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### **RESEARCHERS LOCATE ARMY DOCUMENT ORDERING COMMANDERS NOT TO FIRE GAYS**

**Regulations Seem to Contradict Pentagon Denial That Military Retains Gays During War**

SANTA BARBARA, CA, September 13, 2005 - Scholars studying military personnel policy have found a controversial regulation halting the discharge of gay soldiers in units that are about to be mobilized. The document is significant because of longstanding Pentagon denials that the military requires gays to serve during wartime, only to fire them once peacetime returns. According to the "don't ask, don't tell" policy, gays and lesbians must be discharged whether or not the country is at war.

The regulation, contained in a 1999 "Reserve Component Unit Commander's Handbook" and still in effect, states that if a discharge for homosexual conduct is requested "prior to the unit's receipt of alert notification, discharge isn't authorized. Member will enter AD [active duty] with the unit." The 1999 document was obtained by researchers at the Center for the Study of Sexual Minorities in the Military (CSSMM), a think tank at the University of California, Santa Barbara during research for an ABC Nightline story.

Gay soldiers and legal groups have reported for years that known gays are sent into combat, and then discharged when the conflicts end. Discharge statistics corroborate a pattern of rising expulsions during peacetime and plummeting rates during military conflicts, and Pentagon statistics confirm that, as has been the case in every war since World War II, gay discharges have declined during the current conflict in the Middle East.

But the Pentagon has consistently denied that, when mobilization requires bolstering troop strength, it sends gays to fight despite the existence of a gay ban, and some observers have insisted there is no evidence of such a practice. During the first Gulf War, Pentagon spokesman, Bill Caldwell, said the military would "absolutely not" send gays to war and discharge them when the conflict ends. "The policy on gays continues that homosexuality is incompatible with military service," he said. [Randy Shilts, "Army Discharges Lesbian Who Challenged Ban," San Francisco Chronicle, Jan. 19, 1991.]

Shortly after the terrorist attacks of 9/11, a Pentagon spokesman said that the military was not modifying its regulations on gay troops. "There is no policy that would generate a change in the



standards or in the administrative due process for [Pentagon] programs," said James Turner, "including the department's management of homosexual conduct policies as prescribed in law." [Chris Bull, "'Don't Ask Don't Tell' Goes to War," *The Advocate*, December 04, 2001.]

And a May, 2005 study by the Congressional Research Service says that although gay discharges do decline during wartime, the decrease is the result of "random fluctuations in the data," not an intentional Pentagon policy of retaining gays during wars ["Homosexuals and U.S. Military Policy: Current Issues," p. 12]. The co-author of that recent report, David Burrelli, testified before Congress in 1993 that the Congressional Research Service "has been unable to confirm or deny" that known gays were sent to the Persian Gulf, and that the military has "taken the approach of excluding all admitted homosexuals." [David Burrelli, Congressional testimony, page 9, 10]

But the newly discovered handbook regulations appear to contradict all of these pronouncements. Bridget Wilson, an expert on military law, said the handbook shows "how arbitrary and capricious the law is." The policy says that if gay troops reveal their sexual orientation, they must be fired. But these regulations say that if someone comes out as gay, a commander "can discount that statement in one context and not in another." He can "choose to ignore that statement as being said solely to avoid duty and send that person on. But he wouldn't have to make a finding that the statement was false, only that the person said it to avoid duty." Thus it is fully possible that avowed gays would be sent to active duty. "If you're knowingly sending gay people into a war zone," said Wilson, "doesn't that vitiate your policy?"

The handbook is a revised edition of a similar document from 1990, which contains identical language regulating the mobilization of gay troops. That handbook was cited in a disputed *Wall Street Journal* article reporting that the Pentagon was sending known gays to the first Persian Gulf War only to discharge them upon their return. David Burrelli questioned the *Wall Street Journal's* allegations that a Commander's Handbook barred the discharge of gays during a mobilization. "No such handbook has been found," he wrote, "nor has their [sic] been any documentation that any such bars existed." [David Burrelli, "An Overview of the Debate on Homosexuals in the U.S. Military," in Wilbur Scott and Sandra Carson Stanley, eds., *Gays and Lesbians in the U.S. Military: Issues, Concerns, and Contrasts*, FN# 21, p. 30] The Commander's Handbook located by CSSMM scholars now provides such documentation.

Prior to the first Gulf War, the government issued a "stop-loss" order allowing the services to retain troops who were facing discharge for a variety of reasons. Following the attacks of 9/11, a similar stop-loss order was issued, but when the services implemented it, most specified that discharges would



continue for homosexual conduct. In both cases, however, dozens of allegations surfaced that the military was sending known gays to war. The two handbooks retrieved this week by CSSMM researchers are among the first evidence of written regulations clearing the way for known gays to mobilize.

Bridget Wilson said that the Reserve Commander's handbook may be used as a way for commanders in the Reserve to "pass the buck" to other officials. "It's the 'let's make it someone else's problem' mentality," she said, and it suggests that many commanders would rather not enforce the gay ban. "I bet ninety percent of the time, they'll tell the guy to shut up and get on the plane," Wilson said, "and I think that's the purpose-they're trying to massage their way around the regulation."

According to Dr. Aaron Belkin, director of the CSSMM, "Scholars, lawyers and, most importantly, gay service members themselves, have long known of the military's practice of looking the other way when it's time to fight a war. Now we have documentation showing this has been a deliberate policy."

The Center for the Study of Sexual Minorities in the Military is an official research unit of the University of California, Santa Barbara. The Center is governed by a distinguished board of advisors including the Honorable Lawrence J. Korb of the Center for American Progress, Honorable Coit Blacker of Stanford University and Professor Janet Halley of Harvard Law School. Its mission is to promote the study of gays, lesbians, and other sexual minorities in the armed forces.