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[Don't Ask/Don't Tell]

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To: David Leavy
NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

HANS

8774

REDO

December 15, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: HANS BINNENDIJK *HB*

SUBJECT: "Don't Ask, Don't Tell"

Per our conversation this afternoon, attached is the revised memo for the President on "Don't Ask, Don't Tell."

Concurrences by: Jamie Baker, Miles Lackey
in draft *in previous versions*

RECOMMENDATION

That you sign the memorandum for the President at Tab I.

Approve _____ Disapprove _____

Attachment

Tab I Information Memorandum for the President

COPY

THE WHITE HOUSE
WASHINGTON

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL R. BERGER

SUBJECT: Problems with "Don't Ask, Don't Tell"

You asked for an assessment of the "don't ask, don't tell" policy for gays in the military. The assessment below concludes that: 1) there have been negative trends in policy implementation, 2) OSD is trying to improve the situation, overcoming resistance from the Services, and 3) there are steps available to improve the situation further, but they may reignite negative congressional reaction.

BACKGROUND

Several interrelated trends capture the nature of the current problem. The number of annual discharges for homosexual conduct has doubled since 1994, growing consistently from 617 in that year to 1149 last year. The vast majority of these discharges (82%) were triggered by a personal "statement" admitting to homosexuality. Fifty-eight percent of the discharges were within the member's first year of service.

Servicemembers' Legal Defense Network (SLDN) data (which may not be completely reliable) indicates that incidents of anti-gay harassment have doubled since 1997. Last year they documented 400 cases that included death threats and verbal abuse. The Fort Campbell murder, they argue, must be seen in the context of this broader environment of harassment. SLDN also believes that "commands use heavy-handed tactics to pursue gays" in violation of the "don't ask, don't pursue" elements of the policy. SLDN reports that incidents of "asking and pursuing" were up 42% between 1997 and 1998. They also conclude that while reports of threats to extract confessions are up, physical abuse by investigators has declined.

There appear to be several reasons for these negative trends. Under legislation passed in 1993, service members with a propensity or intention to engage in homosexual acts "create an

unacceptable risk" and must be separated from the Armed Forces. At the same time, the "don't ask, don't tell" policy stresses privacy rights. This has posed contradictions for those tasked with implementing the policy and for those trying to live with it. It is clear that the culture of the military leans in the direction of the law banning gays. While most service members receive some training on the policy, it appears inadequate. Therefore, the "don't ask, don't tell" policy may give homosexuals a false sense of security about joining a culture that may not meet expectations.

OSD EFFORTS TO IMPLEMENT THE POLICY

Bill Cohen and OSD appear to be making a good faith effort to implement the policy, but must overcome implementation problems in the Services. In March 1997, OSD issued a memorandum from Undersecretary Dorn, which made it clear that if a service member reports that he/she is being threatened because of a perception of being homosexual, that report shall not, by itself, cause the service member to be investigated for homosexuality. The report of such a threat should result in the prompt investigation of only the threat itself.

An April 1998 OSD review pointed out that the "don't ask, don't tell" policy posed an implementation challenge to the Services. The review found that although for the most part the policy has been properly applied, there is cause for concern about some aspects of policy implementation. It recommended several steps to enhance implementation.

On August 13, 1999, OSD issued new policy guidelines based on the 1998 review. The new guidelines strengthened and reissued the 1997 Dorn memorandum, and called for its wide distribution and for training on its content. In addition, the 1999 guidelines recommended that: 1) staff judge advocates consult with senior legal officers at higher headquarters before initiating investigations of an allegedly homosexual member, 2) prior authorization be sought at the Service Secretary level before initiating any investigation that might deprive a discharged member of financial benefits, and 3) Service Inspectors General (IG's) inspect the training of those charged with enforcing the policy. The Services are currently developing implementation plans for these August guidelines, so their impact has not yet been felt. OSD reports that the Army plan is acceptable but the other plans need to be revised.

