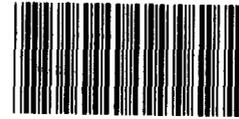


June 1992

DEFENSE FORCE  
MANAGEMENT

DOD's Policy on  
Homosexuality



146980

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United States  
General Accounting Office  
Washington, D.C. 20548

**National Security and  
International Affairs Division**

B-247235

June 12, 1992

The Honorable John Conyers, Jr.  
The Honorable Gerry E. Studds  
The Honorable Ted Weiss  
House of Representatives

This report responds to your joint request that we review the Department of Defense's (DOD) policy of excluding homosexuals from serving in the armed forces. Also, as you requested, our supplemental report Defense Force Management: Statistics Related to DOD's Policy on Homosexuality (GAO/NSIAD-92-98S) contains statistical information such as the number of service personnel expelled for homosexuality as a result of DOD's exclusion policy.

Unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from its issue date. At that time, we will send copies to interested committees; other Members of Congress; and the Secretaries of Defense, the Air Force, the Army, the Navy, and the Marine Corps. We will make copies available to other parties upon request.

Please contact the Director for Defense Force Management Issues, Paul L. Jones, on (202) 275-3990, if you or your staff have any questions concerning this report. The major contributors to this report are listed in appendix V.

Frank C. Conahan  
Assistant Comptroller General

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# Executive Summary

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## Purpose

In response to a request from Representatives John Conyers, Jr., Ted Weiss, and Gerry E. Studds, GAO examined certain aspects of the Department of Defense's (DOD) policy of excluding homosexuals from serving in the U.S. armed forces. Specifically, GAO was asked to

- compile and analyze statistics on the separation of homosexuals from the military services between 1980 and 1990, including the number of personnel by service, race/ethnicity, gender, rank, and occupational category;
- determine the cost of replacing personnel separated under this policy and the cost of investigating allegations of homosexuality;
- identify and analyze the evidence that has been developed by DOD, the military services, or nondefense sources and cited as support for the current policy on homosexuality; and
- obtain information on the general public's attitudes, other nations' military forces policies, and other organizations' views on the compatibility of homosexuality with the military or other work environments.

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## Background

According to DOD officials, U.S. forces have had policies prohibiting homosexuals from serving in the military since the beginning of World War II. DOD's current policy on homosexuality was formalized in 1982 and specifically states that:

Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security.

According to DOD, a homosexual is "a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts." DOD defines a homosexual act as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires."

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## Results in Brief

On the basis of its policy of excluding homosexuals from the military, DOD annually expelled an average of about 1,500 men and women between 1980 and 1990 under the separation category of "homosexuality." These expulsions reached a high of about 2,000 in 1982 and a low of about 1,000 in 1990. Separations for homosexuality do not require a determination that an individual's behavior affects the military's mission. In terms of rank, gender, and race/ethnicity, the majority of those expelled were enlisted personnel; most were men (about 78 percent); and most were white. When challenged, these discharges have been routinely upheld in the military adjudication and civil court systems.

DOD does not maintain records of the costs associated with administering its policy; nor does it record the costs of investigating alleged cases of homosexuality. Accordingly, our analysis was limited to estimates of the costs of recruiting and training individuals to replace personnel discharged for homosexuality.

Major psychiatric and psychological organizations in the United States disagree with DOD's policy and believe it to be factually unsupported, unfair, and counterproductive. In addition, two DOD/service-commissioned study efforts have refuted DOD's position on the potential security risk associated with homosexual orientation as well as disclosed information that raised questions about the basic policy. Further, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff have recently acknowledged that homosexual orientation is no longer a major security concern.

GAO also found that

- recent polls suggest that the public has become more accepting of homosexuality and of homosexuals' serving in the military;
- some U.S. allied nations have policies similar to that of the United States, and others have policies that permit homosexuals to be members; and
- police and fire departments in several major U.S. cities have removed employment restrictions without adverse effects on mission.

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## GAO Analysis

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### Number of Discharges

During fiscal years 1980 through 1990, approximately 17,000 servicemen and women (an average of about 1,500 per year) were separated from the services under the category of "homosexuality." Approximately 1,000 military personnel were discharged in 1990. No determination that their behavior had adversely affected the ability of the military services to perform their missions was required. In terms of rank, gender, and race/ethnicity, the majority were enlisted personnel; most were men; and most were white. However, some groups were consistently discharged at a rate higher than their representation in the total active force or individual service. For example, between 1980 and 1990, the Navy, representing 27 percent of the active force, accounted for about 51 percent of the discharges; and women, representing 11 percent of the total active Navy force, accounted for 22 percent of those discharged.

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### Cost of Policy

Limited cost information associated with the administration of DOD's policy was available. Basically, only the costs of recruiting and training the personnel needed to replace those discharged for homosexuality could be readily estimated. In fiscal year 1990, recruiting and initial training costs associated with the replacement of personnel discharged for homosexuality were estimated to be \$28,226 for each enlisted troop and \$120,772 for each officer. The total cost of replacing personnel discharged for homosexuality, however, would need to include other factors such as out-processing and court costs.

The services' investigative agencies could not provide specific information on the costs of investigating alleged cases of homosexuality. However, during fiscal years 1986 through 1990, DOD investigative agencies conducted a total of 3,663 such investigations. In 1990, a total of about 472 investigations were conducted. These figures are approximate because the services can administratively handle investigations involving homosexuality under other categories, and the investigative agencies had to estimate the number of such cases. In addition, Navy investigations are simultaneously categorized as more than one offense, such as sodomy and indecent assault; again, the Navy adjusted its figures to account for this policy.

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## Studies of Homosexuality in the Military

DOD and the services have commissioned two major efforts that focused on whether homosexuals were more of a security risk than heterosexuals and concluded that there was no factual data to substantiate that premise. The Navy's 1957 Crittenden Report<sup>1</sup> (which did not question the underlying premise of DOD's policy) stated, "A third concept which persists without sound basis in fact is the idea that homosexuals necessarily pose a security risk." A more recent draft report, prepared by DOD's Defense Personnel Security Research and Education Center (PERSEREC), commented that the DOD policy prohibiting homosexuals from serving in the military was based on the same rationale used to limit the integration of blacks.<sup>2</sup> Specifically, it stated:

The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true.

The PERSEREC effort, initiated in 1986, has been packaged as several interim products with the final report issued in late 1991.

In addition, national organizations such as the American Psychiatric Association and the American Psychological Association, familiar with the extensive research conducted on homosexuality in the general population and with military veterans, disagree with DOD's policy and the policy's implied characterization of homosexuals.

In testimony before the House Budget Committee, the Secretary of Defense in July 1991 and the Chairman of the Joint Chiefs of Staff in February 1992 backed away from security concerns as a major basis for DOD's policy. However, both officials continued to support the policy on the basis of their belief that it is needed to maintain good order and discipline.

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<sup>1</sup>Officially, the Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals, Mar. 15, 1957.

<sup>2</sup>Presidential Executive Order 9981, July 26, 1948, required the integration of blacks into the armed forces. Congress also passed the Women's Armed Services Integration Act in 1948 to institutionalize career opportunities for women in the military.

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**Attitudes Toward  
Homosexuality**

General public attitudes in the United States about homosexuality appear to be changing. GAO reviewed three recent national polls, conducted by Gallup and Penn and Schoen Associates, Inc., which indicated that more Americans now say they believe that homosexuals should be allowed to participate in various occupations, including the armed forces. A Gallup survey conducted in March 1991 of a cross section of the American population of adults aged 18 and over showed that 69 percent of those interviewed felt that homosexuals should be allowed to serve in the armed forces, whereas only 51 percent felt that way in 1977.

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**Selected Police/Fire  
Department Policies**

Additionally, since the early 1970s, a number of police and fire departments have adopted policies prohibiting discrimination on the basis of sexual orientation and have hired homosexuals into their work forces. Officials from all eight of the departments that GAO contacted stated that they had not experienced any degradation of mission associated with these policies. Most department officials did not identify major problems related to retaining homosexuals in a work force, but a few pointed out isolated cases of problems indirectly involving homosexuals.

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**Other Nations' Policies on  
Homosexuals in the Military**

The policies regarding homosexuals serving in the military forces of 17 selected nations—predominantly members of the North Atlantic Treaty Organization and other U.S. allies—ranged from policies very similar to that of the United States to no stated policy addressing homosexuality as either a legal or a military personnel issue.

Four of the 17 countries, or about 24 percent, had policies that appear to have been designed to prevent homosexuals from entering military service and to separate from service or preclude retention beyond an existing service obligation those active duty personnel identified as homosexual. While 13 countries did not exclude homosexuals from entering their armed forces, several had policies requiring separation if an individual's homosexuality was disclosed later or if an individual's behavior was found to be aggressive, harassing, or disruptive. During the past 10 years, at least two countries have dropped their exclusion policies. One of the four countries that now exclude homosexuals is reviewing its policy—it expects to rescind the existing restriction in the near future.

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## Recommendations

On May 19, 1992, a bill to prohibit discrimination by the armed forces on the basis of sexual orientation was introduced. While GAO is making no recommendations in this report, GAO's analysis should assist the Congress in deliberating legislative initiatives relative to changing DOD's policy, which excludes homosexuals from serving in the U.S. armed forces.

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## Agency Comments

In commenting on a draft of this report, DOD agreed or partially agreed with some findings and did not agree with others. DOD said that its homosexual exclusion policy is not based on any belief that homosexuality is a mental disorder, nor is it based solely on security concerns. DOD said that GAO correctly notes that the DOD policy is based on military judgment and that scientific or sociological analyses are unlikely to affect its policy of excluding homosexuals from the military. DOD said that the courts consistently have found that the military interests underlying the policy—good order, discipline, and morale—were substantial and that military concern about homosexuality has a basis in fact.

DOD said that GAO erred in stating that the two cited reports did not support DOD's policy. DOD said that the Crittenden report clearly supported the policy and that the PERSEREC draft misstated the policy. That is, DOD said that the PERSEREC draft did not address the issues of morale, discipline, and so on, and, therefore, its "analysis" was flawed.

DOD correctly states that the Crittenden report did not question the premise of DOD's exclusionary policy - - that is, that homosexuality is incompatible with military service - - and GAO's report points this out. However, the report that was issued in 1957 stated that (1) many homosexuals have served honorably in all branches of the military and (2) the concept that homosexuals pose a security risk is unsupported. It also noted that the number of homosexuals disclosed represented only a very small proportion of those in the Navy.

With regard to the PERSEREC draft, GAO recognizes that this study went beyond its directed task. However, GAO believes that the information presented should not be discounted by DOD solely for that reason.

In a draft of this report, GAO suggested that individual Members of Congress may wish to direct the Secretary of Defense to reconsider the basis for DOD's prohibition. Because legislation has since been introduced on this matter, GAO has deleted its suggestion.

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**Abbreviations**

AIDS	Acquired Immune Deficiency Syndrome
DMTAG	Design, Methodology, and Technical Assistance Group
DOD	Department of Defense
GAO	General Accounting Office
PERSEREC	Personnel Security Research and Education Center

# Background

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According to Defense officials, the Department of Defense's (DOD) policy of excluding homosexuals from serving in the U.S. armed forces is based on the professional military judgment that the policy promotes overall combat effectiveness.

Although the language and administration of the military's policy on homosexual orientation has changed since 1941, the current policy has, according to both scientific researchers and DOD officials, evolved from the one adopted during the mobilization for World War II. Exclusion was then grounded on (1) prevailing sodomy statutes that viewed homosexuality as a criminal offense and (2) the psychiatric belief that homosexuality was a mental disorder. At that time, the rationale was that the psychiatric screening of recruits for mental disorders (including homosexual orientation) would enhance the psychiatric profession's prestige, as well as be less costly to the government over the long term. That is, it was anticipated that such screening would reduce the patient load of veterans' hospitals after the war. Many psychiatrists also felt that it was more humane to screen out homosexual recruits from the draft and separate homosexual persons already in the military services rather than imprison them under military sodomy regulations.

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## Definitions and Population Projection

Under present policy, DOD defines a homosexual as "a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts." DOD defines a homosexual act as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires." The limited data currently available (largely Kinsey Institute studies) suggests that the primary sexual orientation of between 5 and 10 percent of the general U.S. population is homosexual.<sup>1</sup>

In commenting on a draft of this report, DOD questioned the predictive value or relevance to today's military of earlier studies conducted by the Kinsey Institute. It stated that we had failed to point out that DOD's exclusion policy—which involves an initial screening out process and a lack of acceptance of homosexuality in the military environment—tends to limit the number of homosexuals in the military.

