

Gene R. Springs. Homosexuality and the United States Military Policy: An Annotated Bibliography of Federal Government Information. A Master's Paper for the M.S. in L.S degree. November, 2006. 38 pages. Advisor: Michael Van Fossen

This selective annotated bibliography compiles documents made available by the federal United States government with regard to the policy of the United States Armed Forces toward homosexuals. The documents included in this bibliography range from federal regulations, such as Department of Defense directives and instructions, to Presidential executive orders, Congressional hearings, and specific military branch memorandums. While this bibliography is by no means exhaustive, it is intended to aid researchers in locating and identifying pertinent federal documents that explicate the history of the U.S. military's policy toward homosexuals, from as early as 1953 through the implementation of the "Don't Ask, Don't Tell" policy and beyond.

Headings:

Gays in the military – United States

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HOMOSEXUALITY AND THE UNITED STATES MILITARY POLICY:
AN ANNOTATED BIBLIOGRAPHY OF FEDERAL GOVERNMENT
INFORMATION

by
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Introduction

Homosexuality in the United States Armed Forces has been a controversial issue for much of the previous decade, dating back to President Bill Clinton's creation of the "don't ask, don't tell" policy that permitted homosexuals to serve in the four main branches of the U.S. military; the Army, Navy, Air Force, and Marine Corps. The crux of the policy was simple: as long as a service member did not, in any way, disclose his/her homosexuality, no commanding officer could inquire about one's possible homosexuality. For many, this policy was seen as a progressive step forward, replacing the previous military ban on homosexuals; for others, liberal and conservative alike, this policy was unacceptable for its insistence on a closeted (i.e. secretive) lifestyle for homosexuals, or for the inclusion of homosexuals alongside heterosexual service members. The compiled annotated bibliography herewith explores this challenging topic by searching through a variety of federal government information about the U.S. military's policies toward homosexuals, and uncovers a long history of directives, regulations, and codes dealing with homosexuality as early as 1953, through to current legislation in the U.S. Congress today.

The U.S. military's policy toward homosexuality mirrors the acceptance, or disapproval, of homosexuality in American society in general. Referred to as "carnal copulation" in the Uniform Code of Military Justice from the 1920s, author Gary Lehring argues that homosexuality was viewed as "a revolting crime,

and perversion, the construction of sodomy by the military follows a familiar path...reflecting religious and criminal understandings of non-procreative sexual acts, sodomy first implicated the individual and then came to completely represent him as the performer of sexual misdeeds” (Lehring 2003, 77). In the 1940s, effeminate characteristics were enough to prevent a person from serving in the military: “feminine body characteristics, effeminacy in dress or manner, or a patulous [expanded] rectum...should lead to careful psychiatric evaluation” (Lehring 2003, 83). A test developed by Dr. Albert Abrams which measured the electronic measurement that emanated from men’s testicles was thought to screen out potential homosexuals for those whose measurements were comparable to women’s ovarian ratings; while there is no record that this test was used by the U.S. military to screen for homosexuality, its development during the early twentieth century shows society’s concern with uncovering homosexuality. The military did institute a psychological test for identifying potential homosexuals in 1943 with the advent of the Cornell Selectee Index, which functioned by flagging men who expressed occupational interest in interior design, dancing, or window dressing. Additionally, these attitudes reveal the underlying discomfort with women’s involvement with the military; feminized men and women are distractions to a cohesive unit of heterosexual male soldiers.

By the end of World War II, when an unprecedented number of soldiers were enlisted in the U.S. Armed Forces, there were notable changes in the military’s policy concerning homosexuality: “homosexual” had replaced ‘sodomist,’ although the criminal aspects of same-sex behaviors had been neither eliminated or elucidated...people who engaged in same-sex behaviors could be separated from the service through their

resignation or by administrative discharge" (Belkin and Bateman 2003, 17). Another change, which would become more prevalent in the coming decades, developed where even if no sexual activity had occurred, there was a conceptualization of homosexuality as an identity; summarily, those who identified as such were "to be barred from military service at induction or separated from the service upon discovery" (Belkin and Bateman 2003, 17). It is estimated that between four and five thousand men were denied entry by the Selective Service into the military during World War II (Belkin and Bateman 2003, 18). As the United States and the Soviet Union gradually progressed into the Cold War, homosexuals, in the military and in civilian positions, were targeted as possible security risks. Through systematic persecution, admitted or perceived homosexuals were removed from positions that could result in a security risk; conversely, many homosexuals retreated further into the proverbial closet and secreted their lifestyles to maintain their careers and livelihoods.

The military's process of investigation into a charge of homosexuality took approximately three months, from accusation to discharge; in between were interrogation, a psychiatric evaluation, a board hearing and a court-martial. Throughout the 1950s and 1960s, there were virtually no challenges to discharges due to homosexuality, as the label of "deviant" prompted men and women to protect others, "avoid being threatened, to avoid more severe punishment, or to finally come clean" (Belkin and Bateman 2003, 30). The advent of the gay civil rights movement, prompted by the Stonewall Riots in New York City in June of 1969, pressured the American Psychiatric Association to change the designation of homosexuality as a psychiatric diagnosis; this was achieved in 1972. This

change would impact the military's exclusionary policies much later, but it was an important harbinger of changes to come.

Following the Vietnam conflict, homosexual subcultures in both American society at large and in the military began to develop: "the informal networks that had existed previously grew and expanded as more homosexual men and women integrated their sexual orientation into their everyday lives...more joined 'The Family' as specific duties, bases, and off-base institutions developed reputations for tolerance or acceptance" (Belkin and Bateman 2003, 35). The AIDS crisis in the 1980s created a new issue for homosexuals, as the disease was seen as the gay epidemic: "while many HIV-positive service members stated that they had been infected through heterosexual contact, the enormous preponderance of AIDS cases in the 1980s were contracted through homosexual contact or intravenous drug use" (Belkin and Bateman 2003, 35). When the military began testing for HIV antibodies in 1987, the number of personnel who tested positive was 3,336, or approximately two-and-a-half times the number of men discharged for homosexuality each calendar year (Belkin and Bateman 2003, 37). Even though the AIDS epidemic carried the stigma of homosexuality, it was clearly a nationwide (and worldwide) societal problem.