OSD has also made a major effort at Lackland Air Force Base to reduce the number of recruits declaring themselves to be

homosexuals. By initiating a "cooling off" period, they have significantly reduced the number of discharges during basic training.

This week in an important step, Bill directed the DOD IG to assess the environment with respect to application of the "don't ask, don't tell" policy at representative installations within each of the military departments. The IG's assessment will address the extent to which service members are subject to harassment based on alleged homosexuality, and the extent to which disparaging speech or expression relating to sexual orientation is tolerated. Bill asked the IG to report back to him in 90 days; the report will serve as a useful basis for considering next steps.

CONGRESSIONAL CONSIDERATIONS

Efforts to strengthen the "don't ask, don't tell" policy could prove extremely controversial, particularly with the Services and opponents of the policy on the Hill. Too bold a step might reignite legislative proposals that could undermine our existing policy and spill over into other defense issues. In a December 15 *Washington Times* article, Senator John Warner is reported to have said, "The wise and fair course for future congressional action, particularly in view of the profound impact of these issues on military readiness, is not to take legislative action in the heated rhetoric of an election year."

POSSIBLE NEXT STEPS

Short of changing the "don't ask, don't tell" policy, there are several steps that might be taken to strengthen existing policy, including the following:

- Ensure prompt and complete Service implementation of the August 1999 guidelines.
- Conduct more vigorous anti-harassment training since current training appears inadequate.
- Take appropriate additional steps to hold commanders accountable for inappropriately "asking or pursuing" and for condoning an environment conducive to harassment.
- Pursue a broader definition of the service member communications for which confidentiality is protected.
- Ensure that there is appropriate recourse to accused service members to stop improper investigations by their commanders.
- A White House/OSD working group might be established to monitor implementation of the August guidelines, discuss implementing the above steps and consider other alternatives after release of the IG report.

TO CDR Jim Fallon, NSC

FAX (202) 456-9270

Begines, Tom, COL, OASD/PA

From: Begines, Tom, COL, OASD/PA
Sent: Wednesday, December 08, 1999 10:04 AM
To: 'Fallin, Jim CDR NSC'
Cc: Carter, Willette, LTC, OASD/PA; Begines, Tom, COL, OASD/PA; Whitman, Bryan, CIV, OASD/PA
Subject: DoD Talking Points, Recent Remarks re. Homosexual Conduct Policy
Importance: High

Jim,

Willette Carter said you needed this material immediately.

Please find attached the DoD(PA) briefing card. I've also included below the Sec Def's responses to two Q's during his media availability yesterday at 10:45 a.m. and Mr. Bacon's remarks during yesterday's regular Tuesday DoD news briefing.

SEC. COHEN'S REMARKS DEC. 7:

Q: Sir, in reference to the court martial in Fort Campbell, is anything being done to protect the safety and the privacy of soldiers suspected of being gay, or is anything being done to strengthen the don't ask/don't tell policy?

Secretary Cohen: Well, the court case is still underway as we speak, but we are determined to enforce the policy of non-discrimination and non-harassment and a zero tolerance policy toward any gay members. We still insist upon the don't ask/don't tell policy, but we want to have that effectively implemented.

Q: Is it not being effectively implemented now?

Secretary Cohen: There have been some cases where it hasn't, obviously. We want to make sure that everybody is fully aware of the policy and from the commanders down they enforce it.

MR. BACON'S REMARKS DEC. 7:**= NEWS BRIEFING****= OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE****= (PUBLIC AFFAIRS)****= WASHINGTON, D.C. 20301**

Mr. Kenneth H. Bacon, ASD PA

Tuesday, December 7, 1999 - 1:35 p.m. EST

-- RELEVANT EXTRACT FROM TRANSCRIPT IS BELOW --

Q New subject? A soldier has pled guilty to murdering another soldier who was believed to be gay. And this appears to have been sort of the culmination of several months of harassment of this one soldier because he was believed to be gay. What is the U.S. military doing to prevent the harassment of soldiers who are believed to be gay but have not broken the "don't tell" part of the agreement?