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<sup>1</sup>Based on a DOD military population of approximately 2 million, the number of homosexual personnel would range from about 100,000 to 200,000 personnel using these percentages.

DOD is correct in stating that a solid estimate of the military homosexual population is not available. However, a number of studies done after the Kinsey efforts clearly suggest that (1) there are considerably more homosexuals serving in the military and completing their terms of service than are being caught and discharged and (2) the limiting effects of the exclusion policy (for example, the screening processes) may not be particularly effective.<sup>2</sup>

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## Current DOD Policy

DOD's guidance on homosexuality is contained in Directives 1332.14, "Enlisted Administrative Separations," and 1332.30, "Separation of Regular Commissioned Officers for Cause." The first directive was officially revised on January 28, 1982; the second on February 12, 1986. Specifically, the guidance states that:

Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security.

Prior to 1982, DOD directives did not require the initiation of separation processing or provide grounds for the possible retention of personnel involved in or suspected of homosexual behavior. Accordingly, the regulations of the military services differed substantially in how these and other matters were addressed. According to DOD officials, these differences resulted in substantial difficulties in responding to legal challenges in the courts.

According to DOD officials and documents, the primary reasons for the 1982 and 1986 policy revisions were to (1) establish uniform policies and procedures for all the services and (2) provide a stronger basis for defending the policies and procedures in the courts. Specifically, the new

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<sup>2</sup>These studies include the Navy's Crittenden Report of 1957; a 1967 study by the Institute of Sex Research at the University of Indiana; *Homosexuals and the Military*, C.J. Williams and M.S. Weinberg, 1971; *Homosexual Men and Women Who Served Their Country*; *Journal of Homosexuality*, J. Harry, 1984.

directives defined the terms “homosexual” and “homosexual act”; standardized the services’ procedures for processing homosexual cases; and clarified the specific actions for which a person would be separated—homosexual acts (including attempt and solicitation), admissions of homosexuality, and homosexual marriages. Further, the directives precluded retention of homosexuals except in limited extenuating circumstances. “Extenuating circumstances” involved cases in which homosexual activity was unlikely to recur and was shown to be, for example, an act motivated by youthful curiosity or performed under intoxication or in response to pressure from a superior. The directives also afforded the right to appeal all separations for homosexuality. Finally, under the 1982 directive, homosexuals are no longer processed for separation by reason of unsatisfactory performance or misconduct—instead they are processed under the category “homosexuality.” Almost 95 percent receive an honorable or a general discharge.

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## Appeals Processes Uphold DOD’s Policy

Current DOD regulations afford the right to appeal homosexual separations through processes within the military adjudication system. Service members may also pursue redress in the civil court system.

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## Military Avenue of Appeal

According to DOD regulations and DOD officials, a service member who is alleged to be or who admits to being homosexual is notified in writing by the appropriate command that he or she is being considered for discharge. At such time, the service member is afforded the opportunity under the military adjudication system to have the case heard before an Administrative Board, where the individual is represented by an appointed military counsel, military counsel of the respondent’s own choice, or civilian counsel retained at the service member’s own expense.

If the Board finds the service member is not a homosexual on the basis of the facts provided and recommends retention, the service member is normally retained. If the Board finds that the allegation is supported by the preponderance of the evidence, the service member is normally processed for discharge. The service member may petition the respective Board for Correction of Military/Naval Records, which reviews the case on the basis of possible error. If the Correction Board finds no error or injustice in the decision made by the Administrative Board, then the decision to discharge stands.

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If the service member wishes to appeal further, he or she may file suit in a civil court, at which time all expenses, including attorney fees, are incurred by the individual because he or she is no longer in the military.

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## Civil Courts' Appeals Jurisdiction

A service member separated from service under DOD's policy may seek review by a federal court as to whether the discharge was proper. The member may file an action in a federal district court if the member's complaint presents a federal question or if the member seeks a declaratory judgment. In addition, under the Tucker Act, the district courts and the U.S. Claims Court have concurrent jurisdiction over actions filed by service members seeking monetary relief not exceeding \$10,000. The Claims Court has exclusive jurisdiction if the amount claimed exceeds \$10,000. Further, reviews of administrative decisions by the armed services that have resulted in discharges also may be sought under the Administrative Procedure Act. The act permits courts to set aside action by a military review board that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law" or when it is claimed that a review board's decision was "unsupported by substantial evidence."

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## Objectives, Scope, and Methodology

We obtained statistics on the composition of the active forces and on service members discharged for homosexuality between fiscal years 1980 and 1990 by branch of service, race, gender, rank, and occupational code. We obtained statistics on the composition of the active military force, discharges for homosexuality, years of service/pay grades, and occupational categories from DOD's Defense Manpower Data Center. Where possible, we analyzed costs associated with the implementation of DOD's policy. Because DOD does not routinely maintain such cost data, our cost analysis is very limited. DOD was able to provide only information on the cost of recruiting and training discharges' replacements. We also obtained pay grade and years-of-service data for those personnel discharged for homosexuality between fiscal years 1980 and 1990. In a separately issued supplement to this report entitled Defense Force Management: Statistics Related to DOD's Policy on Homosexuality (GAO/NSIAD-92-98S), we present these statistics in full.

We were not able to calculate the original investment cost of training and compensation, the cost of investigating alleged or actual homosexual cases, or the cost of out-processing servicemen and women who had been identified as homosexuals. According to DOD officials, there were relatively few service members who had been discharged from service academy and

Reserve Officer Training Corps programs on the grounds of homosexuality, and only a few had been asked to repay educational costs paid by the military.

In a 1984 letter to some Members of Congress, we addressed some of the matters discussed in this report. At that time, we provided a breakout of the numbers of service members discharged for homosexuality by branch of service, race, gender, rank, and career occupation and some costs associated with the implementation of DOD's policy of excluding homosexuals.<sup>3</sup> In this 1992 report, we were also asked to evaluate available evidence used by DOD to support its rationale for implementing the policy.

To determine what evidence exists to support DOD's rationale for its homosexual exclusion policy, we asked DOD to identify any research studies that had been conducted or commissioned and any reports or drafts that had been written to examine the rationale and premises underlying the existing policy. We reviewed the documents so identified. We interviewed officials from the Department of Defense, the Air Force, the Army, the Navy, and the Marine Corps to obtain their views on the origin, the rationale, and the implementation of the policy. We also interviewed officials from the Personnel Security Research and Education Center, the U.S. Army Criminal Investigative Division Command, the Air Force Office of Special Investigations, and the Naval Investigative Service.

To obtain information on the status and results of research in the area of homosexuality in the general population, we met with official representatives of the national professional associations with cognizance of and expertise in this area. These organizations included the American Psychiatric Association and the American Psychological Association. We obtained position papers from each, discussed the understanding and interpretation of the research available on homosexuality, and obtained their views on DOD's policy. GAO's Design, Methodology, and Technical Assistance Group (DMTAG) assisted us in developing our strategy for selecting these organizations and accompanied us on several of the significant meetings.

We also obtained copies of national polls on the public's changing attitudes toward homosexuality in general and homosexuality in the military and discussed the results with polling experts and representatives.

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<sup>3</sup>B-216657, Oct. 11, 1984.

We also contacted embassy officials of U.S. allies and solicited their current policies governing homosexuals serving in their armed forces (see app. II).

Finally, we selected and visited eight police and fire departments in four U.S. cities where the employment of homosexuals is not prohibited and obtained the officials' views on their policies and experiences (see app. III). While these organizations are not comparable to the U.S. military in all ways, we believe that these organizations have attributes that are similar to those of military units. For example, their members work closely together; sleep in close quarters; use the same restroom facilities; maintain trust, confidence, discipline, and morale; and respect the system of rank and command.

We conducted our review between September 1990 and May 1992 in accordance with generally accepted government auditing standards.

# DOD's Separations of Homosexuals

DOD-wide statistics show that 16,919 servicemen and women were discharged under the separation category of homosexuality between fiscal years 1980 and 1990—an average of about 1,500 annually, or about 1.6 percent of the average number of involuntary discharges. Most of these personnel were enlisted, men, and white. According to DOD officials, personnel separated under this category might have been identified in a number of ways, including self-admission, allegations leading to investigations, and being caught in compromising situations. DOD and service officials acknowledged that the numbers we cite do not reflect the total number of homosexual military personnel separated because homosexuals could also have been separated under other categories such as misconduct.

The costs associated with the administration of homosexual discharges, which involve a separation process and may include investigation, are not tracked by DOD or the services. However, calculations using DOD-provided average costs for the recruiting and initial training of enlisted and officer personnel suggest a replacement cost of approximately \$27 million for those personnel separated for homosexuality in 1990—if these individuals were replaced on a one-for-one basis.

## Discharge Criteria

DOD's policy states that homosexuality is incompatible with military service because the presence of persons who engage in or demonstrate a propensity to engage in homosexual conduct seriously impairs the accomplishment of the military mission. Accordingly, identification as a homosexual is the only criterion that needs to be met to discharge a person under this separation category—no specific determination of an individual's negative impact on the military mission is needed prior to separation.

Historically, contested discharges for homosexuality have been upheld both in the military administrative review process and in the civilian court system. This has been true even in cases involving personnel with exemplary service records, such as the following:

- An Army sergeant, whose commanding officer said he was “one of our most respected and trusted soldiers,” was expelled after 14 years of service including tours in Vietnam and Korea.
- An Air Force sergeant, the recipient of a Bronze Star and a Purple Heart, was expelled after 12 years of service including a tour of duty in Vietnam.

- A Naval Academy midshipman, ranked at the top of his class, was expelled 6 weeks prior to graduation.
- The promotion of a captain with 15 years' service in the Army Reserve was suspended. She was subsequently expelled from the military.
- A Navy petty officer who had served 9 years as a linguist and cryptographer with a top secret clearance was discharged.
- An Army Reserve sergeant who had enlisted for a 3-year term and who was the only female in her drill sergeant training course was acknowledged by her superiors as a fine candidate for drill sergeant school, a capable soldier, and an excellent instructor. She was subsequently discharged one year short of her initial enlistment period.

In commenting on a draft of this report, DOD stated that of necessity, it creates categories to manage military personnel and guide accession and retention decisions. Categories include those mandated by law, such as age and citizenship (for officers), and those mandated by regulation, such as height and weight limits, physical and mental standards, single parenthood,<sup>1</sup> and homosexuality. DOD commented that each regulatory category is predicated on the professional military judgment of DOD leaders that creating that category contributes to overall combat effectiveness. Accordingly, DOD separates individuals in selected categories, such as homosexuals, regardless of their individual performance records.

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## Analysis of Discharges for Homosexuality

We summarized DOD's data on discharges and separations for homosexuality during fiscal years 1980 through 1990 by service, race/ethnicity, gender, and rank. Our analysis showed that some groups have consistently been discharged at a rate higher than their representation either DOD-wide or in their respective services. Our analysis of discharge data is discussed below. In a separately issued supplement to this report entitled Defense Force Management: Statistics Related to DOD's Policy on Homosexuality (GAO/NSIAD-92-98S), we present this analysis in full.

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## Discharges by Service

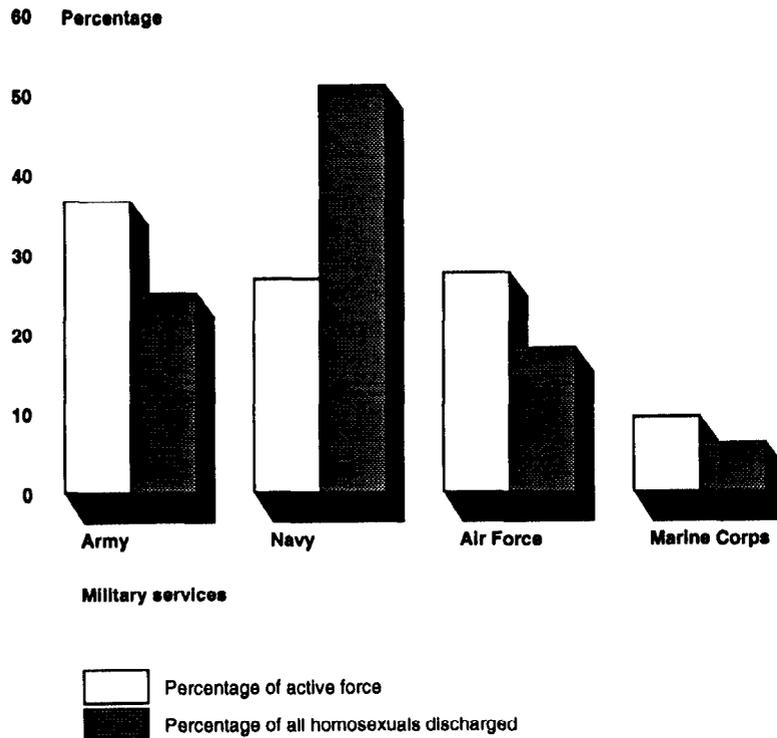
The Navy, representing 27 percent of the active force during this period, accounted for 51 percent (8,638 cases) of the total number of discharges for homosexuality. While the Army represented 37 percent of the active force, it accounted for 25 percent (4,235 cases) of all discharges for homosexuality. The Air Force, representing 27 percent of the active force,

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<sup>1</sup>Under current regulations, a single parent may not enter the military services; however, individuals who become single parents while in service are allowed to stay.