As all of these factors developed throughout the twentieth century, the election of President Bill Clinton in 1992 created a watershed moment for the inclusion of homosexuals in the U.S Armed Forces. One of Clinton's key campaign promises was to remove the military's ban on homosexuals; this promise galvanized the increasingly powerful and visible gay and lesbian communities to support Clinton in his run for the presidency; however, the Clinton underestimated the homophobia that existed throughout

the nation. Emotions ran high on both sides of the debate, “the Democratic Party was [depicted] as the party of ‘queers,’” and conservative Christian organizations reaped the benefits of fundraising (Lehring 2003, 137). The end result of the political maelstrom was the “Don’t Ask, Don’t Tell” policy, which revised the military’s inclusion of homosexuals. Up to this point, no homosexual, closeted or out of the closet, could serve in the U.S. Armed Forces, as prescribed in the Department of Defense Directive 1332.14. The “don’t ask, don’t tell” policy amended this directive (and its superseding directives) by including the following statement: “applicants for military service will not be asked or required to reveal their sexual orientation, but service members will be separated for homosexual conduct” (Lehring 2003, 138). Additionally, homosexual conduct is defined as “homosexual acts, or statements that demonstrate a propensity to engage in homosexual acts, or a homosexual marriage or attempted marriage” (Lehring 2003, 138). While the change may not seem significant, the “don’t ask, don’t tell” policy removes the decades-long provision of exclusion or separation due to homosexual identification; under the new policy, a service member may identify as a homosexual, but may not be public with his/her sexual orientation. This policy was met with disapproval by both the gay and lesbian community and the U.S. military; for the prior, it required a closeted, secretive identity in order to serve, and for the latter, it required acceptance of the knowledge that homosexuals were now allowed to serve.

The history of homosexuality in the U.S. Armed Forces is a long and convoluted one; there is no simple way to trace the military’s policy toward homosexuality, as many government documents are not classified as dealing with the subject. Also, the rapid superseding of regulations and directives can make locating the installation of a policy

difficult. In the documents collected below, great care was taken to choose a variety of sources; additionally, relevancy toward the military's policy was paramount. Though the military is just one facet of the United States, its policy toward homosexuality is clearly indicative of the general public's opinion. For such a staid and bureaucratic institution, the military has adopted its policies to fit the times, even though these changes may not be perceived as progressive or inclusive enough; many court challenges to separations continue to arise, and violent homophobic acts, such as the murder of Private Barry Winchell, bring scrutiny to the "don't ask, don't tell" policy.

Methodology

While I was cognizant of the great deal of government information regarding homosexuals in the U.S. military, I did not anticipate the difficulty in finding a variety in the documents in print, as many were interrelated and previous versions of later regulations. The lack of a sizeable portion of documents from the early part of the twentieth century was not surprising, given the taboo status of homosexuality in society and its diagnosis as a mental disorder. Davis Library here at the University of North Carolina at Chapel Hill only collects the latest version of U.S. Army regulations, which presents a challenge when searching historic regulations; it became apparent that no federal depository library would likely have kept all editions of regulations.. The Robert Crown Law Library at Stanford University Law School's "Don't Ask, Don't Tell, Don't Pursue" project is a digital collection of documents that pertain to the military's policy toward homosexuality. This digital portal proved immensely useful, as more than half of the documents included in this annotated bibliography were found there. Especially helpful were the digitized copies of Army regulations and their superseding replacements, as this can be nearly impossible to trace in print sources.

My initial plan was to search through the catalog here at UNC, using the search terms "homosexuality and military," limiting the search to Davis Library. I found about seven relevant items, all contained in the Federal Documents collection, six of which were microforms. I then went to the index of the *Monthly Catalogue of United States Government Publications* and looked up "homosexuality" and found several entries in the

1951, 1953, and 1957 indexes. My next step was to search LexisNexis Congressional, and I encountered one document that fit into the topic. Feeling that I needed more sources, I did a search at the Government Accounting Office and found nine relevant documents. My final step was to find more electronic sources, which I did by searching Google with the search terms “homosexuality and military” once again. I found over a dozen relatable electronic resources from a variety of government and military web sites, including the Stanford Law School digital project.

The bibliography is organized categorically, not chronologically; the main divisions are statutes and regulations, executive materials, congressional materials, and miscellany. The statutes and regulations section is further divided into federal regulations, which include Department of Defense Directives and Instructions, and Army regulations. The executive materials section contains executive orders and memorandums from Presidents, as well as Department of Defense and Department of Justice memorandums and policies. The congressional materials section includes hearings before Congress, and the miscellany category includes individual branch policies and implementations of the “don’t ask, don’t tell policy.” Notable superseding regulations and policies have been included where a change relevant to homosexuality has occurred.

Annotated Bibliography

Statutes and Regulations Federal Regulations

U.S. Department of Defense Directive. *DODD 1304.26. Qualification Standards for Enlistment, Appointment, an Induction*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/DOD1304.26.pdf>>. [October 10, 2006].

This document, a Department of Defense Directive from February 5, 1994, reestablishes basic guidelines for entrance into the Armed Forces. In addition to basic requirements such as age, citizenship, education, aptitude, physical fitness, and dependency status is moral character, a phrase that is often employed when discussing homosexuality and the military. The policy aims to "judge the suitability of persons to serve in the Armed Forces on the basis of their adaptability, potential to perform, and conduct" (U.S. Department of Defense 1994, 2). Under the "don't ask don't tell" policy, homosexual conduct would definitely fall outside the guidelines for entrance into the Armed Forces.

U.S. Department of Defense Directive. *DODD 1304.26. Qualification Standards for Enlistment, Appointment, an Induction. Enclosure 2*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/1304.26attach1.pdf>>. [October 12, 2006].

