, January 27, when Plaintiff is now scheduled to be discharged barring relief from this Court.

## ANALYSIS

### STANDARD FOR PRELIMINARY INJUNCTION

To prevail on a request for preliminary injunction, the plaintiff must demonstrate 1) a substantial likelihood of success on the merits; 2) irreparable harm or injury absent an injunction; 3) less harm or injury to the other parties involved; and 4) the service of the public interest. See Dendy v. Washington Hosp. Center, 581 F.2d 990, 992 (D.C. Cir. 1978) (footnote omitted); Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir.

1977). For the reasons set forth below, this Court concludes that the Plaintiff is entitled to the relief that he seeks at this time, a preliminary injunction barring his discharge.

### **I. Substantial Likelihood of Success on the Merits**

Plaintiff in this case demonstrates a likely success to prevail on the merits. At its core, the Plaintiff's complaint is with the Navy's compliance, or lack thereof, with its new regulations under the "Don't Ask, Don't Tell, Don't Pursue" policy. Plaintiff contends that he did not "tell," as prescribed by the statute, but that nonetheless, the Navy impermissibly "asked" and zealously "pursued."

In short, this case raises the central issue of whether there is really a place for gay officers in the military under the new policy. "Don't Ask, Don't Tell, Don't Pursue." Although there have been a series of challenges to the constitutionality of the statute that codifies the policy, *see, e.g., Phillips v. Perry*, 106 F.3d 1420 (9th Cir. 1997); *Thomasson v. Perry*, 80 F.3d 915 (4th Cir. 1996), *cert. denied*, 117 S.Ct. 358 (1996); *Richenberg v. Perry*, 97 F.3d 256 (8th Cir. 1996), *cert. denied*, 118 S.Ct. 45 (1996); *Able v. United States*, 88 F.3d 1280 (2d Cir. 1996), civil courts thus far have not interpreted the requirements of the statute assuming its constitutionality. The limits on the Navy's right to investigate sexual orientation and the restrictions on an officer's right to be a gay man or woman in the military—i.e., what it practically means not to ask, not to tell, and not to pursue—have yet to be litigated in the courts.

In 1993, leaders of Congress and the President reached a compromise designed to recognize the important role that officers who happen to be gay play in the defense of our nation. See Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Senate Committee on Armed Services, 103d Cong. 595 *et. seq.* (1993) (statements of General Colin

Powell, Chair of the Joint Chiefs of Staff, Admiral David Jeremiah, Navy, and General Merrill McPeak, Air Force). While the heads of the Armed Forces expressed fear that unit cohesion and military preparedness would be compromised by openly gay conduct, they acknowledged that homosexuality itself was not necessarily incompatible with military service. The statute that came to embody this position, "Don't Ask, Don't Tell, Don't Pursue," was specifically drafted to allow members of the military to live private lives as gay men and women, so long as their sexual orientation remained unspoken.

The facts as stated above clearly demonstrate that the Plaintiff did not openly express his homosexuality in a way that compromised this "Don't Ask, Don't Tell" policy. Suggestions of sexual orientation in a private, anonymous email account did not give the Navy a sufficient reason to investigate to determine whether to commence discharge proceedings. In its actions, the Navy violated its own regulations. See Guidelines for Fact-Finding Inquiries Into Homosexual Conduct, Department of Defense Directive No. 1332.14 ("Guidelines"). An investigation into sexual orientation may be initiated "only when [a commander] has received credible information that there is a basis for discharge," such as when an officer "has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts." Id. Yet in this case, there was no such credible information that Senior Chief McVeigh had made such a statement. Under the Guidelines, "credible information" requires more than "just a belief or suspicion" that a Service member has engaged in homosexual conduct. Id. In the examples provided, the Guidelines state that "credible information" would exist in this case only if "a reliable person" stated that he or she directly observed or heard a Service member make an oral or written statement that "a reasonable

person would believe was intended to convey the fact that he or she engages in or has a propensity or intent to engage in homosexual acts." Id.

Clearly, the facts as stated above in this case demonstrate that there was no such "credible information." All that the Navy had was an email message and user profile that it suspected was authored by Plaintiff. Under the military regulation, that information alone should not have triggered any sort of investigation. When the Navy affirmatively took steps to confirm the identity of the email respondent, it violated the very essence of "Don't Ask, Don't Pursue" by launching a search and destroy mission. Even if the Navy had a factual basis to believe that the email message and profile were written by Plaintiff, it was unreasonable to infer that they were necessarily intended to convey a propensity or intent to engage in homosexual conduct. Particularly in the context of cyberspace, a medium of "virtual reality" that invites fantasy and affords anonymity, the comments attributed to McVeigh do not by definition amount to a declaration of homosexuality. At most, they express "an abstract preference or desire to engage in homosexual acts." See Guidelines. Yet the regulations specify that a statement professing homosexuality so as to warrant investigation must declare "more than an abstract preference or desire"; they must indicate a likelihood actually to carry out homosexual acts. Id.

The subsequent steps taken by the Navy in its "pursuit" of the Plaintiff were not only unauthorized under its policy, but likely illegal under the Electronic Communications Privacy Act of 1986 ("ECPA"). The ECPA, enacted by Congress to address privacy concerns on the Internet, allows the government to obtain information from an online service provider—as the Navy did in this instance from AOL—but only if a) it obtains a warrant issued under the Federal Rules of Criminal Procedure or state equivalent; or b) it gives prior notice to the online

subscriber and then issues a subpoena or receives a court order authorizing disclosure of the information in question. See 18 U.S.C. § 2073 (b)(A)-(B), (c)(1)(B).

In soliciting and obtaining over the phone personal information about the Plaintiff from AOL, his private on-line service provider, the government in this case invoked neither of these provisions and thus failed to comply with the ECPA. From the record, it is undisputed that the Navy directly solicited by phone information from AOL. Lieutenant Karin S. Morean, the ship's principal legal counsel and a member of the JAG corp, personally requested Legalman Kaiser to contact AOL and obtain the identity of the subscriber. See AR at 13. Without this information, Plaintiff credibly contends that the Navy could not have made the necessary connection between him and the user profile which was the sole basis on which to commence discharge proceedings.

The government, in its defense, contends that the Plaintiff cannot succeed on his ECPA claim. It argues that the substantive provision of the statute that Plaintiff cites, 18 U.S.C. § 2703 (c)(1)(B), puts the obligation on the online service provider to withhold information from the government, and not vice versa. In support of its position, Defendants cite to the Fourth Circuit opinion in Tucker v. Waddell, 83 F.3d 688 (4<sup>th</sup> Cir. 1996), which held that § 2703 (c)(1)(B) only prohibits the actions of online providers, not the government. Accordingly, Defendants allege that Plaintiff has no cause of action against the government on the basis of the ECPA.

Under the circumstances of this case, it is unlikely that the government will prevail on this argument. Section 2703 (c)(1)(B) must be read in the context of the statute as a whole. In comparison, § 2703 (a) and (b) imposes on the government a reciprocal obligation to obtain a warrant or the like before requiring disclosure. It appears from the face of the statute that all of the subsections of § 2703 were intended to work in tandem to protect consumer privacy. Even if.

however, the government ultimately proves to be right in its assessment of § 2703(c)(1)(B), the Plaintiff has plead § 2703 (a) and (b) as alternative grounds for relief. In his claim that the government, at the least, solicited a violation of the ECPA by AOL, the Court finds that there is likely success on the merits with regard to this issue. The government knew, or should have known, that by turning over the information without a warrant, AOL was breaking the law. Yet the Navy, in this case, directly solicited the information anyway. What is most telling is that the Naval investigator did not identify himself when he made his request. While the government makes much of the fact that § 2703 (c)(1)(B) does not provide a cause of action against the government, it is elementary that information obtained improperly can be suppressed where an individual's rights have been violated. In these days of "big brother," where through technology and otherwise the privacy interests of individuals from all walks of life are being ignored or marginalized, it is imperative that statutes explicitly protecting these rights be strictly observed.

The government has produced no evidence that would indicate that it would have proceeded without this information from AOL affirmatively linking the email to Senior Chief McVeigh. That the Plaintiff may have made incriminating statements at the subsequent administrative hearing does not bootstrap the Navy out of its legal dilemma of not only violating its own policy, but also a federal statute in its attempt to charge the Plaintiff with homosexuality.

In Plaintiff's case, this Court finds that the Navy has gone too far. The "Don't Ask, Don't Tell, Don't Pursue" policy was clearly aimed at accommodating gay men and women in the military. In effect, it was intended to bring our nation's armed forces in line with the rest of society, which finds discrimination of virtually every form intolerable. It is self-evident that a person's sexual orientation does not affect that individual's performance in the workplace. At

this point in history, our society should not be deprived of the many accomplishments provided by people who happen to be gay. The "Don't Ask, Don't Tell, Don't Pursue" policy was a bow to society's growing recognition of this fact. For the policy to be effective, it has to be implemented in a sensitive, balanced manner. Under the policy as it stands today, gay service members must be permitted to serve their country honorably, so long as they are discrete in pursuing their personal lives.

In this case, the Plaintiff has had an exemplary service record for some seventeen years. Indeed, he has risen in the ranks to become the most senior non-commissioned officer on his ship. His evaluations have been of the highest order. Nothing has been produced before this Court which would in any way suggest that his sexual orientation has adversely affected his job performance. Senior Chief McVeigh's place in the Navy might even be characterized by some to be the very essence of what was hoped to be achieved by those who conceived the policy. The Plaintiff is no less an officer today than he was on January 5, 1993, the day before he was told of his imminent discharge from the Navy because of his sexual orientation.

As this Court stated in Elzie v. Aspin, 897 F. Supp. 1, 3 (1995), it cannot understand why the Navy would seek to discharge an officer who has served his country in a distinguished manner just because he might be gay. Plaintiff's case "vividly underscores the folly . . . of a policy that systematically excludes a whole class of persons who have served this country proudly and in the highest tradition of excellence." *Id.* at 4. Although this case specifically does not reach any of the constitutional issues underscoring the "Don't Ask, Don't Tell, Don't Pursue" policy, see Able v. United States, 968 F. Supp. 850 (1997), the Court must note that the defenses mounted against gays in the military have been tried before in our nation's history — against

blacks and women. See Elzie v. Aspin, 841 F. Supp. 439, 443 (1993). Surely, it is time to move beyond this vestige of discrimination and misconception of gay men and women.

## II. Irreparable Harm

Without this Court's immediate intervention, the Plaintiff will lose his job, income, pension, health and life insurance, and all the other benefits attendant with being a Naval officer. Having served honorably for the last seventeen years, Plaintiff will be separated from a position which is central to his life on the sole ground that he has been labeled a "homosexual," and thus by definition unfit for service. The stigma that attaches to such an accusation without substantiation is significant enough that this Court believes it must grant the injunctive relief sought. In cases nearly identical to this, courts have accordingly granted a preliminary injunction, see Elzie v. Aspin, 841 F. Supp. 439, 443 (D.D.C. 1993) (loss of benefits and "rights as a Marine" constitute irreparable harm); May v. Gray, 708 F. Supp. 716, 719 (E.D.N.C. 1988) (same); see also Saunders v. George Washington University, 768 F. Supp. 843, 845 (D.D.C. 1991); Huynh v. Carducci, 679 F. Supp. 61, 67 (D.D.C. 1988).

## III. Harm to other Parties

In contrast to the serious injury that Plaintiff immediately faces if discharged, there is no appreciable harm to the Navy if Senior Chief McVeigh is permitted to remain in active service. Indeed, the Navy will only be enhanced by being able to retain the Plaintiff's seventeen years of service experience.

## IV. Public Interest

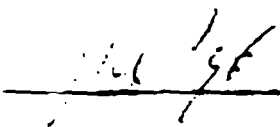
Certainly, the public has an inherent interest in the preservation of privacy rights as advanced by Plaintiff in this case. With literally the entire world on the world-wide web,

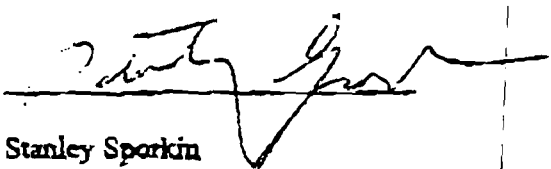
enforcement of the ECPA is of great concern to those who bare the most personal information about their lives in private accounts through the Internet. In this case in particular, where the government may well have violated a federal statute in its zeal to brand the Plaintiff a homosexual, the actions of the Navy must be more closely scrutinized by this Court. It is disputed in the record exactly as to how the Navy represented itself to AOL when it requested information about the Plaintiff. The Defendants contend that Legalman Kaiser merely asked for confirmation of a fax sheet bearing Plaintiff's account. Plaintiff contends, and AOL confirms, however, that the Naval officer "mislead" AOL's representative by "both failing to disclose the identity and purpose [of his request] and by portraying himself as a friend or acquaintance of Senior Chief McViegh's." See AOL Statement on the Matter of Timothy McVeigh, Ct. Ex. 1. At the final injunction hearing, this issue should be fully explored.

The Court believes that when this case is finally determined, it will become clear that the case will be able to be disposed on the basis of the "Don't Ask, Don't Tell, Don't Pursue" policy. This provision draws a fine balance between the interests of gay service members and the Armed Forces. It is a way of permitting gay women and men to serve in the Armed Forces, a right that the military did not provide them prior to the adoption of "Don't Ask, Don't Tell, Don't Pursue."

To make the policy work requires each of the parties to refrain from taking certain actions. Under the provisions of the policy, if the gay member agrees to remain silent about his or her sexual orientation, he or she is permitted to serve. For its part under the policy, the military is required to refrain from asking any of its members about their sexual orientation or pursuing an inquiry into a member's sexual orientation without a reasonable basis in fact. So far, pursuant to the record developed in this case, while Plaintiff complied with the requirements

imposed upon him under "Don't Ask, Don't Tell, Don't Pursue," the Defendant went further than the policy permits. Although Officer McVeigh did not publicly announce his sexual orientation, the Navy nonetheless impermissibly embarked on a search and "outing" mission. Therefore, when this case is finally heard, if the record remains as it is now, the Plaintiff will likely prevail. It is accordingly for this reason that a preliminary injunction will issue. An appropriate order follows.

  
Date

  
Stanley Sporkin  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

TIMOTHY R. McVEIGH

Plaintiff

v.

WILLIAM S. COHEN, et al.,

Defendants.

Civil Action No. 98-116  
Judge Stanley Sporkin**ORDER**

For the reasons set forth in the opinion above, it is hereby

**ORDERED** that good cause having been shown pursuant to Rule 65 of the Federal Rules of Civil Procedure that immediate and irreparable injury and damage will result to Plaintiff before a trial on the merits can be heard and decided, that Plaintiff's Motion for a Preliminary Injunction is **GRANTED**; and it is

**FURTHER ORDERED** that Defendants, their officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise, shall be preliminarily enjoined from taking any adverse action against Plaintiff, including discharging Plaintiff from the United States Navy or otherwise hindering Plaintiff's Naval Service, on the basis of his alleged sexual orientation pending final resolution of Plaintiff's Complaint; and it is

**FURTHER ORDERED** that the parties shall appear before this Court on January 29, 1998 at 10:00 in Courtroom 6 for a status conference, at which time a briefing schedule and date

9

MAR-27-1998 13:57

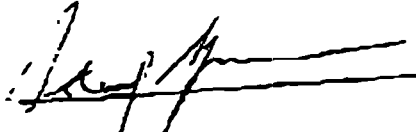
NAVY GENERAL LITIGATION

103 320 0010

for a hearing on final injunctive relief will be determined.

1/2-1/98

Date

  
Stanley Sporkin  
United States District Judge

U.S. Department of Justice  
Civil Division

Washington, D.C. 20530-0001

FWH:GGG:REK:AJSteinmeyer

OPTIONAL FORM 99 (7-90)

## FAX TRANSMITTAL

# of pages =

MAR 25 1998

Tel: (202) 514-3388

Fax: (202) 514-9405

|                                 |                        |
|---------------------------------|------------------------|
| To: <b>ADMIN HUTSON</b>         | From: <b>JG Lynch</b>  |
| Dept./Agency: <b>JAG</b>        | Phone: <b>614-5066</b> |
| Fax: <b>691-4610</b>            | Fax: <b>693-5666</b>   |
| NSN 7540-01-317-7368            | 5099-107               |
| GENERAL SERVICES ADMINISTRATION |                        |

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: Timothy R. McVeigh v. William S. Cohen, Secretary of Defense,  
et al. No. 1:98cv00116 (SS) (D. D.C., January 30, 1998)

TIME LIMITS

The judgment of the district court was entered on January 30, 1998. A notice of appeal is due by March 31, 1998.

RECOMMENDATIONS

The Department of Defense, the Department of the Navy, the Criminal Division, and our Federal Programs Branch recommend for appeal.

I concur.

QUESTIONS PRESENTED

1. Whether, pursuant to the statutory policy regarding military service by homosexuals, the Navy reasonably determined that the plaintiff service member had stated that he is a homosexual when he listed his marital status as gay in an Internet computer profile that is publicly available, but the profile did not contain plaintiff's full name.

2. Whether the DOD guidelines on investigations under the policy regarding service by homosexuals create enforceable rights, and, if so, whether the Navy violated those guidelines because its investigation (a) was not authorized by plaintiff's commanding officer, or (b) proceeded despite a lack of credible evidence that plaintiff had stated that he is a homosexual.

3. Whether the record supports a conclusion that the Navy violated Title II of the Electronic Communications Privacy Act, 18 U.S.C. 2701 *et seq.*, when a Navy paralegal contacted American On Line ("AOL") and AOL confirmed that the author of the Internet profile was the plaintiff, and, if so, whether that violation is a basis for excluding that evidence in plaintiff's administrative discharge hearing.

### STATUTORY PROVISIONS INVOLVED

**18 U.S.C. 2703 provides in relevant part:**

(a) Contents of electronic communications in electronic storage.--A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued pursuant under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) Contents of electronic communications in a remote computing service.--(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection--

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity--

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section [authorizing order for disclosure of electronic communications that are relevant and material to an ongoing criminal investigation];

\* \* \* \*

(c) Records concerning electronic communication service or remote computing service.--(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental agency.

(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of

communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity--

- (i) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;
- (ii) obtains a court order for such disclosure under subsection (d) of this section [authorizing order for disclosure of electronic communications that are relevant and material to an ongoing criminal investigation]; or
- (iii) has the consent of the subscriber or customer to such disclosure.

(C) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, when the governmental entity uses an administrative subpoena authorized by a Federal or State grand jury or trial subpoena or any means available under subparagraph (B).

\* \* \* \*

18 U.S.C. 2707 provides in relevant part:

(a) Cause of action.--Except as provided in 2703(e) [barring action against provider of electronic communication service that provides information pursuant to terms of court order, warrant, subpoena, or certification under this chapter], any provider of electronic communication service, subscriber, or other person aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

(b) Relief.--In a civil action under this section, appropriate relief includes--

- (1) such preliminary and other equitable or declaratory relief as may be appropriate;
- (2) damages under subsection (c); and
- (3) a reasonable attorney's fee and other litigation costs reasonably incurred.

\* \* \* \*

(d) Disciplinary actions for violations.--If a court determines that any agency or department of the United States has violated this chapter and the court finds that the circumstances surrounding the violation raise the question of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department concerned shall promptly

initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee.

\*\*\*

### STATEMENT

Timothy R. McVeigh enlisted in the Navy in 1980. In April 1997, he had attained the rank of Electronics Technician Senior Chief and was assigned to the nuclear submarine USS CHICAGO as the ship's senior noncommissioned officer. McVeigh participated in a volunteer program in which residents of the Chicago area give Christmas gifts to the children of the CHICAGO's crew members. On September 2, 1997, as the CHICAGO was preparing to go to sea, McVeigh sent an email pertaining to this program to Mrs. Helen Hajny. Mrs. Hajny is the wife of one of the other noncommissioned officers of the CHICAGO, and she served as a volunteer "ombudsman" of the CHICAGO. That is, she served as the liaison between the ship's commander and the wives of its crew members. Mrs. Hajny does not receive compensation for her activities and is not a Navy employee.

McVeigh's email to Mrs. Hajny was sent via America On Line ("AOL"). The message gave as the sender's screen name, "Boysrch," and the message itself was signed "Tim." The text of the message discussed their common project:

Hope to get the chance to talk to you today but if not here you go:

If you can we need to get a listing together of all the kids (Name, age, sex) for the 721 club to buy presents for. I will give this list to Mr. Burkheart, who is the one that buys all the presents.

We have the Ombudsman reimbursement forms in and I'm not sure if I sent any home with Ray [Mrs. Hajny's husband] yet but will send some when we come back.

Thats it for now. Have a good one.

Tim

Curious about the screen name "Boysrch," and before she opened the message, Mrs. Hajny utilized an option available to all AOL users and looked in the "member profile directory" to find the "member profile" for the person who had sent the message. The profile that Mrs. Hajny found read:

|              |                  |
|--------------|------------------|
| Member Name: | Tim              |
| Location:    | Honolulu, Hawaii |

Birthdate: Dec 31  
Sex: Male  
Marital Status: Gay  
Hobbies: Driving, boy watching, and collecting pics of other young studs. (send some and i'll [sic] reply)  
Computers: Of course. How else can you download pics.  
Occupation: Military  
Personal Quote: My god, he's got a nice butt. And I know because I'm a booryologist!

Mrs. Hajny told her husband about the email and profile, and he discussed them with a fellow noncommissioned officer on the CHICAGO. The two then spoke to the CHICAGO's commander, who referred the matter to his superior, the deputy commander of Submarine Squadron THREE. The deputy commander asked the squadron's principal legal adviser, JAG Lieutenant Karin S. Morean, to investigate, and he also referred the matter to the squadron commander.

Lieutenant Morean asked a Navy paralegal on her staff, Legalman First Class Joseph M. Kaiser, to "call AOL and find out could we actually connect this screen name and the member name Tim living in Honolulu, Hawaii with a birth date December 31 to Senior Chief McVeigh." Legalman Kaiser then called AOL's toll-free 800 number and spoke with "a gentleman named Owen at Tech Services." Kaiser told Owen that he was "the third party in receipt of a fax sheet and wanted to confirm the profile sheet, who it belonged to." Owen responded by saying that "it came from Hawaii and that it was 'Timothy R. McVeigh' on the billing." Owen did not provide any other information pertaining to McVeigh.

Lieutenant Morean then summoned McVeigh to her office, advised him of his rights, and showed him the email and member profile. McVeigh chose not to make a statement.

2. An administrative discharge proceeding was then commenced against McVeigh for "homosexual conduct, as evidenced by your statement that you are a homosexual." A hearing was held before a three-member board. McVeigh was represented by a JAG attorney.

McVeigh submitted an unsworn statement at the hearing. Under Navy procedures, such an unsworn statement is not subject to cross-examination. In his statement, McVeigh confirmed that he had sent the email to Mrs. Hajny and that the user profile was his. McVeigh stated that "Boysrch" stood for "I'm a boy and searching the web." He also stated that the purpose of the member profile was to solicit responses from other people on the Internet. He explained:

All the stuff that's in there is sort of a trial and error thing. You put it out there and it's kind of, you see what you get back, it's kind of like advertising, like McDonald's \* \* \*

~~Langley, Janice M.~~ → **JOE**

**From:** Hasman, Thomas M.  
**Sent:** Thursday, April 02, 1998 2:57 PM  
**To:** Langley, Janice M.  
**Subject:** FW: Request for Chron File Search [UNCLASSIFIED]

-----Original Message-----

**From:** Hasman, Thomas M.  
**Sent:** Thursday, April 02, 1998 7:35 AM  
**To:** Bouchard, Joseph F.  
**Cc:** @WWD - West Wing Desk  
**Subject:** RE: Request for Chron File Search [UNCLASSIFIED]

Joe,

I came up with one document. A letter to the President from Representative Schroeder et al (Barney Frank included) was logged in on June 24, 93 with the President's reply dated July 15, 1993. I will pull a copy from our vault this afternoon when I return to 379.

-----Original Message-----

**From:** Bouchard, Joseph F.  
**Sent:** Thursday, April 02, 1998 6:55 AM  
**To:** Hasman, Thomas M.  
**Subject:** RE: Request for Chron File Search [UNCLASSIFIED]

Thanks for looking, Tom. The only other keywords that might apply are Barney Frank and "gays in military" (that's the keyword on package 1988 that I'm working now).

