

EXHIBIT 8

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 36-2909

1 MAY 1999



Personnel

**PROFESSIONAL AND UNPROFESSIONAL
RELATIONSHIPS**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction establishes command, supervisory and personal responsibilities for maintaining professional relationships between Air Force members, between Air Force members and members of other uniformed services, between Air Force members and civilian employees of the Department of Defense, to include Air Force civilian employees, and between Air Force members and government contractor employees. Unprofessional relationships are those interpersonal relationships that erode good order, discipline, respect for authority, unit cohesion and, ultimately, mission accomplishment. It is the responsibility of commanders and supervisors at all levels to ensure compliance with this instruction. The policy set out in this instruction applies to all active duty members and to members of the United States Air Force Reserve (USAFR) and Air National Guard (ANG), except as provided in paragraph 3.8., below. Officers, including Reserve officers on active duty or inactive duty for training and ANG officers in Federal service, who violate the custom of the service against fraternization or the specific prohibitions contained in paragraph 5.1 of this instruction can be prosecuted under either Article 92 or Article 134 of the Uniform Code of Military Justice (UCMJ), or both, as well as any other applicable article of the UCMJ, as appropriate. This instruction implements Air Force Policy Directive (AFPD) 36-29, *Military Standards*.

SUMMARY OF REVISIONS

This document is substantially revised and must be completely reviewed.

This instruction has been revised to include specific prohibitions on the formation of personal relationships in the recruiting and training environments (paragraph 3.5.); to stress the use of a stepped approach to enforcement of the policy, taking into consideration all the surrounding facts and circumstances (paragraph 8.); and, to stress the prevention of unprofessional relationships through training and leadership by example (paragraph 9.).

1. General. Professional relationships are essential to the effective operation of all organizations, both military and civilian, but the nature of the military mission requires absolute confidence in command and an unhesitating adherence to orders that may result in inconvenience, hardships or, at times, injury or death. This distinction makes the maintenance of professional relationships in the military more critical than in civilian organizations. While personal relationships between Air Force members are normally matters of individual choice and judgment, they become matters of official concern when they adversely affect or have the reasonable potential to adversely affect the Air Force by eroding morale, good order, discipline, respect for authority, unit cohesion or mission accomplishment. Professional relationships are those interpersonal relationships consistent with Air Force core values: integrity first, service before self, and excellence in all we do. Military members understand that the needs of the institution will sometimes outweigh personal desires. This guidance focuses on the impact of personal relationships on the interests of the Air Force as an institution. The guidance set forth in this instruction is based, in part, on the custom against fraternization that has been a part of and enforced within the American military for over 200 years.

2. Policy.

2.1. Professional Relationships. Professional relationships are those that contribute to the effective operation of the Air Force. The Air Force encourages personnel to communicate freely with their superiors regarding their careers, performance, duties and missions. This type of communication enhances morale and discipline and improves the operational environment while, at the same time, preserving proper respect for authority and focus on the mission. Participation by members of all grades in organizational activities, unit-sponsored events, intramural sports, chapel activities, community welfare projects, youth programs and the like can enhance morale and contribute to unit cohesion.

2.2. Unprofessional Relationships. Relationships are unprofessional, whether pursued on or off-duty, when they detract from the authority of superiors or result in, or reasonably create the appearance of, favoritism, misuse of office or position, or the abandonment of organizational goals for personal interests. Unprofessional relationships can exist between officers, between enlisted members, between officers and enlisted members, and between military personnel and civilian employees or contractor personnel. Fraternization is one form of unprofessional relationship and is a recognized offense under Article 134 of the Uniform Code of Military Justice (UCMJ).

2.2.1. Fraternization. Fraternization, as defined by the Manual for Courts-Martial, is a personal relationship between an officer and an enlisted member that violates the customary bounds of acceptable behavior in the Air Force and prejudices good order and discipline, discredits the armed services, or operates to the personal disgrace or dishonor of the officer involved. The custom recognizes that officers will not form personal relationships with enlisted members on terms of military equality, whether on or off-duty. Although the custom originated in an all male military, it is gender neutral. Fraternization can occur between males, between females and between males and females. Because of the potential damage fraternization can do to morale, good order, discipline, and unit cohesion, the President specifically provided for the offense of fraternization in the Manual for Courts-Martial. (See Manual for Courts-Martial, 1998 Edition, Part IV, paragraphs 59 and 83 for a discussion of fraternization and the related offense of conduct unbecoming an officer.)

3. General Guidelines for All Military Personnel for Avoiding Unprofessional Relationships, Including Fraternization. Military experience has shown that certain kinds of personal relationships present a high risk of becoming unprofessional. Personal relationships that are not initially profes-

sional may become unprofessional when facts or circumstances change. For example, a close personal relationship between officers or between enlisted members can easily become unprofessional if one member becomes the commander, supervisor or rater of the other. Air Force members, both officer and enlisted, must be sensitive to the formation of these personal relationships, as well as the possibility that relationships that are not initially unprofessional may become so due to changed circumstances. The rules regarding personal relationships must be somewhat elastic to accommodate differing conditions and operational necessities; however, the underlying standard is that Air Force members are expected to avoid those relationships that negatively affect morale, discipline, respect for authority and unit cohesion. When economic constraints or operational requirements place senior and junior members in close proximity with one another (such as combined ranks or joint use clubs, joint recreational facilities or mixed officer/enlisted housing areas) military members are, nevertheless, expected to maintain professional relationships. The mere fact that maintaining professional relationships may be more difficult under certain circumstances does not relieve a member from the responsibility to maintain Air Force standards.

3.1. Relationships Within an Organization. Familiar relationships between members in which one member exercises supervisory or command authority over the other can easily be or become unprofessional. Similarly, differences in grade increase the risk that a relationship will be, or will be perceived to be unprofessional, because senior members in military organizations normally exercise authority or some direct or indirect organizational influence over the duties and careers of more junior members. The danger for abuse of authority is always present. The ability of the senior member to influence, directly or indirectly, assignments, promotion recommendations, duties, awards, and other privileges and benefits, places both the senior member and the junior member in vulnerable positions. Once established, such relationships do not go unnoticed by other members of a unit. Unprofessional relationships, including fraternization, between members of different services, particularly in joint service operations, can have the same impact on morale, discipline, respect for authority and unit cohesion, as if the members were assigned to the same service, and must be avoided.

3.2. Relationships with Civilian Employees and Government Contractor Personnel. Civilian employees and contractor personnel are an integral part of the Air Force. They contribute directly to readiness and mission accomplishment. Consequently, military members of all grades must maintain professional relationships with civilian employees and government contractor personnel, particularly those whom they supervise or direct, and must avoid relationships that adversely affect or reasonably can adversely affect morale, discipline and respect for authority or that violate law or regulation.

3.3. Dating and Close Friendships. Dating, courtship, and close friendships between men and women are subject to the same policy considerations as are other relationships. Like any personal relationship, they become matters of official concern when they adversely affect morale, discipline, unit cohesion, respect for authority, or mission accomplishment. Members must recognize that these relationships can adversely affect morale and discipline, even when the members are not in the same chain of command or unit. The formation of such relationships between superiors and subordinates within the same chain of command or supervision is prohibited because such relationships invariably raise the perception of favoritism or misuse of position and erode morale, discipline and unit cohesion.

3.4. Shared Activities. Sharing living accommodations, vacations, transportation, and off-duty interests on a frequent or recurring basis can be, or can reasonably be perceived to be, unprofessional. These types of arrangements often lead to claims of abuse of position or favoritism. It is often the frequency of these activities or the absence of any official purpose or organizational benefit which causes them to become, or to be perceived to be, unprofessional. While an occasional round of golf, game of

racquetball or similar activity between a supervisor and a subordinate could remain professional, daily or weekly activities could result at a minimum in the perception of an unprofessional relationship. Similarly, while it might be appropriate for a first sergeant to play golf with a different group of officers from his or her organization each weekend, in order to get to know them better, playing with the same officers every weekend might be, or reasonably be perceived to be, unprofessional.