This document is a further explication of the rules provided in DODD 1304.26. For example, this enclosure states the minimum age of service in the Armed Forces, as well as the maximum age for initial enlistment. Section 8 of this enclosure features a rule on homosexual conduct, which encompasses the DOD's inclusion of the "don't ask, don't

tell” policy put forth by President Clinton. Section 8a explains that homosexuality as a sexual orientation is not a reason for exclusion from entrance into the Armed Forces; Section 8b defines homosexual conduct as “a homosexual act, a statement by the applicant that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage” (U.S. Department of Defense 1994, 5). The definition is further explained: “propensity to engage in acts means more than an abstract preference or desire to engage in homosexual acts; it indicated a likelihood that a person engages in or will engage in homosexual acts” (U.S. Department of Defense 1994, 5). These provisions lead to the official designation in Section 8b1 that “an applicant shall be rejected for entry into the Armed Forces if, in the course of the accession process evidence is received demonstrating that the applicant engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts” (U.S. Department of Defense 1994, 6). Explained next are the exceptions to this rule for exclusion, and include: the homosexual acts were a departure from customary behavior; the acts were unlikely to recur; the acts were not accomplished by use of coercion or force; and that the applicant does not have a propensity or intent to engage in homosexual acts. The enclosure continues with clear definitions of homosexual acts, defined as “any bodily contact, actively taken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires;” and “any bodily contact that a reasonable person would understand to demonstrate a propensity or an intent to engage in a [homosexual] act” (U.S. Department of Defense 1994, 6). The enclosure ends with two provisions for when rejection is not required: first, “that an applicant or inductee made a statement, engaged in acts, or married or attempted to marry a person of the same sex for the purpose of

avoiding military service;” and second, “rejection of the applicant or inductee would not be in the best interest of the Armed Forces” (U.S. Department of Defense 1994, 6). This last point provides the Armed Forces with the power to override this directive if a homosexual person would provide a great benefit to the military; an example would be permitting homosexual interpreters of an in-demand language during a military conflict.

U.S. Department of Defense Directive. *DODD 1304.26. Qualification Standards for Enlistment, Appointment, and Induction. Attachment 1*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/1304.26attach1.pdf>>. [October 12, 2006].

This document is an application briefing on the Armed Forces separation policy. This attachment to DODD 1304.26 explains the different ways in which a military applicant can be involuntarily separated from the Armed Forces, including weight management, disciplinary problems, and homosexual conduct. The document explains “although we have not and will not ask you about your sexual orientation, you should be aware that homosexual conduct is grounds for discharge from the Armed Forces” (U.S. Department of Defense 1994, 1). Homosexual acts are defined using the official definition as outlines in DODD 1304.26 Enclosure 2, in addition to common-word definitions of “hand-holding or kissing, or other physical contact of a sexual nature” (U.S. Department of Defense 1994, 1). The document also stresses that the applicant will not be discharged if homosexual conduct is employed for the sole purpose of ending military service.

U.S. Department of Defense Directive. *DODD 1332.14 Enlisted Administrative Separations*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/regulation41.pdf>>. [October 11, 2006].

This document is a precursor to the DODD 1304.26; from 1982, this directive explains the Armed Forces policy toward enlisted administrative separations, of which homosexual conduct is listed. In addition to many of the definitions that also appeared in DODD 1304.26, this document explicates that “homosexuality is incompatible with military service; the presence in the military of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission” (U.S. Department of Defense 1982, 1). The directive goes on to say that the presence of these members “adversely affects the ability of the military services to maintain discipline, good order, and morale; to foster mutual trust and confidence among service members...to facilitate assignment of service members who frequently must live and work under close conditions affording minimal privacy” (U.S. Department of Defense 1982, 1). This document is an example of the justifications the Armed Forces use in order to continue the exclusion of homosexual service members.

U.S. Department of Defense Directive. *DODD 1332.30 Separation of Regular Commissioned Officers for Cause*. Internet on-line. Available from <http://dont.stanford.edu/regulations/DOD1332.30.pdf>. [October 12, 2006].

This undated directive focuses on the separation of commissioned officers from the Armed Forces. Included reasons for separation are substandard performance of duties, lack of efficiency or leadership, neglect, and drug abuse. Section C of the directive deals exclusively with homosexual conduct. Included is the official definition of homosexual acts and the propensity toward homosexual conduct, as well as available exceptions to the rules when they can be proven. Like DODD 1304.26, there is a provision for the Armed

Forces to keep a commissioned officer found guilty of homosexual conduct if it is in the best interest of the military. This provision allows for continued service in the wake of a military conflict.

U.S. Department of Defense Directive. *DODD 1332.30 Separation of Regular Commissioned Officers for Cause. Extracts*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/regulation42.pdf>>. [October 13, 2006].

Much of this document from February 12, 1986 is similar to DODD 1332.30 Version 1, except for a section that allows for the explanation of the character of a commissioned officer's discharge on the basis of homosexual conduct. A discharge will be considered honorable or "under honorable conditions unless aggravated acts are included in the findings" (U.S. Department of Defense 1986, 2). A different type of discharge, under other than honorable conditions, may be issued if it is discovered that the officer in question attempted, solicited, or committed a homosexual act: "by using force, coercion, or intimidation; with a person under 16 years of age; with a subordinate in circumstances that violate the customary military subordinate-superior relationship; openly in public view; for compensation; aboard a military vessel or aircraft; in another location subject to military control under aggravating circumstances" (U.S. Department of Defense 1986, 2). This document shows that officers are held to a different standard with regard to homosexual conduct, much like they are with other military standards and rules; as commissioned officers, their behavior is expected to be exemplary at all times.

U.S Department of Defense Instruction. *DODI 5505.3 Initiation of Investigations by Military Investigative Organizations*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/dodi5505.3.pdf>>. [October 13, 2006].