**Joe Bouchard**

-----Original Message-----

**From:** Hasman, Thomas M.  
**Sent:** Wednesday, April 01, 1998 8:03 PM  
**To:** Bouchard, Joseph F.; @RECORDS & ACCESS MGMT  
**Subject:** RE: Request for Chron File Search [UNCLASSIFIED]

Records Management has found no responsive documents using "Meinhold" as the research word. If there are any other "keywords" that might apply, please let me know and I will conduct a new search.

-----Original Message-----

**From:** Bouchard, Joseph F.  
**Sent:** Wednesday, April 01, 1998 6:11 PM  
**To:** @RECORDS & ACCESS MGMT  
**Subject:** Request for Chron File Search [UNCLASSIFIED]

Please make me a copy of any NSC packages on the case of Keith Meinhold in the period January 1993 to December 1994. I have been asked to address the Meinhold case in conjunction with package 1988 that I am working now. Thank you for your help.

**Joe Bouchard**

UNCLASSIFIED  
NSC/RMO PROFILE

RECORD ID: 9304738  
RECEIVED: 28 JUN 93 10

TO: SCHROEDER, PATRICIA  
ET AL

FROM: PRESIDENT

CHRON FILE  
DOC DATE: 15 JUL 93  
SOURCE REF:

KEYWORDS: DEFENSE POLICY

CO

PERSONS:

SUBJECT: PRES REPLY TO CONGRESS RE HOMOSEXUALS IN MILITARY

ACTION: FOR DISPATCH

DUE DATE: 01 JUL 93 STATUS: C

STAFF OFFICER: HAHN

LOGREF:

FILES: WH

NSCP:

CODES:

D O C U M E N T   D I S T R I B U T I O N

FOR ACTION

WH STRIPPING DESK

FOR CONCURRENCE

FOR INFO

HAHN

NSC CHRON

COMMENTS:

DISPATCHED BY

DATE

BY HAND

W/ATTCH

OPENED BY: NSMEM

CLOSED BY: NSJEB

DOC 4 OF 4

UNCLASSIFIED

UNCLASSIFIED  
ACTION DATA SUMMARY REPORT

RECORD ID: 9304738

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

|                       |                                  |
|-----------------------|----------------------------------|
| 001 HAHN              | Z 93062810 PREPARE MEMO FOR LAKE |
| 002 LAKE              | Z 93070715 FWD TO PRES FOR SIG   |
| 003 PRESIDENT         | Z 93071413 FOR SIGNATURE         |
| 004                   | X 93071713 PRES SGD LTRS         |
| 004 WH STRIPPING DESK | X 93071713 FOR DISPATCH          |

DISPATCH DATA SUMMARY REPORT

| <u>DOC</u> | <u>DATE</u> | <u>DISPATCH FOR ACTION</u>    | <u>DISPATCH FOR INFO</u> |
|------------|-------------|-------------------------------|--------------------------|
| 004        | 930715      | WH STRIPPING DESK             |                          |
| 004        | 930715      | SCHROEDER, PATRICIA           |                          |
| 004        | 930715      | MARGOLIES-MEZVINSKY, MARJORIE |                          |
| 004        | 930715      | ANDREWS, THOMAS H             |                          |
| 004        | 930715      | BECERRA, XAVIER               |                          |
| 004        | 930715      | FURSE, ELIZABETH              |                          |
| 004        | 930715      | MEEHAN, MARTIN T              |                          |
| 004        | 930715      | EDWARDS, DON                  |                          |
| 004        | 930715      | SCHUMER, CHARLES E            |                          |
| 004        | 930715      | HASTINGS, ALCEE L             |                          |
| 004        | 930715      | WYDEN, RON                    |                          |
| 004        | 930715      | GUTIERREZ, LUIS V             |                          |
| 004        | 930715      | WATT, MELVIN                  |                          |
| 004        | 930715      | HINCHEY, MAURICE D            |                          |
| 004        | 930715      | ABERCROMBIE, NEIL             |                          |
| 004        | 930715      | UNSOELD, JOLENE               |                          |
| 004        | 930715      | MALONEY, CAROLYN B            |                          |
| 004        | 930715      | WASHINGTON, CRAIG A           |                          |
| 004        | 930715      | KENNELLY, BARBARA B           |                          |
| 004        | 930715      | WHEAT, ALAN                   |                          |
| 004        | 930715      | MINETA, NORMAN Y              |                          |
| 004        | 930715      | DEFAZIO, PETER A              |                          |
| 004        | 930715      | PALLONE, FRANK                |                          |
| 004        | 930715      | KOPETSKI, MIKE                |                          |
| 004        | 930715      | PELOSI, NANCY                 |                          |
| 004        | 930715      | SERRANO, JOSE E               |                          |
| 004        | 930715      | WYNN, ALBERT R                |                          |
| 004        | 930715      | NADLER, JERROLD               |                          |
| 004        | 930715      | VELAZQUEZ, NYDIA M            |                          |
| 004        | 930715      | DELLUMS, RONALD V             |                          |
| 004        | 930715      | MORELLA, CONSTANCE A          |                          |
| 004        | 930715      | SHAYS, CHRISTOPHER            |                          |
| 004        | 930715      | BEILENSON, ANTHONY C          |                          |
| 004        | 930715      | COLLINS, BARBARA-ROSE         |                          |
| 004        | 930715      | STARK, FORTNEY H              |                          |
| 004        | 930715      | WOOLSEY, LYNN C               |                          |
| 004        | 930715      | MEEK, CARRIE P                |                          |
| 004        | 930715      | BLACKWELL, LUCIEN E           |                          |
| 004        | 930715      | REYNOLDS, MEL                 |                          |
| 004        | 930715      | FRANK, BARNEY                 |                          |
| 004        | 930715      | YATES, SIDNEY R               |                          |

UNCLASSIFIED

UNCLASSIFIED  
DISPATCH DATA SUMMARY REPORT

RECORD ID: 9304738

| <u>DOC</u> | <u>DATE</u> | <u>DISPATCH FOR ACTION</u> | <u>DISPATCH FOR INFO</u> |
|------------|-------------|----------------------------|--------------------------|
| 004        | 930715      | WATERS, MAXINE             |                          |
| 004        | 930715      | FOGLIETTA, THOMAS M        |                          |
| 004        | 930715      | MILLER, GEORGE             |                          |
| 004        | 930715      | GUNDERSON, STEVE           |                          |
| 004        | 930715      | TOWNS, EDOLPHUS            |                          |
| 004        | 930715      | MINK, PATSY T              |                          |
| 004        | 930715      | MARKEY, EDWARD J           |                          |
| 004        | 930715      | SABO, MARTIN O             |                          |
| 004        | 930715      | CONYERS JR, JOHN           |                          |
| 004        | 930715      | BERMAN, HOWARD L           |                          |
| 004        | 930715      | ENGEL, ELIOT L             |                          |
| 004        | 930715      | BROWN, GEORGE E            |                          |
| 004        | 930715      | OWENS, MAJOR R             |                          |
| 004        | 930715      | CLAY, WILLIAM L            |                          |
| 004        | 930715      | EVANS, LANE                |                          |
| 004        | 930715      | GEJDENSON, SAMUEL          |                          |
| 004        | 930715      | WAXMAN, HENRY A            |                          |
| 004        | 930715      | LANTOS, TOM                |                          |
| 004        | 930715      | LEWIS, JOHN                |                          |
| 004        | 930715      | HARMAN, JANE               |                          |
| 004        | 930715      | MCDERMOTT, JIM             |                          |
| 004        | 930715      | SANDERS, BERNARD           |                          |
| 004        | 930715      | STUDDS, GERRY E            |                          |
| 004        | 930715      | PASTOR, ED                 |                          |
| 004        | 930715      | MCKINNEY, CYNTHIA A        |                          |
| 004        | 930715      | JOHNSTON, HARRY A          |                          |
| 004        | 930715      | OLVER, JOHN                |                          |
| 004        | 930715      | NORTON, ELEANOR H          |                          |
| 004        | 930715      | DEUTSCH, PETER             |                          |

UNCLASSIFIED

THE WHITE HOUSE

WASHINGTON

July 15, 1993

Dear Barney:

I greatly appreciate your writing to express your support for lifting the ban on homosexuals in the military. I have consistently stated my commitment to ensuring that American citizens who want to serve their country should be able to do so unless their conduct disqualifies them from doing so. I do not think people should be disqualified merely on the basis of status. At the same time, I believe that behavior can and should be strictly regulated for the sake of military efficiency.

Secretary of Defense Les Aspin has been working closely with the military and civilian leadership of the armed forces in an effort to develop a fair and workable solution to the very sensitive issue of homosexuals in the military. I will keep your views in mind as I consider his recommendations.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill", written in a cursive style.

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

NATIONAL SECURITY COUNCIL

ID 9304738

REFERRAL

DATE: 17 JUL 93

MEMORANDUM FOR: WH STRIPPING DESK

DOCUMENT DESCRIPTION: TO: SCHROEDER, PATRICIA

SOURCE: PRESIDENT

DATE: 15 JUL 93

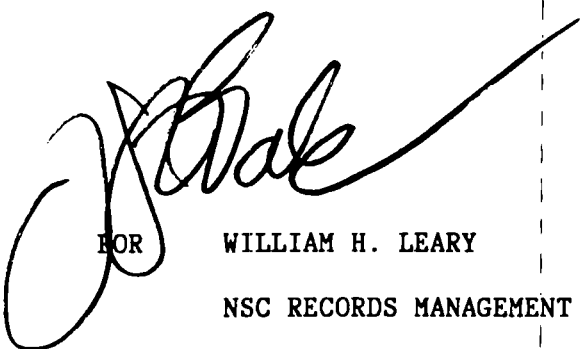
SUBJ: PRES REPLY TO CONGRESS RE HOMOSEXUALS IN MILITARY

---

REQUIRED ACTION: FOR DISPATCH

DUE DATE: 17 JUL 93

COMMENT:



FOR

WILLIAM H. LEARY

NSC RECORDS MANAGEMENT OFFICE

THE WHITE HOUSE  
WASHINGTON

June 14, 1993

33 JUL 14 PM 2:19

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM:

ANTHONY LAKE  
HOWARD PASTER

SUBJECT:

Letters from Representative Nadler and  
Representative Schroeder, et al, on Homosexuals in  
the Military

Purpose

To respond to letters from Representative Nadler and sixty-nine members of Congress asking you to lift the ban on homosexuals in the military.

Background

Representative Nadler argues that the policy of non-discrimination for homosexuals in the military that you set forth in the campaign and at the outset of this Administration is the right policy. He asks that you exercise your powers as Commander-in-Chief to overrule the objections of the Joint Chiefs of Staff on this issue. Finally, he believes that the Congressional opposition to lifting the ban is overestimated.

In their letter, the other sixty-nine concerned members of Congress cite two principles that should be used in developing a new policy toward homosexuals in the military: an individual's private life, to the extent that it does not harm others, should not be subject to regulation by the armed services; and homosexuals should not be forced to live a lie within the military.

The response at Tab A notes that you are working with the military and civilian leadership of the Department of Defense, members of the gay community and congressional leadership to develop a policy that is equitable and workable for all concerned.

RECOMMENDATION

That you sign the letters at Tab A.

Attachments

Tab A Letters to Members of Congress  
Tab B Incoming Correspondence

cc: Vice President  
Chief of Staff

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

June 29, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT BELL <sup>28</sup>

FROM: KEITH HAHN <sup>44</sup>

SUBJECT: Letters to the President from Representative Nadler and Representative Schroeder, et al, RE: Homosexuals in the Military

At Tab B Representative Jerrold Nadler has written the President to express his concern about recent news reports of a change in the President's support for lifting the ban on homosexuals in the military. He argues that the President must be true to his campaign promises and exercise the powers of Commander-in-Chief to overrule the objections of the Joint Chiefs of Staff. He is further convinced that Congressional opposition to lifting the ban is overestimated.

Sixty-nine other members of Congress also have written to the President urging him to lift the ban on homosexuals in the military and support a policy of non-discrimination which recognizes that an individual's private life should not be subject to regulation by the armed services. Their letter is also attached at Tab B.

Concurrence by:  Jeremy Rosner

RECOMMENDATION

That you forward the memorandum at Tab I to the President.

Attachments

Tab I Memorandum for the President  
Tab A Letters to Members of Congress  
Tab B Incoming Correspondence

JERROLD NADLER  
6TH DISTRICT, NEW YORK

1 TO:

- WASHINGTON OFFICE:  
424 CANNON BUILDING  
WASHINGTON, DC 20518  
(202) 225-8631
- DISTRICT OFFICE:  
1841 BROADWAY  
SUITE 809  
NEW YORK, NY 10023  
(212) 488-3530

**Congress of the United States**  
**House of Representatives**

Washington, DC 20515

93 JUN 25 P 1: 56

June 24, 1993

Hon. William J. Clinton  
The White House  
Washington, D.C. 20500

Dear President Clinton:

I am writing to express my great dismay at news reports in recent days suggesting that you may be on the verge of adopting a "compromise" that essentially would leave in place the ban on military service by lesbians and gay men, with modifications only in the methods of enforcement to be employed. This is a far cry not only from your promises made during the campaign but--more important--from the principle of fairness and inclusion that you have articulated on this issue and in other contexts: that "we don't have a person to waste," and must not permit the biases of some to serve as a basis for excluding the contributions of others.

I was especially distressed to see the statements attributed to George Stephanopoulos in today's Washington Post. The fact that "the brass is not moving on this" hardly seems to me a basis for reversal of the essence of your previously stated policy. I do not believe anybody ever contemplated that the military leadership would welcome the change you have promised. The military is not, in any event, a democracy. Any military leader who desired to exercise the powers of Commander-in-Chief was at liberty to resign his commission and join you and your opponents up in New Hampshire in January of last year. Military leaders not comfortable with following your instructions should be referred to the Truman-MacArthur example.

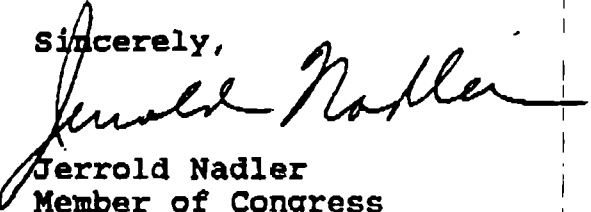
I am puzzled by the suggestion that a reversal of your policy on this matter might be dictated by the lack of sufficient votes in Congress to support your position. From the head counts of which I am aware, it appears to be far from a foregone conclusion that legislation to overturn an executive order ending the ban would pass both houses of Congress. And if it should--that's what the Presidential veto power is for. No head count I have seen suggests that opponents of lifting the ban have sufficient votes to override a veto.

4745  
PUBLIC WORKS AND  
TRANSPORTATION COMMITTEE  
SUBCOMMITTEES:  
ECONOMIC DEVELOPMENT  
SURFACE TRANSPORTATION  
WATER RESOURCES AND  
ENVIRONMENT  
JUDICIARY COMMITTEE  
SUBCOMMITTEES:  
CIVIL AND CONSTITUTIONAL  
RIGHTS  
INTERNATIONAL LAW,  
IMMIGRATION AND REFUGEES  
MEMBER, CONGRESSIONAL  
ARTS CAUCUS  
MEMBER, CONGRESSIONAL  
CAUCUS FOR WOMEN'S  
ISSUES

Politically, I believe you have far more to lose from a retreat on this issue than from steadfastness. Your position on this issue is supported by most of your supporters and opposed by most of those who opposed your election in the first place and have opposed most of your program. Taking a strong stand on an issue of principle--confronting, if necessary, Congress and some leaders of the military--will only enhance your standing with the American people, including many of those who disagree with you on the merits. By contrast, a reversal on this issue would only diminish your stature in the eyes of many. It would certainly undermine the relatively strong support you have continued to enjoy in my district.

I feel certain that you still believe that the policy of non-discrimination that you have articulated repeatedly in connection with this issue is the right one on the merits. I urge you to act on that conviction by adopting a policy of true non-discrimination that permits lesbians and gay men to serve their country on the same terms as all other Americans. Anything less will be a great disappointment to millions of your strongest supporters, gay and straight.

Sincerely,



Handwritten signature of Jerrold Nadler in cursive script.

Jerrold Nadler  
Member of Congress

## THE WHITE HOUSE

WASHINGTON

June 25, 1993

MEMORANDUM FOR WILLIAM ITOH

FROM: HOWARD G. PASTER *HP*  
LEGISLATIVE AFFAIRS

SUBJECT: CONGRESSIONAL MAIL

Attached are copies of letters sent to the President from several members of Congress.

Since these letters address national security issues, I would appreciate your assistance in drafting a response.

The letters are as follows:

- 1) Dianne Feinstein (D-CA), concerning the Presidio of San Francisco;
- 2) Jim Leach (R-IA), concerning nuclear weapons;
- ✓ 3) Jerry Nadler (D-NY), concerning homosexuals, lesbians, and bisexuals in the military;
- 4) Bob Dole (R-KS), concerning Bosnia-Herzegovina;
- 5) John LaFalce (D-NY) and others, concerning human rights;
- 6) Jim Ramstad (R-MN) and others, concerning troops to Macedonia; and
- 7) Glen Browder (D-AL), concerning base closures.

Thank you very much for your assistance. If you have any questions, please feel free to call LeeAnn Inadomi at x7500.

Enclosures

473

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515

93 JUN 24 P4:08

June 23, 1993

The President  
The White House  
Washington, D.C.

Dear Mr. President:

We are writing to express our strong support for a fair and effective policy that will allow gay men, lesbians, and bisexuals to serve openly and with dignity in our armed services. We hope and anticipate that you will present such a policy to the Congress and the country.

Barry Goldwater, who served as Chairman of the Senate Armed Services Committee, recently wrote: "With all the good this country has accomplished and stood for, I know that we can rise to the challenge, do the right thing and lift the ban on gays in the military. Countries with far less leadership and discipline have traveled this way, and successfully." We agree.

We believe that two basic principles should form the foundation of any policy developed.

First, an individual's private life, to the extent that it does not harm others, should not be subject to regulation by the armed services. Currently, the private, consensual sexual activity of heterosexual adult servicemembers is not investigated or prosecuted by the military. The same approach should be adopted for private, consensual homosexual adult activity. This is appropriate, as many individuals--both homosexual and heterosexual--currently engage in private, consensual sexual activity that violates Article 125 of the Uniform Code of Military Justice.

By contrast, sexual misconduct, on-base, off-base, or out of uniform, should certainly be the business of our military. For example, sexual harassment, nonconsensual sex, sex with minors, and fraternization should be strictly regulated by our armed services for both homosexual and heterosexual servicemembers. The recent Tailhook scandal highlights the need for the military to develop and implement more effective methods for eliminating sexual harassment within the armed services. Thus, we strongly support the strict application of a code of conduct that will regulate and punish both heterosexual and homosexual sexual misconduct, particularly sexual harassment.

Second, gay people should not be forced to live a lie within the

military. The key military values of honesty, integrity, and honor are violated every time a gay person is forced to suppress the fact that he or she is gay. In the normal course of social interaction, people are asked numerous questions about their daily lives that require gay people to hedge or lie in order to avoid suspicion. Many active duty servicemembers have told us that this distancing and denial itself undermines unit cohesion. Gay men, lesbians, and bisexuals must be able to acknowledge their sexual orientation, when and if they feel comfortable in doing so. It is unfair for the military to require gay individuals to be silent, when heterosexual servicemembers are allowed to talk freely about their sexual orientation.

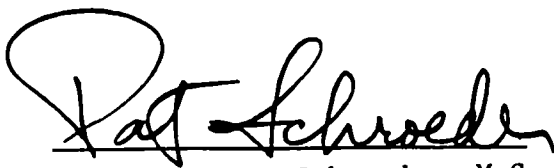
We recognize and respect the armed services' need to maintain good order, discipline, and morale. We see no conflict, however, between this military imperative and allowing gay men, lesbians, and bisexuals to serve openly. The military has the right to establish and enforce rules that prohibit activities that are disruptive within the military setting. But this right must be used sparingly so that activities that have no demonstrable impact on military order--such as a servicemember's statement or acknowledgement of his or her sexual orientation--are not punished. Moreover, any such rules of conduct must be applied equally to heterosexual and homosexual servicemembers.

Finally, we believe that adopting a policy of non-discrimination for gay, lesbian, and bisexual members of the armed services will not lead to dramatic changes in the military. For example, under such a non-discrimination policy, the military will not have to grant marital benefits, including housing and health care to the partners of gay servicemembers. Such a non-discrimination policy will also not restrain the military from preventing public displays of affection that are disruptive to the military. And we do not believe that a policy of non-discrimination constitutes an endorsement of any particular sexual orientation. It simply represents a statement of justice, equality, and tolerance.

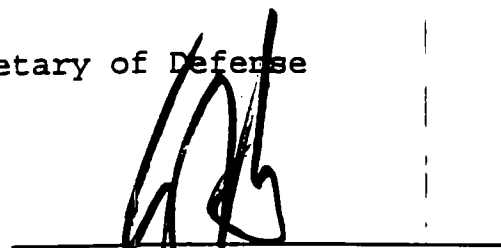
We look forward to supporting a proposal that incorporates these two principles. We will support your commitment to a fair and effective policy for gay men, lesbians, and bisexuals in the armed services and are ready to assist you in any manner.

Sincerely,

cc: The Honorable Les Aspin, Secretary of Defense



Patricia Schroeder, M.C.



Gerry Studds, M.C.

*Ed Pastor*

Ed Pastor, M.C.

*Cynthia McKinney*

Cynthia McKinney, M.C.

*Harry Johnston*

Harry Johnston, M.C.

*John W. Oliver*

John W. Oliver, M.C.

*Eleanor Holmes Norton*

Eleanor Holmes Norton, M.C.

*Tom Andrews*

Tom Andrews, M.C.

*Marjorie Margo lies-Mezvinsky*

Marjorie Margo lies-Mezvinsky

*Xavier Becerra*

Xavier Becerra, M.C.

*Elizabeth Furse*

Elizabeth Furse, M.C.

*Marty Meehan*

Marty Meehan, M.C.

*Don Edwards*

Don Edwards, M.C.

*Charles E. Schumer*

Charles E. Schumer, M.C.

*Alcee L. Hastings*

Alcee L. Hastings, M.C.

*Ron Wyden*

Ron Wyden, M.C.

*Luis V. Gutierrez*

Luis V. Gutierrez, M.C.

*Melvin L. Watt*

Melvin L. Watt, M.C.

*Maurice Hinchey*

Maurice Hinchey, M.C.

*Neil Abercrombie*

Neil Abercrombie, M.C.

*Jolene Unsoeld*

Jolene Unsoeld, M.C.

*Carolyn B. Maloney*

Carolyn B. Maloney, M.C.

*Craig Washington*

Craig Washington, M.C.

*Barbara Kennelly*

Barbara Kennelly, M.C.

*Alan Wheat*

Alan Wheat, M.C.

*Norman Mineta*

Norman Mineta, M.C.

*Peter DeFazio*

Peter DeFazio, M.C.

*Frank Pallone, Jr.*

Frank Pallone, Jr., M.C.

Mike Kopetski  
Mike Kopetski, M.C.

Nancy Pelosi  
Nancy Pelosi, M.C.

José E. Serrano  
Jose E. Serrano, M.C.

Albert R. Wynn  
Albert Wynn, M.C.

Jerrold Nadler  
Jerrold Nadler, M.C.

Nydia Velázquez  
Nydia Velázquez, M.C.

Ron V. Dellums  
Ron V. Dellums, M.C.

Connie Morella  
Connie Morella, M.C.

Christopher Shays  
Christopher Shays, M.C.

Anthony Beilenson  
Beilenson, Anthony, M.C.

Barbara-Rose Collins  
Barbara-Rose Collins, M.C.

Pete Stark  
Pete Stark, M.C.

Lynn C. Woolsey  
Lynn C. Woolsey, M.C.

Carrie P. Meek  
Carrie P. Meek

Lucien E. Blackwell  
Lucien E. Blackwell, M.C.

Mel Reynolds  
Mel Reynolds, M.C.

Barney Frank  
Barney Frank, M.C.

