



OFFICE OF THE SECRETARY OF DEFENSE

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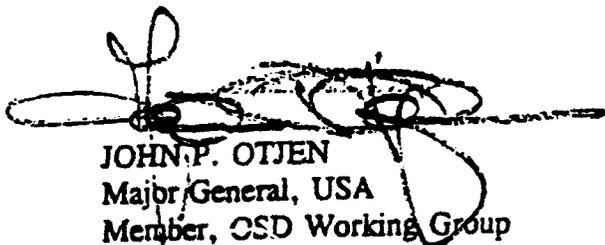


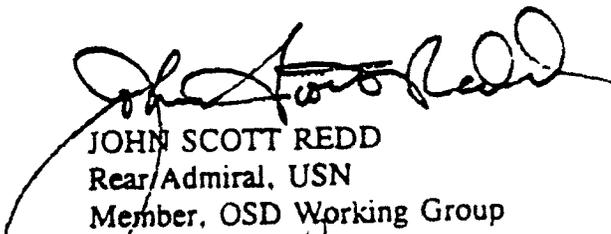
MEMORANDUM FOR THE SECRETARY OF DEFENSE

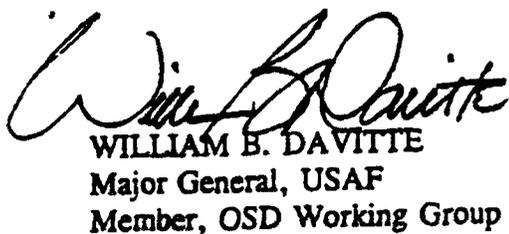
SUBJECT: Recommended DoD Homosexual Policy

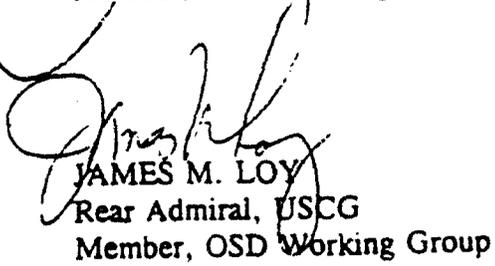
Reference: OSD Working Group memorandum, 8 June 1993, "Recommended DoD Homosexual Policy Outline"

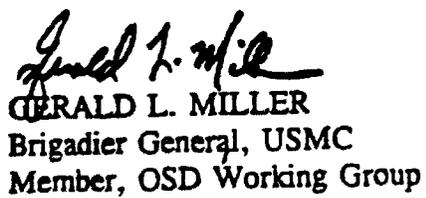
On 8 June, we forwarded a recommended policy outline (reference) describing, in our judgement, the only option that complies with the President's direction to end discrimination while maintaining high standards of combat effectiveness and unit cohesion. The attachment provides a more in-depth explanation of the policy detailing the process and explaining the findings and conclusions that led to our recommendation.


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OCT 04 1993

Attachment

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OFFICE OF THE SECRETARY OF
DEFENSE

SUMMARY REPORT
OF THE
MILITARY WORKING GROUP



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DTIC QUALITY INSPECTION 2

Statement A
OASD(PA)(Ms. Janice Simms-697-5737)
Telecon, 4 Oct 93
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I. BACKGROUND

A. Guidance

1. On 29 January 1993, the President directed the Secretary of Defense 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." The President further directed that the policy be implemented in a manner that is "practical, realistic, and consistent with the high standards of combat effectiveness and unit cohesion our Armed Forces must maintain."

2. On 5 April 1993, the Secretary of Defense directed that a Military Working Group (MWG) be formed to develop and assess alternative policy options to meet the President's requirements.

B. Perspective in formulating this policy. Although the all volunteer military is drawn from civilian society, and generally reflects society's norms, the military institution differs in several important ways. These differences were an essential part of MWG's perspective in formulating this policy.

1. Military mission. Ultimately, the military's mission is to fight and win the nation's wars.

a. The "terms of employment" for an individual servicemember include the real possibility that he or she will be called upon to make the ultimate sacrifice in service to our country. For military leaders, the moral imperative is to accomplish the mission with the least loss of life possible. Accordingly, any change to the military institution must be weighed in light of this responsibility.

b. Similarly, there is no "right to serve" in the Armed Forces. Military service is clearly a privilege afforded only to those who are qualified. There are many features that are disqualifying, such as height, weight, prior conduct record, membership in groups with certain objectives, or mental category. These disqualifying factors are directly related to combat effectiveness and apply whether the force is all-volunteer or conscript.