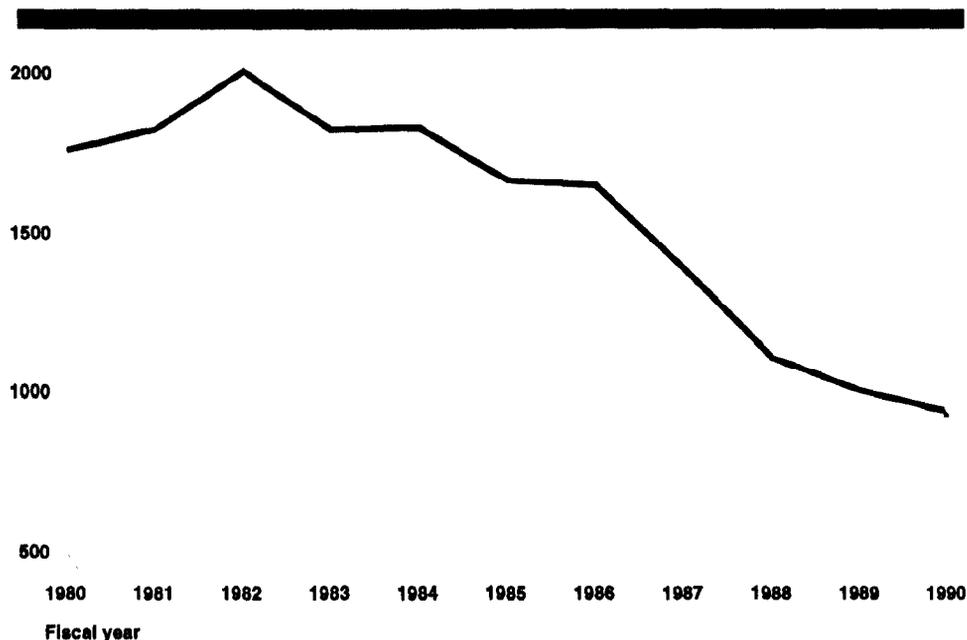
accounted for 18 percent (2,993 cases) of all these discharges. The Marine Corps represented 9 percent of the active force and 6 percent (1,053 cases) of the total number of these discharges. The Marine Corps, the smallest service, also had the fewest discharges overall. (See fig. 2.1.)

Figure 2.1: Discharges for Homosexuality by Service



DOD-wide, the total number of reported discharges for homosexuality dropped 47 percent between fiscal years 1980 and 1990 (see fig. 2.2). Some DOD officials said that there may be various reasons for the trend, including, but not limited to (1) the flexibility available to local commanders to administratively handle situations involving homosexuality without bringing in an investigative agency and to select an alternative separation category other than homosexuality; (2) the likelihood that officers are given the option of resigning, which eliminates the investigative process and the homosexual categorization; and (3) the apparent softening of the general public's attitude toward homosexuality.

Figure 2.2: DOD-Wide Number of Homosexuals Discharged

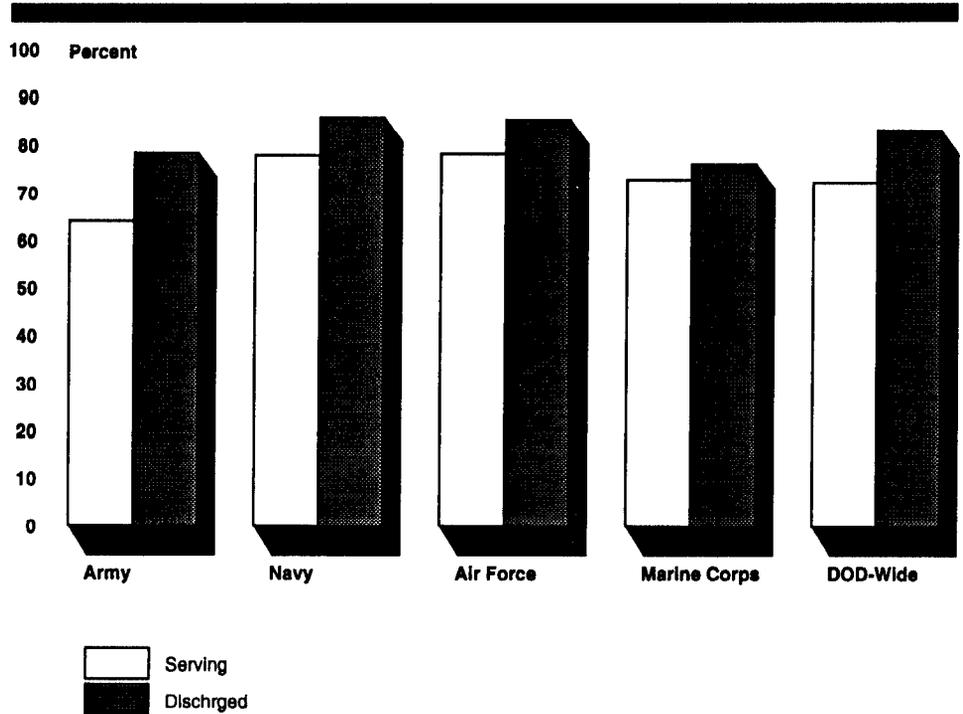


On the basis of DOD's comments, we compared the total number of involuntary separations for the period with the number of separations for homosexuality. We found that as the total number of involuntary separations decreased, so did the total number of separations for homosexuality. For example, the total number of involuntary separations peaked in 1982 at slightly over 108,000 actions and dropped almost 36 percent by 1990. Separations for homosexuality also peaked in 1982 at almost 2,000 cases and dropped 47 percent by 1990. We were unable to determine why this correlation had occurred.

### Discharges by Race

We summarized DOD's race/ethnicity categories into three basic groups: white, black, and "other." In each branch of the military, whites were discharged for homosexuality at a rate consistently higher than their rate of representation. DOD-wide, from fiscal years 1980 through 1990, white men and women constituted 83 percent (14,125 cases) of all personnel discharged for homosexuality while making up about 72 percent of all personnel serving (see fig. 2.3). Conversely, black men and women accounted for 13 percent (2,204 cases) of all discharges while they represented 20 percent of the total serving. The "other" category made up 4 percent (590 cases), while representing 8 percent of the active force.

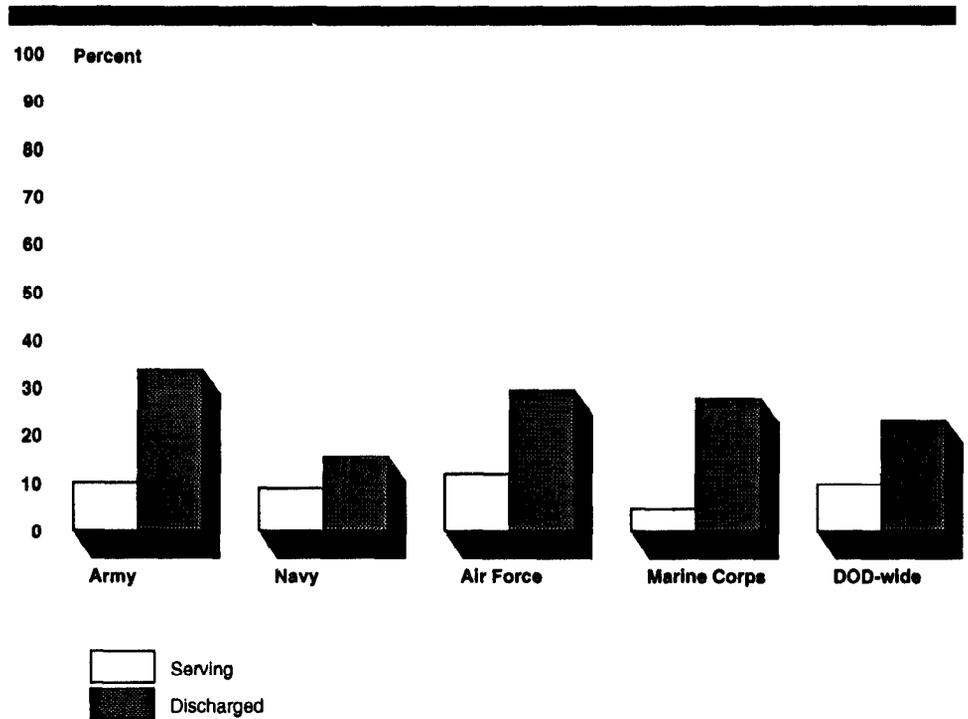
**Figure 2.3: Average Percentage of Whites Serving Compared With Average Percentage of Whites Discharged for Homosexuality**



### Discharges by Gender

In each branch of the military services, women were discharged for homosexuality at a rate consistently higher than their rate of representation (see fig. 2.4). DOD-wide, from fiscal years 1980 through 1990, women constituted 23 percent of all discharges for homosexuality (3,900 cases), contrasted with their representation as just 10 percent of all military personnel. While women in all the services were discharged for homosexuality at a rate consistently ranging two to three times higher than their rate of representation, this pattern was most noticeable in the Marine Corps, where the discharge rate was almost six times their rate of representation. Women constituted 28 percent of all discharges for homosexuality (303 cases) in the Marine Corps, but only 5 percent of all personnel serving. Conversely, DOD-wide men represented 77 percent of all discharges for homosexuality and 90 percent of all military personnel.

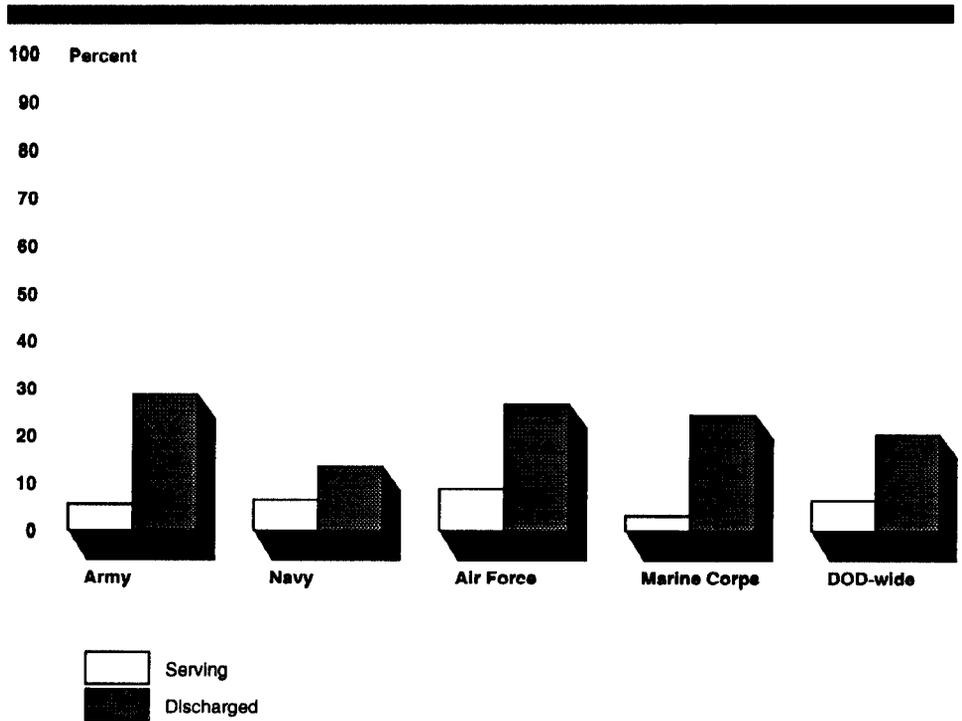
**Figure 2.4: Average Percentage of Women Serving Compared With Average Percentage of Women Discharged for Homosexuality**



### Discharges by Race and Gender

In each military service, white women were discharged for homosexuality at a rate consistently higher than their rate of representation (see fig. 2.5). DOD-wide, from fiscal years 1980 through 1990, white women constituted 20 percent (3,421 cases) of those discharged for homosexuality, while they represented just 6 percent of all personnel serving. The disproportionate discharge rate of white women was evident in all of the services, but most noticeable in the Marine Corps. Marine Corps women constituted 24 percent of such discharges, while they represented just 3 percent of the personnel serving. Conversely, white men represented 63 percent (10,704 cases) of such discharges and 66 percent of all serving. The percentages for other groups were as follows: black men, 11 percent of those discharged and 17 percent of those serving; black women, 2 percent of those discharged and 3 percent of those serving; "other" men, 3 percent of those discharged and 7 percent of those serving; and "other" women, 1 percent of those discharged and 1 percent of those serving.

