

UNDER SECRETARY OF DEFENSE  
4000 Defense Pentagon  
Washington, D.C. 20301-4000  
Personnel and Readiness

August 12, 1999

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS**

SUBJECT: Implementation of Recommendations Concerning Homosexual Conduct Policy

The Department of Defense is committed to the fair and even-handed application and enforcement of its policy on homosexual conduct in the military. An April 1998 report responded to the Secretary of Defense tasking to review how well the Department's policy on homosexual conduct is being applied and enforced. That report provided an analysis of the data on separations for homosexual conduct in Fiscal Year 1997, as well as a discussion of various issues arising under the policy, and made several recommendations. Since that time, my office has continued to analyze the data and issues discussed in the April 1998 report, as well as the data concerning separations based on homosexual conduct in Fiscal Year 1998. It is now appropriate to take the actions outlined below to ensure that the Department's policy is being properly applied and enforced.

First, as the April 1998 report makes clear, the majority of homosexual conduct discharge cases involve minimal or no investigation; that is also confirmed by the data that were analyzed for Fiscal Year 1998. As a result, many installation-level attorneys have not had occasion to build practical expertise in the special rules applicable in this area. Accordingly, the April 1998 report found that, in more complex investigations, it has become common practice for installation judge advocates to consult for advice with more experienced judge advocates in higher headquarters legal offices. The review recommended that the Department issue guidance specifying that such consultation is recommended before initiating investigations into alleged homosexual conduct.

Second, the April 1998 report concluded that little or no investigation should be necessary in most cases where a service member has made a statement acknowledging his or her homosexuality and does not contest separation. The report recognized, however, that it is appropriate in some circumstances to undertake an investigation to determine whether recoupment of financial benefits is warranted, or whether a service member's statement may have been fabricated in an effort to avoid a service obligation. To ensure appropriate review of such cases, the report recommended that prior authorization at the Military Department secretarial level be obtained for any substantial investigation of this nature.

Third, the April 1998 report noted that each Service devotes substantial effort to training commanders and attorneys on the Department's homosexual conduct policy. Notwithstanding these efforts, some commanders, attorneys and investigators report that they have not received training. Accordingly, the report recommended that the Military Departments issue guidance directing that Service Inspectors General include as a specific item of interest for inspection the training of all those charged with implementing the homosexual conduct policy.

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.

Please provide your draft implementing guidance on these matters to Mr. Frank Rush, Principal Deputy Assistant Secretary of Defense for Force Management Policy, within 30 days.

Rudy de Leon