3.5. Recruiting, Training, Schools and Professional Military Education. Personal relationships between recruiters and potential recruits during the recruiting process or between students and faculty or staff in training schools or professional military education (PME) settings are generally prohibited. These interpersonal relationships are especially susceptible to abuse of position, partiality or favoritism, or can easily create the appearance of such. This is particularly true during the recruiting process and in basic military training, because the potential recruit or junior military member is often unfamiliar with Air Force standards and dependent on the senior member, and the senior member is in a position to directly affect, positively or negatively, the career of the junior member. Consequently, additional, specially tailored rules are needed in the recruiting and training environments.

3.5.1. Recruiting. The first impression of the Air Force that most military men and women form is through their contacts with a recruiter. This experience is a critical step in the development of Air Force members; it establishes expectations and begins the formation of Air Force core values. The relationship between recruiter and applicant must be completely professional. Consequently, recruiters will not form unprofessional personal relationships with applicants. At a minimum, recruiters will not date or carry on a social relationship with an applicant, or seek or engage in sexual activity with, or make sexual advances to, or accept sexual overtures from an applicant. In addition, recruiters will not use grade, position, threats, pressure or promises to attain or attempt to attain any personal benefit of any kind from an applicant. Recruiters will not gamble with, lend money to, borrow money from or become indebted to an applicant, or use personal resources to provide an applicant with lodging or transportation or any other benefit. The same limitations govern relationships between recruiters and an applicant's immediate family members.

3.5.2. Basic Military Training and Initial Technical Training. The integrity and leadership of the faculty and staff in basic military training and the initial technical training environment must not be permitted to be compromised by personal relationships with trainees. At a minimum, faculty and staff will not date or carry on a social relationship with a trainee, or seek or engage in sexual activity with, make sexual advances to, or accept sexual overtures from a trainee. In addition, faculty and staff will not use grade, position, threats, pressure or promises to attain or attempt to attain any personal benefit of any kind from a trainee, or share living quarters with, gamble with, lend money to, borrow money from or become indebted to, or solicit donations (other than for Air Force approved campaigns) from a trainee. The same limitations govern personal relationships between faculty and staff and a trainee's immediate family members. Trainees have an independent obligation not to engage in these activities with members of the faculty and staff.

3.5.3. Other Training and Education Settings . The integrity and leadership of faculty and staff in all formal training and PME settings must not be compromised by personal relationships with trainees or students. At a minimum, faculty and staff will not date or carry on a social relationship with a trainee or student, or seek or engage in sexual activity with, make sexual advances to, or accept sexual overtures from a trainee or student. In addition, faculty and staff will not use grade, position, threats, pressure or promises to attain or attempt to attain any personal benefit of any kind from a trainee or student or members of a trainee or student's immediate family.

3.5.4. Supplementation of this Instruction in the Recruiting, Training and Education Environments. Commands providing recruiting, training and education functions may, consistent with this instruction, publish supplemental directives, to include punitive provisions, to regulate personal relationships in the recruiting, education, training, school and similar environments.

3.6. Treatment, Care and Counseling. Persons undergoing medical or psychological treatment or care, or receiving medical, psychological, pastoral, legal or other professional counseling may be dependent on, and therefore vulnerable to, those providing such services. Personnel providing treatment, care and counseling have a duty to refrain from using their position to gain any personal benefit from persons who are receiving their services. In particular, personnel providing such services will not seek or engage in sexual activity with, make sexual advances to, or accept sexual overtures from persons who are receiving their services or the immediate family members of those receiving their services.

3.7. Other Relationships. Other relationships, not specifically addressed above, can, depending on the circumstances, lead to actual or perceived favoritism or preferential treatment and, if so, must be avoided. Examples of activities that may result in an adverse impact on morale, discipline and respect for authority are gambling or partying with subordinates, soliciting or making solicited sales to subordinates and entering into business ventures with members who are junior in rank, grade or position. (See DoD Directive 5500-7.R [the Joint Ethics Regulation], subsections 2-205 and 5-409 for guidance on solicitation and commercial activities), (set out in **Attachment 1** to this instruction).

3.8. Air Reserve Component (ARC) Personnel. In applying the principles set out in this instruction to ARC personnel, when not performing active duty, full-time National Guard duty, or inactive duty training, commanders and supervisors should tailor the application and enforcement of the principles to appropriately address unique situations that may arise from part-time service.

4. Relationship of Unprofessional Conduct to Other Provisions of the UCMJ. All military members are subject to lawful orders. When a military member has been lawfully ordered to cease an unprofessional relationship or refrain from certain conduct, the military member is subject to prosecution under the UCMJ for violation of the order. Similarly, all military members are subject to prosecution for criminal offenses committed incidental to an unprofessional relationship (e.g., gambling, adultery, assault). In addition, officers may be prosecuted for violation of the specific prohibitions listed in paragraph **5.1.**, and its subparagraphs (below); violation of the custom against fraternization; and conduct unbecoming an officer.

5. Specific Prohibitions Relating to Officers (Fraternization). Unprofessional relationships between officers and enlisted members have a high potential for damaging morale and discipline and for compromising the standing of officers. Consequently, officers have an ethical and a legal obligation to avoid certain relationships and activities. Officers must not engage in any activity with an enlisted member that reasonably may prejudice good order and discipline, discredit the armed forces or compromise an officer's standing. The custom against fraternization in the Air Force extends beyond organizational and chain of command lines. In short, it extends to all officer/enlisted relationships.

5.1. Specific Prohibitions. Conduct that violates the custom of the Air Force against fraternization can be prosecuted under Article 134 of the UCMJ. In addition, with reasonable accommodation for married members and members related by blood or marriage, the following conduct is prohibited and

can be prosecuted under either Article 92 of the UCMJ, Article 134, or both, and any other applicable article of the UCMJ when appropriate:

5.1.1. Officers Will Not Gamble With Enlisted Members.

5.1.2. Officers Will Not Lend Money to, Borrow Money From or Otherwise Become Indebted to Enlisted Members. exception: Infrequent, non-interest-bearing loans of small amounts to meet exigent circumstances.

5.1.3. Officers Will Not Engage in Sexual Relations with or Date Enlisted Members. Dating as set out here includes not only traditional, prearranged, social engagements between two members, but also includes more contemporary social activities that would reasonably be perceived to be a substitute for traditional dating.

5.1.3.1. Officer/Enlisted Marriages. When evidence of fraternization exists, the fact that an officer and enlisted member subsequently marry does not preclude appropriate command action based on the prior fraternization. The fact that an officer is married to an enlisted member is not, by itself, evidence of misconduct. For example, some officer-enlisted marriages are created by the commissioning of civilians married to enlisted members, or by the commissioning of enlisted members married to other enlisted members. Other officer-enlisted marriages may result from force reductions and nonselection for promotion of some officers who then reverted to enlisted status. Regardless of how the officer-enlisted marriage came to be, married members are expected to respect all customs and courtesies observed by members of different grades when they are on duty, in uniform in public, or at official social functions.

5.1.4. Officers Will Not Share Living Accommodations with Enlisted Members Except When Reasonably Required by Military Operations.