This document, a DOD Instruction from July 11, 1986, institutes the policy that “the commanders of the military criminal investigative organizations and their subordinate commanders shall be authorized to initiate criminal investigations” (U.S. Department of Defense 1986, 1). The Instruction goes on to implement rules and procedures with regard to cooperation of non-investigative officers, any officer who may have an objection to an undertaken investigation, and the chain of command for prompt reporting of findings.

This document, from July 11, 1986, shows how the Armed Forces will react when there is suspicion for investigation; while this Instruction is for criminal investigations, some homosexual conduct may fall under this distinction.

Department of Defense Instruction. *DODI 5505.8 Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and other DOD Law Enforcement Organizations*. Internet on-line. Available from <http://dont.stanford.edu/regulations/dodi5505.8.pdf>. [October 12, 2006].

An update of DODI 5505.3 from February 5, 1994, this Instruction takes into account the “don’t ask, don’t tell policy” that would have been recently initiated at the time of its creation. This document distinctly defines sexual misconduct as “a sexual act or acts that occur between consenting adults, in private, whether on or off a military installation...it does not include any sexual act or acts that involve allegations of force, coercion, or intimidation” (U.S. Department of Defense 1994, 2). Additionally, it specifically refers to homosexual suspicion with regard to sexual misconduct investigations: “no DOD law enforcement organization shall conduct an investigation solely to determine a Service member’s sexual orientation” (U.S. Department of Defense 1994, 2). This stipulation seeks to prevent the Armed Forces from conducting false criminal investigations with the sole intent of “outing” a service member.

Army Regulations

U.S. Army. *Army Reg. 635.89; Original Version, 15 July 1966*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/regulation20.pdf>>. [October 13, 2006].

Specific to the US Army, this regulation is an example of the mid-20th century popular opinion of homosexuality as a deviant psychosis. This document, the original version of this regulation from July 15, 1966, outlines the Army's policy toward homosexuals in clear and specific language: "personnel who voluntarily engage in homosexual acts, irrespective of sex, will not be permitted to serve in the Army in any capacity, and their prompt separation is mandatory. Homosexuality is a manifestation of a severe personality defect which appreciably limits the ability of such individuals to function effectively in a military environment" (U.S. Army 1966, 1). The regulation goes on to present exceptions to the policy, including "individuals who have been involved in homosexual acts in an apparently isolate episode, stemming solely from immaturity, curiosity, or intoxication" (U.S. Army 1966, 2). Procedures under this regulation deem it the responsibility of each member of the military service to "be alert to situations affecting discipline, morale, or security of military forces. In this connection homosexuality and homosexual acts are not to be condoned, whatever their cause, and when discovered, will be reported through command channels to the unit commander of the member concerned" (U.S. Army 1966, 3). The regulation also outlines specific procedures and processes for officers and enlisted service members.

U.S. Army. *Army Reg. 635.89; Change No. 1, 1 October 1968*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/regulation21a.pdf>>. [October 14, 2006].

This document presents the first amendment to Army Regulation 635.89. The change is in the section of the regulation that deals with service members whom have engaged in a homosexual act out of immaturity, curiosity, or intoxication, adding: “this provision does not preclude consideration of the conduct involved, together with other matters, if disciplinary action or administrative elimination under other regulations is deemed appropriate” (U.S. Army 1968, 1). This change allows for the consideration of dismissal if homosexual acts are undertaken or caused by a violation of a different regulation.

U.S. Army. *Army Reg. 635.89; Change No. 2, 4 April 1969*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/regulation21b.pdf>>. [October 14, 2006].

This second change to Army Regulation 635.89, from April 4, 1969, adds a new paragraph to the procedure, with regard to assignment action for personnel en route to an overseas area as “when action has been initiated under the provisions of this regulation against an individual while assigned to an overseas replacement station, he will be transferred to the Army garrison to await final action on his case” (U.S. Army 1969, 1).

This addendum proscribes that personnel who are suspected of homosexuality or homosexual acts while serving overseas will not be immediately sent back to the United States until the investigation into the allegations are complete; the service member will remain abroad until he is cleared or discharged. The change also includes the addendum that “if the convening authority disapproves the recommendation for separation, the individual will again be assigned to the overseas replacement station for compliance with

his original orders” (U.S. Army 1969, 1). Here, the possibility of redeployment for cleared personnel is made distinct.

U.S. Army. *Army Reg. 635-100; Change No. 4, 21 January 1970*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/regulation23.pdf>>. [October 14, 2006].

This document is of Army Regulation 635-100, which supersedes Army Reg. 635.89.

This is the fourth change to the regulation, and it outlines changes with regard to the separation of officers from the Army for “substandard performance of duty and for moral or professional dereliction or in interests of national security...it also provides procedures for separation of officers for homosexuality” (U.S. Army 1970, 4). Under the section entitled “Reasons which Require Elimination,” rule numbers seven and eight address homosexual conduct: “commission or attempted commission of a homosexual act,” and “existence of homosexual tendencies (this category includes cases of personnel who have not engaged in a homosexual act during military service, but have a verified record preservice homosexual acts” (U.S. Army 1970, 5). This regulation change shows that almost 15 years before the “don’t ask, don’t tell” policy that identification as a homosexual was equated to partaking in homosexual acts with regard to separation from the Army.

U.S. Army. *Army Reg. 635-100; Change No. 24, 1 June 1978*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/regulation32.pdf>>. [October 14, 2006].

This document is change number 24 to the Army Regulation 635-100. In addition to several other edits and addendums, there is a lengthy section that deals specifically with the duty of the commanding officer during an investigation into homosexual conduct: “a

commanding officer receiving information that an individual under his command is a homosexual or has engaged in an act of homosexuality, will enquire thoroughly and comprehensively into the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges” (U.S. Army 1978, 3). This document is notable in that it is the first to reference possible malice in charges or accusations of homosexuality.

U.S. Army. *Army Reg. 635-200; Change No. 38, 23 August 1972*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/regulation28.pdf>>. [October 14, 2006].