Sidney K. Yates  
Sidney K. Yates, M.C.

Maxine Waters  
Maxine Waters, M.C.

Thomas W. Foglietta  
Thomas Foglietta, M.C.

George Miller  
George Miller, M.C.

Steve Gunderson  
Steve Gunderson, M.C.

Edolphus Towns  
Edolphus Towns, M.C.

Patsy T. Mink  
Patsy T. Mink, M.C.

Edward J. Markey  
Edward J. Markey, M.C.

Martin D. Sabo  
Martin D. Sabo, M.C.

John Conyers  
John Conyers, M.C.

Howard Berman  
Howard Berman, M.C.

Eliot L. Engel  
Eliot Engel, M.C.

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George E. Brown  
George Brown, M.C.

Major R. Owens  
Major R. Owens, M.C.

William L. Clay  
William L. Clay, M.C.

Lane Evans  
Lane Evans, M.C.

Sam Goldenson  
Sam Goldenson, M.C.

Henry H. Waxman  
Henry H. Waxman, M.C.

Tom Lantos  
Tom Lantos, M.C.

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John Lewis, M.C.

Jim McDermott, M.C.

**Bernard Sanders, M.C.**

Peter Deutsch, M.C.

Jane Harman, M.C.



DATE

4/1

FROM: CDR J. DANIEL MCCARTHY, JAGC, USN  
SPECIAL ASSISTANT FOR LEGAL AND LEGISLATIVE  
AFFAIRS TO THE SECRETARY OF THE NAVY  
ROOM 4D730, THE PENTAGON, WASHINGTON, DC  
20350-1000  
TEL: 703-697-6935/614-5067  
AUTOVON: 94-227-6935/224-5067  
FAX: 703-693-5666

TO:

Capt Bouchard  
NSC

FAX:

202-456-9190

OFC PHONE:

202-456-9191

COMMENT:

2pgs incl. cover sheet



## THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

1 APR 1998

The Honorable Janet Reno  
Attorney General  
U.S. Department of Justice  
10th & Constitution Avenue, N.W.  
Washington, D.C. 20530

Dear Ms. Reno:

I appreciate your taking the time to meet with Under Secretary of the Navy Hultin, Admiral Pilling, and others from the Navy and DoD to discuss the McVeigh case and your recommendations with respect to an appeal of that case. As you know, we feel strongly that the District Court's decision in that case is plainly erroneous in numerous respects, and that it should be appealed. We understand that you share our view that the decision is erroneous, and that the Navy's actions with respect to Senior Chief McVeigh were fully consistent with the statute governing homosexual conduct in the military and with our own regulations on that subject.

We also appreciate your view that an effort to settle this case may nonetheless be appropriate, given the procedural posture of the case, and considerations relating to the Electronic Communications Privacy Act. You suggested that, once a notice of appeal has been filed, discussions with plaintiff's counsel should be begun, to explore whether it would be possible to arrive at a settlement on terms acceptable to the Navy. You made clear, however, that the Department of Justice remains fully committed to support of the homosexual conduct policy, that your recommendations with respect to the desirability of exploring settlement of the McVeigh case do not represent any diminution of your support for that policy, and that you and your colleagues would be prepared to assist us in communicating that fact to the field.

We support the approach to the McVeigh case that you have recommended, so long as it is clear that any settlement of this case must be on terms acceptable to the Navy. We will, of course, continue to work closely with your staff on this case.

Once again, I very much appreciate your personal attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Reno", written over a horizontal line.

TUESDAY, April 7, 1998

a missile.

Mamvinder Singh, defence correspondent of the Indian Express, said: "If there is such a weapon in the Pakistan arsenal it is probably a North Korean missile smuggled with Chinese help."

He also wondered whether

Pakistan had actually test-fired the missile. The normal practice is for such missiles to be test-fired into the sea.

George Fernandes, the Indian Defence Minister, said that the Government would increase defence spending.

Washington Post April 7, 1998 Pg. 18

## Albanian Team Picked for Talks With Serbs

**PRISTINA, Yugoslavia**—After weeks of deadlock, Kosovo's ethnic Albanian leaders appointed a four-member negotiating team but refused to start talks with the Serbian government without international mediation.

The appointment of negotiators was a step forward in Kosovo, a troubled province in southern Serbia, the larger of the two republics that comprise Yugoslavia, but it remained unclear if and when talks would begin.

## Military Discharges of Homosexuals Soar

New York Times

April 7, 1998

By Tim Weiner

WASHINGTON — The military is discharging 67 percent more gay and lesbian troops today than when the Clinton administration adopted its "don't ask, don't tell" policy, according to a Defense Department report to be issued later this month.

A total of 997 military personnel were discharged for homosexuality last year, the report says, compared with 597 in 1994, the first full year that the policy was in effect.

Gay rights advocates see those figures as evidence for their contention that homosexuals are being outed and ousted in ever-larger numbers. They say gay and lesbian personnel are still subject to interrogation and harassment by commanders.

But Pentagon officials say they think the increase in discharges may be due to voluntary declarations of homosexuality — which the policy forbids — by men and women who want out of the military, although these officials acknowledge that nearly five years after the policy's adoption, some commanders still do not seem to understand it.

The policy — more fully, "don't ask, don't tell, don't pursue" — was intended to allow homosexuals to serve in the armed forces, while protecting not only troops' privacy but also the morale that the military says would be compromised by avowed homosexuality in the ranks.

Under it, recruiters are forbidden to ask prospective enlistees about their sexual orientation, gay and lesbian troops are forbidden to disclose their homosexuality, and commanders are forbidden to pursue investi-

gations of suspected homosexual conduct in the absence of compelling evidence.

Pentagon officials said Monday that the forthcoming report, prepared by the office of the under secretary of defense for personnel, would recommend that commanders consult more closely with military lawyers before undertaking such investigations and that some senior officers receive retraining in the policy.

But the secretary of defense, William S. Cohen, suggested that the rise in discharges might be due in part to an increasing number of voluntary statements to commanders by homosexuals who want to leave the military, rather than to hostility directed at gay and lesbian troops.

"There are some indications," Cohen said, "that there has been an increase as far as some of the people who have declared themselves to be homosexual and have opted to get out of the military."

Elaborating on that remark, Kenneth Bacon, the Pentagon spokesman, said in an interview: "We think the rise is almost exclusively explained by the increase in the numbers of people stating they are homosexuals. We think they are voluntary statements. We can only speculate as to why they are doing this."

Michelle M. Benecke, a former Army captain who is an advocate for gay and lesbian military personnel, disagreed.

"The discharges result from the fact that military leaders have not stopped asking and telling and pursuing," Ms. Benecke said. "We are nearly five years into this policy, but military leaders have not seen fit to tell commanders what this

policy is and what its intent is."

Ms. Benecke, co-director of the Servicemembers Legal Defense Network, said there was little formal training on the policy and the rules resulting from it.

"It is well documented that command violations are widespread in the field and that commanders have not been trained on the intent of the policy," she said. "Commanders are in the driver's seat without a road map. Others know the rules and are deliberately violating them."

Ms. Benecke cited the case of Senior Chief Petty Officer Timothy R. McVeigh, a 17-year sailor with a sterling record. The Navy's investigation of McVeigh went so far as to pry his e-mail messages out of his America Online account last year, before the service moved to discharge him.

"The Navy has gone too far," a federal district judge, Stanley Sporkin, ruled in blocking the discharge in January. "The Navy impermissibly embarked on a search and 'outing' mission" against the sailor, the judge found. The Navy filed a notice of appeal on March 31.

The "don't ask, don't tell" policy bars military personnel not only from avowal of homosexuality but also from homosexual acts and marriages. Discharges for acts and marriages have declined by about 20 percent in the last three years. Statements — declarations or acknowledgment of homosexuality — account for the rise in discharges, Bacon said.

Charles Moskos, a professor of sociology at Northwestern University who as a Pentagon

consultant was widely regarded as the architect of the "don't ask" policy, said, "The core question is, Are the statements being generated by asking?"

Cohen commissioned the Pentagon report last year after the Servicemembers Legal Defense Network documented a surge in what it described as violations of the policy.

"I think it's working," Cohen said of the policy Monday. "We intend to continue to emphasize the fact that this policy should not be abused, that there should be no attempt to hunt or seek out those who may be homosexual, and that we intend to strictly enforce the 'don't ask, don't tell' policy."

The report will recommend that commanders "consult with legal officials before initiating investigations, in order to make sure they are carried out with proper respect for the subject's rights," Bacon said.

"It calls for reiterating an earlier guidance about how to deal with threats against service members accused of being homosexuals," he said. "And it recommends better training for all people involved in implementing the policy, to make sure everybody understands what the policy is."

Ms. Benecke said that under the policy, "harassment and witch hunts were supposed to end."

"But Pentagon leaders have not sent this message to the field," she said. "We have asked the Pentagon as a first step to inform commanders of the intent of this policy to respect people's privacy. Leaders need to hold their subordinates accountable for violations. Nearly five years into this policy, that has not occurred."

TUESDAY, April 7, 1998

## Cohen says he may allow some bases to deteriorate

Defense Secretary William Cohen threatened Monday to let some of the nation's military bases deteriorate if Congress blocks his plan to shut 50 more and trim 25 others. And he acknowledged that President Clinton's interference in the last round of closures has caused a political problem in getting Congress to go along with new closings.

Base closings are unpopular because of the loss of civilian support jobs. The last round, in 1995, caused bitterness when Clinton scratched a California base and a Texas base from the final list. His action saved jobs in two crucial political states but

USA Today  
April 7, 1998  
Pg. 4

infuriated many lawmakers. As a result, many in Congress, especially Republicans, say they won't trust Clinton with a new list.

Bases can't be closed without congressional approval, Cohen said, "but there are a number of things that could be (done) in terms of simply al-

lowing repairs to go unmade, and to allow some degradation and deterioration of the facilities." He said letting some installations go to seed is an alternative he is seriously considering if Congress doesn't authorize two more rounds of closings in 2001 and 2005.

The Pentagon says that unless bases are closed, it can't keep within budget limits and still modernize its ships, aircraft and other equipment. One recent study estimated that two more rounds of closings would free up \$20 billion a year for other military purposes.

## Fateful Crash in Africa: Link to U.S. Is Denied

New York Times

April 7, 1998

By Philip Shenon

WASHINGTON -- A former French government minister said on Monday that missiles from American stockpiles were used to shoot down a plane carrying the presidents of Rwanda and Burundi in 1994, an act that led to a massacre that took at least 500,000 lives. The United States immediately denied that there was any evidence to support those allegations.

"The United States does not have any knowledge about the origin of the missiles which allegedly shot down the plane carrying the presidents of Rwanda and Burundi four years ago," said a State Department official who insisted

on anonymity. "We categorically reject any suggestion that we would have delivered any missiles to the perpetrators of this heinous act."

The charges were made by Bernard Debre, the French minister responsible for dealing with African countries from November 1994 to May 1995. The allegations followed a report last week in a conservative French daily, *Le Figaro*, that the missiles had been seized in Iraq by French forces, not by American troops, and provided to Rwandan government forces.

In an interview with a French radio station, Debre said that two Soviet-built SAM-16 surface-to-air missiles

that hit the plane in April 1994 had come from stocks provided to Uganda by the United States after American troops seized the weapons from Iraq in the gulf war in 1991.

His contentions were also denied by the Pentagon, which, together with the State Department, insisted that it knew of no evidence to suggest that the missiles had ever been in American or Ugandan stockpiles.

A spokesman for the Pentagon, Lt. Cmdr. Anthony Cooper, said he could not address details of Debre's comments, including his statement that the United States had turned over the missiles to Uganda. But Cooper said that "we categorically deny" the former minis-

ter's account.

It has never been established who downed the plane. Ethnic Tutsi rebels operating from Uganda had been fighting with forces dominated by the Hutu majority of Rwanda since 1990, and extremist Hutu leaders were unhappy with a peace accord that the French brokered in 1993.

The extremists used the crash, which killed Presidents Juvenal Habyarimana of Rwanda and Cyprien Ntaryamira of Burundi and the three-man French crew of the plane, which the French government owned, as a pretext for a massacre of at least half the estimated 1 million Tutsi in Rwanda.

Washington Times

April 7, 1998

Pg. 4

## General's accuser passes lie detector test

### Her sex claim didn't stop his retirement

By Rowan Scarborough  
THE WASHINGTON TIMES

The woman accusing retired Maj. Gen. David R. Hale of forcing her into a sexual relationship while he was on active duty in 1997 has passed a lie detector test.

According to an April 3 report provided to *The Washington Times* by the woman, Donnamaria Carpino, she answered truthfully two questions regarding her purported contact with Gen. Hale.

Gen. Dennis Reimer, Army chief of staff, allowed Gen. Hale to retire honorably in February as Army deputy inspector general, despite the fact the Defense Department inspector general was still investigating Mrs. Carpino's charges.

In the polygraph exam, Mrs. Carpino answered "no" to these questions: "Did you lie when you said Gen. Hale told you he was owed a favor by Gen. Reimer and nothing would happen with your complaints?" and "Did you lie when you said Gen. Hale forced you to

have oral sex and then [to deny it in writing] so you and your family could leave the country?"

The polygraph examiner, Danny W. Bragg, president of Security Secrets in Vienna, wrote, "It was the opinion of this licensed state examiner, based upon careful analysis of the test results, that the subject did not exhibit physiological reactions normally indicative of deception and was being truthful to the relevant questions asked."

"Oh yeah, no question about it. She's

# CURRENT NEWS **EARLY BIRD**

WEDNESDAY, April 8, 1998

18/6

Washington Times

April 8, 1998

Pg. 1

## Cohen tells Reno gay sailor must go

Insists any settlement be cleared by Navy

By Rowan Scarborough  
THE WASHINGTON TIMES

Defense Secretary William S. Cohen, in a letter to the attorney general, is strongly backing the Navy's decision to discharge a sailor whom homosexual groups cite as a victim of the military's abuse of the "don't ask, don't tell" policy.

In an April 1 letter to Attorney General Janet Reno, a copy of which was obtained by The Washington Times, Mr. Cohen cautioned the Justice Department that any settlement it strikes with Senior Chief Petty Officer Timothy R. McVeigh must be approved by the Navy.

The Navy's move to discharge Chief McVeigh has emerged as a stern test of the military's ban on open homosexuality because his purported declaration was contained in an anonymous profile he posted on America Online. A federal judge ruled the Navy violated

Chief McVeigh's privacy and has blocked his ouster.

Administration sources said Mr. Cohen's letter is an attempt to head off any move by the Justice Department to let Chief McVeigh retire, with pay benefits, three years short of the required 20 years. The sources said this would leave the door open for other discharged personnel to gain retirement pay.

"We support the approach to the McVeigh case that you have recommended, so long as it is clear that any settlement of this case must be on terms acceptable to the Navy," Mr. Cohen said in his letter.

The defense secretary also sought assurances from Miss Reno that any deal doesn't "represent any diminution of your support for that policy, and that you and your colleagues would be prepared to assist us in communicating that fact to the field."

Administration sources said Mr. Cohen's personal backing for the Navy in this case provides a sig-

nificant boost for the service at a time when it is under intense criticism from homosexual rights groups, the federal judge, and some Justice Department officials.

Administration officials said Mr. Cohen dispatched the letter after he met last week with Adm. Jay Johnson, chief of naval operations, who convinced the secretary the Navy had acted properly. The day before, Miss Reno met with top Navy officials to discuss the McVeigh case. She told them she planned to explore settlement talks with Chief McVeigh's attorney.

In his letter to Miss Reno, Mr. Cohen left no doubt where he stands.

"We feel strongly that the district court's decision in that case is plainly erroneous in numerous respects, and that it should be appealed," Mr. Cohen wrote. "We understand that you share our view that the decision is erroneous, and that the Navy's action with respect to Senior Chief McVeigh were fully consistent with the statute governing homosexual conduct in the military and with our own regulations on that subject."

U.S. District Judge Stanley Sporkin ruled in January that the Navy violated the "don't ask, don't tell" policy by relying on information gleaned from the sailor's online profile.

Chief McVeigh's e-mail to the

## Report downplaying Cuba threat back for review

Miami Herald...See Pg. 3

## Albanian weapons cross to Kosovo

*Militants seek 'blood revenge'*

Washington Times...See Pg. 3

## Accusers must weigh options

European Stars & Stripes...See Pg. 4



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WEDNESDAY, April 8, 1998

wife of an enlisted man described the sender as "boysrch" — an apparent abbreviation of the words "boy search." When the wife clicked on the sender's on-line profile, the word "gay" was listed as marital status.

Since Chief McVeigh didn't voluntarily "tell" his homosexual status to superiors, Judge Sporkin ordered the Navy to reinstate the enlisted man aboard the attack submarine USS Chicago. The Navy has assigned him to shore duty in Hawaii.

The ruling has touched off an internal debate in the Clinton administration. The Navy wants the Justice Department to appeal, even if Chief McVeigh leaves the service. The Justice Department

on March 31 filed papers saying it intended to appeal.

The case has proved troublesome for the Navy. AOL has acknowledged violating Chief McVeigh's privacy by providing a Navy official with the profiler's identity. The Navy claims the regulations under "don't ask, don't tell" — which allow homosexuals to continue serving in the military if they keep their sexual orientation private — allowed Navy investigators to continue their probe.

In the on-line profile, the chief petty officer said his hobbies were "driving, boy watching, and collecting 'pictures' of other young studs. (Send some and I'll reply)."

The Defense Department, after a review of how commanders are enforcing "don't ask, don't tell," yesterday released a report saying the policy is fair.

The report said 80 percent of those discharged for homosexuality in 1997 had admitted their sexuality.

The number discharged rose from 850 in 1996 to 997 last year.

"I think [the policy] is working," Mr. Cohen said on Monday. "We intend to continue to emphasize the fact that this policy should not be abused, that there should be no attempt to hunt or seek out those who may be homosexual, and that we intend to strictly enforce the 'don't ask, don't tell' policy."

Philadelphia Inquirer

April 8, 1998

Pg. 2

# Guidelines planned on gays in military

Cohen says the aim is to explain and enforce the policy against harassing and pursuing gays.

By Susanne M. Schafer  
ASSOCIATED PRESS

WASHINGTON -- Defense Secretary William S. Cohen ordered new guidelines yesterday to explain and enforce the Clinton administration's policy barring the pursuit and harassment of homosexuals in the military, saying it was possible that "some commanders haven't gotten the message."

Members of the military who engage in witch-hunts, Cohen warned, will "be the subject of their own investigation" and potentially charged with sexual harassment.

"I have tried to make it very clear that we want this policy fully and fairly implemented," Cohen said on National Public Radio. "That means there's to be no pursuit, there's to be no harassment, and if it's taking place, it's something I'm very concerned about."

The "don't ask, don't tell, don't pursue" policy was initiated in 1994 amid great controversy, aiming to strike a balance between prohibited homosexual conduct in the military and efforts to maintain the privacy of those who choose not to declare

their sexual orientation.

Meanwhile, the Defense Department released a report showing that the number of people discharged for homosexuality climbed from 850 in 1996 to 997 last year. The lowest number discharged was 617 in 1994, while the highest in recent years numbered 1,998 in 1982, the report said. The high number amounted to 0.095 percent of the total force.

The report also said that 80 percent of those discharged for homosexuality in 1997 had made a statement that they were homosexual. More than 80 percent of those discharged had less than four years of service, the study said.

The secretary said he did not think the new figures indicated that harassment was on the rise.

The report argued that the policy was being fairly and properly enforced, Cohen noted, but he added: "It's conceivable, and it's possible, that some commanders haven't gotten the message."

Some of Cohen's other recommendations include:

- Military commanders should consult with their superiors and military legal authorities before embarking on investigations of service members believed to be homosexual.
- The service secretaries must approve authorizations for investigations in situations dubbed "coming-out" cases.

- Commanders and investigators should receive more training on the policy.

The report said without elaboration that in only three cases had the policy not been properly enforced.

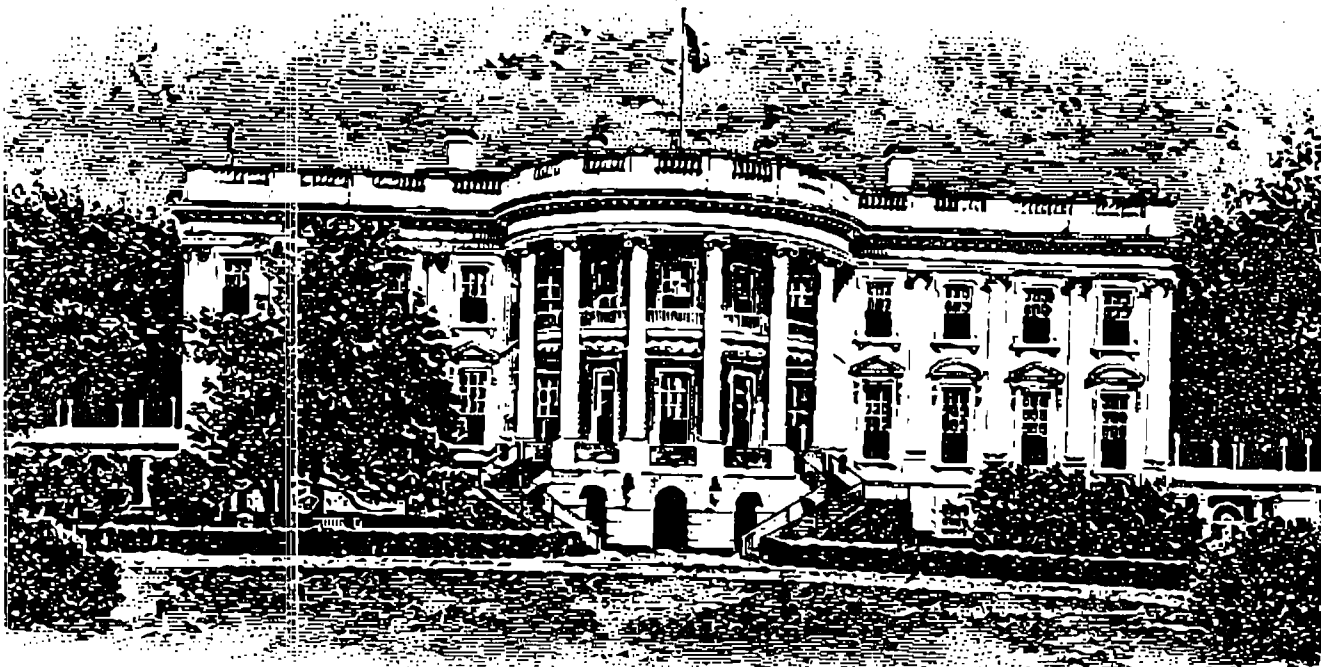
Critics of the policy said Cohen would not have issued the directives if the policy were being properly enforced.

"The policy itself is not being followed down the chain of command, and the core problem of antigay bias goes completely unaddressed," said a statement issued by Winnie Stachelberg, political director of the Human Rights Campaign, a national gay political organization. "The policy is not working because commanders in the field are continuing to ask and pursue, hunting down gay service members unabated."