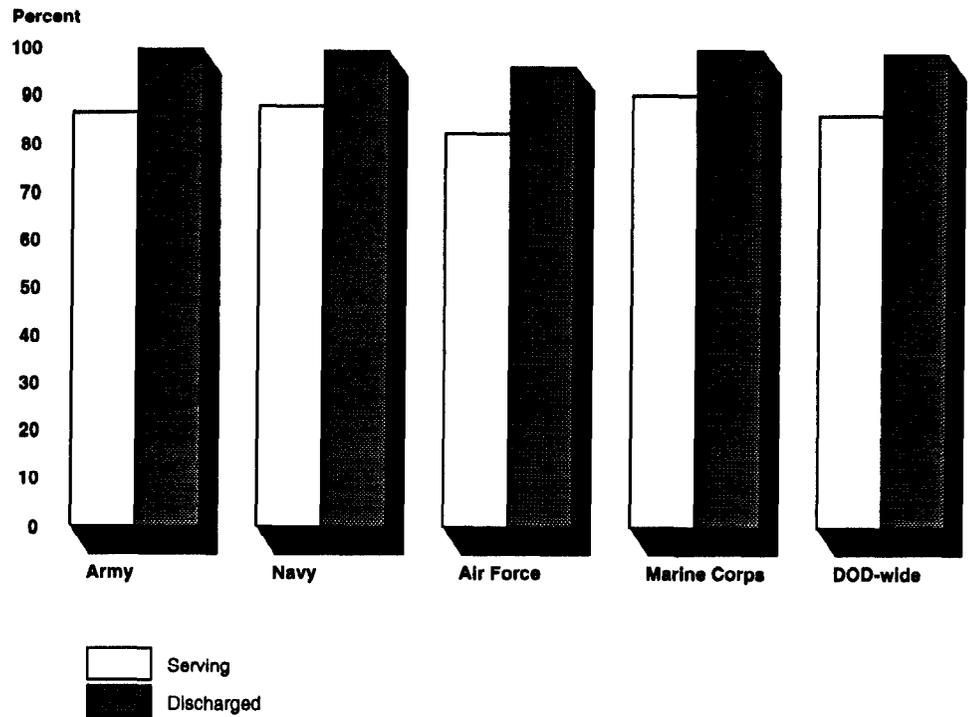
**Figure 2.5: Average Percentage of White Women Serving Compared With Average Percentage of White Women Discharged for Homosexuality**



**Discharges by Rank**

Enlisted personnel have been discharged for homosexuality at a rate consistently higher than their rate of representation (see fig. 2.6). Their rate of discharge is also higher than that of officers. DOD-wide, from fiscal years 1980 through 1990, enlisted personnel constituted 99 percent of those discharged for homosexuality, while making up 86 percent of all personnel serving, a difference of 13 percent. Conversely, officers represented 1 percent of such separations and 14 percent of all serving.

**Figure 2.6: Average Percentage of Enlisted Personnel Serving Compared With Average Percentage of Enlisted Personnel Discharged for Homosexuality**



### Discharges by Occupational Code

DOD categorizes its military personnel (both officers and enlisted personnel) under 10 broad occupational area codes.<sup>2</sup> The officer and enlisted codes are similar but not identical. DOD-wide, about 50 percent of all enlisted personnel who served during the 11-year period we reviewed were employed in the three job categories of Electrical/Mechanical Equipment Repairers (20.2 percent); Infantry, Guncrews, Seamanship Specialist (14.7 percent); and Functional Support and Administration Personnel (15.7 percent). These three categories accounted for approximately 36 percent of the discharges for homosexuality during the period. We noted no obvious, sizable disparities in terms of discharge rates and representation in the occupational categories. However, almost 24 percent of the discharges for homosexuality came from the "Nonoccupational" category, while only about 9 percent of the personnel belonged to that category.

<sup>2</sup>One of these categories, "Nonoccupational," is used to designate individuals such as patients, students, prisoners, and trainees and is not an actual occupation field.

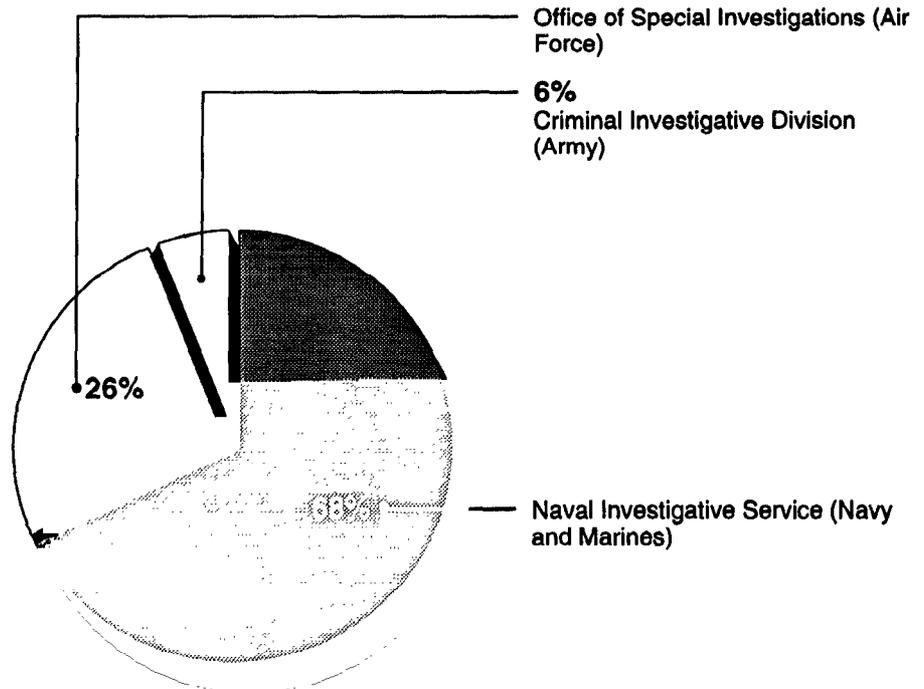
## Investigations of Homosexual Behavior

There are three criminal investigative agencies within DOD: the Army's Criminal Investigation Command, the Air Force's Office of Special Investigations, and the Naval Investigative Service. These organizations investigate specific allegations of criminal activity. Certain sex-related crimes, such as sodomy, may entail either homosexual or heterosexual behavior. We reviewed data provided by each of the services on investigations involving homosexuality. Consistent and reliable information on these cases was not available from the three investigative agencies before 1986, and most did not maintain data by the categories of race, gender, rank, or occupational code. While the Naval Investigative Service did maintain data by gender, it has only maintained data by race since 1986. Accordingly, for consistency, our analysis covers fiscal years 1986 through 1990. For this period, DOD investigative agencies experienced a total investigative caseload of about 186,000. Of these, 3,663, an average of approximately 730 per year, were investigations related primarily to homosexuality. However, this figure may be understated because each DOD investigative agency has its own policies and procedures governing investigations of criminal activity involving homosexuality and its own coding process. For example, while the Army and the Air Force use a specific code for categorizing investigations of homosexuality, the Navy does not. Navy investigations of homosexuality are categorized under the same offense code as sodomy and indecent assault. Additionally, investigations of homosexuality that are administratively handled at the local command level may not be reported or recorded in the system as such. Commanders have this flexibility.

Figure 2.7 shows that for fiscal years 1986 through 1990, the Navy conducted 68 percent of all DOD-wide investigations of homosexuality. The Air Force conducted 26 percent, and the Army 6 percent. Our analysis also shows that, while overall investigative budgets appear to be increasing, the number of investigations involving homosexuality appears to be decreasing. The number of investigations of homosexuality throughout the services dropped from 907 to 472, a decline of 48 percent.

Although DOD officials could not explain this decline, some officials speculated various reasons for it. For example, one investigative agency official stated that it could be due in part to the shift in responsibility for homosexuality cases from investigative agencies to the military police or the provost marshal. Other officials stated that it could be due to the advent of a higher caliber all-volunteer force and a new focus on large, time-consuming procurement fraud cases.

Figure 2.7: DOD-Wide Investigations of Homosexuality



Note: Percentages have been rounded to the nearest whole number.

In commenting on a draft of this report, DOD stated that the statistics from the Naval Investigative Service reflect investigations of both heterosexual and homosexual sodomy/indecent sexual acts. We agree. However, we were told there are a limited number of such cases. Accordingly, we believe that figure 2.7 and the discussion of investigations in this section fairly represent the activity in this area.

## Cost of Expulsions

The costs of administering DOD's exclusion policy were not available because DOD does not routinely maintain records of such costs. While DOD criminal investigative agency officials provided us with figures reflecting total investigative budgets, they stated that records of costs related to carrying out individual investigations or discharges were not maintained and that such costs could not be reliably extrapolated. According to DOD officials, the only costs that were readily identifiable were those for recruiting and providing initial training to personnel replacing troops discharged for homosexuality. For fiscal year 1990, these estimated costs were \$28,226 for each enlisted individual and \$120,772 for each officer.

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The total cost of replacing personnel discharged for homosexuality, however, would need to include factors such as out-processing and court costs.

# Support for DOD's Policy on Homosexuality

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According to DOD, its policy "is based solely upon concerns about homosexuality itself"—that is, the concerns about the effect of homosexuality on factors such as discipline, good order, and morale. Those concerns led to the professional military judgment that the exclusionary policy promotes overall combat effectiveness. Therefore, DOD has not conducted specific research to develop empirical evidence supporting the overall validity of the premises and rationale underlying its current policy on homosexuality.

Efforts to examine the security risk issue have concluded that available data does not substantiate that homosexuals pose a security risk. In addition, professional psychiatric, psychological, sociological associations and other experts familiar with the research conducted on homosexuality in general disagree with the basic rationale behind DOD's policy.

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## DOD's Position

Defense officials stated that DOD's policy is not based on scientific or empirical data, but rather on the considered judgment of military professionals and civilian policymakers serving in various leadership positions throughout DOD and the services. The policy is based on the conviction that homosexual behavior is incompatible with military service in that it interferes with maintaining good order, discipline, and morale. DOD officials do not contend that homosexuals cannot or do not perform as well on the job as heterosexuals; in fact, in some cases commanders have noted that homosexuals are extremely good performers. For example, an interesting opinion regarding homosexuality was expressed in a recent message from the Commander of the Naval Surface Fleet, Atlantic. The message stated:

Experience has shown that the stereotypical female homosexual in the Navy is more aggressive than her male counterpart, intimidating those women who might turn her in to the chain of command. As a result, the ability to obtain credible evidence during an investigation of female homosexuality is often stymied, and all that remains are unsubstantiated rumors leading to accusations of a "witch-hunt" as investigations unsuccessfully search for evidence. Experience has also shown that the stereotypical female homosexual in the Navy is hardworking, career-oriented, willing to put in long hours on the job and among the command's top professionals. As such, allegations that this woman is a homosexual, particularly if made by a young and junior female sailor with no track record, may be dismissed out of hand or pursued half-heartedly.

Defense officials contend that DOD and the services understand the elements critical to ensuring the proper emotional bonding of personnel in military units. In addition, these officials state that a major factor that must be considered when examining the exclusion policy is the lack of

acceptance of homosexuals in general and of homosexuals in the military in particular. According to these officials, homosexuality is not an acceptable behavior in society's eyes, and military policy should reflect this standard. DOD policy officials stated that the courts have consistently upheld DOD's position and that the agency has no intention of changing existing policy.

To examine the evidence or rationale DOD has for its policy, we reviewed documents related to its 1982 policy revision. This was the last time DOD revised and clarified the policy. It appears that the main purpose of that revision was to ensure more consistent application of the policy—not a review of the validity of the underlying rationale. For example, in a January 16, 1981, memorandum to the service Secretaries and the Chairman of the Joint Chiefs of Staff, the Deputy Secretary of Defense stated:

The revision contains no change in policy. It reaffirms that homosexuality is incompatible with military service. In order to provide workable policies and procedures for all the military departments, however, and to provide the strongest possible basis for supporting these policies and procedures in court, it is important that applicable provisions be both clear and uniform.