2. Institutional values. Values are important to any institution, but they

are critical to the military of a democratic nation.

a. The nation calls upon its military to be prepared to kill and destroy -- acts which, in any other context, would be immoral. The shared moral values of the institution -- the collective sense of right and wrong -- provide the foundation which ensures that license will not be abused. This foundation is the essential difference between a professional armed force and a mercenary force. It also provides to individual servicemembers the moral basis for personal service, commitment, and sacrifice in a profession which is demanding in the extreme.

b. As citizen soldiers, military members bring their values with them when they enter the Service. Whether based on moral, religious, cultural, or ethical considerations, those values and beliefs are often strongly held and not amenable to change. While we indoctrinate and train recruits, leadership and discipline cannot -- and generally should not -- attempt to counter the basic values which parents and society have taught. Indeed, efforts to do so will likely prove counter-productive.

3. *Military environment.* Military operations are team operations -- units win wars, not individuals.

a. The rights and needs of the group are emphasized while individual rights and needs are often set aside or sacrificed for military necessity. For example, if military members aren't satisfied with the conditions of their environment, they have no right to quit and, in fact, are subject to prosecution if they do. Similarly, members of the military often are not able to separate their private lives from their working environment. They may be required to work, eat, recreate, sleep, and bathe in cramped spaces for prolonged periods of time, sometimes in the most remote parts of the world. Indeed, separation of the sexes is often the only concession to privacy.

b. In the short term, the military is facing a number of issues -- budget reductions, early retirements, reorganizations, health care worries, base closures, reductions in force -- that have had a severe negative impact on morale. Any change in policy which would further exacerbate this "misery squeeze" must be carefully weighed.

II. PROCESS

A. Composition and organization. The MWG, composed of a general or flag officer from each Service and a support staff of approximately 50 officers, enlisted personnel, and civilian employees convened on 6 April 1993. To facilitate examination of various options, the staff was organized into four functional panels: military operations, service life, personnel policy, and legal.

B. Policy boundaries. The MWG worked within specific limitations which were confirmed with the Office of the Secretary of Defense. Returning to the pre-29 January 1993 policy of "asking the question" was not an option; nor was changing the Uniform Code of Military Justice. These limitations defined the boundaries within which the MWG developed its recommended options.

C. Deliberations. Fairness and objectivity were major aims of the MWG's process. In pursuit of those aims, the MWG met with individuals and groups holding a broad spectrum of views on the subject. This included meetings with uniformed and civilian experts from inside and outside the Department of Defense (DoD), including the soldiers, sailors, airmen, Marines, and Coast Guardsmen who would be most affected by the policy. To broaden understanding of the issue, the MWG also compared experiences of the militaries of other countries, researched available literature, and performed statistical analyses of military separation data obtained from the Services.

D. Results. Several policy options were developed and assessed. After extensive review and consultation, the MWG ultimately focused on a single policy recommendation and a plan to implement that policy. This policy, discussed in detail below, meets the President's guidance, maintains combat effectiveness, and is sustainable for the foreseeable future.

E. Definitions. The public debate over homosexuals in the military has often been further confused by a lack of a common usage of terms. For clarity, the MWG used the following definitions:

1. *Bisexual.* A person who engages in, desires to engage in, or intends to engage in both homosexual and heterosexual acts. (DoDDir 1332.14 of 28 January 1982)

2. *Homosexual.* A person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts. (DoDDir 1332.14 of 28 January 1982)

3. *Homosexual act.* Bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires. (DoDDir 1332.14 of 28 January 1982) (This includes sodomy and acts other than sodomy, such as kissing and dancing between members of the same sex for the purpose of satisfying sexual desires.)

