

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

LOG CABIN REPUBLICANS,)	No. CV04-8425 GPS (Ex)
)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES OF AMERICA AND)	
ROBERT GATES, Secretary of Defense,)	
)	
Defendants.)	
)	
)	
)	
)	
)	
)	

DECLARATION OF MR. BILL CARR

I, William J. Carr declare as follows:

1. I am the Deputy Under Secretary of Defense for Military Personnel Policy. I have served in this position since August 2002. I am responsible for recruiting, retention, compensation, and related human resource management for military members of the Department of Defense (“DoD” or “Department”). One of the offices under my authority, direction, and control is the Office of Officer and Enlisted Personnel Management. That office is responsible for most DoD Issuances, including DoD Directives and Instructions, governing personnel policy

for military personnel. The implementation of 10 U.S.C. § 654 involves one such policy. The DoD implements § 654 primarily through three DoD Instructions for which I am responsible.

2. I am aware of the above styled litigation brought by Log Cabin Republicans and the broad scope of Log Cabin Republicans' First Set of Request for Production of Documents.

3. The DoD protects its deliberative processes in order to assure the free flow of ideas and candid discussion of alternatives. In determining whether a document is within the scope of the deliberative process privilege, the DoD considers whether the document was generated before the adoption of a department policy or position, and whether the document reflects the give-and-take of consultation process leading up to the formation of an agency policy, position, or decision. The DoD also considers whether disclosure of a document is likely to stifle honest and frank communications within the Department in the future.

4. I understand that in response to LCR's discovery requests the Department has reviewed tens of thousands of pages of documents. In reviewing the documents, the DoD has identified and will withhold a number of documents involving or revealing the Department's deliberative process.

5. Based upon my detailed review, I hereby assert deliberative process

privilege on behalf of the DoD for the following documents:

**DEFENSE PERSONNEL SECURITY RESEARCH AND EDUCATION
CENTER DOCUMENTS**

6. LCR has requested all documents relating to Defense Personnel Security Research and Education Center ("PERSEREC") studies concerning the service of gay and lesbian service members in the United States Armed Forces including two PERSEREC reports respectively entitled "Nonconforming Sexual Orientations and Military Suitability" December 1989 and "Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability," January 1989. Individuals within the Department developed these studies through internal deliberations. The Department must be able to develop and pursue such studies through the candid exchange of ideas without fear of the public second guessing a final study based upon information considered before a study becomes final or public confusion from premature disclosures of drafts of the Department's final study.

7. The documents Bates-stamped 42220-42221, 42222-42244, 424418-42419, and 42420-42438 are duplicate copies of a 1986 memorandum from PERSEREC proposing a research plan and a 1987 response memorandum from the Deputy Director, Under Secretary of Defense (Policy) commenting on how PERSEREC

should revise its proposed research plan.

8. The documents Bates-stamped 42447, 42448, 42449, 42452-42454, 42455-42457, 42414-42415, 42562-42563, 42564, and 42592-42594 are internal department comments regarding a re-write of the 1989 draft PERSEREC Report "Nonconforming Sexual Orientations."

9. The document Bates-stamped 8248-8277 is a September 1987 draft of the PERSEREC Report entitled "Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability." The document Bates-stamped 42366-42413 is a November 1989 draft of the PERSEREC Report entitled "Homosexuality and Personnel Security" and includes handwritten comments in the margins. The document Bates-stamped 42498-42553 is a September 1990 draft of the same report. The documents Bates-stamped 42582-42590, 42570-42574, 42554-42560, 42566-42569, and 42576-42578 are internal Department comments regarding the recommended changes to these draft PERSEREC reports.

10. All of these PERSEREC documents concern the Department's decision as to what the final PERSEREC reports should include. The documents reveal internal Department deliberations, including candid discussions, regarding draft PERSEREC studies and recommendations on how to improve these studies. It is

critical to the proper functioning of the Department that it be able to examine draft reports and recommend alternative analysis, conclusions, or ramifications associated with those options before ultimately publishing the reports for public consideration. Release of these internal predecisional documents would chill the Department's current review and future research efforts regarding the service of gay and lesbian individuals in the Armed Forces.

DoD Issuances

11. Documents Bates-stamped 58087-58124 provide a list of officials and their predecisional comments regarding the Department's 2005 re-issuance of DoD Instruction 1304.26 "Qualification Standards for Enlistment, Appointment and Induction."

12. Documents Bates-stamped 58136-58149, 58245-58313, 58315-58317, 58417-58427, 58435-58450 provide a list of DoD officials and their predecisional comments regarding the re-issuance of the 1982, 1987, and 1988 versions of DoD Directive 1332.14 "Enlisted Administrative Separations."

13. Documents Bates-stamped 58483-58516 and 58563-58589 provide a list of Department officials and their predecisional comments regarding the 1986 and 1997 re-issuance of DoD Directive 1332.30 "Separation of Regular and Reserve Commissioned Officers."

14. Documents Bates-stamped 58611-58643 provide a list of Department officials and their predecisional comments regarding the re-issuance of the 2005 version of DoD Instruction 5505.8 "Defense Criminal Investigative Organizations and Other Law Enforcement Organizations Investigations of Sexual Misconduct."

15. All of these documents related to the DoD Issuances discussed above concern the Department's development of a final DoD policy promulgated through DoD regulations. These documents reveal internal Department deliberations, including candid discussions, regarding recommended changes to DoD policy. It is critical to the proper functioning of the Department that it be able to explore alternative policy options and the ramifications associated with those options before ultimately adopting and promulgating the final policy in regulation. Release of these internal predecisional documents would chill the Department's current review of these regulations.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the forgoing is true and correct.

Executed this 3rd day of March 2010.



WILLIAM J. CARR
Deputy Under Secretary
(Military Personnel Policy)