MR. BACON: The military has very strong policies against harassment for any reason involving sexual orientation, race, religion, language, ethnic background. And it's up to commanders to enforce these rules no matter what the cause of harassment. Remember, the ultimate goal is to develop a cohesive fighting force based on trust and respect and mutual understanding. And harassment is antithetical to that. You can't have racial harassment -- that's one of the reasons we were so concerned about the findings of the report several weeks ago -- you can't have ethnic or sexual harassment if you want to build that type of trust and cohesiveness. So it was very clear in the Dorn memorandum put out several years ago and reissued in August, it was very clear in Secretary Cohen's statements last August and also earlier, that there is no room for harassment or discrimination in the military. So all commanders have been instructed to make this policy, which is enshrined in law work as well as possible.

We are in the process of designing training, a special training to deal with the "don't ask, don't tell" policy so that everybody understands exactly what the policy is and what it isn't, but principally so that everybody understands that there is no room for discrimination or harassment or so-called "gay baiting" in the military.

Q So right now there is no training or instruction?

MR. BACON: There is training taking place at Fort Jackson. Not today, but it does take place there regularly. General Van Alstyne, (sic) [Brigadier General Raymond Barrett], who is the commander at Fort Jackson, has carried on such training. But there's going to be uniform training throughout the military. The services are now developing plans that are being cleared, and this is in response to a directive that was put out in August.

Bill?

Q Thank you. Chechnya. Is

7 Dec 99

File Name: Homo Conduct Pol

TAB ____

HOMOSEXUAL CONDUCT POLICY – 7 DECEMBER 1999**CURRENT NEWS**

Ft. Campbell has announced that the court-martial for Pvt. Calvin N. Glover for the alleged premeditated murder of fellow soldier Pfc. Barry L. Winchell began at Ft. Campbell at 8:30 a.m. today [Dec. 7]. At the initial court session today, Glover pled guilty to the lesser offense of unpremeditated murder. The judge revealed the existence -- but not the content -- of a pre-trial agreement, then the court martial went into the jury selection phase. The court members will make the decision whether Pvt. Glover is guilty of premeditated murder. A significant number of national and local media were at Ft. Campbell to cover the Glover court martial. The court martial of Spec. Justin R. Fisher for allegedly encouraging Glover to commit murder and for other lesser offenses is scheduled to begin Dec. 13.

PBS Newshour with Jim Lehrer has a story "in the can" but say they have not scheduled the air date. "60 Minutes" will air a segment Dec. 12. NBC and CBS are pushing for interviews and will likely ask questions today to get a "same day" sound bite from a DoD official to include in the pieces they will likely air tonight, pegged to the start of the court martial.

MESSAGES

I think most of you are aware of the ongoing judicial proceedings at Ft. Campbell. A number of media organizations are at Ft. Campbell to cover those proceedings first-hand. **I think all of you realize it would be totally inappropriate for me to talk about the specifics of that situation.** I think we all need to respect the legal process.

IS THE POLICY A FAILURE?

No. The policy is working.

The number of individuals discharged for homosexual acts since the policy went into effect in 1994 has *decreased*, both as an absolute number and in terms of

File Name: Homo Conduct Pol 7 Dec 99

the percentage of discharges under the policy. The increase has been in terms of statement cases, that is, those cases in which the service members indicate by their statements that they are gay or bisexual.

We don't know why more individuals are coming forward in that way but statement cases are now the basis for more than 80 percent of the discharges under the policy. The majority of those cases involve recruits in their initial months of military service, especially during basic training. Basic training is conducted at only a small number of installations.

The Department's year-long review of the implementation of the policy found that, for the most part, the policy is being properly applied and enforced. The review also determined that specific steps were warranted to enhance the implementation of the policy. The Department issued that additional guidance to the Services in August. All of those documents remain in the public realm.