5.1.5. Officers Will Not Engage, on a Personal Basis, in Business Enterprises with Enlisted Members, or Solicit or Make Solicited Sales to Enlisted Members, Except as Permitted by the Joint Ethics Regulation. For the application of this rule, members should consult DoD Directive 5500.7-R, the Joint Ethics Regulation, subsections 2-205 and 5-409, (set out in **Attachment 1** to this instruction)

6. Individual Responsibility To Maintain Professional Relationships. All military members share the responsibility for maintaining professional relationships. However, the senior member (officer or enlisted) in a personal relationship bears primary responsibility for maintaining the professionalism of that relationship. Leadership requires the maturity and judgment to avoid relationships that undermine respect for authority or impact negatively on morale, discipline, respect for authority, or the mission of the Air Force. This is especially true of officers and noncommissioned officers who are expected to exhibit the highest standards of professional conduct and to lead by example. The senior member in a relationship is in the best position to appreciate the effect of that particular relationship on an organization and in the best position to terminate or limit the extent of the relationship. However, all members should expect to be and must be held accountable for the impact of their conduct on the Air Force as an institution.

7. Command and Supervisory Responsibilities. Commanders and supervisors at all levels have the authority and the responsibility to maintain good order, discipline and morale within their units. They may be held accountable for failing to act in appropriate cases.

8. Actions in Response to Unprofessional Relationships. If a relationship is prohibited by this instruction or is causing (or if good professional judgment and common sense indicate that a relationship may reasonably result in) a degradation of morale, good order, discipline or unit cohesion, a commander or supervisor should take corrective action. Action should normally be the least severe necessary to terminate the unprofessional aspects of the relationship. The full spectrum of administrative actions is available and should be considered. Administrative actions include, but are not limited to, counseling, reprimand, creation of an unfavorable information file (UIF), removal from position, reassignment, demotion, delay of or removal from a promotion list, adverse or referral comments in performance reports and administrative separation. One or more complementary actions can be taken. Experience has shown that counseling is often an effective first step in curtailing unprofessional relationships. More serious cases may warrant administrative action or nonjudicial punishment. Referral of charges to a court-martial is not appropriate except in aggravated cases. An order to terminate a relationship, or the offensive portion of a relationship, can and should be given whenever it is apparent that lesser administrative action may not be effective. Officers or enlisted members who violate such orders are subject to action under the UCMJ for violation of the order. Instances of actual favoritism, partiality, or misuse of grade or position may constitute independent violations of the UCMJ or the punitive provisions of the Joint Ethics Regulation.

8.1. Responses To Cases Involving Dating or Sexual Relationships. When unprofessional conduct includes evidence of a sexual relationship, the sexual relationship is but one factor to be considered in determining the adverse impact, if any, on the organization and, hence, an appropriate response. It is the impact or reasonably foreseeable consequences of the conduct on morale, discipline, good order, unit cohesion and mission accomplishment that determines its seriousness, not its characterization, even if the conduct could be characterized as adultery or some other potential offense. No fact, standing alone, necessarily warrants referral of charges to a court-martial. When a relationship has had an adverse impact on the Air Force, unprofessional conduct should not be excused simply because the parties to the unprofessional relationship subsequently marry or one of the parties leaves the service.

9. Training. Instruction on the concepts of unprofessional relationships and fraternization shall be made a part of the curricula for basic training, commissioning programs, and professional military education for all military personnel. Commanders, judge advocates and supervisors will familiarize themselves with this instruction (in particular paragraph 8.) and commanders will make certain all personnel are briefed on this policy on an annual basis or more frequently.

10. Questions Regarding This Instruction. Military members who have questions as to the application or interpretation of the policy should consult their commander. Commanders are encouraged to consult their staff judge advocates or servicing legal offices for assistance in interpretation.

WILLIAM A. MOORMAN, Maj General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

DoD 5500.7-R subsection 2-205, *Limitation on Solicited Sales*. Excerpts from the Joint Ethics Regulation. A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's non-commercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal Government building management policies does not constitute solicitation for purposes of this section.

DoD 5500.7-R subsection 5-409, *Commercial Dealings Involving DoD Employees*. Excerpts from the Joint Ethics Regulation. A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's non-commercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal Government building management policies does not constitute solicitation for purposes of this subsection.

- a. This prohibition includes the solicited sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods or services.
- b. Both the act of soliciting and the act of selling as a result of soliciting are prohibited. In both cases, however, a solicitation is necessary for a violation to occur. While the standard prohibits a senior from making a solicited sale to a junior or to the junior's family, sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion or intimidation by the senior.
- c. Personal commercial solicitations by the spouse or other household member of a DoD employee to those who are junior in rank, grade, or position to the DoD employee, may give rise to the appearance that the DoD employee himself is using his public office for personal gain. When a spouse or household member of a DoD employee engages in such activity, the supervisor of the DoD employee must consult an Ethics Counselor, and counsel the DoD employee that such activity should be avoided where it may
 - (1) Cause actual or perceived partiality or unfairness;
 - (2) Involve the actual or apparent use of rank or position for personal gain; or
 - (3) Otherwise undermine discipline, morale, or authority.

Abbreviations and Acronyms

AFI—Air Force Instruction

ANG—Air National Guard

ARC—Air Reserve Component

DoD—Department of Defense

DoDD—Department of Defense Directive

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DoDI—Department of Defense Instruction

JER—Joint Ethics Regulation

UCMJ—Uniform Code of Military Justice

USAFR—United States Air Force Reserve

EXHIBIT 9

BY ORDER OF THE
SECRETARY OF THE AIR FORCE

AIR FORCE INSTRUCTION 36-3206

9 JUNE 2004



Personnel

**ADMINISTRATIVE DISCHARGE
PROCEDURES FOR COMMISSIONED
OFFICERS**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This Air Force Instruction (AFI) explains how to discharge active duty Air Force officers for substandard performance of duty, misconduct, moral or professional dereliction, homosexual conduct, or in the interest of national security. It prescribes procedures for disposing of cases involving officers and for processing cases approved under AFI 31-501, *Personnel Security Program Management*. This AFI implements Department of Defense (DoD) Directive 1332.30, 21 December 1993, and Air Force Policy Directive (AFPD) 36-32, *Military Retirements and Separations*. It contains guidance for conducting boards of inquiry (BOI). This AFI doesn't apply to Air National Guard units or members when not on active duty. It also doesn't apply to US Air Force Reserve units and members when not on active duty, including individual mobilization augmentees, or other individual reservists administered by Air Reserve Personnel Center. Refer to **Attachment 1** for a glossary.

The Air Force judges the suitability of officers for continued service on the basis of their conduct and their ability to meet required standards of duty performance and discipline. Continued service as an officer is a privilege that the Secretary of the Air Force may end. An officer who fails to meet and maintain performance standards consistent with that officer's grade and experience is subject to having that service ended. The same applies to officers who do not maintain high standards of professional and personal conduct. The Air Force has both the right and the responsibility to identify such officers and to take appropriate administrative action.

This AFI requires the collection and maintenance of records protected by the Privacy Act of 1974. Authorities to collect and maintain the records prescribed in this AFI are Title 10, U.S.C., section 8013, and AFPD 36-32. Privacy Act statements required by AFI 37-132, *Air Force Privacy Act Program* are on the forms used or available to the subject. System of Records Notice F030 AF MP A, *Personnel Data Systems*, applies. Process supplements that affect any military personnel function as shown in AFI 37-160, volume 1, table 3.2, *The Air Force Publications and Forms Management Programs--Developing and Processing Publications*. Major commands (MAJCOM) must submit proposed supplements to this AFI to Headquarters Air Force Military Personnel Center, Retirements and Separations Branch (HQ AFPC/DPPRP), 550 C St W, Suite 11, Randolph AFB TX 78150-4713, for approval before publication.

A2.2. Definitions.

A2.2.1. Bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in both homosexual and heterosexual acts.

A2.2.2. Commander. A commissioned officer who occupies a position of command.

A2.2.3. Homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

A2.2.4. Homosexual Conduct. "Homosexual Conduct" is a homosexual act, a statement by the member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

A2.2.4.1. A "homosexual act" means any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

A2.2.4.2. A "statement that a member is a homosexual or bisexual, or words to that effect" means language or behavior that a reasonable person would believe intends to convey the statement that a person engages in or has a propensity or intent to engage in homosexual acts. This may include statements such as "I am a homosexual," "I am gay," "I am a lesbian," "I have a homosexual orientation," and the like.