4. *Homosexual conduct.* Evidenced by homosexual acts and attempts or solicitations to engage in such acts, statements by a member that he or she is homosexual or bisexual, or homosexual marriage or attempted homosexual marriage. (OSD MWG)

5. *Homosexual marriage.* When a member has married, or attempted to marry, a person he or she knows to be of the same biological sex (as evidenced by external anatomy). (OSD MWG)

6. *Homosexual statement.* The member has stated that he or she is homosexual or bisexual. (DoDDir 1332.14 of 28 January 1982)

7. *Homosexuality.* The quality, condition, or fact of being a homosexual. (OSD MWG)

8. *Sexual orientation.* A sexual attraction to individuals of a particular gender. (OSD MWG)

III. FINDINGS

Following extensive review, the MWG made the following findings:

A. Combat effectiveness. The Armed Forces of the United States serve an important role in our society by furthering our national interests abroad, defending our borders, and protecting the American way of life. To accomplish this unique mission, the military must be fully combat effective. Combat effectiveness is the *sine qua non* of any armed force and any prospective change must be assessed first and foremost in light of its effect on the military's ability to fight. High combat effectiveness embodies a synergistic mix that can be best expressed as the product of unit cohesion and readiness.

1. **Unit cohesion.** Unit cohesion encompasses a number of factors which, although often intangible, are fundamental to combat effectiveness. These include:

a. **Bonding.** The essence of unit cohesion is the bonding between members of a unit which holds them together, sustains their will to support each other, and enables them to fight together under the stress and chaos of war. The MWG found that the presence of open homosexuals in a unit would, in general, polarize and fragment the unit and destroy the bonding and singleness of purpose required for effective military operations. This phenomenon occurs whether or not homosexual acts are involved. By simply stating that he or she is a homosexual, the individual becomes isolated from the group and combat effectiveness suffers.

b. **Leadership.** In addition to tactical and technical competency, effective leadership depends on mutual respect, fairness, and concern for the well-being of subordinates. If the values and lifestyle of a leader are perceived as contrary to those of the unit, the leader will be, at best, ineffective. That ineffectiveness would be further undermined by perceptions of unfairness or fraternization. The MWG found it would be extremely difficult for an open homosexual to exercise authority or serve effectively as a leader in the Armed Forces of the United States.

c. **Good order and discipline.** Good order and discipline refers to behavior based on respect for authority, other servicemembers, established laws, and regulations and is critical for the effectiveness of leadership and the ability of the unit to carry out its mission. Information presented to the

MWG clearly indicated that the introduction of individuals identified as homosexuals into the military would severely undermine good order and discipline. Moral and ethical beliefs of individuals would be brought into open conflict. Leadership priorities would, of necessity, be reoriented from training for combat to preventing internal discord. Additionally, the military would be perceived as "turning a blind eye" to conduct proscribed by the Uniform Code of Military Justice and regulations, thereby undermining the very basis for good order and discipline.

d. Privacy. Sexual orientation alone is, and should remain, a personal and private matter. However, once an individual's homosexual orientation becomes known, privacy becomes a significant issue. Military members give up many rights -- including the right to free association -- upon joining the military. When deployed on ships or overseas, members often work, eat, relax, bathe, and sleep together in close proximity 24 hours a day. Further, the space individuals can call their own -- their personal sanctuary -- may be only slightly larger than a coffin. For many members, the presence of openly homosexual individuals in that environment constitutes a major and unacceptable invasion of what little privacy remains.

e. Morale. Lifting the ban on homosexuals serving in the military would be perceived by many servicemembers as the imposition of a political agenda by a small group -- an agenda which is seen as having no military necessity and as being, in fact, destructive to the finest fighting force in the world. Morale would suffer accordingly.

f. Core values. The core values of the military profession would be seen by many to have changed fundamentally if homosexuals were allowed to serve. This would undermine institutional loyalty and the moral basis for service, sacrifice, and commitment for those members.

2. Readiness. Readiness includes traditional hardware areas such as technology, equipment, and spare parts as well as the training, education, and fitness of quality personnel. The presence of homosexuals in the military would impact readiness in several ways.

a. Medical. The readiness of the military to deploy and perform its combat mission is directly linked to the medical well-being of the force. The homosexual lifestyle has been clearly documented as being unhealthy. Due to their sexual practices, active male homosexuals in the military could be expected to bring an increased incidence of sexually transmitted diseases and other diseases spread by close personal contact. Additionally, the association of the homosexual lifestyle as a high risk behavior in contracting

AIDS could create the perception of an "enemy within" which has the potential to harm not only other servicemembers, but family members as well.

b. Recruiting. Open homosexuality in the military would likely reduce the propensity of many young men and women to enlist due to parental concerns, peer pressure, and a military image that would be tarnished in the eyes of much of the population from which we recruit.

c. Retention. Discharges for homosexual conduct account for only about one-third of one percent of all United States military discharges. Conversely, recent surveys indicate a significant number of servicemembers say they would not reenlist if open homosexuals were allowed to serve. These views were supported by military personnel who appeared before the MWG. Of note, the members most likely to leave the service would be those with the best options for employment elsewhere -- i.e., the most skilled -- and those with strong moral beliefs.