This document is change number 38 to Army Regulation 635-200, and concerns the separation of enlisted service members from the Army for unfitness or unsuitability. It supersedes Army Regulation 635.89 with regard to enlisted personnel, as Army Regulation 635-100 supersedes 635.89 with regard to commanding officers. This regulation redefines dismissal for homosexual acts: “homosexual act means bodily contact between persons of the same sex, actively undertaken or passively permitted by either or both, with the intent of obtaining or giving sexual gratification, or any proposal, solicitation, or attempt to perform such an act” (U.S. Army 1972, 2). The clarification of the regulation also contains the procedures for first-time or singular offenders (as seen in Army Reg. 635.89 Change 1), and the addendum that dismissal can occur if other regulations are broken concurrently with the homosexual act.

U.S. Army. *Army Reg. 600-443; 10 April 1953*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/regulation17.pdf>>. [October 14, 2006].

This is one of the earliest Army Regulations to detail the Army's exclusive policy toward separating homosexuals from service. The language, sentiment, and reasoning are indicative of the time in which this regulation was instituted; however, it is clear that this regulation served as the basis for a number of successive regulations that followed.

Army Reg. 600-443 calls for mandatory separation: "true, confirmed, or habitual homosexual personnel, irrespective of sex, will not be permitted to serve in the Army in any capacity and prompt separation of known homosexuals from the Army is mandatory" (U.S. Army 1953, 1). Classifications for homosexual offenders are prescribed, based on the nature of the reported and investigated homosexual acts: Class I "is defined as those cases accompanied by assault or coercion, as characterized by any act in or to which the other person involved did not willingly cooperate or consent," and is punishable by mandatory general court-martial; Class II "is defined as those cases wherein true or confirmed homosexuals personnel have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality and which does not fall into the category of class I," and is punishable by forced resignation in lieu of court-martial or a court-martial (U.S. Army 1953, 3). The distinction between class I and class II is notable, in that the nature of separation from the Army under the different circumstances is drastic; the criminal nature of class I requires a more severe punishment, while it remains a circumstantial possibility for class II offenders.

Executive Materials

U.S. President. Executive Order. *"Establishing the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Executive Order 9981."* Internet online. Available from

<<http://dont.stanford.edu.libproxy.lib.unc.edu/regulations/eo9981.pdf>>. [October 10, 2006].

This document, an executive order from President Harry S. Truman on July 26, 1948, is the first official order instating complete equality in the Armed Forces, with regard to race, color, religion, or national origin. Although there is no specific mention of homosexuality, this order does establish an idea of equality in the Armed Forces that would later be in conflict as limits were placed on homosexuals in the military. The order calls for the creation of an advisory committee to the president, to ensure that the measures of the order would be efficiently carried out.

U.S. President. Memorandum. *Memorandum on Ending Discrimination in the Armed Forces*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/pres1-29-93.pdf>>. [October 13, 2006].

This document is an official memorandum to the Secretary of Defense from January 29, 1993, prompting a draft of an Executive Order to end discrimination in the Armed Forces with regard to homosexuality. According to the memorandum, the Executive Order should “be accompanied by the results of a study to be conducted over the next six months on how this revision in policy would be carried out in a manner that is practical, realistic, and consistent with the high standards of combat effectiveness and unit cohesion our Armed Forces must maintain” (U.S. President 1993, 5). This memorandum was the first step in the creation and later implementation of the “don’t ask, don’t tell” policy.

U.S. President. Speech. *Remarks Announcing the New Policy on Gays and Lesbians in the Military*. Internet on-line. Available from <<http://dont.stanford.edu/regulations/pres7-19-93.pdf>>. [October 14, 2006].

This document is a transcription of the “Fort McNair” speech, or the speech in which President Bill Clinton explained his intent behind instituting the “don’t ask, don’t tell” policy in order to end discrimination in the Armed Forces, delivered on July 19, 1993. The speech delves into great detail of how President Clinton developed the policy, and why he believes the policy is the best compromise for individual rights and military efficiency. Parts of the policy, enacted in a later DOD Directive, include: “service men and women will be judged based on their conduct, not their sexual orientation;” and “an open statement by a service member that he or she is a homosexual will create a rebuttal presumption that he or she intends to engage in prohibited conduct, but the service member will be given an opportunity to refute that presumption” (U.S. President 1993, 4). Here, the possibility of exemption from separation from the Armed Forces is raised for service members whom can refute the intent behind a homosexual act based solely on homosexual orientation.

Department of Defense

National Defense Research Institute (U.S.), United States. Dept. of Defense. Office of the Secretary of Defense, and Rand Corporation. 1993. *Sexual Orientation and U.S. Military Personnel Policy: Options and Assessment*. Santa Monica, CA: Rand.

This document is a comprehensive report prepared by the National Defense Research Institute (NDRI) for the Office of the Secretary of Defense on the topic of options and assessments for sexual orientation policy in the Armed Forces. The NDRI researched analogous situations of the integration of a perceived minority into a structured institution, such as African Americans and the US Armed Forces, and homosexual firefighters and police officers in major city departments. The report covers an immense

amount of data, focusing on historical analyses of these comparable situations in order to anticipate the integration of homosexuals in the Armed Forces, even though the "don't ask, don't tell" policy would disallow any disclosure of homosexuality; the assessments made in the report are aimed toward finding any evidence that allowing homosexuals into the organization would be detrimental in any way. Included in the report are opinion polls of the American public, Armed Forces veterans, and current enlisted personnel, in addition to sexual activity statistics of civilians in major cities, AIDS demographics, and sodomy laws. The report seemingly confirms the basic tenets of the "don't ask, don't tell" policy, in questioning the effectiveness of homosexual military leaders: "This is the question of 'followership,' or upward vertical cohesion...in one of the focus groups, one person said 'I worked with a homosexual and not one man would do what he said,'" (U.S. Department of Defense 1993, 327). Conclusions drawn in the report are varied, from "the presence of acknowledged homosexuals may bring about a reduction in social cohesion, although it seems less likely to undermine task cohesion," to "homosexual leaders will need to earn the respect of their subordinates by proving their competence and their loyalty to traditional military values" (U.S. Department of Defense 1993, 331). The context of the policy is analyzed, with several concerns raised through research: first, "a majority of military personnel, and a sizable portion of the general public, feeling that homosexuality is immoral;" second, "the debate is occurring in a context characterized by drawdowns and uncertainty...the resulting anger and resentment [to base closings at the conclusion of the Cold War] have made members disinclined to tolerate additional threats to military culture in the form allowing homosexuals to serve;" third, "the policy debate is occurring in a context where norms of deference are significantly eroded;" fourth, "the

current budgetary context may restrain change if implementation planning fails to take it into account...all new programs are viewed as coming at the expense of old and sometimes cherished ones;" and fifth, "there is no sense that the change would serve any legitimate need of the military" (371-2). In all, this document is a thorough resource because it culls together historical evidence and relevant popular and statistical data in order to assess the proposed integration of homosexuals into the Armed Forces.