## NOTICE TO READERS

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# THE WHITE HOUSE



## Office of Public Liaison

**Richard Socarides**  
*Special Assistant to the President  
and Senior Advisor for Public Liaison*

Phone (202) 456-2930  
Fax (202) 456-6682

To : Robert Bell

Date : 4/7/98

Fax : 6 9190 Pages : 2

Comments :  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## PENTAGON DON'T ASK / DON'T TELL REPORT

### Background:

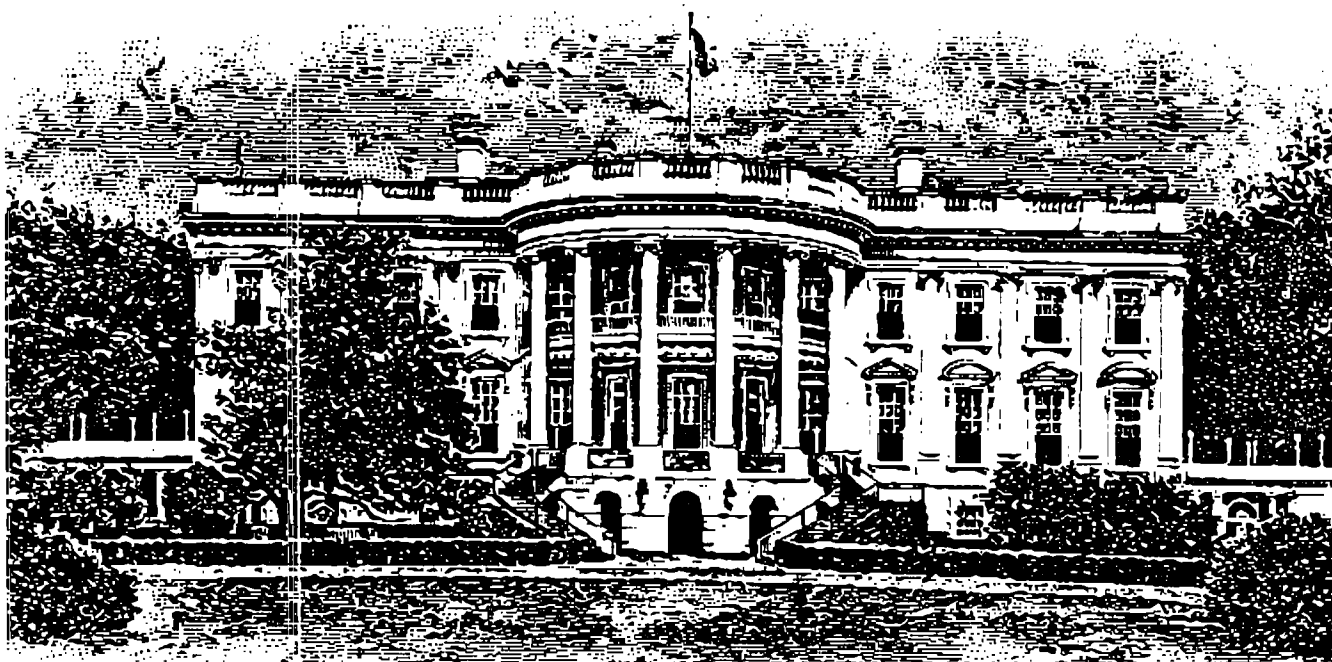
- DOD has leaked a Pentagon report which shows a record number of discharges under the don't ask, don't tell policy. The report says this is because more service members are voluntarily "coming out."
- They have suggested on background that this is because gay people can't compete in the military with straight people. Gay groups find this deeply offensive.
- Secretary Cohen said yesterday that he believes the policy is working well.
- However, the report concedes that implementation of the policy "has posed a challenge to the services" and makes several recommendations which, if implemented, would curtail the ability of the military to pursue gay people in significant ways. These recommendations are consistent with the approach the gay groups have been calling for.

### Talking Points:

- The report acknowledges that the policy has posed challenges to the Services and recommends several significant actions be taken to ensure that the policy is more fairly implemented.
- Implicit in these recommendations is an acknowledgment that there is room for improvement and we applaud Secretary Cohen for his willingness to exercise the leadership required to see to it that this policy is fairly enforced.
- [If asked if the WH agrees with DOD's explanation for the increase in discharges]: I don't think you can generalize about such things. The important point is that clearly there is room for improvement in the implementation of the policy.

4-7-98  
Socarides  
6-1611

# THE WHITE HOUSE



## Office of Public Liaison

**Richard Socarides**

*Special Assistant to the President  
and Senior Advisor for Public Liaison*

Phone (202) 456-2930

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To : Robert Bell

Date : 4/7/98

Fax : 6-9190 Pages : 2

Comments : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Bell, Robert G.**

---

**From:** Bell, Robert G.  
**Sent:** Wednesday, April 08, 1998 9:57 AM  
**To:** Crowley, Philip J.; @DEFENSE - Defense Policy  
**Cc:** @PRESS - Public Affairs  
**Subject:** RE: DON'T ASK; DON'T TELL [UNCLASSIFIED]

PJ: I can accept the points "as is", especially if it will risk reopening a lot of other variations if we don't just go with them. If/when we are still in the "tinkering" stage, though, I would replace:

"I don't think you can generalize about such things. The important point is that clearly there is room for improvement in the implementation of the policy." (which could be interpreted as our questioning "DoD's explanation" for the increase when DoD itself concedes it does not have a full explanation) with:

"The Defense Department acknowledged in its report that it does not have a 'complete explanation' for the increase. Rather than generalize, I think it's important to note that we all agree that clearly there is room for improvement in the implementation of the policy."

-----Original Message-----

**From:** Crowley, Philip J.  
**Sent:** Wednesday, April 08, 1998 9:37 AM  
**To:** @DEFENSE - Defense Policy  
**Cc:** @PRESS - Public Affairs  
**Subject:** FW: DON'T ASK; DON'T TELL [UNCLASSIFIED]

Bob, Joe:

This was end of day guidance from Richard. OK in light of today's coverage? The guidance looks pretty evergreen to me.

PJ

-----Original Message-----

**From:** Wozniak, Natalie S.  
**Sent:** Tuesday, April 07, 1998 7:19 PM  
**To:** Crowley, Philip J.  
**Cc:** @PRESS - Public Affairs  
**Subject:** DON'T ASK; DON'T TELL [UNCLASSIFIED]

<< File: DON'T ASK; DON'T TELL.doc >>

**REVISED 4-7-98 1pm**

## **PENTAGON DON'T ASK / DON'T TELL REPORT**

### **Background:**

- The Pentagon will issue a report which shows a record number of discharges under the don't ask, don't tell policy. The report says this is because more service members are voluntarily "coming out."
- Secretary Cohen said yesterday that he believes the policy is working well.
- However, the report concedes that implementation of the policy "has posed a challenge to the services" and makes several recommendations which, if implemented, would curtail the ability of the military to pursue gay people in significant ways. These recommendations are consistent with the approach the gay groups have been calling for.

### **Talking Points:**

- The report acknowledges that the policy has posed challenges to the Services and recommends several significant actions be taken to ensure that the policy is fairly implemented.
- Implicit in these recommendations is an acknowledgment that there is room for improvement and we applaud Secretary Cohen for his willingness to exercise the leadership required to see to it that this policy is fairly enforced.
- [If asked if the WH agrees with DOD's explanation for the increase in discharges]: I don't think you can generalize about such things. The important point is that clearly there is room for improvement in the implementation of the policy.

4-7-98  
Socarides  
6-1611

FRIDAY, March 27, 1998

commended administrative action against the squadron commander and several other supervising officers for lapses in training and flight preparation. A separate Marine inquiry is reviewing this aspect of the case, with orders to report by April 15.

USA Today  
March 27, 1998  
Pg. 5

**PENTAGON WASTE:** The Pentagon can't account for more than a billion items, from spare parts to clothing, that have been "in transit" for months, a General Accounting Office report said. It said the shipments probably aren't missing, only the paperwork. But the tracking system is so loose it raises concerns about fraud, waste and abuse, the GAO said. The Pentagon said it's fixing the problems.

Washington Post March 27, 1998 Pg. 28

## J.N. Searches 1st Iraqi Presidential Site Since Pact

By Vijay Joshi  
Associated Press

BAGHDAD, Iraq, March 26—In the first test of a U.N. agreement forged to avert a military strike against Iraq, weapons inspectors spent eight hours today going over parts of a presidential estate previously declared off-limits.

German diplomat Horst Holthoff described Iraqi cooperation as "fantastic, absolutely positive."

"I am personally really impressed by the spirit of cooperation. The team saw every-

thing [it] wanted to see," Holthoff said.

Accompanied by diplomats from 20 nations, U.N. arms inspectors visited President Saddam Hussein's Radwaniyah Palace, a complex estimated to be about 6.9 square miles and comprising at least a dozen villas, five artificial lakes, and palm-tree lined streets.

The palace, near Baghdad's international airport, is the largest of eight presidential sites from which Iraq had barred inspectors, calling them symbols of national sovereignty. Saddam Hussein once

used it to host dignitaries.

Inside Radwaniyah, the inspectors and diplomats broke into several teams, Holthoff said.

Today's visit was the first test of the Feb. 23 agreement that Iraq signed with U.N. Secretary General Kofi Annan, pledging to open the sites. The accord averted the threat of military strikes by the United States and Britain.

"It's an important mission in implementing the agreement... [an] extremely important mission for the international community," Sudanese diplomat Saeed Sad said before leaving for Radwaniyah.

U.N. spokeswoman Janet Sullivan said the officials completed inspections at two locations in the Radwaniyah area.

"It was a survey mission,"

she said. "This process... will continue until the baseline surveys are complete." She refused to say if the inspections would continue Friday.

A U.N. spokesman in New York said Radwaniyah is divided into three parts. Reporters were not allowed near the site.

U.N. officials have said they are not interested in the palaces as much as surrounding buildings in the presidential compounds in their search for documents, which could establish whether Iraq has eliminated its lethal weapons and the means to make more.

Until the inspectors certify that Iraq is rid of all its weapons of mass destruction, the Security Council will not lift economic sanctions imposed after Iraq's 1990 invasion of Kuwait.

## Navy is told to give sailor top job back

He had been in charge of the enlisted men on a sub before allegations of homosexuality.

By Laura Myers  
ASSOCIATED PRESS

WASHINGTON — A federal judge told the Navy yesterday to comply with his order reinstating a chief petty officer who successfully fought dismissal from the military over allegations of homosexuality.

U.S. District Judge Stanley Sporkin said the Navy should return Timothy R. McVeigh to his old status as the top enlisted man on a nuclear attack submarine rather than give him only clerical jobs.

Setting a June 1 hearing, Sporkin gave the Navy two months to com-

ply with his January order in the case in which he said the Navy wrongly enforced the Pentagon's "don't ask, don't tell" policy on gays in the military.

Christopher Wolf, McVeigh's attorney, accused the Navy of "dragging its feet" and purposely keeping the decorated 17-year veteran from returning to his former duties that would let him advance his career.

After the hearing, Wolf said McVeigh "used to be in the chief-of-boat position," managing the day-to-day activities of the USS Chicago.

Justice Department attorney David Glass, representing the government, told the judge that one chief-of-boat position had opened up recently, but McVeigh wasn't deemed the best candidate. The judge ordered the Navy to justify its decision by May 1.

Joe Krovisky, a Justice spokesman, said the government intends

to fully reinstate McVeigh.

McVeigh, 36, who is not related to the Oklahoma City bomber, was dismissed in December on charges that he was homosexual and engaged in sodomy. He has not commented on his sexuality.

Pentagon policy allows dismissal of someone who discloses he is gay, but the military cannot raise the issue without sufficient cause.

Sporkin said the Navy went too far in investigating McVeigh, who was linked to an anonymous America Online Inc. computer profile page that suggested he had a sexual interest in young men. The judge also said the Navy violated the 1986 Electronic Communications Privacy Act by obtaining confidential information about McVeigh from AOL without a warrant or court order.

The Navy is appealing, while McVeigh is suing the military, seeking unspecified damages.

Philadelphia Inquirer March 27, 1998

Pg. 25

Philadelphia Inquirer March 27, 1998

Pg. 4

Bosnia remains littered by 750,000 land mines, which will kill and maim for decades, if not centuries, according to a report released yesterday. International Red Cross researcher Ian Woodmansay, author of the report, said 35 people a month were hurt or killed by land mines in Bosnia. The report was timed to coincide with the start of an international conference in Budapest, Hungary, on banning land mines.

THURSDAY, January 22, 1998

er former White House employee, Kathleen Willey, publicly questioned Tripp's credibility.

Also, a congressional official familiar with accounts that Tripp has given about the Whitewater investigation said yesterday that at times, she frustrated Republican lawmakers because she did not deliver more politically explosive material.

"She did not come across as someone who was a Clinton basher," the official said. "She would always low-ball everything she was asked about, not exaggerate it. My impression is

that she was reluctant even to be in the situation."

Still, at the Pentagon, several colleagues recalled that when Tripp arrived there she boasted that she had been transferred from the White House because "she knew too much about Whitewater."

In a deposition that she gave two years ago, Tripp spoke with some surprise about even joining the Clinton White House. She said that an aide to Bush had recommended her to Clinton's transition team. For several months after Clinton's inauguration, she worked

alongside a team of aides supervised by Bruce Lindsey, one of the president's closest advisers. Once the transition was mostly complete, Tripp moved to the White House counsel's office, where she worked directly for Bernard Nussbaum, and at times for his deputy, Vincent Foster. But after Foster's suicide and Nussbaum's departure, Lloyd Cutler took the job and brought his own aides along, leaving Tripp with little to do.

She described that time in an account to Whitewater investigators in the Senate: "But I was

roleless [sic] in my opinion. There was an empty desk . . . where I sat and basically did nothing but prepare my resume for quite some time, for weeks."

While Tripp was leaving the White House, Lewinsky was still in college. She graduated in the spring of 1995 from Lewis and Clark College, a small liberal arts institution in Portland, Ore., with a degree in psychology and headed straight for a new life in Washington.

Staff writers Ceci Connolly, Judith Havemann, Susan Glasser and David Segal contributed to this report.

WASHINGTON POST

January 22, 1998

Pg. 15

## AOL Admits Violating Its Own Disclosure Policy

By Rajiv Chandrasekaran  
Washington Post  
Staff Writer

America Online Inc. yesterday admitted that it violated its privacy policy by disclosing the identity of a subscriber who was under investigation by the Navy for failing to comply with the military's "don't ask, don't tell" policy on homosexuality. But the online service accused the Navy of flouting a federal law in its efforts to obtain the information.

In a case that has disturbed electronic-privacy- and gay-rights advocates, a naval investigator said he was able to get AOL to confirm -- without a court order -- that Senior Chief Petty Officer Timothy R. McVeigh was the author of an online "profile page" that used the word "gay" to describe his marital status and listed "boy-watching" as one of his hobbies. Both AOL's user-confidentiality policy and a federal law prohibit the disclosure of subscribers' personal information to law enforcement authorities without a court order.

"Our member services representative did confirm information presented to him by the Navy. This clearly should not have happened and we regret it," AOL said in a one-page statement issued yesterday, a few hours before McVeigh's attorneys asked a federal judge

in Washington to issue a temporary restraining order preventing the Navy from discharging the officer.

U.S. District Judge Stanley Sporkin refused to rule immediately, but the Navy agreed to postpone McVeigh's discharge until Friday night. Sporkin said he believed that the Navy would wait for his ruling before taking any action in the matter. McVeigh, 36, is not related to the man convicted of bombing the Oklahoma City federal building.

In a letter sent to the Navy yesterday, AOL's general counsel, George Vradenberg III, said that the Navy "may have utilized improper, and perhaps unlawful, procedures in seeking to confirm certain information about a person the Navy believed to be one of our members."

At a November discharge hearing, a naval investigator testified that he called AOL and talked to "a gentleman named Owen at tech services," according to a transcript of the proceeding. The investigator, who did not say that he identified himself as a Navy official, testified that he "wanted to confirm the profile sheet, who it belonged to. They said it came from Hawaii and that it was Timothy R. McVeigh on the billing."

AOL officials said their investigation of the matter -- including a conversation with

"Owen," who is no longer employed by the company -- revealed a markedly different conversation. "The investigator told him that he was McVeigh's buddy, his friend, and that 'I just want to make sure he's the guy who sent me this e-mail,'" said Ann Brackbill, an AOL spokeswoman.

"We believe the Navy deliberately ignored the law," Brackbill said. "We work with law enforcement all the time and there are standard procedures that are used when they want subscriber information. . . . This [investigator] did not identify himself properly."

A Navy official, who spoke on condition of anonymity, said

the Navy did nothing wrong in its investigation. "I don't know why he didn't identify himself, but that's immaterial," the official said. "The Navy felt requesting the information from the provider did not break the law."

The Navy contends that McVeigh's profile is a clear violation of the "don't ask, don't tell" policy.

Brackbill called the case "an isolated incident that involved human error under very unusual circumstances." Nevertheless, she said the company plans to beef up its training curriculum to emphasize adherence to the privacy policy.

USA TODAY

January 22, 1998

Pg. 4

**MIXED TRAINING:** In a report that appears to run counter to one issued a month ago, a Pentagon advisory panel on women's issues argues that most men and women in the military think the sexes should be mixed more, not less, during military training. The panel, known as the Defense Advisory Committee on Women in the Services, says "most service members from every service believed that more gender integration of training was needed than currently existed." The new report contradicts the findings of another panel that issued a controversial report in December. A team of academics and retired military officers headed by former senator Nancy Kassebaum Baker faulted the Army, Navy and Air Force's integrated training programs as failing to instill proper military values. That report called for toughening basic training and putting men and women in segregated units during the first six weeks of training and in separate housing in basic and advanced training programs.

THURSDAY, January 22, 1998

WASHINGTON TIMES

January 22, 1998

Pg. 6

# Sailor's case tests 'tell' part of gay rule

By Rowan Scarborough  
THE WASHINGTON TIMES

An attorney for Senior Chief Petty Officer Timothy R. McVeigh yesterday asked a federal judge to overturn a Navy decision to discharge the submariner for violating the military's homosexual ban.

Attorney Christopher Wolf said a Navy investigator used "subterfuge" and went on a "fishing expedition" in violation of Pentagon rules that prevent pursuing service members unless they openly declare their homosexuality.

But a Justice Department lawyer said the 17-year sailor broke the rules by proclaiming his desire for "boy watching" and his marital status as "gay" in an easily accessible America Online user profile.

"He made a statement to somebody doing official Navy business," said lawyer David M. Glass.

Mr. Wolf released an extraordinary admission by American On-

line, the huge Internet provider who could face civil action for violating the sailor's privacy.

In a one-page statement, AOL admitted "human error" in releasing his name as the owner of the homosexual-tinged profile. AOL also accused the Navy of ignoring a federal privacy law and said the investigator "misled our representative into confirming" the sailor's identity.

But Mr. Glass argued there is nothing in the 1986 Electronic Communications Privacy Act that prevents the government from inquiring about a user's identity. It is the provider, in this case America Online, that has the obligation to protect privacy, he said.

Chief McVeigh is not challenging the constitutionality of the military policy known as "don't ask, don't tell." But he accused the Navy of violating the "don't ask" part by pursuing his identity.

"He did not come forward in a manner contemplated by that policy," Mr. Wolf told U.S. District Court Judge Stanley Sporkin.

The judge delayed an immediate decision but indicated he would rule before late Friday, when the Navy plans to honorably discharge the 36-year-old Chief McVeigh.

The McVeigh case is believed to be the first case in which the "tell" aspect of the policy happened on the Internet.

Last fall, Chief McVeigh was communicating via e-mail with the wife of a shipmate concerning the purchase of Christmas presents for the children of crew members

on the attack submarine USS Chicago.

He inadvertently sent a message with the heading "from: Boysrch," presumably short for "boysearch." The message ended with, "Have a good one, tim."

The wife assumed it came from Chief McVeigh because they had been discussing an upcoming crew Christmas party. To be sure, she clicked on the sender's Online profile. It described the owner's marital status as "gay," said his hobby was "boy watching and collecting pics of other young studs," and added this quote: "My God, he's got a nice butt. And I know because I'm a bootyologist." The name appeared as "Tim."

The wife showed a printout to her husband, who alerted superiors in the sub's home port in Hawaii.

After an investigation, a discharge board of two officers and one enlisted man voted unanimously that Chief McVeigh violated the policy.

Mr. Glass said that at the board hearing, Chief McVeigh acknowledged the America Online profile was his. He failed to rebut a presumption in the policy that a proclaimed homosexual intends to engage in prohibited sexual acts, the lawyer said.

"How do you rebut it?" Judge Sporkin asked. "Bring in a woman you had sex with?"

To Mr. Wolf, the judge wondered aloud, "If he knows the policy, why does he have to sort of flaunt it?"

BALTIMORE SUN

January 22, 1998

Pg. 12

# Fragile peace taking root in Bosnia

## Western officials trying to nurture government

LOS ANGELES TIMES

SARAJEVO, Bosnia — Like pieces in a jigsaw puzzle, some of the most contentious elements in Bosnian peacemaking are starting to fall into place.

The seating of a new, apparently cooperative Bosnian Serb government and a move by international mediators to impose decisions when no one agrees have given impetus to a 2-year-old peace process stalled frequently by separatist bickering.

Yesterday, Western mediators unveiled a common currency that they have ordered Muslims, Serbs and Croats to accept. Shared license plates and a flag are on the horizon.

These trappings are meant to unify the country but were vehemently resisted by a Bosnian Serb leadership dominated by supporters of war crimes suspect Radovan Karadzic.

Western officials believe Karadzic and fellow hard-liners have been dealt a significant setback with the selection Sunday of a moderate prime minister for the Bosnian Serb half of this country. The new government under Prime Minister Milorad Dodik excludes

Karadzic's party for the first time.

Even as Karadzic supporters vowed to set up a parallel government, U.S. officials asserted the success of their policy of promoting moderates in Bosnia while forcing hard-liners to the margin.

Washington and its European allies have invested millions of dollars in the past six months to back Bosnian Serb President Biljana Plavsic in her power struggle with Karadzic, the former president.

But several key Cabinet members in the Dodik government have wartime records that raise questions about their commitment to reconciliation and reform.

Of more immediate concern to mediators, the new government is

UNCLASSIFIED  
NSC/RMO PROFILE

RECORD ID: 9800565  
RECEIVED: 26 JAN 98 15

TO: FRANK, BARNEY

FROM: PRESIDENT

DOC DATE: 04 MAR 98  
SOURCE REF:

KEYWORDS: GAYS IN MILITARY CO

PERSONS: MCVEIGH, TIMOTHY

SUBJECT: RESPONSE TO REP FRANK ON MCVEIGH CASE

ACTION: FOR DISPATCH DUE DATE: 06 FEB 98 STATUS: C

STAFF OFFICER: BOUCHARD

LOGREF:

FILES: PA NSCP: CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION  
WH STRIPPING DESK

FOR CONCURRENCE

FOR INFO  
BOUCHARD  
NSC CHRON  
RUDMAN

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_

DISPATCHED BY \_\_\_\_\_ DATE \_\_\_\_\_ BY HAND W/ATTCH

OPENED BY: NSDRS CLOSED BY: NSGP DOC 5 OF 5

UNCLASSIFIED

UNCLASSIFIED  
ACTION DATA SUMMARY REPORT

RECORD ID: 9800565

| <u>DOC</u> | <u>ACTION OFFICER</u> | <u>CAO</u> | <u>ASSIGNED</u> | <u>ACTION REQUIRED</u>         |
|------------|-----------------------|------------|-----------------|--------------------------------|
| 002        | BERGER                | Z          | 98020710        | FWD TO PRESIDENT FOR SIGNATURE |
| 002        | BOUCHARD              | Z          | 98020717        | FOR FURTHER ACTION             |
| 003        | BERGER                | Z          | 98021013        | FWD TO PRESIDENT FOR SIGNATURE |
| 003        | STEIN, L              | Z          | 98021721        | FOR SIGNATURE                  |
| 004        | PRESIDENT             | Z          | 98022316        | FOR SIGNATURE                  |
| 005        |                       | X          | 98030511        | PRESIDENT SGD LTR              |
| 005        | WH STRIPPING DESK     | X          | 98030511        | FOR DISPATCH                   |

DISPATCH DATA SUMMARY REPORT

| <u>DOC</u> | <u>DATE</u> | <u>DISPATCH FOR ACTION</u> | <u>DISPATCH FOR INFO</u> |
|------------|-------------|----------------------------|--------------------------|
| 005        | 980304      | FRANK, BARNEY              |                          |
| 005        | 980304      | WH STRIPPING DESK          |                          |

UNCLASSIFIED

National Security Council  
The White House

PROOFED BY: \_\_\_\_\_

LOG # 0565

URGENT NOT PROOFED: \_\_\_\_\_

SYSTEM PRS NSC INT ARS

BYPASSED WW DESK: \_\_\_\_\_

DOCLOG \_\_\_\_\_ A/O \_\_\_\_\_

|                | SEQUENCE TO | INITIAL/DATE   | DISPOSITION |
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| Rice           | _____       | _____          | _____       |
| Davies         | _____       | _____          | _____       |
| Kerrick        | _____       | _____          | _____       |
| Steinberg      | _____       | _____          | _____       |
| Berger         | _____       | _____          | _____       |
| Situation Room | _____       | _____          | _____       |
| West Wing Desk | <u>2</u>    | <u>TMA 3.5</u> | <u>D</u>    |
| Records Mgt.   | <u>3</u>    | _____          | <u>D</u>    |
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A = Action    I = Information    D = Dispatch    R = Retain    N = No Further Action

cc:

COMMENTS:

Date

March 4, 1998?