3. *All homosexuality is incompatible with military service.* The effect on combat effectiveness is not limited to known homosexuals.

a. Even if officially unknown, individuals who engage in homosexual conduct can undermine combat effectiveness through, for example, high risk behavior and the formation of "sub-cultures" outside the chain of command. Further, they may not remain unknown over the course of several years of an enlistment or for a full military career. For example, an "unknown" homosexual can become "known" overnight as a result of a police blotter entry or any other incident by which his or her homosexuality becomes officially known. The resultant effect on readiness can thus manifest itself quickly and without warning.

b. Currently unknown and non-practicing homosexuals are also cause for concern. Homosexual activist groups argue that the productivity of individual homosexuals is reduced by virtue of having to hide their true orientation. While the immediate impact on combat effectiveness for those individuals is limited, it nonetheless exists. Further, by definition, even non-practicing homosexuals either intend to engage in homosexual acts or desire to engage in homosexual acts. Some may remain celibate for a time, but it is reasonable to presume that, over a period of years, many will engage in homosexual conduct.

c. The salient point is that what the military doesn't know can -- and over time will -- negatively impact combat effectiveness. While the

immediate effect on combat readiness varies depending on whether a homosexual is known or unknown, and whether or not the servicemember engages in homosexual conduct, it is nonetheless true that all homosexuality is incompatible with military service and has some measure of negative impact.

B. Practical considerations. In addition to the direct effects on combat effectiveness described above, a number of practical considerations were examined in assessing policy options.

1. Longevity of the policy. One of the tests for an effective policy is that it withstand the test of time.

a. A key element is the likelihood of surviving challenge in the courts. A central finding of the MWG is that statements that one is a homosexual are inextricably linked to homosexual acts. To suggest otherwise is contrary to logic, MWG research, and the publicly expressed view of homosexual advocates. Authorities on military law expressed concern that drawing an artificial distinction between homosexual statements and homosexual acts would undercut the legal precedent upholding the military's homosexual policy. Conversely, a policy which correctly includes as its underlying premise the linkage between homosexual statements and homosexual acts can draw from established precedent and is therefore likely to endure.

b. Any policy that condones homosexual conduct would require congressional action to change the Uniform Code of Military Justice. Failure to do so would establish an untenable situation, creating a perceived conflict between stated policy and military law. This would, in turn, create leadership and legal problems and ultimately would have to be resolved.

2. Personnel policies. Military personnel policies are designed by necessity to manage large groups or categories of people, as opposed to individuals, for the purpose of achieving maximum combat effectiveness. During its deliberations, the MWG found that current DoD policy, directives, and regulations regarding homosexuality generally are not well understood.

a. Accessions. The questions formerly asked during the accession process regarding an applicant's sexual orientation appear to have been ineffective either in deterring homosexuals from entering the military or in articulating DoD policy on homosexuality.

b. Assignments. The issue of assignment restrictions poses a particular dilemma. On the one hand, there are significant problems with

overall combat effectiveness associated with assigning open homosexuals to units that require higher degrees of cohesion (e.g., combat units, special forces) or close quarters berthing. On the other hand, restricting their assignments would cause resentment among those who must serve in their place while tending to concentrate open homosexuals into a narrow selection of skill fields. Since assignment to combat skills and combatant vessels is career enhancing, excluding homosexuals from these duties would inhibit their promotion and advancement opportunities and bring a new set of problems.

c. Berthing/billeting. The presence of known homosexuals in a unit will create tension which may require them to be berthed/billeted and segregated from the remainder of the unit in order to maintain good order and discipline. This would entail additional and unbudgeted costs. On the other hand, segregating certain members of the group will isolate those individuals, possibly highlighting them as a special class, and further degrade unit cohesion. Additionally, there are situations where separate berthing/billeting -- such as aboard ships -- is not practical at any cost.

3. Investigations

a. DoD has no written, uniform policy guidelines for investigating cases involving allegations of homosexuality. This lack of policy may have contributed to a misperception that the military's investigative agencies conduct "witch hunts" to weed out suspected homosexuals.

b. Commanders must have the discretion to inquire and investigate when there is credible information of misconduct or basis for discharge. However, a balance must be struck. While servicemembers set aside certain individual rights while they serve, they still retain freedom from unwarranted intrusion into their private lives.