As Secretary of Defense William S. Cohen said [in an Aug. 13 DoD news release] when the Department released two policy memoranda intended to improve application of the policy: "The Department is determined to implement the homosexual conduct policy with fairness to all concerned. I've made it clear there is no room for harassment or threats in the military. I've instructed the military Services to make sure that the policy is clearly understood and fairly enforced."

The policy is based upon the federal statute enacted by Congress in 1993 after they examined the issues in great detail. The congressional record of that examination and the Senate and House hearings runs to more than 1400 pages. I'd refer you to the studies and testimony documented in that extensive record of Congress' examination.

The reasons for the homosexual conduct policy are spelled out in the federal statute that essentially contains the findings of Congress after their lengthy examination. [From S.1337, National Defense Authorization Act for Fiscal Year 1994, Sec. 654, amending Chapter 37 of Title 10, United States Code]:

The "bottom line" is that the law and the policy maintain the necessary balance between the prohibition of homosexual conduct in the military and the privacy rights of Service members. The policy supports the maintenance of unit cohesion, morale and readiness while preserving the privacy of the individual.

File Name: Homo Conduct Pol 7 Dec 99

I've heard a number of speculative theories about why the number of statement cases has increased. [Ken Bacon, quoted on page 15 of the Jan. 23, 1999, *New York Times*: "Throughout our society there are more people declaring their sexual orientation – coming out of the closet, shall we say – and there's no reason the military should be any different."]

PLEA BARGAIN IN CASE OF PVT. GLOVER AT FT. CAMPBELL?

I'd refer you to the Army for any comment.

[ON BACKGROUND]: As those media present at the court martial proceedings at Ft. Campbell saw, on the morning of Dec. 7, the judge asked Pvt. Glover if he was aware of the pre-trial agreement. Glover indicated that he was. It would be inappropriate to comment on the content of the pretrial agreement. To do so could compromise the rights of the accused to a fair trial because in the military justice system the sentence is the lesser of the limitation in the pretrial agreement and the sentence adjudicated by the court members or military judge. However, it is standard procedure for victim and witness liaisons to consult with victims (or their families if the victim is deceased) regarding any potential pretrial agreements and their terms. The Army has full and total confidence in the military justice system and is committed to protecting and preserving the integrity of the military justice process for all those concerned in this case.

WHAT ABOUT "RAMPANT" HARASSMENT OF HOMOSEXUALS IN THE MILITARY? [A Mark Thompson article in the Dec. 13 issue of *Time* magazine highlighting the Winchell case at Ft. Campbell stated, "But virulent antigay bigotry remains an accepted prejudice in much of the U.S. military."]

I don't think there is any justification for such a sweeping and inaccurate pronouncement.

The Secretary of Defense, the Department and Service leadership, and leaders at all levels, have made it clear that there is no place in our military for harassment and no tolerance of harassment. This standard is based upon the fundamental requirement to foster and maintain unit cohesion. Cohesive units perform to high standards and accomplish the unit mission. Disrupted units falter. Unit cohesion is based upon trust and respect for all members of the unit. It is Department policy that commanders must take appropriate action in cases of harassment.

File Name: Homo Conduct Pol 7 Dec 99

The vast majority of discharges [over 80 percent] under the policy are uncontested and appear to involve service members who have elected to disclose their sexual orientation to their commanders or peers and therefore require little or no investigation. Because discharged service members are generally not interviewed about why they decided to disclose their sexual orientation, it is difficult to know precisely why service members are making such statements.

The typical case does not involve an investigation. The typical case is a service member, often within the first year of their military service and often while still in basic training, stating that they are homosexual or bisexual. The Department's year-long review determined that 58 percent of those discharged under the policy in fiscal year 1997 were junior enlisted personnel with less than one year of military service.

There have been eight unsuccessful challenges in four federal appellate courts since the statute went into effect in 1994. In each case, the constitutionality of the statute has been upheld.