U.S. Department of Defense. *Review of the Effectiveness of the Application and Enforcement of the Department's Policy on Homosexual Conduct in the Military*. Internet on-line. Available from <<http://defenselink.mil/pubs/rpt040798.html>>. [October 14, 2006].

Provided as a link from the Department of Defense's web site publications page, and compiled by the Office of the Under Secretary of Defense, this report examines the effectiveness of the DOD's policy on homosexual conduct. Since this report is internal in nature, it provides an interesting insight into the DOD's concern with homosexual conduct in the military nearly four years after the passing of the "don't ask, don't tell" policy. The report was compiled after a committee of legal and personnel representatives from each branch of the military met, examined, and compared statistics and enforcement policies. One of the findings of note is that the large majority of discharges were based on statements by service members who identified as homosexual, not discharges based on homosexual acts. Also, junior service members are more likely to be discharged, not career service members; in 1997, 98 percent of all homosexual discharges received honorable discharges, discharges under honorable conditions, or uncharacterized discharges. One of the most intriguing discoveries of this report is that the "great majority" of discharges did not object or appeal the decisions. Also, to confirm with the

findings of NSIAD 92-98, women are discharged for homosexuality at a greater rate than their representation in the force. The report also notes the “troubling” incidents of threats and harassment against service members who are homosexual or believed to be homosexual; the findings conclude that commanders took appropriate actions when dealing with the perpetrators. This report is particularly useful because it is an internal document of sorts, with the DOD compiling its own research and offering recommendations for its controversial policy.

Department of Justice

U.S. Department of Justice. *Andrew Holmes, et al, Petitioners v. California National Guard, et al; Supreme Court of the United States, October term, 1998*. Internet on-line. Available from <<http://www.usdoj.gov/osg/briefs/1998/0responses/98-0500.resp.html>>. [October 14, 2006].

From the U.S. Department of Justice web site, this document is a petition for a writ of certiorari to the U.S. Supreme Court regarding the case of Andrew Holmes v. California National Guard. This case is an interesting complement to the 1988 case involving Woodward, as ten years had passed and the implementation of the 1993 DOD policy was in effect. The case is a challenge of the validity of the policy in possible violation of first-amendment rights. The petition is denied, as the DOD policy is upheld as not being a violation of first-amendment rights as the petitioner knew the risk of disclosing his homosexuality. This document is a valuable electronic resource on this subject because it shows that the evolution from military exclusion of homosexuals to its current policy of secrecy can still result in the same conclusion.

U.S. Department of Justice. *James M. Woodward, Petitioner v. United States of America, Supreme Court of the United States; Trial Date October term, 1988*. Internet on-line. Available from <<http://www.usdoj.gov/osg/briefs/1989/sg890388.txt>>. [October 12, 2006].

Taken from the U.S. Department of Justice site, this electronic resource is a petition for a writ of certiorari of a U.S. Supreme Court case from October term 1989, wherein the petitioner was suing to determine if the Navy had acted constitutionally when it discharged him for admitting to being a homosexual. The petitioner, James Woodward, was a naval officer in the 1970s, who admitted in his recruitment papers that he was attracted to men, but that he had never engaged in homosexual acts. Upon being accepted into the Navy and promoted several times, he was caught fraternizing with an enlisted soldier who was being discharged for homosexual acts. At first, the Navy did not discharge him or ask for his resignation, but did reclassify him as a reservist. Woodward sued the Navy for first- and fifth-amendment violations, and after various appeals, the case ended up in the Supreme Court, where the petition was denied. This document is a valuable resource for examining homosexuality and the military before the 1990s and the modification of the policy.

General Accounting Office

United States. General Accounting Office. 1992. *Defense Force Management: DOD's Policy on Homosexuality*. Washington, D.C.: The Office.

This GAO report was compiled in response to a request from Representatives John Conyers Jr., Ted Weiss, and Gerry E. Studds about the Department of Defense's policy of excluding homosexuals from serving in the United States armed forces. Published in

June 1992, before President Bill Clinton's "don't ask, don't tell" policy was introduced, this report includes an examination specifically of the period between 1980 and 1990, with 1982 as the start date of the DOD's [then] most recent policy on the exclusion of homosexuals in the military: "Homosexuality is incompatible with military service...The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among service members; to ensure the integrity of the system of rank and command; to facilitate assignment..." (General Accounting Office 1992, 2). From 1980 through 1990, 17,000 servicemen and women were discharged under the category of "homosexual;" most were enlisted personnel (i.e. not officers), most were men, and most were Caucasian. The Navy accounted for a majority of the discharges, while it represents only 27 percent of the total armed forces; also, women represented only 11 percent of the total naval force, but accounted for 22 percent of discharges. The cost of discharges, beyond recruiting and training, could not adequately be calculated by GAO; similarly, the cost of investigations into possible homosexual behavior could not be accurately established. The report acknowledges that public attitudes about homosexuality shifted during the time period, becoming increasingly tolerant and accepting of homosexuals and with the idea of homosexuality and military service. The GAO notes that the findings of the report should "assist the Congress in deliberating legislative initiatives relative to changing DOD's policy" (General Accounting Office 1992, 7). This report is a vital piece of government information in attempting to understand modern military policy regarding homosexuality among service members, especially as its findings laid the groundwork for President Clinton's "don't ask, don't tell" policy which still exists today.