Exec Sec Office has diskette \_\_\_\_\_

National Security Council  
The White House

PROOFED BY: \_\_\_\_\_

LOG # 0565

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SYSTEM PRS NSC INT ARS

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| A = Action | I = Information | D = Dispatch | R = Retain | N = No Further Action |
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cc:

COMMENTS:

Exec Sec Office has diskette \_\_\_\_\_

National Security Council  
The White House

2/10

PROOFED BY: \_\_\_\_\_

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| Kerrick           | _____       | _____              | _____          |
| Steinberg         | <u>2</u>    | <u>[Signature]</u> | _____          |
| Berger            | <u>3</u>    | <u>[Signature]</u> | _____          |
| Situation Room    | _____       | _____              | _____          |
| West Wing Desk    | <u>4</u>    | <u>8 2/7</u>       | <u>D White</u> |
| Records Mgt.      | _____       | _____              | _____          |
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A = Action    I = Information    D = Dispatch    R = Retain    N = No Further Action

cc:

COMMENTS:

'98 FEB 9 PM 7:51

Exec Sec Office has diskette yes

National Security Council  
The White House

2/7/98

PROOFED BY: \_\_\_\_\_

LOG # 0565

URGENT NOT PROOFED: \_\_\_\_\_

SYSTEM PRS NSC INT ARS

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DOCLOG SNP A/O \_\_\_\_\_

*JP*

|                | SEQUENCE TO | INITIAL/DATE       | DISPOSITION   |
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| Cosgriff       |             |                    |               |
| Rice           | 1           | <u>2/6</u>         | <u>INIT</u>   |
| Davies         |             |                    |               |
| Kerrick        | 2           | <u>2/6</u>         |               |
| Steinberg      | 3           | <u>[Signature]</u> |               |
| Berger         |             |                    |               |
| Situation Room |             |                    |               |
| West Wing Desk | 4           |                    |               |
| Records Mgt.   |             |                    |               |
| <u>Booth</u>   | 5           | <u>JB 2/9</u>      | <u>Redone</u> |

A = Action I = Information D = Dispatch R = Retain N = No Further Action

CC:

COMMENTS:

'98 FEB 5 PM 7:48

Exec Sec Office has diskette yes

THE WHITE HOUSE

WASHINGTON

March 4, 1998

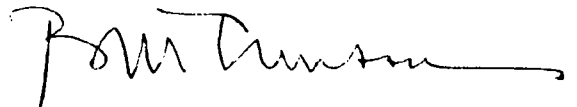
Dear Barney:

Thank you for your letter on the case of Chief Petty Officer McVeigh. As you know, U.S. District Court Judge Stanley Sporkin issued a permanent injunction against discharging McVeigh.

I am committed to ensuring that the Services implement our "Don't Ask, Don't Tell" policy fairly. I also take very seriously allegations that federal law protecting every citizen's right to electronic privacy may have been violated in this case. Consequently, I am paying close attention to this situation.

Thank you again for sharing with me your concerns on this important matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Clinton", with a long horizontal flourish extending to the right.

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

## THE WHITE HOUSE

WASHINGTON

February 23, 1998

~~98 FEB 23 PM 4:22~~ACTION

98 MAR 2 PM 3:46

MEMORANDUM FOR THE PRESIDENT

FROM:

SAMUEL BERGER  
LARRY STEINTHE PRESIDENT'S OFFICE  
3-4-98

SUBJECT: Letter from Representative Frank on McVeigh Case

Purpose

To answer the letter from Representative Frank urging you to stop the Navy from discharging Chief Petty Officer Timothy McVeigh.

Background

The Navy seeks to discharge McVeigh for allegedly violating the "Don't Ask, Don't Tell" policy by including language indicating a propensity to commit homosexual acts in his profile on America On-Line (AOL), which is accessible to anyone with an AOL account. McVeigh's supporters argue that his AOL profile does not constitute a violation of the "don't tell" policy and that the Navy violated McVeigh's electronic privacy by asking AOL to confirm that the profile in question belonged to him. On January 29, U.S. District Court Judge Stanley Sporkin issued a permanent injunction against discharging McVeigh for homosexuality on the grounds that Navy investigators had exceeded the limits of their authority under the "don't ask" side of the policy and had violated McVeigh's right to electronic privacy. The Department of Justice has 60 days in which to file an appeal and is currently reviewing the case with the Department of Defense and the Navy to determine whether an appeal is appropriate.

Representative Frank states that discharging McVeigh would disappoint those concerned with gay and lesbian rights. Your response notes the current status of the case and assures him that you are following it closely.

RECOMMENDATION

That you sign the letter at Tab A.

cc: Vice President  
Chief of Staff

## Attachments

Tab A Letter for Signature

Tab B Incoming Correspondence

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

0565  
redo

February 9, 1998

ACTION

MEMORANDUM FOR SAMUEL BERGER

THROUGH: ROBERT BELL *JB for*

FROM: JOSEPH BOUCHARD *JB*

SUBJECT: Letter from Representative Frank on McVeigh Case

The letter at Tab A responds to a letter from Representative Frank urging the President to stop the Navy from discharging Chief Petty Officer Timothy McVeigh.

Concurrence by: Mara Rudman, Mary DeRosa *Indraft*

RECOMMENDATION

That you sign the memorandum at Tab I.

Attachments

Tab I Memorandum for signature  
Tab A Letter for Signature  
Tab B Incoming Correspondence

BARNEY FRANK  
4TH DISTRICT, MASSACHUSETTS

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

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

0565

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

558 PLEASANT STREET  
ROOM 309  
NEW BEDFORD, MA 02740  
(508) 999-8482

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

89 MAIN STREET  
BRIDGEWATER, MA 02324  
(508) 687-9403

January 20, 1998

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

JAN 22 12:35

Dear Mr. President:

I am sending this message in confidence in the hope of averting a disaster. I know that the question of Timothy McVeigh's discharge has been put off until at least tomorrow. I want to emphasize that it would be an enormous political and moral mistake for the Administration to kick him out of the Navy. Those concerned with gay and lesbian rights -- me included -- would be severely disappointed by such an outrageous action. Throwing this sailor with an unblemished record out of the Navy because other people invaded the privacy he sought to protect would finally convince us that "Don't Ask, Don't Tell" is simply an equally homophobic version of the old anti-gay policy.

  
BARNEY FRANK

BF/mk

THE WHITE HOUSE  
WASHINGTON

January 22, 1998

MEMORANDUM FOR CHARLES RUFF  
DON GOLDBERG

FROM: SUSAN BROPHY *SB*

SUBJECT: Congressional Correspondence

Attached is a copy of a letter sent to the President from Members of Congress. We would appreciate your assistance in drafting the response. Please note that this letter was hand delivered to your office.

Thank you very much for your assistance. If you have any questions, please feel free to call Chris Walker at x67500.

The following is a description of the letter:

- 1) Rep. Barney Frank (D-MA), received 1-22-98.

Attachment

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

February 6, 1998

ACTION

MEMORANDUM FOR SAMUEL BERGER

THROUGH: ROBERT BELL *RB*

FROM: JOSEPH BOUCHARD *JB*

SUBJECT: Letter from Representative Frank on McVeigh Case

The letter at Tab A responds to a letter from Representative Frank urging the President to stop the Navy from discharging Chief Petty Officer Timothy McVeigh.

Concurrence by: Mara Rudman, Mary DeRosa *Imchoft*

RECOMMENDATION

That you sign the memorandum at Tab I.

Attachments

Tab I Memorandum for signature  
Tab A Letter for Signature  
Tab B Incoming Correspondence

WHAT

IS

TIMELINE

*What is timeline for decision?*

UNCLASSIFIED  
NSC/RMO PROFILE

RECORD ID: 9800565  
RECEIVED: 26 JAN 98 15

TO: PRESIDENT

FROM: FRANK, BARNEY

DOC DATE: 20 JAN 98  
SOURCE REF:

KEYWORDS: GAYS IN MILITARY CO

PERSONS: MCVEIGH, TIMOTHY

SUBJECT: DISCHARGE OF MCVEIGH FM NAVY

---

ACTION: DUE DATE: 06 FEB 98 STATUS: S

STAFF OFFICER: BOUCHARD

LOGREF:

---

FILES: PA NSCP: CODES:

---

D O C U M E N T D I S T R I B U T I O N

FOR ACTION  
BOUCHARD

FOR CONCURRENCE  
BAKER  
RUDMAN

FOR INFO  
BELL  
KERRICK

COMMENTS: IF FINAL REPLY CANNOT BE PREPARED BY DUE DATE, AN INTERIM RESPONSE  
MUST BE PREPARED FOR MARA RUDMAN'S SIGNATURE.

---

DISPATCHED BY \_\_\_\_\_ DATE \_\_\_\_\_ BY HAND W/ATTCH

OPENED BY: NSDRS

CLOSED BY:

DOC 1 OF 1

UNCLASSIFIED

**PRESIDENTIAL/NSA CORRESPONDENCE**

**IMMEDIATE ACTION REQUIRED**

ACTION OFFICER: Bouchard LOG NUMBER: 0565  
DUE DATE: 06 Feb  
DATE STAFFED: 26 Jan

**CORRESPONDENCE ADDRESSED TO:**



PRESIDENT



NATIONAL SECURITY ADVISOR

FROM: Frank

PREPARE A RESPONSE FOR THE PRESIDENT'S OR NATIONAL SECURITY ADVISOR'S SIGNATURE WITHIN 10 DAYS. IF A LETTER DOES NOT REQUIRE A RESPONSE, PLEASE RETURN IT TO RECORDS MANAGEMENT (RM 379) WITH THIS FORM, ANNOTATED ACCORDINGLY.

## GAYS IN THE MILITARY

Q: The New York Times today reports that your Administration has done little work on lifting the ban on gays in the military, and that your own Pentagon is actively undermining your policy. Are you satisfied with the progress to date? Is your military in control on this issue?

A: -- When I met with the Joint Chiefs of Staff in January, we set forward a plan to address this issue over the several months. I am confident that the Defense Department and the military Services are approaching this issue seriously, and I look forward to working closely with them as final decisions are made.

-- I expect to receive Secretary Aspin's recommendation on July 15, as planned.

Q: Do you believe that the Navy acted improperly in providing to Congress a court document that contends that the reinstatement of Navy Petty Officer Meinhold has been disruptive to his squadron?

A: -- No. The document in question -- a statement by Petty Officer Meinhold's commanding officer -- was provided to Congressional committees at their request. As part of the documentation filed with the district court in California, it is publicly available and is not of a privileged nature.

Q: Are you concerned that lifting the ban on homosexuals in the military will hurt recruiting so badly that the military might have to return to the draft?

A: -- No. I agree with Senator Nunn's assessment in that regard -- that we will continue to be able to draw top caliber men and women and to maintain ready, quality military forces.

Q: Do you still support your campaign pledge to lift the ban?

A: -- I am firmly committed to ensuring that American citizens who want to serve their country should be able to do so unless their conduct disqualifies them from doing so.

-- I believe that behavior can and should be strictly regulated. I do not think people should be disqualified merely on the basis of status.

-- I do not believe individuals should be excluded from military service solely on the basis of their status.

Q On a different subject?

MR. MCCURRY: Yes.

Q During the President's briefing with college reporters, one of the students asked him about Rutgers University and don't ask, don't tell, and ROTC. The President said, "If the policy were implemented in spirit and in letter the way it is really written, I don't think it would be in conflict." It seems that by that response that there's question of whether or not he thinks that it's being implemented in spirit and in letter. Does the President believe that don't ask, don't tell, don't pursue, is being implemented the way it should be?

MR. MCCURRY: The President is confident it's the right policy. He is concerned about some of the news reports that he's seen, anecdotally, providing information that some people have -- the circumstances of which would seem to suggest there might be some problem implementing the policy. But he is -- we have been in contact with the Pentagon on that and General Shalikashvili and Secretary Perry have both been very public and very detailed in explaining how the policy is working.

Q Mike, could you go back to a question I asked yesterday and just confirm if Deval Patrick is testifying tomorrow, and if so, what is he going to be saying?

MR. MCCURRY: Well, you are not surprised that his testimony will reflect very much the presentation on the subject of affirmative action that the President made at his news conference with the college editors earlier. The President gave, I think it's fair to say, a fairly detailed account and update on the status of the review and some of the areas of concern that he has, some of the questions that he's been posing. And I think that information will be of interest to the members of Congress who question Mr. Patrick tomorrow.

Q Two questions -- a follow-up, that will probably come up tomorrow, if he's asked, what is the President's timetable? And when the President finishes his review, what is it that he plans to do? Would he propose legislation, or just make the information available? What are the answers to those?

MR. MCCURRY: I think -- I suspect his answer tomorrow will be that we will do the review in a careful and deliberate way, and it'll be done when it's done, and we will -- and know the answer to the question, what follows as a result of the review when it is completed and when it's discussed publicly. I'd be surprised if the answer is any different than that.

**Secretary of Defense Les Aspin  
Ms. Jamie Gorelick, DoD General Counsel  
DoD Press Briefing  
Homosexual Conduct Policy in the Armed Forces  
Wednesday, December 22, 1993 - 2:15 p.m.**

Secretary Aspin: Let me just say that we're here today to release the new Department of Defense regulations on homosexual conduct in the armed forces.

These regulations fully implement the Clinton Administration's policy that was announced back in July. Secondly, they are consistent with the Defense Authorization Bill that just recently passed the Congress. And third, they have been agreed to by the services after a thorough coordination process. So all three points are important. One, these regulations that are being issued today implement the policy that was announced July 19th. Secondly, they are consistent with the language in the Defense Authorization Bill that passed the Congress in the conference form just before Thanksgiving. And third, they have been agreed to -- we've had extensive consultations with the services and they have been agreed to by the services after a thorough coordination process.

General Counsel Jamie Gorelick is going to make a presentation about how this is going to work and about the specifics of the regulations, but before she does that, I'd like to take a moment and say a few words about how we got to this point.

When the Clinton Administration came into office, we were immediately faced with the question of service by gays in the military. This was an enormously divisive and emotional issue. We determined very early on that attempting to solve this problem through a presidential stroke of the pen, as some had advocated at the time, that that was not the best route to follow. Instead, we decided that the only successful way to resolve the issue was by working with the services, and in particular, working with the Joint Chiefs of Staff.

On January 29th, the President signed a directive to the Secretary of Defense to begin formulating a new policy, and he gave us a date of mid-July to complete that new policy.

The strategy that we employed in coming up with the policy came from one central insight -- namely, that the President and the Joint Chiefs of Staff must agree on the new policy. The Chiefs understood that the Commander-in-Chief wanted to change the existing policy to end

discrimination based solely on status. The President understood that it was extremely important that any changes occur in a way that maintained the high level of morale and unit cohesion which is so important for military readiness and effectiveness. And everyone involved in the discussions understood that real world considerations required a meeting of the minds on what practical limits the changes should encompass at this present time.

Therefore, a period was necessary to formulate a policy that would accomplish these ends. That policy, which was announced July 19th, was "Don't ask, don't tell, don't pursue."

There are two important tests of the success of that policy. First, is the reaction of the troops; and second, is the reaction of Congress. For the troops, interesting. After the policy was announced, it basically dropped off as an issue after being the number one barracks topic. What happened was, it was a constant topic of discussion throughout the military all last spring. When the policy was announced, it just disappeared. Obviously, the indication of a successful formulation of the policy.

In Congress, the policy went through without any heavy lifting or major expenditure of political capital. To be sure, there are still some lawsuits; and to be sure, not everybody is happy with the policy. I don't want to imply that we think we have unanimous consent here. But we have proceeded to capture the broad middle with this policy as it's been announced in July and is being implemented in the policy regulations which we're making available today.

I would wager that not an awful lot of people would have thought that we could pass the Defense Authorization Bill this year without a big fight on gays in the military. If you thought back to the attitudes and the discussions of January and then made a bet that we could get through the Authorization Bill without a major fight, you could have won a lot of money given where people thought we were going to end up in January. The success of the program, of the policy, was shown... Which doesn't mean that there weren't amendments. There was, in fact, an amendment in the House, in any case -- there was an amendment on the left and there was an amendment on the right. But the point was, we were able to get that piece of legislation through without a big public fight which diverted a lot of attention and which required a lot of political capital from the White House. We were able to get it to happen in a way in which we didn't have to divert resources away from other fights -- on NAFTA, on the economic programs and all the other things that we needed political capital on this year.

So the important thing is that an acrimonious fight in Congress was avoided. The Defense Authorization Bill was passed, and the White House was permitted to preserve its political capital for other fights.

In sum, I would say that we have accomplished four things in the formulation phase of our strategy. One of them, I think, is that we've got the right solution -- don't ask, don't tell, don't pursue.

Number two, we worked with the right strategy to get the right solution. The strategy of separating the formulation and the implementation stages of the process has allowed us to make

the change in a rational and a deliberate manner without acrimony that surrounded the issue when it first surfaced in January. The process of saying "Okay, we're going to take six months and come up with a policy, and Congress, don't you worry about that, don't think you have to vote on this on every issue because we'll guarantee you'll get a vote on this before we're finished. But we're going to take six months, we're going to come up with a policy, we're going to announce our policy in July, and then you'll have ample chance to vote on these issues in the defense bills as they go through the system before they get implemented. We are not going to implement this until you've had a chance to vote on it." We made that pledge, and that pledge allowed us to deal with the issue in a rational way without acrimony, which we would have had plenty of if we tried to implement a policy right away on January 20th.

The third point is that we worked the solution through the military and through the Joint Chiefs. Obviously, a change in policy of this magnitude would ultimately be impossible to accomplish without a meeting of the minds between the services and the civilian leadership. I hope there's nobody that doubts that. I occasionally read comments that say we could have done this thing right away at the outset with a stroke of the pen. I hope nobody's under any illusion about that. We did it in the only way that it was possible to do it, which was working with the Joint Chiefs, for two reasons. Number one, without the Joint Chiefs, there weren't the votes in Congress for the policy. Number two, without the Joint Chiefs, we would have had much trouble implementing any policy. The implementation of the policy is successful when the Joint Chiefs of Staff send the word down to their various services from the top down, this is a policy, this is a good policy, we want it implemented. You need enthusiastic support in the services in order to implement any kind of complicated social change, and that's why it was important to have everybody on board, and that's why I think there is a very, very good chance that this policy will work out, because it has the support of the people in the military services starting at the top.

Everyone involved worked the problem in a way that was constructive and helpful until we arrived at the solution. We reached a meeting of the minds. That was true in the formulation of the policy in general terms, and in particular in the regulations that we're issuing today, the particulars of the regulations that are going out to the services today.

The fourth point, we've taken the issue off the table in a way that will not harm the readiness of our forces. As has been emphasized throughout this process, unit cohesion and morale are the bedrock of readiness. Formulation of the new policy has sharply reduced and almost eliminated the anxiety among the forces concerning this issue. We're confident that the new policy will maintain unit cohesion, and will maintain the readiness of the forces. It is the best equipped, best trained military in the world today, and this will help make sure that it doesn't degrade from those high standards.

Now what we're doing is moving from stage one to stage two. We're moving from the formulation of the policy to the implementation of the policy. Today we're announcing the new regulations. We fully expect the same cooperative spirit that guided our formulation of the new policy will also guide the implementation phase.

At this point, I'd like to turn to Jamie Gorelick, who will explain the new regulations and answer any questions that you might have.

Q: Mr. Secretary, could we ask you a quick question?

A: On the general policy, yes, ma'am.

Q: You're saying one of the big tests is the reaction of the troops. It seems that some military officials at bases are not allowing reporters on the bases to talk to the troops about this issue. Since you say that is an important factor, would you say now that it's possible for reporters to go out and talk to the troops at the bases?

A: We will make them available. The problem was, the troops did not know what the policy was going to be in the specifics. That's what we're doing today with the regulations. We are going to implement the regulations. Putting out the regulations today. As Jamie will explain, they have to then go to implementing regulations for each of the services. But we have no doubt that as soon as this has been internalized in the military services, you'll all have a chance to go out and talk to people about it.

Q: Do you see that big a mystery here? I mean, really, why can't the people that are serving talk about it?

A: Because at the moment you're talking to people who don't know what the policy is in its particulars. As soon as they understand what it is, how it's going to affect their lives, we would like you to have a chance to talk to them.

Q: Do you foresee a time when you won't have to make the premise that homosexuality is incompatible with military services?

A: Let me just say that I do not know...I would not say that the policy that we are implementing here today is the policy that will be forever on this issue. I think that we don't know that. I think attitudes have changed an awful lot in the last four or five years. Presumably, that change has not stopped. If changes occur, I would anticipate that further changes might occur in the military. But for the time being or for the foreseeable future, this is now the policy. It's a long struggle to get there. We should not think willy-nilly of taking up the issue again next year or any time soon, but I would not say that this is going to be it forever.

Q: Why not wait to implement the policy until the courts have had a chance to decide the central question of whether homosexuals can be dismissed at all?

A: You're talking about the Steffan case?

Q: Yes.

A: The Steffan case is a case that is brought up under the old policy, not under the new policy. So the Steffan case is an appeal and questions the issues of the old policy.

Q: Yes, but some of the decisions have tended to imply that homosexuals cannot be dismissed at all from the armed forces.

A: I understand. But what we are doing is implementing a policy here which is a new policy, and I would argue is a greatly improved policy because it's more consistent, it's more

thought through. It has the support of the services in a way that the old policy was not clear. It has the support of Congress, because we've had votes on it in Congress. It was not clear about the old policy, how much of the policy had the support of the Congress.

We are going to be able, under this new policy, to argue in the courts that here is a policy that has been considered by the Executive Branch, has been considered by the military, has been considered by the Congress, and all of those entities have supported it. We are implementing those regulations, and we fully expect that there will be lawsuits on this. But we would like to fight them out on the new policy rather than on the old policy.

Q: Does that mean you won't appeal the old policy...

A: I'm sorry, that one is still under discussion as to what to do about it.

Q: It sounds like you won't, from what you're saying.

A: It is under discussion. It has not been decided what is going to happen to the Steffan case.

For the purposes of this exercise today, these regulations apply to the new policy, not the old policy.

Jamie, go and talk about the regulations.

Ms. Gorelick: Thank you, Mr. Secretary.

I would like to discuss a little bit the process by which we came to the directives and walk you through the substance. We will have available for you, the full book of directives. We've tried to make it easy for you by listing the changes that we've made and by providing a summary for you.

These directives are the faithful execution of the July 19th policy and the legislation. It was our job to turn that brief bit of legislation, and the very brief statement of policy, into the kind of language that we in the Pentagon understand, which is about an inch and a half of directives.

The critical policy decisions were made in July. You will not find very much difference between what we all testified to, and particularly, what I testified to in July, and what you see in this book. The hours of testimony before the House and the Senate are amplified here, but again, we view this as an implementation, not a policy-making process.

I think that the way in which we have written these and the training that we intend to pursue will make these directives enforceable and understandable in the field. We have cognizance, as you know, over millions of people, and trying to create a set of directives that millions of people can understand is a difficult exercise. Ed Dorn, the Assistant Secretary for Personnel and Readiness, will take responsibility for the implementation and for training, and for concerns that may arise, as we go forward.

The second point I'd like to emphasize is how collaborative the process of arriving at these directives was. We had many, many, many hours of consultations, with dozens and dozens of people throughout the Department, within the services, at the most senior level within the services, and with the Department of Justice.

The services will implement these guidelines, these directives, in 45 days, so that they will become final on February 5th. The services' implementation drafts are due to us in 30 days, and that means that we will then have 15 days to consider their consistency with what we have issued and, of course, to consider any other comments that people may have. We are always open to suggestions as to how to do things better.

We have a three part policy, as Mr. Aspin said. What I think I should just do for you now, and then I'll take your questions, is outline what's new. When I say what's new, I'm talking about the difference between this policy and the current policy -- not the interim. That is, the pre-January policy.

With respect to "don't ask." We will not ask at accession about orientation or past conduct. If independent evidence of acts or statements is brought to the attention of those in the accession process, those acts and statements will be evaluated according to the same kinds of standards we see in the separation criteria that I'll get to in a minute.