A2.2.4.3. A "homosexual marriage or attempted marriage" is when a member has married or attempted to marry a person known to be of the same biological sex.

A2.2.4.4. "Propensity to engage in homosexual acts" means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

A2.2.5. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

A2.2.6. Substantial Inquiry to Determine Whether a Statement was Made for the Purpose of Seeking Separation from Military Service. A substantial inquiry to determine whether a statement was made for the purpose of seeking separation from military service is an inquiry that extends beyond questioning the member who made the statement, and/or a third party who reports that a member made a statement, individuals suggested by the member for interview and the member's immediate supervisory chain of command.

A2.2.7. "Threats" and "harassment," as used in paragraphs A2.3.3.4. and A2.4.3., are not technical terms and are used in the commonly understood sense. "Harassment" includes the use of derogatory or demeaning words, gestures or actions in regard to the sexual orientation of another or others.

A2.3. Basis for Conducting Inquiries.

A2.3.1. A commander will initiate an inquiry only if he or she has credible information that there is a basis for discharge. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.

A2.3.2. A Basis for Discharge Exists if:

A2.3.2.1. The member has engaged in a homosexual act.

A2.3.2.2. The member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts.

A2.3.2.3. The member has married or attempted to marry a person of the same sex.

A2.3.3. Credible information does not exist, for example, when:

A2.3.3.1. The individual is suspected of engaging in homosexual conduct, but there is no credible information, as defined, to support that suspicion.

A2.3.3.2. The only information is the opinions of others that a member is homosexual. The inquiry would be based on rumor, suspicion, or capricious claims concerning a member's sexual orientation.

A2.3.3.3. The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

A2.3.3.4. A member reports being threatened or harassed because he or she is labeled or perceived to be a homosexual. Such information, standing alone, does not constitute credible information justifying the initiation of an inquiry into alleged homosexual conduct by the member reporting the threats or harassment.

A2.3.4. Credible information exists, for example, when:

A2.3.4.1. A reliable person states that he or she observed or heard a service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex.

A2.3.4.2. A reliable person states that he or she heard, observed, or discovered a member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

A2.3.4.3. A reliable person states that he or she observed behavior that amounts to a nonverbal statement by a member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

A2.4. Procedures.

A2.4.1. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by courts-martial when appropriate.

A2.4.2. Commanders must exercise sound discretion regarding when credible information exists. They must examine the information and decide whether an inquiry is warranted, whether an inquiry is necessary in light of the facts reported or whether no action should be taken.

A2.4.3. If a member reports threats or harassment based on being labeled or perceived to be a homosexual, the alleged threat or harassment must be addressed promptly by inquiry or investigation, as appropriate based on the surrounding facts. Assuring the physical safety of the complainant will be a primary consideration in any such case. A report of threats or harassment based on being labeled or perceived to be a homosexual does not constitute credible information justifying initiation of an inquiry or investigation of the complainant. Persons conducting an investigation or inquiry into the threats or harassment should not solicit allegations about the sexuality or possible homosexual conduct of the complainant. If information regarding alleged homosexual conduct by the complainant arises during an inquiry or investigation into threats or harassment, commanders must carefully consider the source of the information, and the circumstances under which it was provided, in assessing its credibility. The receipt of information alleging homosexual conduct on the part of the complainant does not negate the need to inquire into or investigate the facts and circumstances surrounding the original complaint of threats or harassment.

A2.4.4. Commanders or appointed inquiry officials must not ask, and members may not be required to reveal, their sexual orientation. However, upon receipt of credible information of homosexual conduct, commanders or appointed inquiry officials may ask members if they engaged in homosexual conduct. But the member must first be advised of the DoD policy on homosexual conduct (and rights under Article 31, UCMJ, if applicable). If the member chooses not to discuss the matter further, the commander may consider other available information. Nothing in this provision precludes questioning a member about any information provided by the member in the course of the fact-finding inquiry or any related proceeding; nor does it provide the member with any basis for challenging the validity of any proceeding or the use of such evidence, including a statement by the member in any proceeding.

A2.4.5. At any given point of the inquiry, the commander or appointed inquiry official must be able clearly and specifically to explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

A2.4.6. A statement by a service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The service member must be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or intends to engage in, homosexual acts.

A2.4.6.1. The Service member bears the burden of proving, throughout the proceedings, by a preponderance of the evidence, that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

A2.5. Legal Effect. The procedures set forth in this attachment create no substantive or procedural rights, such as excluding evidence from an administrative proceedings or court-martial. Command authorities must take appropriate action against any military member or civilian employee who violates these procedures.



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON DC

AFI36-3206_AFGM1
2 April 2010

MEMORANDUM FOR DISTRIBUTION C
MAJCOMs/FOAs/DRUs

FROM: AF/A1

SUBJECT: Air Force Guidance Memo to AFI 36-3206, *Administrative Discharge Procedures For Commtissioned Officers*

This is an AF Guidance Memorandum immediately changing AFI 36-3206, *Administrative Discharge Procedures For Commissioned Officers*. Compliance with this Memorandum is mandatory. To the extent its directions are inconsistent with other Air Force publications, the information herein prevails, in accordance with AFI 33-360, *Publications and Forms Management*.

The changes set forth in this Guidance Memorandum are effective immediately and shall apply to all fact-finding inquiries and separation proceedings open on or initiated on or after 25 March 2010. The official before whom an open inquiry or separation proceeding is pending shall examine the case to determine whether it is being handled in a manner consistent with these revisions and take such action as may be necessary to comply with these revisions. A member for whom an inquiry or separation proceeding is open may, in the member's discretion, waive either or both of the new requirements regarding the minimum grade of the officer authorized to initiate a fact finding inquiry (See paragraph A2.1) or a separation proceeding (See paragraph 1.1)

All commanders, judge advocates and investigators will be trained on the revised homosexual conduct policy within 60 days of the date of this memorandum. Approved training slides are available at all legal offices. Use of locally produced training materials is not authorized. Training materials will be available on ADLS in April 2010.

Current guidance in AFI 36-3206 remains in effect with the following changes.

1.1. Show-Cause Authority (SCA). The SCA determines whether the information or evidence presented warrants initiation of discharge action before referring a case to an administrative board under Chapter 6 or Chapter 7, as appropriate. If the SCA determines that the information or evidence does not warrant discharge action, the SCA notifies the officer pending discharge action that the action is terminated. MAJCOM commanders will delegate SCA to wing commanders who are general officers or General Court-Martial Convening Authorities for wings not commanded by a general officer, unless they personally determine that specific delegations cannot be made because of unusual circumstances. For homosexual conduct cases, SCA may not be delegated any lower than a general officer who has general court-martial convening authority.