United States. General Accounting Office. 1992. *Defense Force Management: Statistic's Related to DOD's Policy on Homosexuality*. Washington, D.C.: The Office.

This document is the supplement to the previous report (NSIAD-92-98), and includes the statistics by which conclusions and findings in the report were reached. In terms of providing relevant information regarding homosexuality and the U.S. military, the statistics are extremely convincing in the support of the findings that the majority of discharges were male, white, and in the Navy. The tables display total populations of each branch of the military (Army, Navy, Air Force, Marines) including gender and race, and then breaks down discharges in the same manner. For example, in 1982, the Navy discharged 973 white men for homosexuality, while the Marine Corps discharged 98 in the same time period. There are tables that also display discharges by year, enlisted discharges versus officer discharges, and pay grades of the discharged. The information provided in the tables complements and even enlightens the related report, and could even stand on its own for research purposes into this subject, as the data is plentiful and available for a variety of comparisons and manipulations.

United States. General Accounting Office. *Homosexuals in the Military*. 1993. Washington, D.C.: The Office.

This General Accounting Office (GAO) report, conducted during the time period leading up to the installation of the "don't ask, don't tell" policy by Congress in October 1993, at the request of Senator John Warner, examines the policies in place in other countries with regard to homosexuality and their militaries. Initially, the report included an examination of 25 countries, but for the purposes of this report, only Canada, Germany, Israel, and

Sweden are included in the analysis because of their allowance of homosexuals to serve in the military, size of their armed forces, and recent combat or deployment experience. The report notes that each of these four countries had modified their policies on including homosexuals in their armed forces in the recent past to conform to burgeoning societal acceptance or tolerance of homosexuality, especially with regard to civilian law. Military officials in each of the four countries noted that homosexual service members were not an issue and had caused no conflict or problem at all. Included in the report is a table of the initial 25 countries examined, that displays the countries which have exclusionary policies and whether or not they are military policy or legislation. This report is an important piece to the government information puzzle that leads up to the lifting of the military ban on homosexuality and the installation of the "don't ask, don't tell" policy.

United States. General Accounting Office. 2005. *Military Personnel: Financial Costs and Loss of Critical Skills Due to DOD's Homosexual Conduct Policy Cannot be Completely Estimated*. Washington, D.C.: The Office.

This report by the GAO was conducted to discover if the DOD's policy regarding homosexuals resulted in the loss of capable service men and women with critical skills, most importantly Arabic fluency in the post-9/11 U.S. military. The report focuses on the years 1994 through 2003, when approximately 9,500 service members were discharged for homosexuality, after the 1993 Congressional policy was established. Much like the 1992 GAO report (NSIAD 92-98), the financial costs of discharges could not be calculated because the military does not keep records on investigations, counseling, pastoral care, etc; however, the report does cite training costs, and each branch of the military spent at least over \$16 million on discharged personnel training over the 9-year

period. Out of the total number of discharges, 757 service members were deemed to have critical skills, i.e. foreign language fluency (Arabic, Farsi, Korean) or technical abilities (voice interceptor, data processing). One interesting note from this report is that the Army was responsible for the most discharges during the post-9/11 period, usurping the Navy's previously dominant role as having the most discharges. This report is extremely relevant and helpful as a companion report to NSIAD 92-98, as a record of pre- and post-"don't ask, don't tell" policy created by President Clinton and confirmed by Congress in 1993.

United States. General Accounting Office. 2004. *Military Personnel: First-Term Recruiting and Attrition Continue to Require Focused Attention, Testimony before the Subcommittee on Personnel, Committee on Armed Services, U.S. Senate*. Washington, D.C.: The Office.

This GAO report is comprised mostly of testimony by Norman J. Rabkin, Director of National Security Preparedness Issues, National Security and International Affairs Division before the Subcommittee on Personnel, Committee on Armed Services, U.S. Senate does not focus solely on homosexuality and the military, but does point it out a key reason for first-term recruiting and attrition issues in all branches of the military. Homosexuality falls under the category of fraudulent/erroneous enlistment, which accounts for approximately 26 percent of the total number of those who leave the military in their first term. While no solution is given for homosexual violations of the DOD policy (i.e. speaking about it or getting caught involved in homosexual acts), the suggestions given for increased enrollment and lower attrition include more marketing and a greater intra-military support system. This report is not as informative as others

included in this bibliography, but it does show the DOD's policy on homosexuals having an effect on the overall health of the military.

Congressional Materials

U.S. Senate. Committee on Armed Services. 1994. *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the Committee on Armed Services, U.S. Senate*. Washington, D.C.: U.S. Government Printing Office.

This extensive document contains the transcripts of numerous testimonies over several dates (ranging from March to July) in 1993 before the U.S. Senate's Committee on Armed Services as to the best policy regarding homosexuals and military service. These hearings were initiated by President Clinton's proposed idea of admitting homosexuals to the military through the "don't ask, don't tell" policy. It is these hearings before the Armed Services Committee which lead to the passing of the law into military regulation. Included in this document is a Congressional Research Service report for Congress entitled "Homosexuals and U.S. Military Personnel Policy," which explicates the complicated history of military regulations with regard to homosexual service policy. The testimony of several dozen military officers is included, with further explanation into the history of the DOD's policy toward homosexuals and the changes to the policy as developed by members of Congress and military leaders alike. This lengthy document is essential for a detailed understanding of the building of the current DOD policy toward homosexuality, i.e. the "don't ask, don't tell" policy.

Miscellany

Secretary of the Navy. 1993. *The Crittenden Report: Report to the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures, and Directives Dealing with Homosexuals, 21 December 1956-15 March 1957*. Upland, PA: Defense Information Access Network.