4. Military family issues. Service life is all encompassing. While spouses and children obviously do not serve in the Armed Forces, military policies and personnel touch every aspect of family life. Servicemembers, both single and married, are often involved as leaders in military youth activities -- for example, scouting, little league, church youth groups, and social clubs. Indeed, most Morale, Welfare, and Recreation programs rely almost exclusively on these volunteers. Many military families would object to the participation of open homosexuals in these programs -- programs to which they entrust their children. Additionally, family members are worried about the same issues that concern their military sponsors -- such as, encumbered privacy during deployments, medical risks, and the breakdown

of the unit -- because they are perceived as a threat to their loved ones.

5. *Common misperceptions concerning homosexuals and the military*

a. Foreign militaries

(1) The policy and practice of foreign militaries regarding homosexuals actively serving do not always match. In countries where policies are "accepting," practice typically involves exclusion of homosexuals for medical/psychological reasons. Even where policy and law allow homosexuals to serve, few servicemembers openly declare their homosexuality due to fears of baiting, bashing, and negative effects to their careers.

(2) Extended deployments and berthing/billeting privacy are not significant issues for most foreign militaries. Additionally, no country has as high a proportion of its servicemembers billeted/berthed together on military installations and deployed aboard ships or overseas at any given time as does the United States. Most importantly, no other country has the global responsibilities, operational tempo, or worldwide deployment commitments of the Armed Forces of the United States.

b. Police/Fire departments. Parallels cannot be accurately drawn between the experiences of police and fire departments and the Armed Forces. While there are some organizational similarities, there are also some very fundamental differences in the areas of mission and related training, deployments, work environment, authority of the commander over subordinates, living conditions, and personal privacy.

c. Discharge and discipline of homosexuals in the Armed Forces. Incorrect perceptions exist that the military discharges large numbers of personnel for homosexuality and that most of those discharges are for reasons of homosexual "status" only -- i.e., statements alone that one is a homosexual, with no homosexual acts involved. Additionally, some believe the military prosecutes homosexual sodomy cases but does not prosecute heterosexual sodomy cases.

(1) Analysis of Armed Forces separations over the four-year period of fiscal years 1989 through 1992 reveals:

(a) Only one-third of one percent (0.3 percent) of all separations were for homosexuality.

(b) Of those discharged for administrative or punitive reasons, only 1.5 percent were for homosexuality.

(c) Drug and alcohol abuse discharges were nine times greater than those for homosexuality. Overweight discharges were five times greater.

(d) Of all discharges for homosexuality, at least 79 percent clearly involved homosexual conduct. There was insufficient documentation to determine whether conduct was involved in the remaining 21 percent.

(2) Similarly, a review of 1,141 military courts-martial involving Article 125 (sodomy) indicated that heterosexual sodomy cases outnumbered homosexual sodomy cases by a 4 to 1 ratio.

IV. CONCLUSIONS

After extensive research and prolonged deliberations, the MWG concluded the following:

- A. Since it is impossible to determine an individual's sexual orientation unless he or she reveals it, sexual orientation alone is a personal and private matter.
- B. Homosexuality is incompatible with military service. The presence in the military of individuals identified as homosexuals would have a significantly adverse effect on both unit cohesion and the readiness of the force -- the key ingredients of combat effectiveness. If identified homosexuals are allowed to serve, they will compromise the high standards of combat effectiveness which must be maintained, impacting on the ability of the Armed Forces to perform its mission.
- C. For practical reasons, servicemembers should be discharged only when their homosexuality is manifested by objective criteria -- homosexual acts, homosexual statements, or homosexual marriages.
- D. Applicants for military service should be clearly advised of the military's policy regarding homosexuals prior to their entering active duty. Specifically, applicants should be briefed and acknowledge in writing that they understand: (1) homosexuality is incompatible with military service; (2) they may be denied enlistment or separated if they have engaged in homosexual conduct (acts, statements, or marriage); or (3) they are not required to reveal their sexual orientation, even if asked, but if they do, it is of their own free will and can be used as a basis for separation from the Armed Forces.
- E. A single, clear investigative policy should be adopted to provide uniform guidance to the Services for conducting inquiries and investigations into allegations of homosexual conduct.
- F. All serving members should be educated on the military's policy on homosexuals. This education should be factual in nature and should not include sensitivity training or attempt to change deeply held moral, ethical, or religious values.