[Text omitted.]

I have personally worked on this problem from time to time during most of the four years I have served in the Department. I firmly believe that the most important aspect of our policy is the ability to keep homosexuals out of the service and to separate them promptly in the event they are in fact enlisted or commissioned.

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## Judicial Consideration of DOD's Policy

The courts have consistently upheld DOD's policy on homosexuality as constitutional under a rational basis standard of review. Under this standard, the government is only required to establish that regulations implementing the policy are rationally related to legitimate governmental interests. According to DOD, the courts have not required scientific evidence to support DOD's policy. The courts, giving special deference to military judgments, have accepted as legitimate governmental interests such military objectives as good order, morale, and discipline, without requiring the government to produce scientific evidence to support the policy. In more limited contexts, a few federal courts have cautioned DOD on nonconstitutional grounds concerning application of the policy. For example, it has been held that the government must afford a member facing discharge under military regulations that contain an exception to the policy a reasoned explanation as to why that member does not come within

the exception, including a fact-sensitive inquiry into the member's particular circumstances. Also, one federal court has held that the Army could not deny a service member's reenlistment under its regulations when the service, with full knowledge of the member's homosexuality, has repeatedly permitted the member to reenlist in the past. Appendix I lists examples of homosexual expulsions for which performance was not an issue.

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## Studies Initiated by DOD and the Services Do Not Address the Policy's Rationale

DOD and the services identified two major efforts completed in the last 35 years that dealt with homosexuality. These efforts included the Navy's 1957 "Crittenden Report" and a 1988 draft of a report by the Personnel Security Research and Education Center (PERSEREC), which was initiated in 1986. Basically, the Crittenden Report was undertaken to look at the Navy's procedures and standards in processing homosexuals out of the military. The PERSEREC study was undertaken specifically to examine the security risk associated with civilian personnel who were homosexuals. Despite the specific objectives of these studies, both addressed issues concerning the overall suitability of homosexuals to serve in the armed forces.

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## Navy Crittenden Report

The Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing with Homosexuals was submitted to the Secretary of the Navy on March 15, 1957. This document is informally called the "Crittenden Report," after the Board's Chairman, who was appointed in 1956 to examine various issues surrounding the Navy's policies, procedures, and directives governing homosexuals, including security risk implications. Although at the time of the study there was increased knowledge of homosexual behavior and treatment, specific questions had been raised on which the Board was specifically asked to make recommendations. The Board's recommendations were to address issues involving one-time offenders, voluntary confessions, types of discharge, treatment of offenders, clinical evaluations, review procedures, responsibility to the civilian community, the screening of applicants for enlistment, the treatment of women, and related administrative practices. The Board was not asked to examine the validity of the rationale underlying the policy. However, it contained considerable information regarding the status of research and homosexuality in the Navy.

The Board, comprised of several members from the U.S. Navy and the U.S. Marine Corps, reported its findings and recommendations to the Secretary of the Navy in a three-part document, which did not question the underlying DOD policy on homosexuality, but concluded in part, the following:

The Board was unable to uncover any statistical data to prove or disprove that homosexuals are in fact more of a security risk than those engaged in other unsocial or immoral activity. Even the number of cases of blackmail revealed as a result of past investigations, which were cited to the Board, is negligible.

[Text omitted.]

The Board is in agreement that a homosexual is not necessarily more of a security risk, per se, than other transgressors of moral and criminal codes. Further the Board recognizes that the propensities and vulnerabilities associated with homosexual activity, as in the case of promiscuous heterosexual activity, do provide serious security implications.

The report further stated that: "Isolated cases are mentioned, but to determine that a homosexual is more of a security risk than a non-homosexual, these instances would have to be measured against security breaks by non-homosexuals, and against the proper observance of security by homosexuals."

The report further explained that:

There is considerable information which would indicate that other factors in the personality constitute the security risk rather than the factor of homosexuality alone. One such item, for example, would be feelings of inadequacy which drive a man to boast of the secrets he possesses. Such boasting might very well be done to any sexual partner, whether the partner be homosexual or heterosexual. Some intelligence officers consider a senior officer having illicit heterosexual relations with the wife of a junior officer or enlisted man is much more of a security risk than the ordinary homosexual.

The report also stated that, although there are some homosexuals who have adjustment difficulties in coping with military life, the difficulties may or may not be due to their homosexuality. According to the report, there have been many documented instances of individuals who have reported themselves as having homosexual tendencies and who nonetheless have continued on duty and served honorably and well.

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Research on Personnel  
Security by PERSEREC

An effort to examine the correlation between homosexuality and security risk violations by civilian employees was undertaken by the Defense Personnel Security Research and Education Center at the direction of the Deputy Under Secretary of Defense for Security Policy. PERSEREC, established in 1986, is a DOD research, analytical, and educational facility whose missions are to (1) perform personnel security research and analysis for DOD and (2) furnish educational assistance, instruction, and advice on personnel security research to DOD components. PERSEREC now operates under the guidance of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence) in Washington, D.C., and is based in Monterey, California.

In 1986, PERSEREC was tasked with validating and reporting on existing criteria for granting civilian personnel security clearances and with developing more objective, uniform, and valid adjudication standards. For example, PERSEREC was to clarify relationships between risk and various personal characteristics, including sexual orientation.

In December 1988, PERSEREC completed a draft report entitled Nonconforming Sexual Orientations and Military Suitability. Although it did not address the results of the 1957 Crittenden report, it echoed the security observations of that report.

The PERSEREC draft report revealed no evidence that homosexuality is related to security risk violations or that sexual orientation affects an individual's suitability for military service. In fact, the report stated that the development of ethnology as an area of study has made possible more precise examination of the influence of biological factors on the formation of sexual orientation. In addition to including data supporting a biological cause for homosexuality, the authors stated that they had examined recent and contemporary studies that led to the inference that homosexual men and women as a group are not different from heterosexual men and women in regard to their adjustment or job performance. The report also made the following comments regarding DOD's policy on homosexuals in the military:

The intensity of prejudice against homosexuals may be of the same order as the prejudice against blacks in 1948, when the military was ordered to integrate.<sup>1</sup>

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<sup>1</sup>Presidential Executive Order 9981, July 26, 1948.

The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true.

Although the draft report did not specifically address the integration of women in the military, it stated that it would be possible to set out as a hypothesis and test directly and indirectly the question of whether the presence of men or women identified as nonconforming in sexual orientation actually influences such features of military life as discipline, group morale, and integrity.<sup>2</sup> Direct testing would involve integrating men who identify themselves as holding nonconforming sexual attitudes with men who do not so identify themselves. The same design could be used for women.

The report also stated that:

Social science specialists helped develop programs for combating racial discrimination, so that now the military services are leaders in providing equal opportunity for black men and women. It would be wise to consider applying the experience of the past 40 years to the integration of homosexuals.

Although the PERSEREC draft was submitted in late 1988, it was rejected by DOD because it went beyond the requested scope, which was to determine security risk implications, and, instead, addressed the suitability of homosexuals serving in the military. The study was not finalized until September 1991, and the report was revised at least three times at DOD's direction in order to focus on its assigned task.

The following quotes were extracted from PERSEREC's draft 1988 report:

During the period 1981-1987, 4,914 men were separated from the Army and the Air Force on the grounds of homosexuality. Of these, 40 percent of the Army sample and 50 percent of the Air Force sample held Secret or Top Secret security clearances. It is reasonable to suppose that background investigations had yielded no information that would indicate that the subjects were security risks . . . .

[Text omitted.]

The argument goes that they would be candidates for blackmail if a foreign agent learned that they were homosexuals. This argument is somewhat blunted when we remind ourselves

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<sup>2</sup>In 1948 Congress acknowledged the quality and value of the contribution women made in World War II and passed the Women's Armed Services Integration Act of 1948.

that blackmail is also an option for foreign agents who acquire knowledge about heterosexual men and women secretly engaged in adultery. Also, decriminalizing homosexual behavior has done much to decrease the danger of blackmail.

Studies of homosexual veterans make clear that having a same gender or an opposite-gender orientation is unrelated to job performance in the same way as is being left- or right-handed.

In its conclusions and recommendations, the 1988 draft report stated that the time was ripe for DOD to engage in empirical research to test the hypothesis that men and women of atypical sexual orientation can function with heterosexuals appropriately in military units. The report further suggested that DOD use a general framework for developing research programs and that the findings of such research could be employed by DOD policymakers as they continue their efforts to improve the effectiveness of recruitment, selection, and training programs.

Although the scope of the finalized version of the PERSEREC report, dated September 1991, was narrower than earlier versions (that is, it addressed only the civilian personnel security issue), it contained much of the same basic information included in the 1988 version. For example, the 1991 report stated:

Few data have been put forward to support the belief that being homosexual predisposes a person to unreliability, disloyalty, or untrustworthiness. Scores of studies have made clear that large individual differences in moral beliefs are to be found among heterosexuals and homosexuals. It is invalid to generalize from sexual orientation to trustworthiness. Life styles of homosexuals are as varied as the life styles of heterosexuals.

The conclusions and recommendations of the 1991 report were considerably narrower than those included in the 1988 version. For example, the 1991 report concluded and recommended the following:

Homosexuals have been targets of discriminatory policies. The residues of earlier constructions of homosexuality (sin, crime, or illness) may influence personnel security specialists to treat homosexuals as a morally suspect class. Given that homosexuals (like heterosexuals) are a diverse group, fairness and personnel efficiency require a case-by-case policy. The current case-by-case policy is appropriate to the task of determining eligibility for security clearance. However, the implementation of the policy needs to be examined in light of the fact that investigators, adjudicators, and other personnel security specialists are drawn from the general population, and large segments of the population continue to view homosexuality as sin, crime, or illness, constructions that might bias eligibility decisions. The work of investigators and adjudicators should be monitored to ensure that practice follows policy.

According to the Deputy Director for Personnel Security, the recommendation is not for DOD to take any new actions but reinforces what DOD is already doing—which is looking at each situation on a case-by-case basis. DOD has several initiatives ongoing that address the report's recommendations. For example, DOD has had a 2-week adjudication course in place since 1988 to teach and encourage adjudicators to put their own personal prejudices and biases aside when making adjudication decisions not only for homosexuals but for anyone involved in trying to obtain a security clearance. DOD has also devised a 2-week advanced course for adjudicators that will focus on promoting uniformity and consistency in the application of DOD's adjudication standards. According to the Deputy Director of Personnel Security, this course was to be offered to the adjudicators sometime in May 1992. In addition, on the basis of PERSEREC's review of DOD's adjudication standards, DOD is revising its standards to improve their specificity and clarity.

In commenting on a draft of this report, DOD disagreed with our observation that the Crittenden and the PERSEREC reports did not support DOD's policy. DOD explained that, as GAO had stated, the Crittenden study looked at the Navy's procedures and standards in separating homosexuals. According to DOD, its premise that homosexuality is incompatible with military service was the foundation for the study, and the report did not question that premise.

We do not disagree with DOD regarding the purpose and objective of the Crittenden report and did not suggest that this effort questioned the underlying premise to DOD's policy. However, we did find that the study contained considerable information and data that raise questions about the policy. For example, with regard to security risk, the report stated, "A third concept which persists without sound basis in fact is the idea that homosexuals necessarily pose a security risk." In addition, the report made the following summary statements: (1) homosexual behavior is much more frequent than has been generally believed; (2) many exclusively homosexual persons have served honorably in all branches of the military service without detection; (3) homosexual behavior cannot be correlated with any other characteristic or group of characteristics of the personality; and (4) the concept of homosexuality as a clinical diagnosis has been discarded.

DOD further commented that the PERSEREC draft report was misdirected. PERSEREC was tasked with studying the correlation, if any, between homosexuality and security risks for DOD civilian employees and

government contractors. The purpose of the study was to help the Department assess homosexuality as a factor in adjudicating security clearances for civilian and contractor employees. The study was never commissioned to address the homosexual exclusion policy—an entirely separate and broader issue based on uniquely military concerns. DOD also commented that the draft report's authors had not discussed the draft with knowledgeable DOD officials, and as a result, they had misunderstood the policy and its basis (that is, DOD's belief concerning the effects on morale, discipline, and so on of allowing homosexuals to serve in the military). DOD said that therefore the subsequent analysis was flawed. Further, DOD emphasized that the opinions expressed in the report did not reflect those of the Department and, thus, should not be considered as authoritative.

We recognize that the PERSEREC study went beyond its directed task. However, we believe that DOD should not discount the information obtained and presented because such data was not authorized as part of the original task. The PERSEREC draft did, in fact, address homosexuality in the context of its effects on morale and discipline in the services.