This document, an internal policy on how to deal with homosexuals in the Navy, is highly indicative of both military and societal impressions of homosexuality—that it is a mental illness that would prevent proper military service from occurring, and would corrupt the morale and unity of a military unit. The basic objectives in handling homosexual behavior in the Navy during this time were “to rid the Navy of habitual homosexuals; to provide a deterrent to homosexual behavior by naval personnel not habitually homosexual; and to prevent evasion of military service by individuals falsely admitting homosexual acts or tendencies in order to maintain the discipline, moral standards and fighting efficiency of the naval service” (U.S. Navy 1993, 5). Notable aspects of the report include a mention of Kinsey’s research into approximate numbers of homosexuals in society; a mention of the increasing problem in identifying homosexuals solely through sight (i.e. effeminate characteristics); and the statement of the “one-time” offender as the most difficult situation to deal with in terms of the Navy and homosexual behavior.

Defense Security. *Reference Materials: Information about Specific Sexual Practices*. Internet on-line. Available from <http://www.dss.mil/nf/adr/sexbeh/sexT2.htm#Homosexuality>. [October 15, 2006].

From the Defense Security Service web site, this document is from a current handbook about sexual behavior and its affect on the military. While not exclusively dealing with homosexuality, it is interesting to note that all of the information about homosexuality is

included alongside information about sexual perversion, group sex, “swinging,” prostitution, extramarital affairs, etc. The document notes that mental health and social adjustment are unrelated to sexuality, so homosexuals would not present any security concerns, although the following section then presents data about homosexuality and coercion, with a special emphasis on the fear of disclosure. If this document is an example of military training or a source of general information for service members, it would most likely do little to change any negative stereotype or belief. This site is helpful though to paint an accurate portrait of how the military casts homosexuality in current times.

U.S. Marine Corps. *Complaint Processes: Threats Against or Harassment of Service Members based on Alleged Homosexuality*. Internet on-line. Available from <[http://hqinet001.hqmc.usmc.mil/ig/Complaints%20%20\(homosexuality\).htm](http://hqinet001.hqmc.usmc.mil/ig/Complaints%20%20(homosexuality).htm)>. [October 14, 2006].

From an official Marine Corps web site, this document is from a larger electronic resource about filing and managing complaint processes for commanding officers. This particular document deals with accusatory homosexual harassment, and recommends that the commanding officer investigates the validity of the claims immediately, and file any pertinent paperwork as soon as possible. The directives, compiled in an FAQ-style, say that the commanding officer should not take this opportunity to investigate whether or not the victim of the harassment is indeed a homosexual, as the harassment takes precedence because it was filed first. This page also includes links to the DOD’s official policy for reference. Like the DSS site, this document is relevant because it is a current resource for Marine officers to utilize when confronted with an issue of harassment and

homosexuality; the content and directives offer insight into the priorities and concerns of the Marine Corps.

U.S. Coast Guard. *In the Matter of the Merchant Mariner's Document No. Z-511718 and all other Seaman's Documents, Rafael F. Molina; Decision of the Commandant, United States Coast Guard*. Internet on-line. Available from <<http://www.uscg.mil/hq/g-cj/appeals/cg1042.pdf>>. [October 11, 2006].

Taken from the official Coast Guard web site, this document contains the investigation and order of the discharge of Rafael F. Molina, a seaman with the Coast Guard, from November 1957. Molina was arrested by German detectives in Bremerhaven, Germany for onanism with a German man, as they were found sleeping in the same hotel bed; following the advice of his counsel, Molina plead guilty and received three years probation, but because of the arrest he missed his ship's deployment. Because Molina admitted to "playing with" the man, he was discharged for homosexual conduct. The document reveals that Molina's appeal was denied, as the claim was accepted and an order made to uphold the decision. This document is an intriguing view into the 1950s military policy regarding homosexuality, before societal shifts promoted acceptance and tolerance of homosexuals in society.

U.S. Army. *Don't Ask Don't Tell, Army Homosexual Conduct Policy*. Internet on-line. Available from <<http://www.army.mil/soldiers/HotTopics/winter00.pdf>>. [October 11, 2006].

This document is a pamphlet entitled *Hot Topics*, and is a newsletter that circulates among commander and leaders of the U.S. Army. Published in the winter of 2000, this document is meant to explain the Army's homosexual conduct policy in case of the need

to use it; “commanders are frontline administrators of the policy” (U.S. Army 2006, 1). Stressed in the newsletter is the threat of administrative action for using derogatory or inflammatory words to any minority group, including homosexuals; also, the recommended steps for dealing with an accusation of homosexuality or homosexual acts. Included is a checklist of duties, definitions of words such as “homosexual,” what constitutes credible information and the continued reminder not to ask if a soldier is a homosexual, as it violates the “don’t ask, don’t tell policy.” Like the DSS and Marine sites, this pamphlet is indicative of how the Army has decided to implement a potentially unclear policy, to protect both itself and the service members under possible inquiry. Although it is not completely current, with a published date of 2000, it is still a pertinent resource for the subject.

U.S. Army. *Executive Summary, Task Force; Fort Campbell Investigation Regarding Murder of Private First Class Barry Winchell*. Internet on-line. Available from <<http://www.army.mil/ig/2Executive%20Summary.htm>>. [October 11, 2006].

This document is an electronic version of an executive summary of the investigation into the murder of Private First Class Barry Winchell, from the U.S. Army web site. This summary gives a brief background into the case (which received multitudinous media attention and was made into a film), and explicates the steps of the investigation into the murder of a soldier for being perceived to be a homosexual. When reviewing this document in the context of the military sites devoted to the correct and safe implementation of the DOD’s policy toward homosexuality, this incident at Fort Campbell is a strikingly relevant example of the potential danger inherent in a policy that promotes secrecy and unknowing. The findings of the summary reveal that the proper

implementation of the policy was not followed to the letter, as a commanding officer referred to Winchell using a derogatory term; however, on the whole, the summary found that Fort Campbell's chain of command did all that could be expected of them leading up to the murder of Winchell. The summary reaffirms the Army's duty to eliminate harassment whenever possible.

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