V. THE RECOMMENDED POLICY

A. Overview. After extensive research and assessment of several options, the MWG submitted the following policy for consideration by the Secretary of Defense on 8 June 1993. In the judgement of the MWG, the policy represented the only option which complied with the President's guidance to end discrimination while maintaining high standards of combat effectiveness and unit cohesion.

B. Key policy features

1. Sexual orientation will be considered a personal and private matter. The Armed Forces won't ask and servicemembers will not be required to reveal their sexual orientation.
2. The presence in the Armed Forces of persons who engage in homosexual acts, who state they are homosexual or bisexual, or marry or who attempt to marry persons of the same gender remains inconsistent with the requirement to maintain high standards of combat effectiveness and unit cohesion.
3. Sexual orientation alone is not a bar to service entry or continued service unless manifested by homosexual acts, statements, or marriages.
4. Neither commander's inquiries (normally for minor offenses) nor military criminal law enforcement investigations (normally for criminal violations) will be conducted absent credible information. Commanders will continue to initiate inquiries or investigations, as deemed necessary, when credible information that a basis for discharge or disciplinary action exists.
5. Servicemembers will be discharged if they are found to have engaged in homosexual conduct.
6. An education plan will be developed to inform servicemembers, commanders, and military investigators about this policy so as to reinforce the principle that all service-members can serve without fear of unwarranted intrusion into their personal lives.

C. Discussion of the policy

1. Military personnel policies are designed by necessity to manage large groups or categories of people for the purpose of achieving maximum combat effectiveness. The basis for our personnel policy regarding homosexuals has been and remains that homosexuality is incompatible with service in the Armed Forces.

2. For practical reasons, we implement that policy by discharging servicemembers only when their homosexuality is manifested by objective criteria -- homosexual acts, statements, or marriage. As a practical result of the implementation of this policy, homosexuals who keep their sexual orientation private have served and will continue to serve.

3. While maintaining the *de jure* basis of the previous policy, this policy acknowledges the *de facto* situation that some homosexuals have served, and presumably will continue to serve, in the Armed Forces under the unique constraints of military life. These constraints require members of the Armed Forces to keep certain aspects of their personal life private for the benefit of the group.

D. Implementation

1. *Accessions policy.* Applicants for service in the Armed Forces will not be required to declare their sexual orientation or answer questions about their orientation. They will be briefed on departmental policies governing conduct proscribed for members of the Armed Forces. All applicants will sign a statement acknowledging they understand these policies. Additionally, homosexual behavior will no longer be listed as a mental disorder in the DoD Physical Standards directive.

2. *Investigative policy.* Commanders may initiate investigations or inquiries into homosexual conduct as defined by DoD policy. However, no investigations or inquiries will be conducted solely to establish an individual's sexual orientation, nor will servicemembers be required to answer questions concerning their sexual orientation. This provision does not create a protected class. Acknowledgement by a member that he or she is a homosexual -- even in reply to a question asked in error -- continues to be a basis for separation. No investigations or inquiries will be conducted absent credible information of the commission of a crime or basis for discharge or disciplinary action. Military investigative agencies, at the direction of a commander, may investigate misconduct and violations of the Uniform Code of Military Justice. Investigations will not go beyond establishing the

elements of the offense or basis for discharge. There will be no stake-outs, sting operations, or round-ups absent specific allegations of proscribed conduct.

3. *Discharge policy.* Homosexual conduct is inconsistent with the high standards of combat effectiveness and unit cohesion our Armed Forces must maintain. Servicemembers will be discharged if they engage in homosexual conduct. Homosexual conduct is evidenced by any act involving bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of sexual gratification, and attempts or solicitations to engage in such acts; a statement by the member that he or she is a homosexual or bisexual; or homosexual marriage or attempted homosexual marriage. Normally, administrative separations involving homosexual conduct will be under honorable conditions, unless there are aggravating circumstances -- such as acts with a minor.

4. *Education policy.* Each Service will provide training to their personnel, at every level, to explain the new policy regarding homosexuals. The DoD will provide an education plan for the Services to use as a guideline in their separate training programs. The education package will focus on the changes to the DoD policy and will not be an attempt to change any deeply held religious and ethical beliefs; that is, sensitivity training.