There are some 1.4 million individuals in the active duty force. Each year, more than 200,000 newly commissioned officers and enlisted recruits join that force to replace those who depart. These recruits come from all walks of American society and they begin military service with values that may or may not be the same as the military's institutional values. With an organization that large and that dynamic, there is always room for improvement. The goal is to ensure everyone in uniform understands the policy and that those individuals charged with implementing the policy have the more detailed understanding necessary to implement it fairly. Our thrust is to be proactive in terms of avoiding mistakes in the implementation of the policy.

THE SLDN REPORTED THERE WERE 400 INCIDENTS OF HARASSMENT IN 1998. TRUE?

The Department's review in 1997-1998 examined the SLDN's allegations of harassment in their last report prior to the review. The SLDN's last report prior to the review provided enough specifics in only a handful of harassment incidents such that the Department could do follow up. The Department reviews every allegation received.

I'm not sure what the SLDN counted as harassment or what process they used to validate the accuracy of each report they received.

File Name: Homo Conduct Pol 7 Dec 99

After a year-long review of the implementation of the policy, the Department of Defense task force that conducted the review concluded in its [April 7, 1998] report *that in those cases where Service members reported threats directly to the commander, those commanders took appropriate action and did not target the victim*. Some of the threats were anonymous, and in those cases investigators had difficulty identifying those who were responsible.

The Department of Defense does not maintain a consolidated record of all reported harassment of alleged homosexuals or for most matters affecting good order and discipline at the unit level. Unit commanders closely monitor many areas that could or do impact good order and discipline. Only some of those areas are the subject of formal reports. Few such reports are consolidated at Service or Department level.

Most incidents involving Service members, whether alleged harassment or any other misconduct, are addressed by unit commanders at unit level. They take action as appropriate to enforce regulations and policy, and their consistency and effectiveness in doing so is evaluated by their chain-of-command.

At the more senior levels, the focus is on providing the right training and education, making sure that commanders, supervisors, leaders, and those other persons charged with fairly and correctly implementing the policy are properly trained with regard to the policy. It's a proactive approach.

Even if you accept the statistics of the policy's worst critic [the Servicemembers Legal Defense Network, SLDN], they indicated they had received reports from individuals that totaled up to some 400 instances of alleged harassment of any degree in our active duty force of 1.4 million individuals.

In 1998, the Department of Defense published the report of its year-long review of the implementation of the homosexual conduct policy. *The review determined that in those cases where Service members reported threats directly to the commander, those commanders took appropriate action and did not target the victim*. The sources of some reports were anonymous and sometimes those who make the reports do not identify the alleged harasser. In those cases investigators had difficulty identifying those who were responsible.

The Department monitors those cases that are brought to our attention [by the SLDN, members of Congress, by the chain-of-command].

File Name: Homo Conduct Pol 7 Dec 99

As you might recall, the Department was able to publish the fiscal year 1998 statistics in January 1999. I expect a similar time line this year.

FACTS AND POLICY

LEGAL CHALLENGES

There have been eight unsuccessful challenges in four federal appellate courts since the statute went into effect in 1994. In each case, the constitutionality of the statute has been upheld.

HOMOSEXUAL CONDUCT POLICY

The Defense Department's homosexual conduct policy went into effect February 28, 1994, after months of extensive congressional hearings and debate and the enactment of a federal statute. This policy supports the maintenance of unit cohesion and morale as well as preserving the privacy of the individual. For these reasons, and because it works to maintain readiness, the Department supports and defends the policy.

The reasons for DoD's homosexual conduct policy are spelled out in the federal statute governing homosexual conduct in the military and in the congressional findings made in connection with that statute:

- The three bases for separation in the statute are homosexual acts, same sex marriages, and statements by an individual that he or she is a homosexual or bisexual.
- From S.1337, National Defense Authorization Act for Fiscal Year 1994, Sec. 654, amending Chapter 37 of Title 10, United States Code:
 - **“(a) (13) The prohibition against homosexual conduct . . . continues to be necessary in the unique circumstances of military service.”**
 - **“(a)(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.”**

File Name: Homo Conduct Pol 7 Dec 99

HOW MANY COMMANDERS OR OTHER INDIVIDUALS HAVE BEEN DISCIPLINED FOR HARASSMENT OF ALLEGED HOMOSEXUALS OR FOR VIOLATING THE "DON'T ASK, DON'T PURSUE" ASPECTS OF THE POLICY?