Applicants will be informed both before they join the service, and at accession about what our standards are, so people will know, coming in, what our standards are.

The second part of the policy is "don't tell." That's essentially the separation criteria. The criteria are set forth in both the July 19th policy and they are echoed and ratified in the legislation. Someone may be discharged for homosexual acts, for marriages, and for statements under certain circumstances.

Now the statements which can be a basis for discharge are those that demonstrate a propensity, or intent to engage in acts. Now there are two changes here. One, we've eliminated the word "desire" to emphasize that the statement must be one that shows a likelihood to engage in acts. That is done in the statute as well as in our policy. We've also defined "propensity" as more than abstract preference or desire, and defined it in terms of a likelihood that the person would act. Again, it's a very conduct-based policy.

As you all know, a statement then creates a rebuttable presumption that the person will engage in acts, but the service member then has an opportunity to rebut, and we lay out the kinds of evidence that one might bring in. Evidence of one's activities, the context in which the statement was made, the credibility of the person making the statement, the circumstances of the statement. The board then has discretion to assess the facts and determine whether there is that likelihood.

There was a lot of attention paid to the fact-finding process that commanders would undertake in connection with a possible separation. Number one, no inquiry will be made about orientation, but a service member can be asked about conduct if there is credible information. Credible information is information that supports a reasonable inference that there has, indeed, been homosexual conduct. The commander must assure himself that there is that credible information. Credible information is not rumored, it is not suspicion, it's not opinion. It's facts. Associational activities like going to a gay parade or reading a magazine, in and of themselves, are not credible information. They only rise to that level if they are such that a reasonable person would believe that the conduct was intended to make a statement, intended to tell other people that the person is a homosexual.

The inquiry is limited to the facts involved in the allegation. Again, this was a very important part of our policy when we announced it in July. That is that if someone investigates a particular set of facts, say that two people were engaged in homosexual acts. The inquiry will be complete when the facts establishing that set of acts is determined. There will not then be a process whereby each service member is interrogated about his or her partners. That is our attempt to try to deal with the concern about witch-hunts. That doesn't mean that investigators must blink at evidence that is staring them in the face, and we have some ability to explain that a little bit more in our directives and in the scenarios that we have set forth.

The burden of proof remains on the member. The standard is preponderance of the evidence. If no aggravating circumstances exist and the person is found to be someone who should be separated, they will be separated under honorable conditions. That is, an honorable discharge or a general discharge. That is without aggravating factors.

The next part is "don't pursue." Don't pursue has some ramifications for the fact-finding process that I just described, but it also relates to criminal investigations. There will be no criminal investigations to determine orientation. Investigations of sexual misconduct will be undertaken in an evenhanded manner, without regard to whether the service member is heterosexual or homosexual. That doesn't mean the results are always the same, but it means the process by which we investigate is the same.

So, for example, allegations of consensual adult sexual conduct, heterosexual or homosexual, will normally be referred to commanders for administrative action and will not be pursued criminally.

A commander who has credible information about a UCMJ violation may request a criminal investigation, and the commander must assure himself that there is credible information before launching that investigation. The criminal investigators themselves must assure themselves that there is credible information.

Personnel security is the last issue. There will be no investigations here either to determine orientation. Information obtained in the personnel security process will not be provided for use in separation proceedings or criminal proceedings. That is current policy, but it has not uniformly been followed. It is clearly part of our policy that that line be honored.

Inquiries into sexual conduct must be relevant to security concerns like promiscuous sexual behavior or concealment of sexual conduct. So there must be a nexus between the question about orientation and the security concern.

Finally, one's efforts to conform one's behavior to DoD policy by not openly acknowledging homosexuality is not, in and of itself, that is not concealment. So that you don't get penalized as a service member for abiding by the policy.

Ultimately, these changes -- which are incremental changes -- need to be understood by commanders, by Judge Advocates General, by our troops, and Ed Dorn and his people who will be responsible for training. We have put in the materials, you will see, some scenarios. They are not meant to be prescriptive. They are not meant to be a cookbook of answers for commanders. But they are meant to give an idea to the people doing the training and the people receiving the training of what we who have been in the process of developing these directives thought they meant and thought they might result in.

Now I'd be happy to take your questions.

Q: I have a two part question. Part one is granted the Steffan case was decided under the pre-January rules and regulations, but in your professional, legal opinion, wouldn't the reasoning of the Circuit Court in Steffan throw out this policy as well? That's part one. Part two is somewhat related in that it seems to me the key to this policy and the purported change is in your assumption that a declaration of homosexual orientation establishes a rebuttable presumption of future homosexual conduct. That presumption can be rebutted by the evidence you described.

I was at a Senate Armed Services Committee hearing where that issue went back and forth, and the Secretary ended up saying, "That is not a change in existing policy. That is precisely what existing policy had held." So given the fact that it's not a major change, isn't this entire policy really the old policy, perhaps more humanely applied in certain circumstances, but basically the old policy in a new suit?

A: The old policy did not have either the "don't ask" or "don't pursue" parts, which I think are very significant and important in allowing someone with a homosexual orientation to, as the Secretary put it, "stay off the radar screen." I think those should not be overlooked.

With respect to the "don't tell" part, the criteria for separation are the same with some minor changes that I explained, that is having to do with the elimination of the word "desire", a clearer definition of the word "propensity", to make it absolutely clear that what we're talking about is the likelihood of acts. But the rebuttable presumption which existed before was A, hard to find; and B, hard to understand. We have tried to make it more apparent, and we have tried to give some examples of how it might work, and, if you will, to make it more robust. I think that is a difference that a court could acknowledge, as well as the careful balancing that went into this policy.

So in addition to the reasons that the Secretary stated, having to do with both houses of Congress and both policy-making branches of government agreeing on this policy, I think that there are some reasons why a court might view this policy differently than the old policy.

I'm not going to address the Steffan case. That issue is under discussion, and I'm sorry, I'm just not going to address it.

Q: Aside from conduct or declarations or statements when one is already in the military, you mentioned something about evidence being brought up at accession.

A: Yes.

Q: What is accession, and how much would that evidence be pursued relating to past conduct, not as a test of the conduct of the member when he's in the armed forces?

A: Accession is the process by which one joins the service. As you know, the policy says we're not going to ask. We're not going to ask about your orientation at that point, we're not going to ask about acts. The only question is if someone comes in and says, "Well, here's my history of acts." Or, "I am a homosexual." Or, in the very odd case, I suppose you might have some third party evidence submitted. We did try to address that. All I'm saying about that is that you will look at those matters in the same way that you would if someone were in the service. You would look at whether the conduct at issue reflects a likelihood that while you are in the service you will act similarly.

Q: You would take an allegation by a third party as a reason to pursue an inquiry at accession, at the point of joining the armed services.

A: There has to be information. Even when you're in the service, a mere allegation that someone is gay doesn't amount to credible information.

Q: I've got a question about "don't tell," what you might call the "Klinger provision." You don't tell, but if you tell only to get out of the military, it doesn't count. So then you can wind up being openly gay in the military because you only told to get out?

A: That is the current rule, as you know, and that's been carried forward. We've had, thankfully, very few instances in which it has been necessary to use it.

Q: One of the things they talk about is the blur between homosexual status and conduct. Legal authorities and gays in the military. Define, and I know you do so in this, sexual orientation.

A: Sexual orientation is an attraction to a person of a particular gender.

Q: And that's okay as long as you have no desire or likelihood to act on that?

A: What we're simply saying is, we have never acted on the basis of someone's orientation. It has never made any difference in the way the military treats a service member. We act on the basis of conduct. So this policy is conduct-based. If you engage in acts or are likely to do so, then we can and will separate you. Beyond that, essentially we're not going to ask.

Q: So basically, a homosexual can serve as long as they're celibate.

A: Again, as I say, it's conduct-based. We are not looking at anything other than conduct or likelihood to engage in conduct.

Q: Concerning the types of discharges given, I notice that the new policy, similar to the existing one, states that if the person determined to have engaged in homosexual conduct did so in private under consenting circumstances, they almost always, in the past, got an honorable or a general under honorable circumstances discharge. That seems to be the same situation now, if I understand the new directives.

A: Yes.

Q: But you also indicated that commanders might be able to use their discretion to invoke the Uniform Code of Military Justice which might make homosexual conduct a criminal offense. Can you clarify exactly how they can draw that line? Are they supposed to give them honorable discharges under most cases but some not?

A: We have not taken away any of the commander's discretion. On the other hand, there is a clear statement that our criminal investigative resources should not, in ordinary circumstances, be used for adult, private, consensual activity. It is, therefore, the most likely case, and I would say the norm, that such a case would be handled A, administratively; and B, if there were no aggravating factors, would result in a discharge under honorable conditions.

Q: The reason I raise that is that there's been some indication in the press and people I've spoken to that some commanders in recent weeks have, in fact, become in the words of some gay activists, vindictive, and have invoked sodomy prosecutions, or threatened to do so. There's a feeling that they seem to be lashing out on this.

A: Let me address quite squarely the allegations that have been made in the press in that regard. I want to make two very clear statements. Number one, the suggestion that the criminal process could be invoked against someone who makes a statement is preposterous. There has never been a basis in the Uniform Code of Military Justice for that, nor is there now. Number two, the notion that the current policy that we are about to issue broadens the basis on which someone can be investigated, rather than narrowing it, is equally preposterous.

Now with respect to the other allegations that surfaced in the press over the weekend that there has been vindictive conduct, we will look at any such allegation. In order to discharge somebody, that person goes before a board, that board decision is reviewed. There is ample opportunity for us, consistent with concepts of military justice, to try to ensure fairness in the system, and that's one of the things that my good friend Ed Dorn will have the privilege and honor of trying to do. It is our intention to make sure that people understand what we are trying to do here.

Q: Is it still true under this policy that homosexuality is incompatible with military service?

A: There is no statement to that effect in the directives.

Q: Is that your view? Or would you say that it's been altered to say homosexual conduct is incompatible with military service?

A: That is the statement that is in the directive. The basis provision of the directive is basically a quote from the July 19th policy. We understand that to be consistent with the legislation. It does not adopt in the language of the policy all of the findings of the legislation nor, in my view, does it need to do so.

Q: You said homosexual conduct is incompatible with this, but when it becomes clear that the person on active duty is homosexual, then they must separate from the service even though they have done nothing? Somehow you find out, but once it becomes clear they have to leave, is that correct? Even though they haven't conducted themselves in a manner that would violate any of your rules? Just from your knowledge?

A: If it becomes clear that they are homosexual, if they state their homosexuality, they have an opportunity to show that they do not engage in acts, and there would be a fact-finding thereafter. So the question is, do they engage in acts, or are they likely to do so.

Q: The Secretary emphasized that you want to fight the new battles, the legal battles, under the new policy. What are the ramifications of the new policy with respect to the two major themes of the constitutional questions -- the Fifth and 14th, equal protection; and the First Amendment, free speech?

A: I was trying to answer that question, essentially, when I answered Bob Zelnick's question. The new policy addresses the attack on the old policy having to do with speech by trying to make, very clear, that this is conduct-based. And when a determination is made to separate someone based upon a statement, it is because of what the statement tells you about the likelihood of acts. That's why there is this more robust, more apparent rebuttable presumption proceeding. The person has an opportunity to produce evidence on that issue. I think that addresses the First Amendment concern.

Q: Can you state with confidence, or to what degree of confidence will you state that the number of discharges for homosexuality will decline under this new policy? Do you, in fact, expect that to happen? Do you have any idea by how much?

A: I have no idea. I really don't. They have declined, as you know, from two years ago to last year, but I really don't know.

Q: Isn't that the real test?

A: It depends on how many homosexuals there are in the military, which we don't know because we're not asking. (Laughter)

Q: If the statement, as you said, tells you something about the strong likelihood to act in a way that might be incompatible, how does that protect the notion that a mere statement is not enough to get somebody out?

A: If the person says, "I said that, but I don't engage in conduct," that's what the board looks at. The board looks at evidence relating to the likelihood of engaging in conduct.

Q: In future conduct?

A: In future conduct.

Q: How does that protect the First Amendment?

A: It protects the First Amendment because we are not taking action based upon someone's statement of belief or the statement itself, but rather for what the statement tells you about future action. That was the rationale of the 7th Circuit opinion upholding the old regulations on that basis. I don't want to get too far down in the weeds on legal doctrine here.

Q: When the new policy is fully implemented February 5th, what happens to existing discharge proceedings? In particular, cases like the Meinhold case, the Justin Elzie case. Are new administrative proceedings started for them? What do you do with those existing cases?

A: Let me answer the broader question, then and the narrow question. The broader question is what happens to pending cases on February 5. From February 5 forward, these will be the rules that apply to cases that arise after that date.

There is a provision whereby the service can make these procedures available to then-pending cases. One of the things that we will do is look at all pending cases to see whether they should be treated differently than the course they are currently on.

Q: It seems to me you feel this new policy is more defensible in court, wouldn't it follow that you would want to open new cases for all existing pending cases?

A: Yes, but there are other competing factors having to do with how stale the evidence is and other issues that come into the mix. It's not such a simple issue.

Q: If I could just ask you to clarify about the misconduct when it is private, consensual. On two parts. My first question is, are you not going to direct investigative sources that way because, if heterosexuals are engaged in something that is a violation of the UCMJ, it's not normally investigated there? Is that the rationale? Also, how does this fit together with the fact that you still say that homosexual conduct is incompatible with military service? I'm just a little unclear, and I'm expecting that people who hear the report might ask the same questions.

A: To answer your first question, the reason that we are saying that we will not normally use criminal investigative resources for private, adult, consensual sexual conduct is that we just don't think it's a good use of our resources. We haven't been using our criminal resources that way for heterosexuals, and they're scarce resources, and we don't think we should use them that way for homosexual conduct.

The issue of whether you use your criminal justice resources in that way and whether you maintain someone in the military service once they've been found to have acted that way, are two different issues.

Q: Going to personnel security. A gay Marine goes into a position and he has to have a security clearance. On the form he can't put, "I am a homosexual," right?

A: He will not be asked.

Q: In the course of the investigation they find out he is a homosexual. None of that can be used against him?

A: Not for separation or criminal justice proceedings. It can be used in making the personnel security determination if there is some nexus to a security concern. For example, if he engages in promiscuous conduct or if there's an issue of concealment, those are traditional concerns. But his sexual orientation itself, his sexual activity, in and of itself is not disqualifying from receiving a personnel security clearance.

Q: If he is denied that security clearance, then he's just shifted to another job with no prejudice against him?

A: I don't know the answer to that question. I think that depends on what his skills are. I think there are probably some circumstances where if someone is denied a clearance it will have an impact on their career. That's not something that I have actually addressed.

Q: Can I just follow up on this? Retroactivity. If someone like Justin Elzie or Steffan, if you don't appeal those cases, for instance, and they continue to serve, can past statements be held against them? If they never again say, "I am gay."

A: That's one of the issues that one has to deal with in resolving this issue of retroactivity, and we just have not resolved what to do with pending cases. We may reach different decisions in different individual cases.

Q: Back to this question on the admission of desire. Does that mean that a service person can say that he or she is gay or lesbian and it will not be then a presumption of case? Or will that, at that point, be a rebuttal presumption, or what?

A: Yes, the latter.

Press: Thank you.

(END)



THE SECRETARY OF DEFENSE  
WASHINGTON, THE DISTRICT OF COLUMBIA

July 19, 1993

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

SUBJECT: Policy on Homosexual Conduct in the Armed Forces

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

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

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

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

I direct the following:

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

Servicemembers will be separated for homosexual conduct.

07/19 13:54 [TX/RX NO. 1998]

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

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

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

~~Homosexual conduct is a homosexual act, a statement by the servicemember that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.~~

A statement by a servicemember that he or she is homosexual or bisexual creates a rebuttable presumption that the servicemember is engaging in homosexual acts or has a propensity or intent to do so. The servicemember has the opportunity to present evidence that he does not engage in homosexual acts and does not have a propensity or intent to do so. The evidence will be assessed by the relevant separation authority.

A homosexual act includes any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires or any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in homosexual acts. Sexual orientation is a sexual attraction to individuals of a particular sex.

The interim policy and administrative separation procedures that I established on February 3, 1993, will remain in effect until October 1, 1993. Secretaries of the Military Departments and responsible officials within the Office of the Secretary of

Defense shall, by October 1, 1993, take such actions as may be necessary to carry out the purposes of this directive. Secretaries of the Military Departments will ensure that all members of the armed forces are aware of their specific responsibilities in carrying out this new policy. This memorandum creates no substantive or procedural rights. Any changes to existing policies shall be prospective only.

Policy Guidelines are attached.

cc: Secretary of Transportation

A large, stylized handwritten signature in black ink. The signature appears to be "J. A. Spurr" with a large loop at the top and a horizontal line at the bottom.

POLICY GUIDELINES ON HOMOSEXUAL CONDUCT  
IN THE ARMED FORCES

Summary of Policy

• Accession Policy

- Applicants for military service will no longer be asked or required to reveal if they are homosexual or bisexual, but applicants will be informed of the conduct that is proscribed for members of the armed forces, including homosexual conduct.

• Discharge Policy

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

• Investigations Policy

- No investigations or inquiries will be conducted solely to determine a servicemember's sexual orientation. Commanders will initiate inquiries or investigations when there is credible information that a basis for discharge or disciplinary action exists. Sexual orientation, absent credible information that a crime has been committed, will not be the subject of a criminal investigation. An allegation or statement by another that a servicemember is a homosexual, alone, is not grounds for either a criminal investigation or a commander's inquiry.

Activities

- Bodily contact between servicemembers of the same sex that a reasonable person would understand to demonstrate a propensity or intent to engage in homosexual acts (e.g., handholding or kissing in most circumstances) will be sufficient to initiate separation.
- Activities such as association with known homosexuals, presence at a gay bar, possessing or reading homosexual publications, or marching in a gay rights rally in civilian clothes will not, in and of themselves, constitute credible information that would provide a

basis for initiating an investigation or serve as the basis for an administrative discharge under this policy.

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

#### Off-Base Conduct

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

#### Investigations and Inquiries

- Neither investigations nor inquiries will be conducted solely to determine an individual's sexual orientation.
- Commanders can initiate investigations into alleged homosexual conduct when there is credible information of homosexual acts, prohibited statements or homosexual marriage.
- Commanders will exercise sound discretion regarding when credible information exists, and will evaluate the information's source and all attendant circumstances to assess whether the information supports a reasonable belief that a servicemember has engaged in proscribed homosexual conduct. Commanders, not investigators, determine when sufficient credible information exists to justify a detail of investigative resources to look into allegations.

Credible Information

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

Security Clearances

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

The Threat of Extortion

- As long as servicemembers continue to be separated from military service for engaging in homosexual conduct, credible information of such behavior can be a basis for extortion. Although the military cannot eliminate the potential for the victimization of homosexuals through blackmail, the policy reduces the risk to homosexuals by making certain categories of information largely immaterial to the military's initiation of investigations.
- Only credible information that a servicemember engaged in homosexual conduct will form the basis for initiating an inquiry or investigation of a servicemember; suspicion of an individual's sexual orientation is not a basis, by itself, for official inquiry or action.
- Extortion is a criminal offense, under both the UCMJ and United States Code, and offenders will be prosecuted. A servicemember convicted of extortion risks dishonorable discharge and up to three years confinement. Civilians found guilty of blackmail under the U.S. Code may be subject to a \$2000 fine and one-year imprisonment. The risk of blackmail will be addressed by educating all servicemembers on the policy and by emphasizing the significant criminal sanctions facing convicted extortionists.

Outing

- A mere allegation or statement by another that a servicemember is a homosexual is not grounds for official action. Commanders will not take official action against members based on rumor, suspicion or capricious allegations.
- However, if a third party provides credible information that a member has committed a crime or act that warrants discharge, e.g., engages in homosexual conduct, the commander may, based on the totality of the circumstances, conduct an investigation or inquiry, and take non-judicial or administrative action or recommend judicial action, as appropriate.
- Commanders are responsible for initiating an investigation when credible information exists that a crime or basis for discharge has been committed. The commander examines the information and decides whether an investigation by the Service investigative agency or a commander inquiry is warranted, or if no action should be taken.

Harassment

- Commanders are responsible for maintaining good order and discipline.
- All servicemembers will be treated with dignity and respect. Hostile treatment or violence against a servicemember based on a perception of his or her sexual orientation will not be tolerated.



Personnel and  
Readiness

THE OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-4000

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## Facsimile Cover Sheet

To: *CADR Sestak*  
Office: *Policy*  
Phone: *(202) 456-9191*  
Fax: *(202) 456-9190*

From: *LTC Jose Maldonado*  
Office: P&R (FMP)(MPP)O&EPM, 2B265  
Phone: 703-695-6312  
Fax: 703-614-6058

Date: *23 Sept 96*  
No. Pages with Cover: *25*

Comments:

*Sir:*  
*In response to Ken's; - I extracted*  
*info from Computer and gave briefing*  
*slides. Hope info. answered mail -*  
*via*  
*Jon*



**The United States Department  
of Defense**

**HOMOSEXUAL CONDUCT  
POLICY**



# Homosexual Conduct Policy

## OVERVIEW

Background

Training

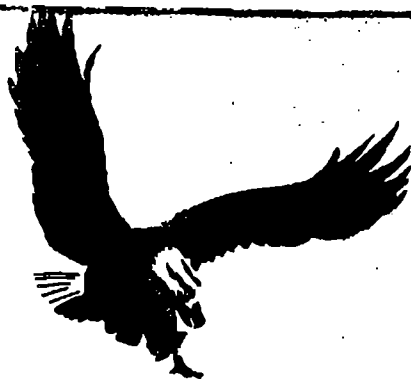
Statistics

Cases



# Background

- 29 Jan 93 - President Clinton directed SECDEF to develop a policy “ending discrimination on the basis of sexual orientation in determining who may serve in the Armed Forces of the United States.”
- 19 Jul 93 - SECDEF issued a new policy
- 20 Nov 93 Congress passed legislation consistent with the new policy
- 30 Nov 93 President Clinton signed the legislation



# Background Statute

(Section 654, Title 10)

“(b) **POLICY.**- A member of the armed forces shall be separated . . . under regulations prescribed by SECDEF . . . if . . .

- (1) That the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts . . .
- (2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding . . . that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.
- (3) That the member has married or attempted to marry a person known to be of the same biological sex.”