~~A2.3.2.2. The member has said made a statement that he or she is a homosexual or bisexual, or ~~made some other statement that indicates a propensity or intent to engage in homosexual acts~~ words to that effect; or~~

~~A2.3.2.3. The member has married or attempted to marry a person known to be of the same biological sex.~~

~~A2.3.3.5. The information does not come from a reliable person.~~

~~A2.3.4.1. A member states to a person of senior grade and authority within his or her chain of command that he or she is a homosexual or bisexual, or words to that effect: or~~

~~A2.3.4.2. A reliable person states, under oath, that he or she observed ~~or heard~~ a member engaging in, attempt to engage in, or solicit another to engage in a homosexual act or acts ~~or saying that he or she is a homosexual or bisexual or is married to a member of the same sex~~; or~~

~~A2.3.4.23. A reliable person states, under oath, that he or she was told by heard, observed, or discovered a member that he or she is a homosexual or bisexual, or words to that effect make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts; or~~

~~A2.3.4.3. A reliable person states that he or she observed behavior that amounts to a nonverbal statement by a member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.~~

~~A2.3.4.4. A reliable person states, under oath, that a member has married or attempted to marry a person known to be of the same biological sex.~~

~~A2.3.5. A “reliable person” is someone who would be expected, under the circumstances, to provide accurate information. Examples of a person who may not be a “reliable person” are:~~

~~A2.3.5.1. A person with a prior history of untruthfulness or unreliability; or~~

~~A2.3.5.2. A person with a motive to seek revenge against or to cause personal or professional harm to the member specifically, or to cause personal or professional harm to persons suspected of being homosexual generally; or~~

~~A2.3.5.3. A person with a prior history of conflict with the member.~~

EXHIBIT 10

MilitaryTimes

They asked, he told, but he might get to stay

By Bruce Rolfsen, Staff writer
Special Report: 2009/10/24, 10:00 a.m. EDT

When Lt. Col. Victor Fehrenbach took his fight public to stay in the Air Force, he never told the millions watching him on national TV exactly how his commanders came to learn he is gay.

Fehrenbach, 40, talked about his 18 years of service and the unfairness of the "don't ask, don't tell" policy, the ban that prevents gays from openly serving in the military — but not once did he talk specifically about how he came to face dismissal. All he said in interviews, including one with Air Force Times, was that a "civilian acquaintance" reported him.

Fehrenbach's case tests the limits of what constitutes "telling" and under what circumstances a service member's statement can be used to initiate discharge proceedings under don't ask, don't tell.

Indeed, in the next few weeks, Air Force Secretary Michael Donley could allow Fehrenbach to remain on active duty — making him the first openly gay service member to do so under don't ask, don't tell.

The reason: Fehrenbach admitted his orientation while defending himself against an unsubstantiated charge of male rape.

Police later refused to prosecute Fehrenbach, finding the charges groundless. But not before Fehrenbach told police he had consensual sex with a man he met through a gay Web site.

Fehrenbach would not discuss the rape accusation; Air Force Times sent him at least three e-mails since Sept. 28 requesting comments. The Servicemembers Legal Defense Network, a national advocacy group for gay military members that represents Fehrenbach in his legal battle, advised the lieutenant colonel not to speak with Air Force Times, though he has three times before.

Cameron Shaner, the man who made the rape charge, sought publicity, taking his story first to the Idaho Statesman newspaper. Both police and the Air Force Office of Special Investigations found no proof of a crime and consider Shaner, a former soldier, "unreliable."

Here are the events that drove Fehrenbach to out himself:

THE ACCUSER

On May 7, 2008, Fehrenbach was at Mountain Home Air Force Base, Idaho, preparing for an F-15E deployment with the 366th Operations Support Squadron.

That same day, two students from Boise State University — Shaner and an airman — went to the base's Office of Special Investigations detachment to report that service members were spreading AIDS at HIV sex parties, according to Linda Card, OSI's chief of public affairs.

In a telephone interview, Shaner told Air Force Times that the airman had confided in him about the parties because of his prior service. He did not name the airman or mention the airman's sexual orientation.

Shaner, who now lives in Arizona, said he is gay but left the Army voluntarily as a private first class when his enlistment was up in 1999. According to the Veterans Affairs Department, Shaner has a 100 percent service-connected disability. He would not disclose his disability to Air Force Times but told the Idaho Statesman that he suffers from post-traumatic stress disorder and skeletal injuries.

At the meeting on base, Shaner said OSI Special Agent Carolyn DeRosier swore him in as a confidential informant.

OSI agents interviewed Shaner three times on May 7 and 8, Card told Air Force Times. The only oath Shaner took, she said, was the standard oath attesting to the truthfulness of his statement.

"After meeting with Mr. Shaner, AFOSI determined not to use him as a confidential informant," Card wrote in an e-mail to the Idaho Statesman, which published its story on Shaner in August. "Special Agent DeRosier NEVER directed or requested him to carry out any actions as a source or informant, nor did any other AFOSI agent."

OSI looked into HIV parties but closed the investigation in December 2008 after it couldn't corroborate the information provided by Shaner and the airman.

Shaner "has a history of false reporting," Card said. "He is considered to be unreliable."

DIFFERING STORIES

Fehrenbach met Shaner for the first time in person May 11, 2008, at his home in Boise, about 60 miles from Mountain Home, according to OSI's Card.

Many of the base's 4,000 airmen choose to live in Boise because it's bigger — with a population of about 200,000 — and has more amenities than Mountain Home, with its 12,300 residents.

The men made contact through a paid gay Web site, www.MenHunt.com

THE MEN MADE CONTACT through a paid gay web site, www.gayarmy.com, according to Shaner, who said he subscribed to investigate the HIV parties. Shaner told Air Force Times he sought out Fehrenbach, thinking he might have information about the investigation.

At Fehrenbach's home, the men took off their clothes and soaked in a hot tub, Shaner said.

A few hours after the rendezvous, Shaner said he drove to Boise State's rape crisis center, where he called the local police to report a sexual assault. A counselor at the center said she could not discuss any client without his or her consent, citing confidentiality laws. Air Force Times e-mailed Shaner a consent form from the counselor, but as of Oct. 15, Shaner had not acknowledged sending the waiver to the center. Shaner told police Fehrenbach raped him in the hot tub and that he had gone to Fehrenbach's home at OSI's request — as a confidential informant.

Officers began an investigation and called in OSI, Card said.

Shaner, according to Card, had made several other rape allegations to Boise police, all unproven. Local investigators found no physical evidence to support Shaner's rape accusation, she said.

When OSI agents talked with Shaner on May 14, 2008, he admitted OSI did not ask him to investigate Fehrenbach, Card said.

When police officers interviewed Fehrenbach two days later, he admitted to a consensual relationship with Shaner and other men but denied he had assaulted Shaner, Card said.

The civilian investigation ended with attorneys from the Ada County Prosecutor's Office in Boise declining to charge Fehrenbach.

Boise police refused to release their closed investigation file because the rape allegations didn't result in an arrest, said Lynn Hightower, a department spokeswoman. Hightower cited an Idaho statute allowing law enforcement agencies to withhold reports that would "constitute an unwarranted invasion of personal privacy."

The OSI, according to Card, closed its case after concluding Shaner was an unreliable witness, no felony had occurred and the sex had been consensual.

Based on the OSI findings, Air Force staff judge advocates at Mountain Home and 12th Air Force headquarters at Davis-Monthan Air Force Base, Ariz., decided not to prosecute Fehrenbach.

A CAREER WRITTEK?

If Fehrenbach hadn't talked, he could have been prosecuted for rape. Now, though, he is at risk of ending his career, two years short of retirement.

Fehrenbach's admission to being gay had triggered an Air Force investigation into whether Fehrenbach had violated the don't ask, don't tell policy, Card said.

At Mountain Home in September 2008, four months after Shaner made his rape charge, commanders determined Fehrenbach had violated the policy and recommended his discharge.

The finding meant Fehrenbach faced an almost certain dismissal once his case went up the chain of command, eventually landing on Donley's desk for a final review.

"I was devastated, absolutely devastated," Fehrenbach said about the recommendation in a May interview with Air Force Times. "The Air Force has been my life."

Dismissal, though, would mean a huge financial loss as well as an emotional one for Fehrenbach, the son of two Air Force officers. If unable to finish out his career, Fehrenbach will lose \$46,000 a year in retirement pay as well as medical benefits, according to pay charts. He would get a lump sum of about \$80,000, half of standard involuntary separation pay for an officer of his years, the charts show.

At first, Fehrenbach said in the May interview, he considered resigning his commission and quietly leaving the service to take a job with a defense contractor. Then, Fehrenbach said he had a change of heart when he heard Democratic presidential candidate Barack Obama promise to end don't ask, don't tell, figuring the Illinois senator might get Congress to lift the ban before he was dismissed.