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### Recent DOD Statements Indicate Security Risk Is No Longer a Major Concern

In testimony delivered on July 31, 1991, the Secretary of Defense, in defending DOD's policy, made the following remarks:

I have inherited a policy that has been in the department now for many years that does focus specifically upon the military and military service and is based upon the proposition that a gay lifestyle is incompatible with military service. That is the policy. I think there have been times in the past when it has been generated on the notion that somehow there was a security risk involved, although I must say I think that is a bit of an old chestnut. The question turns more upon the need of the department to maintain the combat-effectiveness of our military units and that our sole mission in life is to be prepared to fight and to win wars. And that based upon that, the department over the years, specifically the military services, have pursued a policy that said that certain kinds of individuals in our society are not, do not serve in those combat units.

In a statement before the House Budget Committee in February 1992, the Chairman of the Joint Chiefs of Staff said that he agreed with the Secretary of Defense. He said that the ban on homosexuals serving in the military is not based on a security argument but on his judgment and the judgment of the service chiefs that homosexual behavior is inconsistent with maintaining good order and discipline. He stated that it is difficult in a military setting, where there is no privacy and where you do not get a choice of where you live, to introduce a group of individuals—who are proud, brave, loyal, good Americans but favor a homosexual life-style—and put them in with a group of heterosexuals who would prefer not to have a

person of the same sex find them sexually attractive, put them in close proximity, and ask them to share the most private of their facilities together—the bedroom in the barracks, the latrines, and the showers.

## Scientific Evaluations of Homosexuality

Scientific and medical studies disagree with the military's long-standing policy holding that homosexuality is incompatible with military service. During the course of our review, we met with representatives from the American Psychiatric Association and the American Psychological Association, as well as other mental health professionals, and were told that these organizations do not support DOD's exclusion of homosexuals. These organizations, through various steps, are trying to convince DOD to change its policy to improve the mental health and functioning of its members and to help end the discrimination that they believe can lead to psychological distress and psychiatric disorder. These steps include (1) dialogues between gay and lesbian groups and the military; (2) the banning of military advertising and recruiting either at association meetings or in association publications; and (3) the protesting of military training programs, such as Reserve Officer Training Corps programs, on university and college campuses.

The concept of homosexual orientation as a mental disorder was formally rejected by the psychiatric profession about 20 years ago. In 1973, the American Psychiatric Association removed homosexuality from the list of mental illnesses after psychiatric, psychological, medical, and scientific evidence showed that it could not be considered a mental illness or a personality or psychopathological disorder. The Association's 1973 position on homosexuality and homosexuals in the military was that "homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Furthermore, rejecting the conception of homosexual orientation as a pathology has been supported by psychology and social work.

The American Psychological Association's resolution of January 1975 supported the position taken in 1973 by the American Psychiatric Association by also opposing the exclusion and dismissal of persons from the armed services on the basis of sexual orientation. Further, the American Psychological Association asserted that (1) no burden of proof of judgment, capacity, or reliability should be placed on homosexuals that is greater than that imposed on any other persons within the armed services and (2) homosexuals should be granted the same protection from discrimination as other minorities are granted. According to DOD officials,

they agree with the conclusions of these organizations in stating that homosexuality is no longer to be considered indicative of any mental or physical disorder.

According to those we interviewed and position papers provided by the organizations we visited, current research supports the idea that homosexuality can no longer be viewed as "abnormal" if a significant minority of the population engage in it at some time in their adult lives.<sup>3</sup> Instead, homosexuality is now considered by many social scientists and researchers (1) to be a normal variation in the spectrum of human sexual behavior and (2) not pathological or indicative of any mental illness or impairment in functioning. Many social scientists and researchers now believe that discrimination against homosexuals leads to unhealthy behavior and attitudes on both sides. Further, many experts believe that the military's policy is unsupported, unfair, and counterproductive; has no validity according to current scientific research and opinions; and appears to be based on the same type of prejudicial suppositions that were used to discriminate against blacks and women before these policies were changed.

Over the years, many studies have documented homosexuals' mental health and their level of functioning. Some experts have looked at homosexuals in the military and found that many performed well despite the nonaccepting attitude of the services. Experts believe that when homosexuals experience a higher incidence of depression or drug abuse, they may do so in part because they are unable to integrate their sexuality because of homophobia,<sup>4</sup> both internal and external. Many experts believe that DOD's exclusion policy perpetuates this homophobia and leads to further discrimination against homosexuals, which in turn leads to an atmosphere not conducive to their mental health or that of those prejudiced against them. These experts believe that attitudes can be altered by allowing open communication and the sharing of ideas between the two groups. If a more tolerant attitude were enforced, it would lead to the better functioning of all.

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<sup>3</sup>Surveys of human sexuality conducted by the Kinsey Institute in the 1940s and 1950s, though their samples of patients were flawed, demonstrated that homosexual behavior was much more prevalent than expected. These surveys suggested that 5 to 10 percent of the general adult population could be considered predominantly homosexual and that approximately one-third had engaged in such behavior sometime in adulthood.

<sup>4</sup>A common term used to connote an inexplicable fear of homosexuality.

DOD partially agreed with our statement that scientific and medical studies disagree with the long-standing military policy that holds that homosexuality is incompatible with military service. DOD stated that the American Psychological Association and the American Psychiatric Association have written to DOD expressing their disagreement with its exclusion policy, but neither has addressed the issue of overall combat effectiveness. According to DOD, these groups focus on homosexuals in the general population and the relationship between homosexuality and the mental health of the individual.

As discussed in this report, many individuals discharged under DOD's exclusion policy have exemplary records and have held important positions within their units. Additionally, the research cited by groups that disagree with DOD's policy includes studies looking at veterans of military service who have served honorably.

# Public Attitudes and Other Views

We obtained information about the general U.S. population's attitudes toward homosexuality through nationwide polls; we also contacted representatives of other nations to determine how their policies were similar to or different from DOD's. Finally, we contacted police and fire departments in several major U.S. cities where policies of nondiscrimination against sexual preference have been established.

## Changes in Public Perceptions

Information from three national polls shows a shift in society's thinking on homosexuality. National polls conducted in the mid-1980s showed an increasing intolerance of homosexuality at a time when the fear of contracting Acquired Immune Deficiency Syndrome (AIDS) was at its highest point among the general public. But new surveys show that this trend is reversing. In October 1989, a Gallup poll found that the tolerance of homosexuality was on the rise among the public. The results of the poll show that from a sample of 1,227 adults, aged 18 and older, almost half (47 percent) believed that homosexual relations between consenting adults should be legal, up from one-third (33 percent) who felt that way in 1987. Seven in 10 (71 percent) felt that homosexuals should have equal job opportunities, compared to 6 in 10 (59 percent) in 1982. In 1989, just over one-third (36 percent) believed that homosexual relations should not be legal, whereas more than half opposed legalization in 1987 (55 percent). The results of another Gallup poll conducted in March 1991, shown in table 4.1, show a change in the trend of public opinion on the hiring of homosexuals in various job categories.

**Table 4.1: Percentage of the Public Who Believed That Homosexuals Should Be Hired for Various Jobs**

Figures in percentages

Job category	1977	1982	1985	1987	1989	1991
Salesperson	68	70	71	72	79	89
Armed forces member	51	52	55	55	60	69
Doctor	44	50	52	49	44	54
Clergy member	36	38	41	42	44	54
Elementary school teacher	27	32	36	33	42	52
High school teacher	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>	<sup>a</sup>	47	60

<sup>a</sup>The poll did not address this category between 1977 and 1987.  
Source: National Gallup Poll, Mar. 25-27, 1991.

A national poll conducted in April 1991 by Penn and Schoen Associates, Inc., for the Human Rights Campaign Fund on "Public Attitudes Towards Homosexuals and Their Place in the Military" further supports the fact that

the public's attitude towards homosexuals' serving in the military has changed. According to this poll, 81 percent of Americans believed that homosexuals should not be discharged from military service solely because of their sexual orientation. Fourteen percent believed homosexuals should be discharged.

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## Other Nations' Policies

In the course of our work, we obtained information on the policies of 17 other nations, predominantly U.S. allies and North Atlantic Treaty Organization countries, on homosexuals' serving in their armed forces. (See app. II for a listing of these countries.) These nations had various, sometimes diametrically opposed approaches to and legislation affecting the presence of homosexuals in their armed forces. The attitudes ranged from the view held by the United States to less strict ones in other countries. Some, in fact, do not view homosexuality as a legal or a military issue. Four of the 17, or 24 percent, had policies that specifically exclude homosexuals from serving in the armed forces. Four of the remaining 13 restricted homosexuals' duties or relieved them from duty for disruptive behavior. Seven of the 17, or 41 percent, had no written policy addressing homosexuality. Two of the 17, or 12 percent, stated that during the recruiting process, the question regarding the individual's sexual orientation was not asked.

The Canadian Forces has also had a long-standing policy of excluding homosexuals. The Canadian policy on homosexuality was reviewed in detail in 1986 as part of a wider review by a special task force of a number of personnel policies. The task force's recommendation was to maintain the policy of not accepting declared homosexuals into the Canadian Forces. That recommendation was accepted in early 1987. However, the policy on homosexuality has been under review almost continuously since that time.<sup>1</sup>

Over the past few years, the Canadian Forces' policy has changed in that its focus has changed from targeting "homosexual propensity" to targeting "homosexual activity." On an interim basis, pending the completion of the present policy review, members who engage in homosexual acts are offered the opportunity to be discharged. If they refuse, they may complete their terms of service under career restrictions, including no promotions, no postings elsewhere, and no further career training. Discharged

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<sup>1</sup>Currently, there are five court challenges to the Canadian Forces' policy on homosexuality. None of these had come to trial by March 11, 1992.

members are given the equivalent of what is an honorable discharge in the United States.

The British Defense Force, like the U.S. military, is an all-volunteer force and is opposed to having homosexuals serve in the military. British Defense Force officials recently told us that the British Defense Force does not knowingly accept homosexuals. However, for homosexuals identified while in service, Britain provides a system of warnings, meaning that an individual who admits to his or her homosexuality need not be automatically discharged, but rather can be reminded of the military's disapproval of homosexual activity, warned against any misconduct, and perhaps counseled. A British embassy official told us that the issue of homosexuals' serving in the British military had been raised in Parliament, but there was no mention of changing the policy.

The policies of Denmark, France, Belgium, Italy, and Finland specifically state that individuals whose homosexuality interferes with their ability to effectively perform required duties are to be discharged. They are discharged only after medical diagnoses have been provided and medical decisions of fitness have been rendered by physicians.

## Selected Police/Fire Department Policies

All but one of the eight police and fire departments we visited in four cities had written policies dictating nondiscrimination on the basis of sexual preference or allowing the employment of homosexuals. Many of these policies dated as far back as the mid-1970s. None of the officials we interviewed from these departments viewed homosexuality as an issue; most believed that the key element in their hiring practices was to hire based on previous job performance—not on an individual's sexual orientation. Several of the department officials saw the inclusion of homosexuals as having a positive impact on management-personnel relations.

Both police and fire department officials stated that the elements of unit/team cohesiveness, discipline and good order, morale, trust and confidence, and a system of command rank and respect are important to their overall mission.

Police and fire department officials who have admitted homosexuals into their departments stated that homosexuals and heterosexuals appear to have acceptable working relationships. This may be due partly to the fact that all of the departments we visited had developed and put in place

sensitivity, diversity, and/or cultural awareness training programs. While most department officials did not identify major problems involving homosexuality, a few pinpointed isolated cases indirectly involving homosexuals. In these cases, the issues focused not on the person's homosexuality, but on his or her religious beliefs and/or job performance.

In terms of security breaches, most police and fire department officials stated that, while some assignments are considered confidential or secret in nature, most department officials believed that homosexuals, whether "closeted or admitted," were no more subject to breaches of security or blackmail than heterosexuals.

Most of the police and fire departments with policies endorsed by the city mayors and department chiefs target their recruiting to gay and lesbian communities as well as to the communities of blacks, Hispanics, and Asians. In fact, some departments have gay and lesbian liaisons, councils, task forces, and/or a gay officers' action league to assist the department in its recruiting efforts and in maintaining or bringing about equality and balance throughout the department. Additionally, some fire and police department officials stated that the public seems to view their open policies as positive moves in that they break down barriers in society. These officials cited the advances made in race relations as evidence that attitudes can be changed. Some other officials stated that they believe exclusionary policies based on sexual orientation are counterproductive and only create further stress.