I don't have statistics for you because violations of this or any other policy that are severe enough to warrant judicial punishment are normally charged and reported as offenses under specific articles of the Uniform Code of Military Justice such as "failure to obey a lawful order." Having said that, I'm not aware of any cases of judicial punishment for violations in the application of the policy.

However, officers and supervisors understand that they are required to follow departmental policy and are subject to adverse action if they do not follow policy, to include a lower efficiency report, a letter of reprimand or admonition, or non-selection for career-enhancing assignments or schools, and in the most serious cases action may be taken under the Uniform Code of Military Justice. Again, most types of such corrective action would not be tracked at DoD level.

[If asked about statements made by Ft. Campbell soldiers during Article 32 hearings for Glover and Fisher that indicated supervisors and others may have violated the policy] Ft. Campbell issued a news release Nov. 12 stating, in part: "Inquiries have been raised with regard to compliance with Department of Defense and Department of the Army policies. . . . The Fort Campbell command will undertake a review of compliance with applicable policies, procedures and regulations at Fort Campbell, and will take any steps warranted by the results of that review. This review will include the issues addressed in the August 12, 1999, memoranda issued by the Office of the Secretary of Defense, which are intended to clarify application of the homosexual conduct policy."

WHEN WILL ANTI-GAY HARASSMENT TRAINING IN BASIC TRAINING BEGIN?

The military Services are working on implementing guidance for OSD review. I anticipate that guidance will be reviewed and approved in a timely manner; however, I can't give you a specific implementation date at this time. Again, it will be reasonably soon, I believe.

NUMBER OF HOMOSEXUAL CONDUCT POLICY DISCHARGES IN FISCAL YEAR 1999?

Those numbers are not yet available.

File Name: Homo Conduct Pol 7 Dec 99

The language of the Aug. 12, 1999, de Leon memo in large part reiterates the language of the March 1997 Dorn memo. The de Leon memo states, in part:

- "Service members should be able to report crimes and harassment free from harm, reprisal, or inappropriate or inadequate governmental response."
- "The fact that a service member reports being threatened because he or she is said or is perceived to be a homosexual shall not in itself constitute credible information justifying the initiation of an investigation of the threatened service members."
- "The report of a threat or harassment should result in the prompt investigation of the threat or harassment itself."
- "If, during the course of an investigation, information is received that the service member has engaged in homosexual conduct, commanders shall carefully consider the source of that information and the circumstances under which it was provided in assessing its credibility."
- "Please ensure that this guidance is effectively disseminated to all levels of command and is made part of training programs for law enforcement personnel, commanders, supervisors and incorporated in the training required by section 654(d) of title 10, United States Code."

[NOTE: Section 654(d) requires "the briefings that members of the armed forces receive upon entry into the armed forces and periodically thereafter under section 937 of this title (Article 137 of the Uniform Code of Military Justice) shall include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies prescribed under subsection (b)." (Subsection (b) includes homosexual conduct policy.)]

WILL ARIZONA LEGISLATOR STEVE MAY BE DISCHARGED FROM THE ARMY RESERVES UNDER "DON'T ASK, DON'T TELL"?

It wouldn't be appropriate for me to comment while that individual's chain-of-command is working through the application of the homosexual conduct policy in this situation. I'd refer you to the Army for comment.

File Name: Homo Conduct Pol 7 Dec 99

A statement made by a service member that he or she is homosexual provides a rebuttable presumption that the service member has a propensity to engage in homosexual conduct and therefore can result in the initiation of administrative discharge proceedings against the member.

The member has a right to an administrative hearing where he or she has the right to legal representation and to present evidence to rebut the presumption.