Obama took the oath of office Jan. 20 but hasn't taken action on the policy. He continues, though, to promise gays that they will someday soon serve openly in the U.S. military.

Since the ban went into effect Oct. 1, 1993, about 13,000 service members — including more than 2,200 airmen — have been discharged, according to the Defense Department. In the 10 months since Obama became commander in chief, 49 airmen — all enlisted — have been discharged for violating the policy, Air Force statistics show. The number for all services wasn't available from the Pentagon.

A bill repealing the law is pending in Congress. More than 170 congressmen have signed on as co-sponsors, but the bill remains stuck in the House Armed Services Committee.

On April 15, an Air Force administrative discharge board made up of five officers recommended an honorable discharge for Fehrenbach.

In mid-May, a year after Shaner's allegations, Fehrenbach told his family that he was gay. A few days later, on May 19, he appeared on MSNBC's "The Rachel

Maddow Show" to tell his story to the world.

"I was faced with the end of my life as I knew it," Fehrenbach told Maddow.

"The more I thought about it, about how wrong this policy is, I thought that I had to fight."

ENCOURAGING SIGNS

Fehrenbach is still at Mountain Home as assistant director of operations for the 366th Operations Support Squadron, though no longer on active flight status. In his years of service, Fehrenbach has amassed 2,180 hours of flight time, including 400 hours in combat over Iraq, Afghanistan and Kosovo.

The recipient of nine Air Medals and five Air Force Commendation Medals, Fehrenbach can't be removed until Air Force personnel officers review the paperwork and Donley, the service's top civilian leader, approves the board's dismissal recommendation.

Fehrenbach, though, has a chance of staying in uniform. The opening came June 30, when Defense Secretary Robert Gates told reporters he had ordered Pentagon lawyers to review ways to apply the law in "a more humane way." Gates wondered whether the law required the military to dismiss service members investigated only after someone turned them in.

"Do we need to be driven to take action on somebody, if we get that information from somebody who may have vengeance in mind or blackmail or somebody who has been jilted," Gates said at the time.

While Gates didn't cite Fehrenbach by name, just the day before Fehrenbach had attended an invitation-only White House reception marking Gay Pride Month.

At the reception, Obama discussed don't ask, don't tell. Afterward, the president stopped to talk with several in the crowd, including Fehrenbach, who on Air Force orders wore civilian clothes.

In an interview with Air Force Times a few days after the reception, Fehrenbach said he briefly told Obama about his situation.

"He looked me in the eye and said, 'We'll get this done,'" Fehrenbach recalled in the interview.

In July, when Donley was asked how he would enforce the rules, the secretary told Air Force Times he would follow the law as interpreted by the Defense Department.

"Our approach will be to execute the law as Congress has written it and if there are policy adjustments that are made within the existing legal structure, those policy changes will be led and coordinated at the DoD level and we'll be part of that," Donley said.

When Obama spoke Oct. 10 at a gay rights dinner sponsored by Human Rights Campaign in Washington, he repeated the repeal pledge but offered no direct action or deadlines.

"We should not be punishing patriotic Americans who have stepped forward to serve this country," Obama said.

The questions raised by Gates and the president's stand may have delayed the need for Donley to sign off on Fehrenbach's case.

In an Oct. 12 interview on Maddow's show, Fehrenbach pointed out most dismissals take about five months to process, a timetable that would have him headed out the door by now.

An Air Force spokesman said Fehrenbach's case had not reached Donley's office.

Fehrenbach told the show's viewers that his continued service demonstrates military units can operate with gay members.

"We prove every day that this policy needs to be changed, now," Fehrenbach said.

DISCUSS THIS STORY

EXHIBIT 11

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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

June 29, 2009

**REMARKS BY THE PRESIDENT
AT LGBT PRIDE MONTH RECEPTION**

East Room

4:35 P.M. EDT

THE PRESIDENT: Hello, everybody. Hello, hello, hello. (Applause.) Hey! Good to see you. (Applause.) I'm waiting for FLOTUS here. FLOTUS always politics more than POTUS.

MRS. OBAMA: No, you move too slow. (Laughter.)

THE PRESIDENT: It is great to see everybody here today and they're just -- I've got a lot of friends in the room, but there are some people I want to especially acknowledge. First of all, somebody who helped ensure that we are in the White House, Steve Hildebrand. Please give Steve a big round of applause. (Applause.) Where's Steve? He's around here somewhere. (Applause.)

The new chair of the Export-Import Bank, Fred Hochberg. (Applause.) Where's Fred? There's Fred. Good to see you, Fred. Our Director of the Institute of Education Sciences at DOE, John Easton. Where's John? (Applause.) A couple of special friends -- Bishop Gene Robinson. Where's Gene? (Applause.) Hey, Gene. Ambassador Michael Guest is here. (Applause.) Ambassador Jim Hornel is here. (Applause.) Oregon Secretary of State Kate Brown is here. (Applause.)

All of you are here. (Laughter and applause.) Welcome to your White House. (Applause.) So --

AUDIENCE MEMBER: (Inaudible.) (Laughter.)

THE PRESIDENT: Somebody asked from the Lincoln Bedroom here. (Laughter.) You knew I was from Chicago too. (Laughter.)

It's good to see so many friends and familiar faces, and I deeply appreciate the support I've received from so many of you. Michelle appreciates it and I want you to know that you have our support, as well. (Applause.) And you have my thanks for the work you do every day in pursuit of equality on behalf of the millions of people in this country who work hard and care about their communities -- and who are gay, lesbian, bisexual, or transgender. (Applause.)

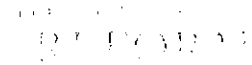
Now this struggle, I don't need to tell you, is incredibly difficult, although I think it's important to consider the extraordinary progress that we have made. There are unjust laws to overturn and unfair practices to stop. And though we've made progress, there are still fellow citizens, perhaps neighbors or even family members and loved ones, who still hold fast to worn arguments and old attitudes, who fail to see your families like their families, and who would deny you the rights that most Americans take for granted. And I know this is painful and I know it can be heartbreaking.

And yet all of you continue, leading by the force of the arguments you make but also by the power of the example that you set in your own lives -- as parents and friends, as PTA members and leaders in the community. And that's important, and I'm glad that so many LGBT families could join us today. (Applause.) For we know that progress depends not only on changing laws but also changing hearts. And that real, transformative change never begins in Washington.

(Cell phone "quacks.")

Whose duck is back there? (Laughter.)

MRS. OBAMA: It's a duck.



[More Information](#)

WATCH THE VIDEO



June 29, 2009

President Obama & First Lady Hold LGBT Pride Reception

BLOG POSTS ON THIS ISSUE

May 28, 2010 5:00 AM EDT

[Weekly Address: Health Reform Starts to Kick In](#)

The President goes through the benefits in health insurance reform that are already kicking in for young adults, retirees, and families, and says more benefits coming down the pike.

May 27, 2010 6:37 PM EDT

[On the Ground, Updating President Obama on the Floods in Tennessee](#)

Craig Fugate, Administrator of FEMA, travels to Tennessee at the request of the President for the second time to meet with local officials and assess the damage from the severe weather and floods that swept through the Southeast.

May 27, 2010 5:52 PM EDT

["All of the Extraordinary Women in Our Lives"](#)



The First Lady celebrates Mother's Day at the White House.

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THE PRESIDENT There's a duck quacking in there somewhere. (Laughter) Where do you guys get these ring tones, by the way? (Laughter) I'm just curious. (Laughter)

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Indeed, that's the story of the movement for fairness and equality -- not just for those who are gay, but for all those in our history who've been denied the rights and responsibilities of citizenship; who've been told that the full blessings and opportunities of this country were closed to them. It's the story of progress sought by those who started off with little influence or power, by men and women who brought about change through quiet, personal acts of compassion and courage and sometimes defiance wherever and whenever they could.