# Conclusions and Agency Comments

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## Conclusions

For more than 50 years, DOD and its predecessors have excluded homosexuals from military service. This policy is based on the belief that the presence of homosexuals seriously impairs the accomplishment of the military mission. Because this policy is based on military judgment, it is difficult to challenge. The courts have routinely accepted DOD's judgment on the policy in cases brought by discharged homosexuals. DOD has stated that its policy is not based on scientific or sociological analysis. Studies of the security risk issue have refuted DOD's position, but there are other bases for the policy that may not lend themselves to conclusive analysis.

On May 19, 1992, H.R. 5208, a bill to prohibit discrimination by the armed forces on the basis of sexual orientation was introduced. While we are making no recommendations in this report, we believe this report should assist the Congress in deliberating legislative initiatives relative to changing DOD's policy, which excludes homosexuals from serving in the U.S. armed forces. In deliberations, Congress could consider the following factors:

- Since DOD last revised the policy in 1982, public attitudes toward homosexuals have been changing, and its own PERSEREC draft report disclosed considerable information that raised questions about the policy.
- Several allied countries allow homosexuals into the military or are reassessing their policies on homosexuals; many U.S. police and fire departments have also accepted homosexuals into their ranks and have generally not reported adverse impacts.
- Recent congressional testimonies by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff indicate that the concern over homosexuals' being security risks, which was once a significant basis for the policy, is no longer a major concern.
- There are many avenues for discharging military personnel, including homosexuals, who have behavior problems; changing the policy to permit homosexuals to remain in the military would not entail condoning inappropriate behavior.
- A careful look at the policy may reveal a middle ground similar to what some other countries have taken, discouraging homosexuals from joining the military but not automatically discharging those who are already in it.

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## Agency Comments

In commenting on a draft of this report, DOD agreed or partially agreed with some findings and did not agree with others.

DOD said that its homosexual exclusion policy is not based on any belief that homosexuality is a mental disorder, nor is it based solely on security concerns. DOD said that we correctly note that the DOD policy is based on military judgment and that scientific or sociological analyses are unlikely to affect its policy of excluding homosexuals from the military. DOD said that the courts consistently have found that the military interests underlying the policy—good order, discipline, and morale—were substantial and that military concern about homosexuality has a basis in fact.

DOD said that we erred in stating that the two cited reports did not support DOD's policy. DOD said that the Crittenden Report clearly supported the policy and that the PERSEREC draft misstated the policy. That is, DOD said that the PERSEREC draft did not address the issues of morale, discipline, and so on, and, therefore, its "analysis" was flawed.

DOD correctly states that the Crittenden report did not question the premise of DOD's exclusionary policy - - that homosexuality is incompatible with military service - - and our report points this out. However, the report that was issued in 1957 stated that (1) many homosexuals have served honorably in all branches of the military and (2) the concept that homosexuals pose a security risk is unsupported. It also noted that, while there were not accurate figures concerning the frequency of homosexual behavior in the Navy, indications were that the number of homosexuals disclosed represented only a very small proportion of those in the Navy.

With regard to the PERSEREC draft, we recognize that this study went beyond its directed task. However, we believe that the information presented should not be discounted by DOD solely for that reason.

In a draft of this report, we suggested that individual Members of Congress may wish to direct the Secretary of Defense to reconsider the basis for DOD's prohibition. Because legislation has since been introduced on this matter, we have deleted this suggestion.



# Examples of Expulsions for Which Performance Was Not an Issue

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## Matlovich v. Secretary of the Air Force

Former Technical Sergeant Leonard P. Matlovich was a 12-year Air Force veteran who had served a tour of duty in Vietnam and had received a Bronze Star and a Purple Heart. Matlovich informed the Secretary of the Air Force in writing of his belief that his sexual preferences were homosexual, although he did not believe these preferences would in any way interfere with his Air Force duties. Under an Air Force regulation that bars homosexuals except in exceptional situations, he was administratively processed for separation after admitting his sexual orientation and his engagement in homosexual activity. Subsequently, Matlovich was honorably discharged. On the day before his discharge, Matlovich filed suit with the United States District Court for the District of Columbia Circuit, seeking a temporary restraining order against his discharge and an injunction and declaratory relief against the Air Force on the grounds that its policy was unconstitutional. The District Court ruled in favor of the Air Force, stating that, although there had been times when, due to extenuating circumstances, the Air Force had retained persons who had engaged in homosexual acts, there was no need to consider this case an exception (exceptions have been granted to only one-time offenders). The United States Court of Appeals for the District of Columbia (591 F.2d 852 (D.C. Cir. 1978)) held that it was unable to determine from the record why the Air Force had not retained Matlovich under the "unusual circumstances" exception to the general policy and remanded the case to the district court. The appeals court instructed the Air Force to either promulgate advance written rules or directives, or formulated criteria; or to establish the standards for the policy through case-by-case decision-making and apply those standards to Matlovich's case. The case was subsequently dismissed on December 16, 1980, pursuant to a court-approved monetary settlement between Matlovich and the Air Force.

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## Secora v. Fox

Former Technical Sergeant Claude E. Secora was a 16-year active duty veteran in the United States Air Force serving as a computer operator. He was the recipient of the Air Force Commendation medal and the National Defense medal. Secora was administratively processed for separation in 1978 under an honorable discharge on the grounds that he had violated the same Air Force regulation challenged in the Matlovich case. Secora filed suit in the United States District Court for the Southern District of Ohio on the grounds that the Air Force regulation was unconstitutional and that it had denied him equal protection.

A federal magistrate, upon declining to address the constitutional issues, relied on the Matlovich decision in finding that the Air Force had not

complied with its own regulations in discharging Secora because it had failed to put forth its reasons for not retaining him under the “unusual circumstances” exception to the general policy of discharging officers who engage in homosexual activity. The District Court agreed with the magistrate and ruled that Secora was entitled to a reasoned explanation with respect to the regulation as to why he did not come within the “unusual circumstances” exception (747 F. Supp. 406 (S.D. Ohio 1989)). The court held that such an explanation required a fact-sensitive inquiry into Secora’s particular circumstances, especially since he was facing discharge notwithstanding a 16-year, unblemished service record. The court ruled that the Air Force must show cause why Secora did not meet the Air Force’s rule of exception to its policy if there was no current pattern of homosexuality and Secora’s ability to perform military service had not been compromised. Both parties have moved for summary judgment in the District Court, where the case is currently pending.

## **Watkins v. United States Army**

Former Staff Sergeant Perry Watkins was a 14-year active duty veteran in the United States Army, who had served tours in Vietnam and Korea. He had been completely candid about his homosexuality from the start of his Army career and had been allowed to reenlist on three occasions (in 1971, 1974, and 1979), with the Army’s full knowledge of his homosexuality. The record indicates that in all respects Watkins was an outstanding soldier. He became, in the words of his commanding officer, “one of our most respected and trusted soldiers.” This official stated that “from daily personal contact I can attest to the outstanding professional attitude, integrity, and suitability for assignment within the Personnel Reliability Program, of SP5 Watkins.” While Watkins’ case was making its way through eventual appeals in the federal courts, the Army rated his performance and professionalism. He received 85 out of 85 possible points, including perfect scores for the categories “earns respect,” “integrity,” “loyalty,” “moral courage,” “self-discipline,” “military appearance,” “demonstrates initiative,” “performs under pressure,” “attains results,” “displays sound judgment,” “communicates effectively,” “develops subordinates,” “demonstrates technical skills,” and “physical fitness.”

In 1982, Watkins filed suit in the United States District Court for the Western District of Washington challenging revocation of his security clearance and seeking to prevent his discharge from the Army under an Army regulation that mandated the discharge of all homosexuals regardless of merit. The District Court enjoined the Army from discharging

Watkins based on his admission of homosexuality. After the Army subsequently denied Watkins' reenlistment under a regulation making homosexuality a nonwaivable disqualification for reenlistment, the court held that the Army was estopped from relying on this regulation. After certain procedural maneuvers by the parties between the United States Court of Appeals for the Ninth Circuit (721 F.2d 687 (9th Cir. 1983)) and the District Court, a panel of the appeals court held that the reenlistment regulations violated the constitutional guarantee of equal protection because they discriminated against persons of homosexual orientation and were not necessary to promote a legitimate compelling governmental interest (847 F.2d 1329, 1352-1353, (9th Cir. 1988)).

The full appeals court, declining to rule on the constitutional issue, held the Army to be estopped from barring Watkins' reenlistment solely on the basis of his acknowledged homosexuality (875 F.2d 699 (9th Cir. 1989)). The appeals court reasoned that Watkins had been completely candid about his homosexuality from the start of his career, and the Army, with full knowledge of this fact, had continued to reenlist him despite its long-standing policy to the contrary. In weighing the injustice to Watkins against the possible damage to the public interest, the court noted that Watkins, after having relied on the Army's 14-year approval of his service, had been injured by the loss of his career, whereas harm to the public interest from his reenlistment was nonexistent since he had demonstrated he was an excellent soldier. In 1990, the United States Supreme Court denied the Army's petition to review the case (875 F.2d 699 (9th Cir. 1989) cert. denied, —U.S.—, 111 S. Ct. 384, 112 L. Ed. 2d 395 (1990)), and Watkins and the Army subsequently agreed to settle. Watkins was promoted to the rank of sergeant first class effective June 1, 1992, and voluntarily retired. He received back pay and allowances with offsets from civilian pay earned for the period between his 1984 discharge and his retirement date.

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## **Pruitt v. Cheney**

Former Captain Dusty Pruitt was a 15-year active and reserve veteran in the United States Army who was separated from the Army Reserve under an honorable discharge for homosexuality on July 19, 1986. Pruitt served in the Army between 1971 and 1975. After leaving active service to seek ordination as a methodist minister, Pruitt remained an officer in the U.S. Army Reserve. On May 25, 1982, Pruitt was notified of her selection for promotion to the rank of major effective February 6, 1983. Pruitt's outstanding record in both active and reserve service is undisputed.

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**Appendix I**  
**Examples of Expulsions for Which**  
**Performance Was Not an Issue**

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Pruitt, who had no record of allegations of prohibited homosexual conduct, openly admitted in an interview published in the Los Angeles Times on January 27, 1982, that she was a homosexual. The Army, as a result of the article, suspended her promotion to major pending an investigation that ultimately resulted in her being discharged from the reserves based on an Army regulation providing for the discharge of a person who “desires to engage in, or intends to engage in, homosexual acts.” On the basis of her written admission of homosexuality to her commanding officer, an administrative board concluded that separation of Pruitt was warranted, and she was discharged from the reserve effective July 9, 1986. Pruitt filed suit in 1987 in the United States District Court for the Central District of California (See Pruitt v. Weinberger, 659 F. Supp. 625 (C.D. Cal. 1987)) alleging that Army regulations had violated her first amendment rights because they called for punishment solely on the basis of her assertion of her status rather than any conduct in which she had engaged. The District Court dismissed Pruitt’s action for failure to state a first amendment claim, reasoning that acknowledgment of her homosexuality was simply an admission that she fell within a class of people whose presence the Army deemed incompatible with its expressed goals, and it was not for the court to question the wisdom of the Army’s policy. A three-judge panel of the United States Court of Appeals for the Ninth Circuit (943 F.2d 989 (9th Cir. 1991)) agreed with the District Court that Pruitt had failed to state a first amendment claim. The appeals court further held that Pruitt’s case stated an equal protection claim—that she had been discharged based on her mere status as a homosexual without evidence that she had engaged in homosexual conduct while on duty or had performed poorly as an officer—which should have been heard by the District Court. The appeals court held that Pruitt should have been allowed to present evidence to support her equal protection allegations and that the Army should have been required to establish on the record that its regulation had a rational basis. Accordingly, the appeals court reversed the dismissal of Pruitt’s action and remanded the case to the District Court to determine whether the Army’s discrimination against Pruitt was rationally related to a permissible governmental purpose.

The Army has asked for reconsideration of the decision by the full appeals court, contending that Pruitt had not properly raised the equal protection claim in the District Court. The Army’s request is currently pending before the appeals court, and the decision on rehearing is pending before the District Court.

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## Steffan v. Cheney

Former midshipman Joseph C. Steffan was a 4-year student at the United States Naval Academy who was administratively processed for separation 6 weeks prior to graduating at the top of his class and after admitting he was homosexual. Although he was not charged with any homosexual conduct, he resigned on April 1, 1987, and was honorably discharged. On December 22, 1987, he filed suit in the United States District Court for the District of Columbia challenging DOD's policy of excluding homosexuals from active service, alleging that his separation violated his constitutional rights of free speech and association, due process, and equal protection. He sought reinstatement, a bachelor of science degree, and a commission as an ensign.