ADDITIONAL DOD GUIDANCE ISSUED IN AUGUST 1999

The Department's working group recommended, and the Secretary of Defense approved [in August, 1999], additional policy guidance designed to promote consistent and fair application of the law and policy. Specifically, [from one of the two Aug. 12, 1999, USD(P&R) policy memos]:

"In order to implement the recommendations and findings of the April 1998 report, I request that you issue guidance as follows:

"Recommend that, to promote consistent and fair application of the law and policy, installation level staff judge advocates consult with senior legal officers at higher headquarters prior to the initiation of an investigation into alleged homosexual conduct. This guidance should make clear that the responsibility to determine when credible information exists – i.e., to determine whether the information reported supports a reasonable belief that a service member has engaged in homosexual conduct, such that an investigation is appropriate – remains with commanders.

"Commanders are best equipped to assess the credibility of the information provided, taking into account, for example, whether the stress of basic training may affect the reliability of a statement.

"Ensure that initiation of any substantial investigation into whether a service member made a statement regarding his or her homosexuality for the purpose of seeking separation be approved at the Military Department secretarial level.

"Ensure that Service Inspectors General include as an item of specific interest in their inspections the training of those charged with application and enforcement of the policy on homosexual conduct – i.e., commanders, attorneys, and investigators."

GUIDELINES FOR CONDUCTING INQUIRIES

Guidelines for fact-finding inquiries into homosexual conduct are specified in DoD Directive 1332.14, Enlisted Administrative Separations (in Attachment 4 to Enclosure 3). Directive guidance also exists for officer separations under the policy, of course.

File Name: Homo Conduct Pol 7 Dec 99

FINDINGS OF THE APRIL 1998 DOD REPORT:

"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 homosexuals in the military are to be handled [sic, missing words], and the elimination of obsolete enlistment forms that could have resulted in unwarranted questions."

The great majority of discharges for homosexual conduct are uncontested and are processed administratively. The vast majority of those discharged receive honorable discharges or general discharges under honorable conditions. (Separations of enlisted members in their first 180 days of military service are generally not characterized.)

The review found only isolated instances in which inquiries were made without the requisite factual basis or in which the scope of the investigation was expanded in a way that is inconsistent either with the express terms of the policy or with its spirit. The review makes recommendations designed to reduce the likelihood of such errors recurring.

There were 997 discharges for homosexual conduct in fiscal year 1997, an increase of 139 (or 16 percent) from the 858 discharges in fiscal year 1996. Also, in fiscal year 1997, women composed 14 percent of the active duty force but accounted for 22 percent of the homosexual conduct discharges. The review did not determine a complete explanation for the increased overall numbers or the disproportionate percent of women and those numbers are cause for some concern.

The numbers of service members discharged for homosexual conduct has increased somewhat since the current policy was instituted in 1994. However, the review found that more than 80 percent of the homosexual conduct discharges in fiscal year 1997 were the result of "statement" cases wherein the service member identified himself or herself as homosexual. Although the review did not analyze individual cases in depth to determine the reasons for service members' decisions, the Services believe that the bulk of these statement cases - although not all - involve service members who voluntarily elected to disclose their sexual orientation to their commanders, supervisors or peers.

File Name: Homo Conduct Pol 7 Dec 99

Most of those discharged under the policy are junior personnel with little time in the military. Fifty-eight percent of those discharged in fiscal year 1997 for homosexual conduct were junior enlisted personnel with less than one year of military service. Across all the Services, more than 80 percent of those discharged under the policy in fiscal year 1997 had less than four years of service.

Discharges for homosexual acts and marriages have declined by 20 percent over the past three years.

The review concluded that many of the allegations (including SLDN allegations) that were made last year relating to the improper initiation of investigations reflect a misunderstanding of the policy.