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That's the story of a civil rights pioneer who's here today, Frank Kameny, who was fired -- (applause.) Frank was fired from his job as an astronomer for the federal government simply because he was gay. And in 1965, he led a protest outside the White House, which was at the time both an act of conscience but also an act of extraordinary courage. And so we are proud of you, Frank, and we are grateful to you for your leadership. (Applause)

It's the story of the Stonewall protests, which took place 40 years ago this week, when a group of citizens -- with few options, and fewer supporters -- decided they'd had enough and refused to accept a policy of wanton discrimination. And two men who were at those protests are here today. Imagine the journey that they've travelled.

It's the story of an epidemic that decimated a community -- and the gay men and women who came to support one another and save one another, and who continue to fight this scourge, and who demonstrated before the world that different kinds of families can show the same compassion and support in a time of need -- that we all share the capacity to love.

So this story, this struggle, continues today -- for even as we face extraordinary challenges as a nation, we cannot -- and will not -- put aside issues of basic equality. (Applause) We seek an America in which no one feels the pain of discrimination based on who you are or who you love.

And I know that many in this room don't believe that progress has come fast enough, and I understand that. It's not for me to tell you to be patient, any more than it was for others to counsel patience to African Americans who were petitioning for equal rights a half century ago.

But I say this: We have made progress and we will make more. And I want you to know that I expect and hope to be judged not by words, not by promises I've made, but by the promises that my administration keeps. And by the time you receive -- (applause) -- We've been in office six months now. I suspect that by the time this administration is over, I think you guys will have pretty good feelings about the Obama administration. (Applause)

Now, while there is much more work to do, we can point to important changes we've already put in place since coming into office. I've signed a memorandum requiring all agencies to extend as many federal benefits as possible to LGBT families as current law allows. And these are benefits that will make a real difference for federal employees and Foreign Service Officers, who are so often treated as if their families don't exist. And I'd like to note that one of the key voices in helping us develop this policy is John Berry, our director of the Office of Personnel Management, who is here today. And I want to thank John Berry. (Applause)

I've called on Congress to repeal the so-called Defense of Marriage Act to help end discrimination -- (applause) -- to help end discrimination against same-sex couples in this country. Now, I want to add we have a duty to uphold existing law, but I believe we must do so in a way that does not exacerbate old divides. And fulfilling this duty in upholding the law in no way lessens my commitment to reversing this law. I've made that clear.

I'm also urging Congress to pass the Domestic Partners Benefits and Obligations Act, which will guarantee the full range of benefits, including health care, to LGBT couples and their children. (Applause) My administration is also working hard to pass an employee non-discrimination bill and hate crimes bill, and we're making progress on both fronts. (Applause) Judy and Dennis Shepard, as well as their son Logan, are here today. I met with Judy in the Oval Office in May -- (applause) -- and I assured her and I assured all of you that we are going to pass an inclusive hate crimes bill into law, a bill named for their son Matthew. (Applause)

In addition, my administration is committed to rescinding the discriminatory ban on entry to the United States based on HIV status. (Applause) The Office of Management and Budget just concluded a review of a proposal to repeal this entry ban, which is a first and very big step towards ending this policy. And we all know that HIV/AIDS continues to be a public health threat in many communities, including right here in the District of Columbia. And that's why this past Saturday, on National HIV Testing Day, I was proud once again to encourage all Americans to know their status and get tested the way Michelle and I know our status and got tested. (Applause)

And finally, I want to say a word about "don't ask, don't tell." As I said before -- I'll say it again -- I believe "don't ask, don't tell" doesn't contribute to our national security. (Applause) In fact, I believe preventing patriotic Americans from serving their country weakens our national security. (Applause)

Now, my administration is already working with the Pentagon and members of the House and the Senate on how we'll go about ending this policy, which will require an act of Congress.

Someday, I'm confident, we'll look back at this transition and ask why it generated such angst, but as Commander-in-Chief in a time of war, I do have a responsibility to see that this change is administered in a practical way and a way that takes over the long term. That's why I've asked the Secretary of Defense and the Chairman of the Joint Chiefs of Staff to develop a plan for how to thoroughly implement a repeal.

I know that every day that passes without a resolution is a deep disappointment to those men and women who continue to be discharged under this policy -- patriots who often possess critical language skills and years of training and who've served this country well. But what I hope is that these cases underscore the urgency of reversing this policy not just because it's the right thing to do, but because it is essential for our national security.

Now, even as we take these steps, we must recognize that real progress depends not only on the laws we change but, as I said before, on the hearts we open. For if we're honest with ourselves, we'll acknowledge that there are good and decent people in this country who don't yet fully embrace their gay brothers and sisters -- not yet.

That's why I've spoken about these issues not just in front of you, but in front of unlikely audiences -- in front of African American church members, in front of other audiences that have traditionally resisted these changes. And that's what I'll continue to do so. That's how we'll shift attitudes. That's how we'll honor the legacy of leaders like Frank and many others who have refused to accept anything less than full and equal citizenship.

Now, 40 years ago, in the heart of New York City at a place called the Stonewall Inn, a group of citizens, including a few who are here today, as I said, defied an unjust policy and awakened a nascent movement.

It was the middle of the night. The police stormed the bar, which was known for being one of the few spots where it was safe to be gay in New York. Now, raids like this were entirely ordinary. Because it was considered obscene and illegal to be gay, no establishments for gays and lesbians could get licenses to operate. The nature of these businesses, combined with the vulnerability of the gay community itself, meant places like Stonewall, and the patrons inside, were often the victims of corruption and blackmail.

Now, ordinarily, the raid would come and the customers would disperse. But on this night, something was different. There are many accounts of what happened, and much has been lost to history, but what we do know is this: People didn't leave. They stood their ground. And over the course of several nights they declared that they had seen enough injustice in their time. This was an outpouring against not just what they experienced that night, but what they had experienced their whole lives. And as with so many movements, it was also something more. It was at this defining moment that these folks who had been marginalized rose up to challenge not just how the world saw them, but also how they saw themselves.

As we've seen so many times in history, once that spirit takes hold there is little that can stand in its way. (Applause.) And the riots at Stonewall gave way to protests, and protests gave way to a movement, and the movement gave way to a transformation that continues to this day. It continues when a partner fights for her right to sit at the hospital bedside of a woman she loves. It continues when a teenager is called a name for being different and says, "So what if I am?" It continues in your work and in your activism, in your fight to freely live your lives to the fullest.

In one year after the protests, a few hundred gays and lesbians and their supporters gathered at the Stonewall Inn to lead a historic march for equality. But when they reached Central Park, the few hundred that began the march had swelled to 5,000. Something had changed, and it would never change back.

The truth is when these folks protested at Stonewall 40 years ago no one could have imagined that you -- or, for that matter, I -- (laughter) -- would be standing here today. (Applause.) So we are all witnesses to monumental changes in this country. That should give us hope, but we cannot rest. We must continue to do our part to make progress -- step by step, law by law, mind by changing mind. And I want you to know that in this task I will not only be your friend, I will continue to be an ally and a champion and a President who fights with you and for you.

Thanks very much, everybody. God bless you. (Applause.) Thank you. It's a little stuffed in here. We're going to open -- we opened up that door. We're going to walk this way, and then we're going to come around and we'll see some of you over there, all right? (Laughter.) But out there. (Laughter.)

But thank you very much, all, for being here. Enjoy the White House. Thank you. (Applause.)