# Background

## DoD Policy

(Effective 28 Feb 1994)

- Homosexual conduct is grounds for barring entry into, and for separation from, the armed forces
  - Consistent with past policy and current statute
- Homosexual conduct (based on statute):
  - “A homosexual act, statement by the Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.”
    - Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

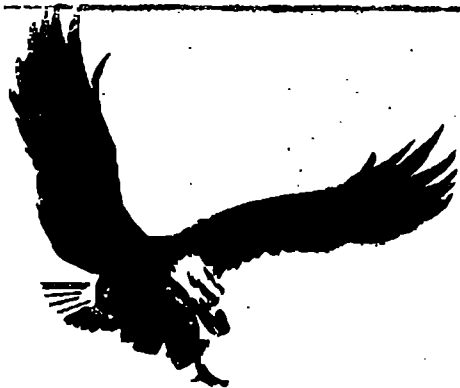


# Background

- 22 Dec 93 - SECDEF released new DoD directives. Congress reviewed DoD Directives prior to implementation to ensure compliance with intent of the law
- Directives/Instructions/Manuals that changed as a result of the new policys

| <b>DIRECTIVES/INSTRUCTIONS/MANUALS</b>                                                                                                                  | <b>OPR</b>     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| <i>DoDD 1332.14, Enlisted Administrative Separations</i>                                                                                                | <i>OEPM</i>    |
| <i>DoDD 1332.30, Separation of Regular Commissioned Officers</i>                                                                                        | <i>OEPM</i>    |
| <i>DoDD 1304.26, Qualification Standards for Enlistment, Appointment, and Induction</i>                                                                 | <i>AP</i>      |
| <i>DoDD 1332.18, Military Training</i>                                                                                                                  | <i>P&amp;R</i> |
| <i>DoDD 6130.9, Physical Standards for Enlistment</i>                                                                                                   | <i>HA</i>      |
| <i>DoDI 5505.8, Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations</i> | <i>IG, DoD</i> |
| <i>Defense Investigative Service Manual 20-1</i>                                                                                                        | <i>DIS</i>     |

- DoD reviewed /approved Services' regulations/directives/instructions prior to implmentation. Ensured compliance with law and DoD directives



# Training

- 21 Dec 93-DoD published Training Guidance
  - Provided to assist Services in the education of personnel
  - Directed training focus
    - Commanders/leaders orientation programs
    - Legal and personnel staff courses
    - Recruiting and accession programs
    - Professional military education/training



# Training

- DoD reviewed/approved Services' Training Plans prior to implementation
- Apr 95-DoD requested assessments of training implementation from the Services
- May 95-Services indicated full implementation of Training Plans completed



# Training

## Army Training Assessment

- DoD directed training focus
  - Commanders/leaders
    - Company grade and above receive training at pre-command courses prior to assuming command
  - Legal and personnel administrators
    - All policy/legal personnel and JAG officers receive training either prior to or immediately upon assumption of duties on the local level
  - Recruiting and accession personnel
    - All recruiters and recruiting unit commanders are trained at Fort Jackson prior to assuming their duties
    - Accession personnel are trained locally prior to or immediately upon assuming their duties
  - PME
    - All soldiers are trained at initial entry training and again after the soldier completes 6 months of active duty
- Assessment methodology
  - Review training objectives, procedures and results
  - Feedback from commanders



# Training

## Air Force Training Assessment

- DoD directed training focus

- Commanders/leaders
  - Squadron to Wing commanders receive training at Maxwell AFB or local area commanders' conference prior to or immediately assuming command
- Legal and personnel administrators
  - All JAG officers receive training at a number of specialized courses either prior to or immediately upon assumption of duties on the local level
- Recruiting and accession personnel
  - All recruiters receive training within the Recruiting Service prior to assuming their duties
- PME
  - All enlisted members receive training at Basic Military Training School and officers receive training at the commissioning source.
  - Training is incorporated in PME at all levels of both officer and enlisted leadership courses

- Assessment methodology

- Reports from AF/JA General Law Division and Litigation staffs and Major Commands



# Training

## Marine Corps Training Assessment

- DoD directed training focus
  - Commanders/leaders
    - Training conducted for all officers at commanders courses, general officer annual symposium, command and staff college and Amphibious Warfare School. Training occurs for enlisted leaders at various career level schools
  - Legal and personnel administrators
    - Judge Advocates and legal administrators are trained at the Naval Justice School and through local training programs either prior to or immediately upon assumption of duties on the local level
  - Recruiting and accession personnel
    - All recruiters receive training at Recruiter School prior to assuming their duties and subsequently on the district level on a quarterly basis
  - PME
    - Training is fully incorporated at the various Staff Noncommissioned Officer and Noncommissioned Officer Academies as well as at all officer PME courses.
    - Units below the battalion/squadron level conduct training based on operational and personnel tempos.
- Assessment methodology
  - Assessed on a decentralized level



# Training

## Navy Training Assessment

- DoD directed training focus
  - Commanders/leaders
    - All CO's at the PCO course prior to or within 6 months of command
  - Legal and personnel administrators
    - All JAG officers and Legal Admin officers receive training at the School of Naval Justice or via Mobile Training Teams
  - Recruiting and accession personnel
    - All recruiters receive training at the Navy Recruiting Orientation Unit prior to assuming their duties
  - PME
    - All enlisted members receive training locally on an annual basis as part of General Military Training
    - All officers receive training during resident PME
- Assessment methodology
  - Course monitoring and feedback from the students



# Statistics

- Homosexual discharges and percentage as part of the active duty forces.
  - FY 91-93 discharges are all under the old policy.
  - FY 94 discharges are a mixture of cases under both the old and new policies.
  - FY 95 is the first year that contains discharge data only associated with the new policy.

| Fiscal Year | Total DOD Discharges | Percentage |
|-------------|----------------------|------------|
| 1991        | 949                  | .047       |
| 1992        | 708                  | .039       |
| 1993        | 682                  | .039       |
| 1994        | 597                  | .037       |
| 1995*       | ≈ 600-620**          | ≈ >.039    |

Source: Services

\*The FY 95 number includes minor projections since end of year data has not been finalized.

\*\*The total figure is normalized to compensate for certain Air Force discharges that under the old policy would have been characterized as "fraudulent enlistment" and are now characterized as "for homosexual conduct". Under the old policy, recruits who answered "no" when asked if they were homosexual on enlistment forms and subsequently recanted their denials were often discharged for fraudulent enlistment. Under the new policy, that question is no longer asked in the enlistment process.



# Statistics

- Number of successful rebuttals - 7 (5-Navy, 2- Air Force)
  - Verbal and nonverbal statements create a rebuttable presumption that the member is engaging in homosexual acts or has the propensity to do so. The member has the burden of providing evidence sufficient to demonstrate that he or she does not engage in homosexual acts and does not have the propensity to do so.



# Conclusions

- Implementation has gone smoothly
- By-in-large, training programs are in place and working. The Navy is finalizing recurring training for sailors
- Policy is being applied as intended

11 FEB 94

ADDITIONAL Q's & A's FOR MR. DORN's DEPOSITION

Q: Is it not true that the rationale for excluding homosexuals from the military is, essentially, the same as that used in the past to exclude blacks and other minorities before the Services were integrated?

A. - No. There is one important difference. The policy to exclude blacks and others was based solely on race.

- It excluded people because of who they were and had nothing to do with conduct.

- There is no particular behavior or set of behaviors associated with a person's race.

- On the other hand, the policy regarding homosexuals is based on conduct.

- People are excluded only because of their conduct. Their sexual orientation is personal and private.

Q: If your policy is concerned only with conduct, why are people denied enlistment or separated from the Service if they just say they are gay?

A: - The key is whether a statement demonstrates intent or propensity to commit homosexual acts. We do not bar statements just for the sake of doing so.

- As a matter of military judgment, we have determined that, generally, a statement that an individual makes that he or she is a homosexual demonstrates that he or she has (1) engaged in homosexual acts, (2) is engaging in homosexual acts, or (3) has the intent or propensity to engage in homosexual acts.

- Such a statement gives rise to a presumption, which the person may rebut. The opportunity to rebut acts as a safety valve in cases of possible misunderstanding.

Q: What does the term, "Propensity," mean, as used in your regulations?

A: - It means, "Likelihood."

- (Our regulations define the term as "more than an abstract preference or desire to engage in homosexual acts; it [propensity] indicates a likelihood that a person engages in or will engage in homosexual acts.")

- The term most often comes up in the context of a person's statement, which gives rise to an inference of likelihood to commit homosexual acts.

**QUESTION:** There have recently been allegations in the media that little has changed in the DoD policy on homosexual conduct. Are personnel complying with the new policy?

**ANSWER:** Our people have been trained and are complying with the new policy. We keep working to ensure that the new policy is clearly understood. Where people have misunderstood or misapplied the policy, we will take corrective action.

The new policy on homosexual conduct became effective February 28, 1994. We have made extensive efforts to ensure that those empowered to execute provisions of the new policy in their roles as supervisors, administrators, commanders and investigators have the training that equips them to fulfill their responsibilities.

RECID = 9300101  
 CREFDATE = 1993012709  
 DOCDATE = 19930127

SUBJECT TRANSCRIPT OF REMARKS BY SEN NUNN RE GAYS IN MILITARY  
 KEYWORDS DEFENSE POLICY GAYS IN MILITARY  
 PERSONS NUNN, SAM  
 STAFFOFF BELL  
 STATUS C  
 FILELOC WH  
 FILECODE NONE  
 UPDATES D001 93012808 NOTED BY LAKE  
 DISTRIB D001 A LAKE  
 DISTRIBC D001 I BELL I NSC CHRON  
 DOCINFO D001 TMP150030012 19930127  
 BELL  
 TRANSCRIPT OF REMARKS BY SEN NUNN RE GAYS IN MILITARY  
 EOINFO:  
 XREFRDID 9300101 9300113

END OF DOCUMENT

RECID = 9300106  
CREFATE = 1993012712  
DOCDATE = 19930121

SUBJECT HALTERMAN FWDS LTR FM VAISSEY RE GAYS IN MILITARY  
KEYWORDS DEFENSE POLICY CONGRESSIONAL  
GAYS IN MILITARY  
PERSONS VAISSEY, JOHN  
STAFFOFF HAHN  
STATUS C  
FILELOC WH  
FILECODE NONE  
UPDATES D004 93021513 LAKE SGD LTR  
DISTRIB D001 A HAHN C BELL C GROSS  
D002 A LAKE  
D003 A LAKE  
DISTRIB D004 I BELL I HAHN I NSC CHRON  
DISPATCHA D004 HALTERMAN, H LEE  
DOCINFO D001 TMP150030022 19930121  
HALTERMAN, H LEE  
HALTERMAN FWDS LTR FM VAISSEY RE GAYS IN MILITARY  
EOINFO:  
D002 TMP150080032 19930130  
HAHN BELL  
LTR FM HALTERMAN RE MILITARY LEGAL ISSUES  
EOINFO:  
D003 TMP150180051 19930211  
HAHN BELL  
LTR FM HALTERMAN RE MILITARY LEGAL ISSUES  
EOINFO:  
D004 TMP150220009 19930215  
LAKE  
LTR THANKING HALTERMAN FOR LETTER FM VAISSEY  
EOINFO:

END OF DOCUMENT

RECID = 9300246  
CREDATE = 1993020217  
DOCDATE = 19930127

SUBJECT US NAVY COMMANDER REQUESTS POSITION ON PRESIDENTIAL COMMIS ON GAYS  
IN MILITARY  
KEYWORDS NAVY MP  
GAYS IN MILITARY  
PERSONS COY, BETH F  
STAFFOFF BELL  
STATUS C  
FILELOC WH  
FILECODE NONE  
UPDATES D003 93022014 LAKE SGD LTR  
DISTRIB D001 A BELL C HAHN  
D002 A LAKE  
DISTRIB D003 I BELL I HAHN I HALL  
I NSC CHRON I PROCTOR  
DISPATCHA D003 LA ROCQUE, GENE R  
DOCINFO D001 TMP150090069 19930127  
LA ROCQUE, GENE R  
US NAVY COMMANDER REQUESTS POSITION ON PRESIDENTIAL COMMIS ON GAYS  
IN MILITARY  
EOINFO:  
D002 TMP150240072 19930216  
HAHN BELL  
LTR FM RADM LA ROCQUE RE HOMOSEXUALS IN MILITARY  
EOINFO:  
D003 TMP150270008 19930216  
LAKE  
RESPONSE TO RADM LA ROCQUE LTR RE HOMOSEXUALS IN MILITARY  
EOINFO:

END OF DOCUMENT

RECID = 9302037  
CREFDATE = 1993033112  
DOCDATE = 19930318

SUBJECT LTR TO PRES FM REP PETERSON RE HOMOSEXUALS IN MILITARY  
KEYWORDS DEFENSE POLICY CO  
GAYS IN MILITARY

PERSONS PETERSON, PETE

STAFFOFF HAHN

STATUS C

FILELOC PA

FILECODE NONE

UPDATES D004 93041311 PRES SGD LTR

DISTRIB D001 A HAHN C BELL C GOTTEMOLLER  
C ROSNER I GROSS I ITOH  
I KENNEY

D002 A LAKE

D003 A PRESIDENT

DISTRIB D004 I GROSS I HAHN I NSC CHRON

DISPATCHA D004 PETERSON, PETE

DISPATCHI D003 VICE PRESIDENT WH CHIEF OF STAFF

DOCINFO D001 TMP150660050 19930318

PETERSON, DOUGLAS

LTR TO PRES FM REP PETERSON RE HOMOSEXUALS IN MILITARY

EOINFO:

D002 TMP150740046 19930401

HAHN BELL

LTR FM REP PETERSON RE HOMOSEXUALS IN MILITARY

EOINFO:

D003 TMP150750072 19930409

LAKE PASTER, H

LTR TO PRES FM REP PETE PETERSON RE HOMOSEXUALS IN MILITARY

EOINFO:

D004 TMP150790021 19930412

PRESIDENT

LTR TO REP PETERSON RE HOMOSEXUALS IN MILITARY

EOINFO:

END OF DOCUMENT

RECID = 9302158  
CREFDATE = 1993040214  
DOCDATE = 19930316

SUBJECT LTR FM MOTHER OF HOMOSEXUAL US SAILOR KILLED IN OCT 1992

KEYWORDS DEFENSE POLICY NAVY  
GAYS IN MILITARY MP

PERSONS HALE, M

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D001 93072114 NFAR PER HAHN

D002 93052411 FOR RECORD PURPOSES

DISTRIB D001 A HAHN C BELL C GOTTEMOELLER

I GROSS I JONES I ROSNER

DISTRIB D002 I BELL I HAHN I JONES

DOCINFO D001 TMP150680102 19930316

HAJDYS, DOROTHY

LTR FM MOTHER OF HOMOSEXUAL US SAILOR KILLED IN OCT 1992

EOINFO:

D002 TMP151200037 19930416

HERNREICH, N

HERNREICH COVER MEMO TO LTR FM MOTHER OF KILLED SEAMAN SCHINDLER

EOINFO:

END OF DOCUMENT

RECID = 9302632

CREDATE = 1993042017

DOCDATE = 19930420

SUBJECT PRES MTG W/ SEC ASPIN ON 21 APR RE TAILHOOK / HOMOSEXUALS IN  
MILITARY / WOMEN IN COMBAT & DFAS SELECTION PROCESS

KEYWORDS DEFENSE POLICY AP  
GAYS IN MILITARY

PERSONS ASPIN, L

STAFFOFF HAHN

STATUS C

FILELOC PA

FILECODE NONE

UPDATES D002 93042309 NOTED BY PRES

DISTRIB D001 A LAKE

D002 A PRESIDENT

DISTRIBC D002 I BELL I HAHN

I NSC CHRON

DOCINFO D001 TMP150860095 19930420

HAHN

BELL

PRES MTG W/ SEC ASPIN ON 21 APR RE TAILHOOK / HOMOSEXUALS IN  
MILITARY / WOMEN IN COMBAT & DFAS SELECTION PROCESS

EOINFO:

D002 TMP150860118 19930421

LAKE

PRES MTG W/ SEC ASPIN ON 22 APR

EOINFO:

END OF DOCUMENT

RECID = 9304866  
CREFDATE = 1993063010  
DOCDATE = 19930624

SUBJECT LTR TO PRES FM SEN BOXER ET AL RE HOMOSEXUALS IN MILITARY  
KEYWORDS DEFENSE POLICY GAYS IN MILITARY

CO

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D004 93071609 PRES SGD LTRS

DISTRIB D001 A HAHN C BELL C GOTTEMOELLER  
C ROSNER I GROSS I ITOH  
I JONES I KENNEY

D002 A LAKE

D003 A PRESIDENT

DISTRIBC D004 I HAHN I NSC CHRON

DISPATCHA D004 LEVIN, CARL M MOSELEY-BRAUN, CAROL  
BOXER, BARBARA METZENBAUM, HOWARD M

DOCINFO D001 TMP151570022 19930624

MOSELEY-BRAUN, CAROL BOXER, BARBARA

METZENBAUM, HOWARD M

LTR TO PRES FM SEN BOXER ET AL RE HOMOSEXUALS IN MILITARY

EOINFO:

D002 TMP151660054 19930709

HAHN

BELL

LTRS TO PRES FM CONGRESS RE HOMOSEXUALS IN MILITARY

EOINFO:

D003 TMP151700077 19930713

LAKE

PASTER, H

LTRS TO CONGRESS RE HOMOSEXUALS IN MILITARY

EOINFO:

D004 TMP151730009 19930715

PRESIDENT

PRES REPLY TO SENATORS RE HOMOSEXUALS IN MILITARY

EOINFO:

XREFRDID 9304866 9304883 9306236

END OF DOCUMENT

RECID = 9304883  
 CREFDATE = 1993063014  
 DOCDATE = 19930625

SUBJECT LTR TO PRES FM SEN LEVIN RE GAYS IN MILITARY  
 KEYWORDS DEFENSE POLICY CO  
 GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D001 93071408 SEE 9304866 FOR FINAL ACTION

|         |             |          |                |
|---------|-------------|----------|----------------|
| DISTRIB | D001 A HAHN | C BELL   | C GOTTEMOELLER |
|         | C ROSNER    | I GROSS  | I ITOH         |
|         | I JONES     | I KENNEY |                |

DOCINFO D001 TMP151570074 19930625

LEVIN, CARL M

LTR TO PRES FM SEN LEVIN RE GAYS IN MILITARY

EOINFO:

XREFRDID 9304866 9304883 9306236

END OF DOCUMENT

RECID = 9305079  
 CREFDATE = 1993071214  
 DOCDATE = 19930728

SUBJECT LTR TO PRES FM REP SCHENK RE GAYS IN MILITARY  
 KEYWORDS DEFENSE POLICY CO  
 GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D003 93073009 PRES SGD LTRS

|         |             |          |                |
|---------|-------------|----------|----------------|
| DISTRIB | D001 A HAHN | C BELL   | C GOTTEMOELLER |
|         | C ROSNER    | I GROSS  | I ITOH         |
|         | I JONES     | I KENNEY |                |

D002 A LAKE

|         |              |        |             |
|---------|--------------|--------|-------------|
| DISTRIB | D003 I GROSS | I HAHN | I NSC CHRON |
|---------|--------------|--------|-------------|

|           |                   |                   |
|-----------|-------------------|-------------------|
| DISPATCHA | D003 SCHENK, LYNN | JOHNSTON, HARRY A |
|-----------|-------------------|-------------------|

DOCINFO D001 TMP151690054 19930728

SCHENK, LYNN

LTR TO PRES FM REP SCHENK RE GAYS IN MILITARY

EOINFO:

D002 TMP151780058 19930720

HAHN

BELL

LTR TO PRES FM REP SCHENK RE HOMOSEXUALS IN MILITARY

EOINFO:

D003 TMP151870006 19930729

PRESIDENT

PRES LTR TO REPS RE HOMOSEXUALS IN MILITARY

EOINFO:

XREFRDID 9305067 9305079 9305364

END OF DOCUMENT

RECID = 9305067  
CREDATE = 1993071211  
DOCDATE = 19930701

SUBJECT LTR TO PRES FM REP JOHNSTON RE GAYS IN MILITARY  
KEYWORDS DEFENSE POLICY GAYS IN MILITARY  
CO

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D002 93072608 SEE 9305079 FOR FINAL ACTION

DISTRIB D001 A HAHN C BELL C GOTTEMOELLER  
C ROSNER I GROSS I ITOH  
I JONES I KENNEY

D002 A LAKE

DOCINFO D001 TMP151690026 19930701

JOHNSTON, HARRY A

LTR TO PRES FM REP JOHNSTON RE GAYS IN MILITARY

EOINFO:

D002 TMP151780060 19930720

HAHN

BELL

LTR TO PRES FM REP JOHNSTON RE HOMOSEXUALS IN MILITARY

EOINFO:

XREFRDID 9305067 9305079 9305364

END OF DOCUMENT

RECID = 9305364  
 CREFDATE = 1993072214  
 DOCDATE = 19930714

SUBJECT LTR TO PRES FM REP SHENCK RE GAYS IN MILITARY  
 KEYWORDS DEFENSE POLICY GAYS IN MILITARY  
 CO

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D001 93072608 SEE 9305079 FOR FINAL ACTION

|         |             |          |                |
|---------|-------------|----------|----------------|
| DISTRIB | D001 A HAHN | C BELL   | C GOTTEMOELLER |
|         | C ROSNER    | I GROSS  | I ITOH         |
|         | I JONES     | I KENNEY |                |

DOCINFO D001 TMP151790047 19930714

SCHENK, LYNN

LTR TO PRES FM REP SHENCK RE GAYS IN MILITARY

EOINFO:

XREFRDID 9305067 9305079 9305364

END OF DOCUMENT

RECID = 9306763

CREFDATE = 1993090907

DOCDATE = 19930909

SUBJECT REPONSE TO INCOMING LTRS RE HOMOSEXUALS IN MILITARY

KEYWORDS DEFENSE POLICY GAYS IN MILITARY

STAFFOFF ITOH

STATUS C

FILELOC PA

FILECODE NONE

UPDATES D001 93090911 KENNEY SGD MEMO

DISTRIB D001 A ITOH

DISTRIBC D001 I EXECSEC

DISPATCHA D001 PODESTA, J

DOCINFO D001 TMP152280004 19930909

ITOH

REPONSE TO INCOMING LTRS RE HOMOSEXUALS IN MILITARY

EOINFO:

END OF DOCUMENT

RECID = 9305553  
CREDATE = 1993072715  
DOCDATE = 19930707

SUBJECT REQUEST PRES MEET W/ MILITARY COALITION RE GAYS & LESBIANS  
IN THE MILITARY

KEYWORDS DEFENSE POLICY ARMY  
NAVY AP  
GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D003 93080207 KENNEY SGD MEMO

DISTRIB D001 A HAHN C BELL I BERGER  
I EMERY I HALL I HILLIARD  
I ITOH I KENNEY I SIGLER

D002 A ITOH

DISTRIB D003 I EXECSEC I HAHN

DISPATCHA D003 HALE, M

DOCINFO D001 TMP151840083 19930707 019370

HALE, M

REQUEST PRES MEET W/ MILITARY COALITION RE GAYS & LESBIANS  
IN THE MILITARY

EOINFO:

D002 TMP151870044 19930729

HAHN

BELL

PRES MTG W/ LEADERSHIP OF MILITARY COALITION

EOINFO:

D003 TMP151900002 19930730

ITOH

MTG W/ LEADERSHIP OF MILITARY COALITION

EOINFO:

END OF DOCUMENT

RECID = 9305365  
CREDATE = 1993072214  
DOCDATE = 19930714

SUBJECT LTR TO PRES FM SEN JEFFORDS RE GAYS IN MILITARY  
KEYWORDS DEFENSE POLICY CO  
GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D004 93080220 PRES SGD LTR

DISTRIB D001 A HAHN C BELL C GOTTEMOELLER  
C ROSNER I GROSS I ITOH  
I JONES I KENNEY

D002 A LAKE

D003 A PRESIDENT

DISTRIB D004 I BELL I HAHN I NSC CHRON  
I ROSNER

DISPATCHA D004 JEFFORDS, JAMES M

DISPATCHI D003 VICE PRESIDENT WH CHIEF OF STAFF

DOCINFO D001 TMP151790049 19930714

JEFFORDS, JAMES M

LTR TO PRES FM SEN JEFFORDS RE GAYS IN MILITARY

EOINFO:

D002 TMP151850030 19930723

HAHN

BELL

LTR TO SEN JEFFORDS RE HOMOSEXUALS IN MILITARY

EOINFO:

D003 TMP151880014 19930731

LAKE

PASTER, H

PRES REPLY TO LTR FM SEN JEFFORDS RE HOMOSEXUALS IN MILITARY

EOINFO:

D004 TMP151900110 19930802

PRESIDENT

PRES REPLY TO LTR FM SEN JEFFORDS RE HOMOSEXUALS IN MILITARY

EOINFO:

END OF DOCUMENT

RECID = 9305212  
CREDATE = 1993071518  
DOCDATE = 19930625

SUBJECT LTR TO PRES FM SEN NUNN RE NEW YORK TIMES ARTICLE ON COURT MARTIAL  
OF TWO AIR FORCE OFFICERS ON SODOMY CHARGES

KEYWORDS DEFENSE POLICY AIR FORCE  
GAYS IN MILITARY CO

PERSONS CARLYLE, TROY TURNER, LUTHER S

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D005 93080509 PRES SGD LTR

DISTRIB D001 A HAHN C BELL C JONES  
C ROSNER I GROSS I ITOH  
I KENNEY

D003 A LAKE

D004 A PRESIDENT

DISTRIB D005 I BELL I HAHN I NSC CHRON  
I ROSNER

DISPATCHA D005 NUNN, SAM

DISPATCHI D004 VICE PRESIDENT WH CHIEF OF STAFF

DOCINFO D001 TMP151720054 19930625

NUNN, SAM

LTR TO PRES FM SEN NUNN RE NEW YORK TIMES ARTICLE ON COURT MARTIAL  
OF TWO AIR FORCE OFFICERS ON SODOMY CHARGES

EOINFO:

D002 TMP151720055 19930712

PASTER, H

PRES CORRESPONDENCE TRANSMITTAL MEMO

EOINFO:

D003 TMP151780057 19930719

HAHN

BELL

LTR TO PRES FM SEN NUNN RE COURT MARTIAL OF TWO AIR FORCE OFFICERS

EOINFO:

D004 TMP151840066 19930727

LAKE

PASTER, H

PRES REPLY TO LTR FM SEN NUNN RE COURTS-MARTIAL OF TWO AIR FORCE  
OFFICERS

EOINFO:

D005 TMP151930031 19930729

PRESIDENT

PRES REPLY TO SEN NUNN RE NY TIMES ARTICLE ON COURT MARTIAL OF 2 AIR  
FORCE OFFICERS ON SODOMY CHARGES

EOINFO:

END OF DOCUMENT

9300113 DOCUMENT= 22 OF 33 NUMBER OF LINES = 22  
RECID = 9300113  
CREDATE = 1993012715  
DOCDATE = 19930127  
SUBJECT SEN NUNN STATEMENT RE HOMOSEXUALS IN ARMED FORCES  
KEYWORDS DEFENSE POLICY CONGRESSIONAL  
GAYS IN MILITARY  
PERSONS NUNN, SAM  
STAFFOFF HAHN  
STATUS C  
FILELOC WH  
FILECODE NONE  
UPDATES D001 93012813 NOTED BY LAKE  
DISTRIB D001 A LAKE  
DISTRIBC D001 I BELL I HAHN I NSC CHRON  
DOCINFO D001 TMP150030046 19930127  
HAHN BELL  
SEN NUNN STATEMENT RE HOMOSEXUALS IN ARMED FORCES  
EOINFO:  
XREFRDID 9300101 9300113

END OF DOCUMENT

RECID = 9308689  
CREDATE = 1993110509  
DOCDATE = 19931027

SUBJECT LTR FM SEN BOXER TO PRES RE MY EXTREME DISAPPOINTMENT W/ YOUR ADMIN  
EMERGENCY REQUEST TO SUPREME COURT INTERVENE TO IN POLICY IN GAYS  
KEYWORDS DEFENSE POLICY CO  
GAYS IN MILITARY  
STAFFOFF HAHN  
STATUS C  
FILELOC WH  
FILECODE NONE  
UPDATES D004 93122220 PRESIDENT SGD LTR  
93122220 FOR DISPATCH WH STRIPPING DESK  
DISTRIB D001 A HAHN C BELL C ROSNER  
I GROSS I ITOH I KENNEY  
I WALKER  
D002 A LAKE  
D003 A PRESIDENT  
DISTRIBC D004 A WH STRIPPING DESK I HAHN I NSC CHRON  
I ROSNER  
DISPATCHA D004 BOXER, BARBARA WH STRIPPING DESK  
DISPATCHI D003 VICE PRESIDENT WH CHIEF OF STAFF  
DOCINFO D001 TMP152850017 19931027  
BOXER, BARBARA  
LTR FM SEN BOXER TO PRES RE MY EXTREME DISAPPOINTMENT W/ YOUR ADMIN  
EMERGENCY REQUEST TO SUPREME COURT INTERVENE TO IN POLICY IN GAYS  
EOINFO:  
D002 TMP153270088 19931216  
HAHN BELL  
LTR FM SEN BOXER RE HOMOSEXUALS IN MILITARY  
EOINFO:  
D003 TMP153310104 19931221  
LAKE PASTER, H  
PRES REPLY TO SEN BOXER RE HOMOSEXUALS IN MILITARY  
EOINFO:  
D004 TMP153320116 19931222  
PRESIDENT  
PRES REPLY TO SEN BOXER RE CASE OF HOMOSEXUALS IN MILITARY  
EOINFO:

END OF DOCUMENT

RECID = 9306233  
CREFDATE = 1993081812  
DOCDATE = 19930818

SUBJECT LTR TO RETIRED FLAG OFFICERS RE POLICY ON HOMOSEXUALS IN MILITARY  
KEYWORDS NAVY DEFENSE POLICY  
GAYS IN MILITARY  
STAFFOFF HAHN  
STATUS C  
FILELOC PA  
FILECODE NONE  
UPDATES D003 93091007 PRES SGD LTRS  
93091008 FOR DISPATCH WH STRIPPING DESK  
DISTRIB D001 A LAKE  
D002 A PRESIDENT  
DISTRIBC D003 A WH STRIPPING DESK I BELL I HAHN  
I NSC CHRON  
DISPATCHA D003 DUGAN, MICHAEL AITLIN, HUGH S  
BROOKS, THOMAS A CLARK, ARTHUR  
DORMAN, CRAIG FLYNN, CATHAL L  
FOOTE, E PAT KINNARD, DOUGLAS  
ODOM, WILLIAM E REALS, GAIL  
ROBERTSON, H B SEAWELL, WILLIAM T  
TAYLOR, JAMES TRULY, RICHARD H  
TURNER, STANSFIELD WEBER, VERN  
WALLER, CALVIN A H WICKHAM, JOHN A  
WOERNER, FRED F WOODMANSEE, JOHN W  
TRAINOR, MICK SMITH, PERRY  
COMFORT, CLAY WH STRIPPING DESK  
DOCINFO D001 TMP152060050 19930818  
HAHN BELL  
LTR TO RETIRED FLAG OFFICERS RE POLICY ON HOMOSEXUALS IN MILITARY  
EOINFO:  
D002 TMP152120036 19930824  
LAKE  
LTR TO RETIRED FLAG OFFICERS RE POLICY ON HOMOSEXUALS IN MILITARY  
EOINFO:  
D003 TMP152290004 19930901  
PRESIDENT  
PRES LTRS TO RETIRED FLAG OFFICERS RE POLICY OF GAYS IN MILITARY  
EOINFO:

END OF DOCUMENT

RECID = 9402082  
CREFATE = 1994032107  
DOCDATE = 19940319

SUBJECT PRES QUESTION ON ARTICLE RE GAYS IN MILITARY  
KEYWORDS GAYS IN MILITARY MEDIA  
STAFFOFF HAHN  
STATUS C  
FILELOC WH  
FILECODE NONE

UPDATES D003 94032513 NOTED BY PRESIDENT

DISTRIB D001 A HAHN C STEINBERG I BELL  
D002 A LAKE  
D003 A PRESIDENT

DISTRIBC D003 I NSC CHRON

DISPATCHI D003 VICE PRESIDENT WH CHIEF OF STAFF

DOCINFO D001 TMP154210001 19940319  
PRESIDENT

PRES QUESTION ON ARTICLE RE GAYS IN MILITARY  
EOINFO:

D002 TMP154230109 19940321

HAHN BELL

RECOUPMENT OF SCHOLARSHIPS & BONUSES

EOINFO:

D003 TMP154230110 19940323

LAKE

REPLY TO PRES QUESTION RE RECOUPMENT OF SCHOLARSHIPS & BONUSES FOR  
HOMOSEXUALS DISCHARGED FM ARMED SERVICES

EOINFO:

END OF DOCUMENT

RECID = 9400269  
CREFDATE = 1994011211  
DOCDATE = 19940106

SUBJECT LTR TO PRES FM SENS THURMOND & COATS RE HOMOSEXUALS IN MILITARY  
KEYWORDS DEFENSE POLICY CO  
GAYS IN MILITARY  
STAFFOFF HAHN  
STATUS C  
FILELOC WH  
FILECODE NONE  
UPDATES D004 94032415 PRESIDENT SGD LTRS  
94032415 FOR DISPATCH WH STRIPPING DESK  
94080216 ORIGINALS RETURNED TO NSC/S  
DISTRIB D001 A HAHN C BELL C ROSNER  
I GROSS I ITOH I KENNEY  
I WALKER  
D002 A LAKE  
D003 A PRESIDENT  
DISTRIB D004 A WH STRIPPING DESK I BELL I HAHN  
I KRECZKO I NSC CHRON I ROSNER  
DISPATCHA D001 DEFENSE  
D004 THURMOND, STROM COATS, DAN  
WH STRIPPING DESK  
DISPATCHI D003 VICE PRESIDENT WH CHIEF OF STAFF  
DOCINFO D001 TMP153530029 19940106  
THURMOND, STROM COATS, DAN  
LTR TO PRES FM SENS THURMOND & COATS RE HOMOSEXUALS IN MILITARY  
EOINFO:  
D002 TMP154070065 19940303  
HAHN BELL  
LTR TO PRES FM SEN THURMOND & COATS RE HOMOSEXUALS IN MILITARY  
EOINFO:  
D003 TMP154170129 19940317  
LAKE  
REPLY TO SENS THURMOND & COATS RE HOMOSEXUALS IN MILITARY  
EOINFO:  
D004 TMP154240074 19940323  
PRESIDENT  
LTRS TO SENS THURMOND & COATS RE HOMOSEXUALS IN MILITARY  
EOINFO:

END OF DOCUMENT

RECID = 9405440

CREFATE = 1994070708

DOCDATE = 19940707

SUBJECT ADMIN POLICY ON GAYS IN MILITARY

KEYWORDS GAYS IN MILITARY

STAFFOFF BELL

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D001 94070817 NOTED BY BERGER

DISTRIB D001 A LAKE

DISTRIBC D001 I NSC CHRON

DOCINFO D001 TMP155290001 19940707

BELL

ADMIN POLICY ON GAYS IN MILITARY

EOINFO:

END OF DOCUMENT

RECID = 9407218  
 CREFDATE = 1994090820  
 DOCDATE = 19940908

SUBJECT REQUEST INFO MEMO RE WASHINGTON TIMES ARTICLE NAVY OFFICERS BALK  
 AT PRO - GAY SEMINAR

KEYWORDS GAYS IN MILITARY MEDIA

STAFFOFF BELL

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D003 94091614 NOTED BY PRESIDENT

DISTRIB D001 A BELL C HAHN C ROSS

D002 A LAKE

D003 A PRESIDENT

DISTRIBC D003 I NSC CHRON

DISPATCHI D003 VICE PRESIDENT WH CHIEF OF STAFF

DOCINFO D001 TMP155920094 19940908

LAKE

REQUEST INFO MEMO RE WASHINGTON TIMES ARTICLE NAVY OFFICERS BALK

AT PRO - GAY SEMINAR

EOINFO:

D002 TMP155960013 19940909

BELL

INFO MEMO ON WASHINGTON TIMES ARTICLE RE GAYS IN MILITARY

EOINFO:

D003 TMP157400034 19940914

LAKE

WASHINGTON TIMES ARTICLE ON NAVY OFFICERS BALK AT PRO-GAY SEMINAR

EOINFO:

END OF DOCUMENT

RECID = 9409437  
 CREFDATE = 1994112816  
 DOCDATE = 19941127

SUBJECT PRES NOTES ON WASHINGTON TIMES ARTICLE ON GAYS IN MILITARY  
 KEYWORDS GAYS IN MILITARY MEDIA  
 STAFFOFF BELL  
 STATUS C  
 FILELOC WH  
 FILECODE NONE  
 UPDATES D003 94122012 NOTED BY PRESIDENT  
 DISTRIB D001 A BELL C ROSS I LAKE  
 I SESTAK  
 D002 A LAKE  
 D003 A PRESIDENT  
 DISTRIBC D003 I BELL I NSC CHRON  
 DISPATCHI D003 VICE PRESIDENT WH CHIEF OF STAFF  
 DOCINFO D001 TMP156730082 19941127  
 PRESIDENT  
 PRES NOTES ON WASHINGTON TIMES ARTICLE ON GAYS IN MILITARY  
 EOINFO:  
 D002 TMP156900056 19941214  
 BELL  
 PRES QUESTIONS RE GAYS IN MILITARY DISCHARGES  
 EOINFO:  
 D003 TMP156900057 19941215  
 LAKE  
 ARTICLE ON GAYS IN MILITARY  
 EOINFO:

END OF DOCUMENT

RECID = 9306236  
CREFDATE = 1993081814  
DOCDATE = 19930811

SUBJECT LTR TO PRES FM SEN BOXER RE GAYS & LESBIANS IN MILITARY  
KEYWORDS DEFENSE POLICY CO  
GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D002 95030216 ORIGINALS RETURNED TO NSC/S

D004 93101219 PRES SGD LTR

DISTRIB D001 A HAHN C BELL C GOTTEMOELLER  
C ROSNER I GROSS I ITOH  
I JONES I KENNEY

D002 A LAKE

D003 A PRESIDENT

DISTRIB D004 I BELL I HAHN I NSC CHRON  
I ROSNER

DISPATCHA D004 BOXER, BARBARA

DISPATCHI D003 VICE PRESIDENT WH CHIEF OF STAFF

DOCINFO D001 TMP152060063 19930811

BOXER, BARBARA

LTR TO PRES FM SEN BOXER RE GAYS & LESBIANS IN MILITARY

EOINFO:

D002 TMP152490148 19930930

HAHN

PRES REPLY TO LTR RE GAYS IN MILITARY

EOINFO:

D003 TMP152540057 19931005

LAKE

PASTER, H

STEPHANOPOULOS, G

PRES REPLY TO LTR FM SEN BOXER RE HOMOSEXUALS IN MILITARY

EOINFO:

D004 TMP152610129 19931012

PRESIDENT

PRES REPLY TO LTR FM SEN BOXER RE HOMOSEXUALS IN MILITARY

EOINFO:

XREFRDID 9304866 9304883 9306236

END OF DOCUMENT

RECID = 9304738  
 CREDATE = 1993062810  
 DOCDATE = 19930624

SUBJECT LTR TO PRES FM REP SCHROEDER ET AL RE HOMOSEXUALS IN MILITARY  
 KEYWORDS GAYS IN MILITARY DEFENSE POLICY

CO  
 STAFFOFF HAHN  
 STATUS C  
 FILELOC WH  
 FILECODE NONE

UPDATES D004 93071713 PRES SGD LTRS  
 93071713 FOR DISPATCH

WH STRIPPING DESK

DISTRIB D001 A HAHN C BELL  
 C ROSNER I GROSS  
 I JONES I KENNEY

C GOTTEMOLLER  
 I ITOH

D002 A LAKE  
 D003 A PRESIDENT

DISTRIB D004 A WH STRIPPING DESK I HAHN

I NSC CHRON

DISPATCHA D004 WH STRIPPING DESK  
 MARGOLIES-MEZVINSKY, MARJORIE  
 BECERRA, XAVIER  
 MEEHAN, MARTIN T  
 SCHUMER, CHARLES E  
 WYDEN, RON  
 WATT, MELVIN  
 ABERCROMBIE, NEIL  
 MALONEY, CAROLYN B  
 KENNELLY, BARBARA B  
 MINETA, NORMAN Y  
 PALLONE, FRANK  
 PELOSI, NANCY  
 WYNN, ALBERT R  
 VELAZQUEZ, NYDIA M  
 MORELLA, CONSTANCE A  
 BEILENSEN, ANTHONY C  
 STARK, FORTNEY H  
 MEEK, CARRIE P  
 REYNOLDS, MEL  
 YATES, SIDNEY R  
 FOGLIETTA, THOMAS M  
 GUNDERSON, STEVE  
 MINK, PATSY T  
 SABO, MARTIN O  
 BERMAN, HOWARD L  
 BROWN, GEORGE E  
 CLAY, WILLIAM L  
 GEJDENSON, SAMUEL  
 LANTOS, TOM  
 HARMAN, JANE  
 SANDERS, BERNARD  
 PASTOR, ED  
 JOHNSTON, HARRY A  
 NORTON, ELEANOR H

SCHROEDER, PATRICIA  
 ANDREWS, THOMAS H  
 FURSE, ELIZABETH  
 EDWARDS, DON  
 HASTINGS, ALCEE L  
 GUTIERREZ, LUIS V  
 HINCHEY, MAURICE D  
 UNSOELD, JOLENE  
 WASHINGTON, CRAIG A  
 WHEAT, ALAN  
 DEFAZIO, PETER A  
 KOPETSKI, MIKE  
 SERRANO, JOSE E  
 NADLER, JERROLD  
 DELLUMS, RONALD V  
 SHAYS, CHRISTOPHER  
 COLLINS, BARBARA-ROSE  
 WOOLSEY, LYNN C  
 BLACKWELL, LUCIEN E  
 FRANK, BARNEY  
 WATERS, MAXINE  
 MILLER, GEORGE  
 TOWNS, EDOLPHUS  
 MARKEY, EDWARD J  
 CONYERS JR, JOHN  
 ENGEL, ELIOT L  
 OWENS, MAJOR R  
 EVANS, LANE  
 WAXMAN, HENRY A  
 LEWIS, JOHN  
 MCDERMOTT, JIM  
 STUDDS, GERRY E  
 MCKINNEY, CYNTHIA A  
 OLVER, JOHN  
 DEUTSCH, PETER

DOCINFO D001 TMP151550035 19930624

SCHROEDER, PATRICIA ET AL  
 LTR TO PRES FM REP SCHROEDER ET AL RE HOMOSEXUALS IN MILITARY  
 EOINFO:

D002 TMP151640041 19930628

HAHN BELL

LTR TO PRES FM REP SCHROEDER ET AL RE HOMOSEXUALS IN MILITARY  
 EOINFO:

D003 TMP151710065 19930714

LAKE PASTER, H

LTRS FM REP NADLER & SCHROEDER ET AL ON HOMOSEXUALS IN MILITARY

EOINFO:

D004 TMP151740003 19930715

PRESIDENT

PRES REPLY TO CONGRESS RE HOMOSEXUALS IN MILITARY

EOINFO:

XREFRDID 9304738 9304745

END OF DOCUMENT

RECID = 9304745  
CREFDATE = 1993062810  
DOCDATE = 19930624

SUBJECT LTR TO PRES FM REP NADLER RE HOMOSEXUALS IN MILITARY  
KEYWORDS DEFENSE POLICY CO  
GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D002 93111717 SEE 9304738 FOR FINAL ACTION

DISTRIB D001 A HAHN C BELL C GOTTEMOELLER  
C ROSNER I GROSS I ITOH  
I JONES I KENNEY

D002 A LAKE

DOCINFO D001 TMP151550045 19930624

NADLER, JERROLD

LTR TO PRES FM REP NADLER RE HOMOSEXUALS IN MILITARY

EOINFO:

D002 TMP151640038 19930628

HAHN

BELL

LTR TO PRES FM REP NADLER RE HOMOSEXUALS IN MILITARY

EOINFO:

XREFRDID 9304738 9304745

END OF DOCUMENT

RECID = 9305416  
CREFDATE = 1993072311  
DOCDATE = 19930721

SUBJECT LTR TO PRES FM REP ESHOO RE ENDING BAN ON GAYS IN MILITARY  
KEYWORDS DEFENSE POLICY CO  
GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D004 93080508 PRES SGD LTRS

DISTRIB D001 A HAHN C BELL C GOTTEMOELLER  
C ROSNER I GROSS I ITOH  
I JONES I KENNEY

D002 A LAKE

D003 A PRESIDENT

DISTRIBC D004 I BELL I HAHN I NSC CHRON  
I ROSNER

DISPATCHA D004 ESHOO, ANNA G SCHROEDER, PATRICIA  
FURSE, ELIZABETH STUDDS, GERRY E  
BECERRA, XAVIER ROGERS, HAROLD

DISPATCHI D003 VICE PRESIDENT WH CHIEF OF STAFF

DOCINFO D001 TMP151800068 19930721

ESHOO, ANNA G

LTR TO PRES FM REP ESHOO RE ENDING BAN ON GAYS IN MILITARY

EOINFO:

D002 TMP151870066 19930729

HAHN

BELL

LTRS TO PRES RE HOMOSEXUALS IN MILITARY

EOINFO:

D003 TMP151910065 19930803

LAKE

PASTER, H

PRES REPLY TO LTRS FM MEMBERS OF CONGRESS RE HOMOSEXUALS IN MILITARY

EOINFO:

D004 TMP151930003 19930804

PRESIDENT

PRES REPLY TO REP ESHOO ET AL RE HOMOSEXUALS IN MILITARY

EOINFO:

XREFRDID 9305416 9305419 9305420 9305425 9305428

END OF DOCUMENT

RECID = 9305419  
 CREFDATE = 1993072312  
 DOCDATE = 19930715

SUBJECT LTR TO PRES FM REPS FURSE & SCHROEDER RE SPECIAL CONCERN FOR WOMEN  
 AFFECTED BY POLICY OF LIFTING BAN ON GAYS IN MILITARY

KEYWORDS DEFENSE POLICY CO  
 GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D001 93073018 SEE 9305416 FOR FINAL ACTION

|         |             |          |                |
|---------|-------------|----------|----------------|
| DISTRIB | D001 A HAHN | C BELL   | C GOTTEMOELLER |
|         | C ROSNER    | I GROSS  | I ITOH         |
|         | I JONES     | I KENNEY |                |

DOCINFO D001 TMP151800073 19930715

FURSE, ELIZABETH SCHROEDER, PATRICIA  
 LTR TO PRES FM REPS FURSE & SCHROEDER RE SPECIAL CONCERN FOR WOMEN  
 AFFECTED BY POLICY OF LIFTING BAN ON GAYS IN MILITARY  
 EOINFO:

XREFRDID 9305416 9305419 9305420 9305425 9305428

END OF DOCUMENT

RECID = 9305425

CREFDATE = 1993072313

DOCDATE = 19930714

SUBJECT LTR TO PRES FM REP BACERRA RE GAYS IN THE MILITARY

KEYWORDS DEFENSE POLICY CO

GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D001 93073018 SEE 9305416 FOR FINAL ACTION

|         |      |   |      |        |      |        |              |           |
|---------|------|---|------|--------|------|--------|--------------|-----------|
| DISTRIB | D001 | A | HAHN | C      | BELL | C      | GOTTEMOELLER |           |
|         |      |   | C    | ROSNER | I    | GROSS  | I            | ITOH      |
|         |      |   | I    | JONES  | I    | KENNEY | I            | LOWENKRON |
|         |      |   | I    | WALKER |      |        |              |           |

DOCINFO D001 TMP151800084 19930714

BECERRA, XAVIER

LTR TO PRES FM REP BACERRA RE GAYS IN THE MILITARY

EOINFO:

XREFRDID 9305416 9305419 9305420 9305425 9305428

END OF DOCUMENT

9305420 DOCUMENT= 15 OF 33 NUMBER OF LINES = 22  
RECID = 9305420  
CREDATE = 1993072312  
DOCDATE = 19930716  
SUBJECT LTR TO PRES FM REP STUDDS RE NEW ADMIN POLICY ON GAYS IN MILITARY  
KEYWORDS DEFENSE POLICY CO  
GAYS IN MILITARY  
STAFFOFF HAHN  
STATUS C  
FILELOC WH  
FILECODE NONE  
UPDATES D001 93073018 SEE 9305416 FOR FINAL ACTION  
DISTRIB D001 A HAHN C BELL C GOTTEMOELLER  
C ROSNER I GROSS I ITOH  
I JONES I KENNEY  
DOCINFO D001 TMP151800074 19930716  
STUDDS, GERRY E  
LTR TO PRES FM REP STUDDS RE NEW ADMIN POLICY ON GAYS IN MILITARY  
EOINFO:  
XREFRDID 9305416 9305419 9305420 9305425 9305428

END OF DOCUMENT

RECID = 9305428  
 CREFDATE = 1993072313  
 DOCDATE = 19930714

SUBJECT LTR TO PRES FM REP ROGERS URGES KEEPING BAN ON GAYS IN MILITARY &  
 MAKING IT PART OF US LAW

KEYWORDS DEFENSE POLICY CO  
 GAYS IN MILITARY

STAFFOFF HAHN

STATUS C

FILELOC WH

FILECODE NONE

UPDATES D001 93073018 SEE 9305416 FOR FINAL ACTION

|         |             |          |                |
|---------|-------------|----------|----------------|
| DISTRIB | D001 A HAHN | C BELL   | C GOTTEMOELLER |
|         | C ROSNER    | I GROSS  | I ITOH         |
|         | I JONES     | I KENNEY |                |

DOCINFO D001 TMP151800087 19930714

ROGERS, HAROLD

LTR TO PRES FM REP ROGERS URGES KEEPING BAN ON GAYS IN MILITARY &  
 MAKING IT PART OF US LAW

EOINFO:

XREFRDID 9305416 9305419 9305420 9305425 9305428

END OF DOCUMENT