1998 HOMOSEXUAL CONDUCT DISCHARGES

The fiscal 1998 homosexual conduct policy discharge statistics were released Jan. 22, 1999, accompanied by the statement below from Under Secretary of Defense for Personnel and Readiness Rudy de Leon:

- "During 1997 and 1998, the Department of Defense conducted an extensive review of the military Services' implementation of the homosexual conduct policy required by the 1994 federal statute. The review concluded that, for the most part, the policy has been properly applied and enforced. The report of that review, including pertinent statistics, was published in April 1998. The Department is committed to ensuring the fair and even-handed implementation of the policy.
- "The fiscal year 1998 separations from the military under the policy align with those of previous years. About 87 percent of the fiscal year 1998 separations were based upon statements by Service members, an increase of about four percent compared to the percent of statement cases in fiscal year 1997. The total number of fiscal year 1998 discharges under the policy was less than one-tenth of one percent of the total strength of the active duty force."

BASIS FOR SEPARATION BY GENDER FOR FISCAL YEAR 1998

	<u>STATEMENT</u>			<u>ACT/MARRIAGE</u>		
MALE	FEMALE	TOTAL	MALE	FEMALE	TOTAL	

File Name: Homo Conduct Pol 7 Dec 99

712	279	991 (87%)	116	38	154 (13%)
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HISTORICAL HOMOSEXUAL CONDUCT POLICY DISCHARGE STATISTICS

Since the law was implemented in early 1994, the annual rate for separations under the policy has ranged from 4 to 8 per every 10,000 active duty service members. Again, more than 80 percent of those are statement cases.

The April 7, 1998, DoD report posted on the Internet on April 7, 1998 contains the statistics below, except for the fiscal year 1998 statistics which were published on Jan. 22, 1999:

Separations from active duty service under homosexual conduct policy:

<u>Fiscal Year</u>	<u>Total DOD Separations</u>	<u>Percentage of Active Force</u>
1991	949	.047 (< 5 per 10,000 service members)
1992	730	.039
1993	682	.040
1994	617	.038 (Current policy began Feb 1994)
1995	757	.050
1996	858	.058
1997	997	.069
1998	1145	.082 (about 8 per 10,000 active duty service members)

QUOTES

Secretary of Defense William S. Cohen in Aug. 13, 1999 DoD news release announcing issue of two policy memoranda intended to improve application of the policy:

File Name: Homo Conduct Pol 7 Dec 99

- "The Department is determined to implement the homosexual conduct policy with fairness to all concerned. I've made it clear there is no room for harassment or threats in the military. I've instructed the military Services to make sure that the policy is clearly understood and fairly enforced."

Secretary Bacon quoted on page 15 of the Jan. 23, 1999, *New York Times*:

- "Throughout our society there are more people declaring their sexual orientation – coming out of the closet, shall we say – and there's no reason the military should be any different."

Arizona legislator and Army Reservist Lt. Steve May in the *New York Times* Aug. 26:

- "This isn't about gay rights. It's about the security of the nation. The issue for me as a policy maker is I want to make sure the nation is aware of the dangers this policy creates for our military preparedness."
- [Referring to the DoD's additional policy guidance announced Aug. 13]: "First we're going to indoctrinate our soldiers to believe that homosexuals are inferior and a threat because of this policy, and then we're going to indoctrinate them into believing gays shouldn't be harassed. It doesn't make a lot of sense."

May in the *Washington Post* Aug. 15:

- "My commanders aren't doing this [considering his discharge] vindictively. They don't have a choice. I guess the real issue for me right now is to find the best way to transition out of the service honorably. I enjoyed my active duty. It was a great two years. . . ."
- "The military is facing a readiness problem. Recruitment is becoming more difficult. And every year a thousand or more qualified and trained service members are booted out of the military because of their sexual orientation. Homophobia contributes to a huge waste of resources."

SLDN Co-director Michelle Benecke in *Army Times* Aug. 2, 1999:

File Name: Homo Conduct Pol 7 Dec 99

- **"We [the SLDN] haven't come to any conclusion as to the motive [for the murder], but we think it is important for the Army to investigate every aspect of this murder."**

**Sources: OSD General Counsel, OSD Legal Policy, Standing Policy,
ASD(FMP), Army Public Affairs**
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