END 4:53 P.M. EDT

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EXHIBIT 12

-----Original Message-----

From: Blanchard, Charles A Hon USAF SAF/GC [mailto:Charles.Blanchard@pentagon.af.mil]
Sent: Wednesday, August 04, 2010 1:52 PM
To: Woodmansee, M. Andrew
Cc: Coletti, Diana J.; aubrey@SLDN.org
Subject: RE: Request for an update

Andrew:

You are reading too much into my email. The only notification I have received from the MRB is that the Board has indeed meet. It is my understanding that that despite the wording of the AFI, because of the nature of the Secretary's delegation to MRB, any Board action (either way) was merely a recommendation to the MRB, and only the MRB (or the Secretary if he revokes the delegation) has authority to act on these matters. Since receiving your email, I have confirmed my understanding with the lawyers on my team who work on MRB matters. I wrote my email to you based on that understanding. I have not been told the outcome of the Board action, and you should make no assumptions based on my email.

As I have said repeatedly, in these types of cases, any recommendation by the Board--and/or the decision of the MRB--is not final, and I am not (and will not be) in a position to give you any such predecisional information. Your request that the final decision be communicated to you by fax, email or telephone is a reasonable one, however, and I will do my best to make that happen.

Chuck Blanchard

-----Original Message-----

From: Woodmansee, M. Andrew [mailto:MAWoodmansee@mofa.com]
Sent: Wednesday, August 04, 2010 3:07 PM
To: Blanchard, Charles A Hon USAF SAF/GC
Cc: Coletti, Diana J.
Subject: RE: Request for an update

Charles:

Thank you for responding.

I take it from your email (which acknowledges that the Board has made a recommendation to Mr. Lineberger and that either he or the Secretary still might render a decision) that the Board has recommended that Lt. Col. Fehrenbach be separated. See AFI 36-3206 Chapter 6.10 ("When the AFPB recommends retaining the respondent, HQ AFPC/DPRS advises the respondent, through the SCA, that the AFPB's determination ends the action."); and Chapter 6.10.1 ("When the AFPB recommends removal from active duty, discharge, or other action, the AFPB sends the case to the SAF."). My understanding of the regulations is that, had the AFPB recommended that Lt. Col. Fehrenbach should be retained, there would be no need to forward the recommendation to Mr. Lineberger or the Secretary for further action.

Since last evening, I have had two separate sources with information from inside the Pentagon tell me that the recommendation had been made to separate my client. I anticipate that those same sources, or others, will leak this information to the news

media or any one of countless bloggers. I don't want my client to read about this decision for the first time on the internet. No matter the outcome of the process I am sure you will agree that, based on his record of service to this country, he deserves better than that.

Please confirm for me, by close of business today but no later than noon tomorrow, that the Board has recommended that my client should be removed from active duty and discharged.

I appreciate your continued willingness to keep me apprised of the status of any final decision so that my client may seek redress from the courts. I do ask, however, that the decision be communicated to me either by fax, e-mail or telephone rather than UPS or FedEx ground, as was the case with my last letter from Mr. Lineberger.

Best regards,

Drew Woodmansee

-----Original Message-----

From: Blanchard, Charles A Hon USAF SAF/GC [mailto:Charles.Blanchard@pentagon.af.mil]
Sent: Wednesday, August 04, 2010 5:32 AM
To: Woodmansee, M. Andrew
Cc: Coletti, Diana J.
Subject: RE: Request for an update

Andrew:

I was able to confirm that the Board has met and made a recommendation to Mr. Lineberger (the "MRB" in Air Force parlance). Mr. Lineberger has the delegated authority to make separation decisions and the Board decision is only a recommendation. As of this morning, Mr. Lineberger had not yet forwarded any decision to the Pentagon. As you may recall, once the decision reaches the Pentagon, there is a two week or so delay to allow the Secretary to remove the delegated authority and take over the decision himself. (This removal of delegated authority is very rare, however). Once with this time elapses without removal of delegation (or the Secretary makes his own decision after removing the delegation), your client will be notified. As I explained in a previous email, if the decision is for separation, the separation would not be immediately effective, which would give you a few days to seek court action. As I hope you understand, I can't release any decision information until the decision is final. I will be happy to keep to answer any questions about the schedule.

-----Original Message-----

From: Woodmansee, M. Andrew [mailto:MAWoodmansee@mofa.com]
Sent: Tuesday, August 03, 2010 8:54 PM
To: Blanchard, Charles A Hon USAF SAF/GC
Cc: Coletti, Diana J.
Subject: Re: Request for an update

Charles:

I have received word from a group allied with SLDN that a recommendation has, in fact, been made board to discharge Lt. Col. Fehrenbach from the Air Force. Are you able to provide any information regarding his status?

Best regards

Drew
Best regards,

M. Andrew Woodmansee
Morrison Foerster LLP

----- Original Message -----

From: Blanchard, Charles A Hon USAF SAF/GC <Charles.Blanchard@pentagon.af.mil>
To: Woodmansee, M. Andrew
Cc: Coletti, Diana J.
Sent: Fri Jul 23 10:53:03 2010
Subject: Re: Request for an update

Andrew

I just got off the plane. I have not seen board action but expect. A decision shortly. Again there will be a ten day process once we get the decision. I will get you a council contact

----- Original Message -----

From: Woodmansee, M. Andrew <MAWoodmansee@mofo.com>
To: Blanchard, Charles A Hon USAF SAF/GC
Cc: Coletti, Diana J. <dcoletti@mofo.com>
Sent: Thu Jul 22 15:41:59 2010
Subject: RE: Request for an update

Dear Chuck:

Customary apologies for taking time out of your schedule. Are you in a position to update me on the Board's consideration of Lt. Col. Fehrenbach's case? Also, is there a point of contact at the Board with whom I should correspond directly in order to get a status update?

Thanks in advance for your cooperation.

Drew

-----Original Message-----

From: Blanchard, Charles A Hon USAF SAF/GC [mailto:Charles.Blanchard@pentagon.af.mil]
Sent: Friday, June 18, 2010 11:48 AM
To: Woodmansee, M. Andrew
Cc: Coletti, Diana J.
Subject: RE: Request for an update

Andrew:

I generally am informed of the Council decision on these cases right after the board has met, and I have not been informed of any decision. My understanding is that the Council did not make a decision this week, which likely reflects some attention to the issues you have raised in your correspondence. I do expect the Council to make a decision soon.

As I explained at the meeting, the process is that the Council will meet one or more times, and make a recommendation to Mr. Lineberger, who has been delegated the separation authority in officer cases by the Secretary. Mr. Linberger will then advise the Assistant Secretary of his decision, which will be the final decision unless the Secretary decides to revoke the delegation in an additional case. (In my experience, the Secretary very rarely revokes delegation.) The result of this process is that even if the Board meets next week, the decision will not be final (and therefore releasable to you) for a few weeks. If the Secretary revokes delegation, the matter could even take more time.

I hope this helps.
Chuck Blanchard

-----Original Message-----

From: Woodmansee, M. Andrew [mailto:MAWoodmansee@mofo.com]
Sent: Friday, June 18, 2010 1:31 PM
To: Blanchard, Charles A Hon USAF SAF/GC
Cc: Coletti, Diana J.

Subject: Request for an update

Chuck:

I know you are on the road, so I apologize in advance for disturbing you. When we met on June 7th, you indicated you thought that the Board would be meeting either last week or this week to consider Lt. Col. Fehrenbach's case. My request to appear before the board (in a June 7th letter to Mr. Lineberger) has been met with utter silence.

As you can appreciate, my client is under a large amount of stress due to the uncertainty of his situation. Is there any chance to get an indication today of whether the board has in fact met and already considered his case, and if so what the next steps are and what the timeline will be?

I appreciate your assistance.

Best regards,

Drew

Picture (Metafile)
M. Andrew ("Drew") Woodmansee
Morrison & Foerster LLP
12531 High Bluff Dr. Suite 100 | San Diego, CA 92130 P. 858.720.5167 F.
858.720.5125 | mawoodmansee@mofoco.com <http://www.mofoco.com> <<http://www.mofoco.com>>

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