During the discovery phase of his case, Steffan refused to answer a deposition question asking whether he had engaged in homosexual activities while at the Academy or since departing on the grounds that the question was irrelevant and violated his fifth amendment privilege against self-incrimination.

In November 1989, the District Court (733 F. Supp. 121 (D.D.C. 1989)) dismissed Steffan's suit as a sanction for failure to cooperate in discovery regarding his homosexual activities. The court reasoned that Steffan could not refuse to answer on the grounds of irrelevance since the Navy had the right to refuse his reinstatement for homosexual conduct, and his request for reinstatement raised the issue of whether he was qualified for such relief. Moreover, the court stated that the Navy was entitled to information necessary to defend itself against Steffan's claims to such relief. In addition, the court reasoned that since Steffan had raised the issue of homosexual conduct by seeking reinstatement, he could not use the fifth amendment as a shield to frustrate the Navy's right to prepare a defense.

The United States Court of Appeals for the District of Columbia (920 F.2d 74 (D.C. Cir. 1990)) reversed and remanded to the District Court, holding that the discovery sanction was improper because Steffan's discharge was based solely on the grounds of his admission that he was homosexual; his request for relief on those grounds did not put into issue the question of whether he had engaged in homosexual conduct, unless such conduct was a basis for his separation. On December 9, 1991, the District Court (Cir. No. 88-3669-OG, D.D.C.) upheld the right of the Navy to expel Steffan from the Naval Academy, holding that the military's ban on homosexuals was justifiable on military grounds as well as a reasonable step toward protection against the spread of Acquired Immune Deficiency

Syndrome in the armed forces. Steffan's attorneys have indicated that they will appeal the District Court's decision in the near future.

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## **Dronenburg v. Zech**

Former petty officer James L. Dronenburg was a 27-year-old, 9-year veteran who had served in the Navy as a linguist and cryptographer with a top secret clearance. He had maintained an unblemished service record and earned many citations praising his job performance. During a Navy investigation and an administrative discharge hearing concerning allegations of homosexual conduct, Dronenburg acknowledged that he was a homosexual and that he had repeatedly engaged in homosexual conduct with a 19-year-old seaman recruit in the Navy barracks. On April 21, 1981, Dronenburg was honorably discharged for violating regulations implementing a Navy policy of mandatory discharge for homosexual conduct.

On April 20, 1981, Dronenburg filed suit in federal district court challenging the Navy's policy as unconstitutional on the grounds that it violated his right of privacy and right of equal protection of the laws. The district court granted summary judgment for the Navy, and Dronenburg appealed to the United States Court of Appeals for the District of Columbia. A three-judge panel of the Appeals Court (741 F. 2d 1388 (D.C. Cir. 1984)), concluding that it found no constitutional right to engage in homosexual conduct, applied the rational basis standard in reviewing Dronenburg's constitutional challenges to the Navy's regulation. In applying that standard, the court held that the Navy's policy did not violate Dronenburg's rights of privacy or equal protection because the policy is a rational means of achieving legitimate state interests such as discipline, good order, and morale. In so holding, the court noted the following:

The effects of homosexual conduct within a naval or military unit are almost certain to be harmful to morale and discipline. The Navy is not required to produce social science data or the results of controlled experiments to prove what common sense and common experience demonstrate... 741 F.2d at 1398. [Underscoring supplied.]

A rehearing on the case before a full panel of the appeals court was denied (746 F.2d 1579 (D.C. Cir. 1984)).

## **Ben-Shalom v. Marsh**

Former Army Reserve Sergeant Miriam Ben-Shalom originally enlisted in the Army Reserve in 1974 for a 3-year period, serving as a drill instructor. She apparently was the only woman in her drill sergeant training school course and was acknowledged to be a fine candidate for drill sergeant school, a capable soldier, and an excellent instructor. Ben-Shalom publicly acknowledged her homosexuality at various times during her enlistment: in conversations with fellow reservists, in an interview with her division newspaper, and while teaching drill sergeant candidate class. During an investigation of the matter and at an administrative discharge hearing, there was never any evidence that she had engaged in homosexual conduct. On December 1, 1976, she was honorably discharged under an Army regulation that permitted discharge for any soldier who "evidenced homosexual tendencies, desire or interest, but is without homosexual acts." Ben-Shalom filed suit in the United States District Court for the Eastern District of Wisconsin seeking reinstatement on the basis that her discharge under the regulation had violated her constitutional rights of free speech and privacy and equal protection of the laws. The District Court (489 F. Supp. 964 (E.D. Wisc. 1989)) held the regulation to be constitutionally overboard and a violation of Ben-Shalom's right of privacy. The equal protection claim was denied because the court found she could not establish either a constitutionally protected "property" or "liberty" interest under the fifth amendment. The court ordered her to be reinstated for the remainder of her enlistment term.

Following additional court actions concerning enforcement of the reinstatement order, the Army eventually reinstated Ben-Shalom for her original enlistment term, which was extended by court order due to the protracted litigation.

While serving her original enlistment term, Ben-Shalom, again admitting her homosexuality, sought and was denied reenlistment for another 6-year term. She was denied reenlistment on April 7, 1988, under a new, reworded Army regulation making the status of homosexuality a "nonreviewable morale and administrative" disqualification. On May 3, 1988, Ben-Shalom filed suit in the United States District Court for the Eastern District of Wisconsin, claiming that the new regulation violated the first amendment because it chilled her right to freedom of speech since she would no longer be able to make statements regarding her sexual orientation. She also claimed the regulation violated her fifth amendment right to equal protection of the laws because the regulation was not necessary to achieving a compelling state interest or, alternatively, failed to rationally further a legitimate, articulated state purpose. The district court (702 F.

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**Appendix I**  
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Supp. 1372 (E.D. Wisc. 1989)) agreed with Ben-Shalom, holding that the regulation unreasonably chilled her right to freedom of speech and did not further a compelling state interest in violation of equal protection principles. The United States Court of Appeals for the Seventh Circuit reversed (881 F. 2d 454 (7th Cir. 1989)). The Appeals Court ruled that the regulation did not prohibit speech per se, but prohibited the homosexuality that Ben-Shalom's speech merely identified. The court reasoned that when speech and nonspeech elements are combined in the same course of conduct, limitations on speech are permissible when there is a sufficiently important governmental interest in regulating the nonspeech element. Regarding the due process claim, the court ruled that the deferential rational basis standard of review was applicable and that the regulation met this standard because it promoted a legitimate government interest. In 1990, the United States Supreme Court denied Ben-Shalom's petition to review the case (881 F.2d 454 (7th Cir. 1989), cert. denied, — U.S. —, 110 S. Ct. 1296, 108 L. Ed. 2d 473 (1990)).

# Other Nations' Policies Regarding Homosexuals in the Military

Country	Specifically exclude	Allow
Austria		X
Belgium <sup>a</sup>		X
Canada	X	
Denmark		X
Finland <sup>a</sup>		X
France <sup>a</sup>		X
Germany <sup>a</sup>		X
Italy		X
Japan		X
Luxembourg		X
Netherlands		X
New Zealand	X	
Norway		X
Portugal	X	
Spain		X
Sweden		X
United Kingdom <sup>b</sup>	X	
United States <sup>b</sup>	X	

<sup>a</sup>Although these countries allow homosexuals to serve in their armed forces, they place certain restrictions on homosexuals. These restrictions include (1) limiting their access to confidential documents; (2) excluding them from certain tasks, such as officer and recruiting training; (3) excluding them from leadership roles; and (4) relieving them from duty if the behavior becomes disturbing to other service members.

<sup>b</sup>These countries specifically ask during the recruiting process if the individual has homosexual tendencies in an effort to prevent homosexuals from entering.

# List of Organizations Visited by GAO

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International Association of Chiefs of Police  
110 North Glebe Road, Suite 200  
Arlington, Virginia 22201

International Association of Fire Chiefs  
1329 18th Street, N.W.  
Washington, D.C. 20036

District of Columbia Police Department  
Room 5080  
300 Indiana Avenue, N.W.  
Washington, D.C. 20001

District of Columbia Fire Department  
Suite 201  
1923 Vermont Avenue, N.W.  
Washington, D.C. 20001

New York City Police Department  
1 Police Plaza  
New York City, New York 10038

New York City Fire Department  
250 Livingston Street  
Brooklyn, New York 11202-5884

San Francisco Police Department  
Hall of Justice, Room 525  
850 Bryant Street  
San Francisco, California 94102

San Francisco Fire Department  
260 Golden Gate Avenue  
San Francisco, California 94102

Seattle Fire Department  
301 Second Avenue South  
Seattle, Washington 98104

United States Capitol Police  
119 D Street, N.E.  
Washington, D.C. 20510

# Comments From the Department of Defense

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



FORCE MANAGEMENT  
AND PERSONNEL

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-4000

APR 17 1992

Mr. Frank C. Conahan  
Assistant Comptroller General  
National Security and International  
Affairs Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report entitled--"DEFENSE FORCE MANAGEMENT: DoD's Policy on Homosexuals in the Military," dated March 9, 1992 (GAO Code 391137/OSD Case 8983). The draft report addresses the basis for the DoD policy, describes the procedures, analyzes separation and cost statistics, and reviews various studies, public opinions polls, and policies of other nations.

The report makes no recommendations, but does suggest that Members of the Congress may wish to urge the DoD to reexamine the basis for the policy and determine whether the policy could be revised to better serve Military needs. The Department agrees or partially agrees with some findings, does not agree with other findings, and disagrees with the matter for congressional consideration.

The GAO correctly notes that the DoD policy is based upon Military judgment. In fact, the DoD policy is based upon a series of carefully considered, professional Military judgments and almost 50 years of experience by a succession of civilian and Military leaders. The GAO also appropriately emphasizes that Military judgments about overall combat effectiveness are inherently subjective in nature, and that scientific or sociological analyses are unlikely to ever be dispositive.

An important issue not addressed by the draft report is the distinction between the DoD homosexual exclusion policy and the broader social policy question of homosexuality in American Society. Many citizens view homosexuality as a religious or moral issue; others see it as one of civil rights. There are many aspects to what is very complex and controversial issue.

**Appendix IV  
Comments From the Department of Defense**

The DoD homosexual exclusion policy is however, like other Military personnel policies, based on what contributes to overall combat effectiveness. The GAO addresses both the social policy and the combat effectiveness issues without distinguishing between them.

The draft report may also be misleading in another respect. The DoD policy is not based on any belief that homosexuality is a mental disorder, nor is it based solely on security concerns. Rather, the DoD policy is based on concerns about the effects that homosexuality, that is sexual desire or behavior directed toward a member of one's own sex, has in the Military environment. It continues to be the Department of Defense policy that the presence in the Military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the Military mission.

Finally, the draft report minimizes the importance of years of litigation before the Federal courts. Numerous decisions have established a virtually unanimous body of law affirming the constitutionality of the Military homosexual exclusion policy. Those cases all required a determination by the judicial branch that the DoD policy is rationally related to legitimate Governmental interests. The courts consistently have found that the Military interests underlying the policy--good order, discipline and morale--were substantial and that the Military concern about homosexuality has a basis in fact. The GAO, however, devotes less than a page to that significant body of law.

The detailed DoD comments on the report findings and matter for congressional consideration are provided in the enclosure. Thank you for providing the opportunity to comment on the draft report.

Sincerely,

  
Christopher Jehn

Enclosure:  
As stated

GAO DRAFT REPORT - DATED MARCH 9, 1992  
(GAO CODE 391137) OSD CASE 8983

"DEFENSE FORCE MANAGEMENT: DOD'S POLICY ON  
HOMOSEXUALS IN THE MILITARY"

DEPARTMENT OF DEFENSE COMMENTS

\* \* \* \* \*

FINDINGS

**FINDING A: The Origin of Military Policy on Homosexual Orientation.** The GAO reported that the current Military policy on homosexual orientation is a direct descendent of the policy adopted during the mobilization for World War II. The GAO explained that, at that time, Service policies were grounded both on prevailing sodomy statutes and on the psychiatric belief that homosexuality was a mental disorder. The GAO reported that, according to the DoD, the following definition of homosexuality is used by the Military Services today:

"A homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts...A homosexual act means bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires."

The GAO speculated that if the composition of the Military Services mirrors the general U.S. population, the number of homosexuals in the Military is between 5 percent and 10 percent--or 100,000 to 200,000 personnel.

The GAO observed that, under current DoD guidance, homosexuality has been determined to be incompatible with Military Service. The GAO noted that the DoD policy was revised in 1982 and in 1986 (1) to establish uniform policies and procedures for all the Military Services, and (2) to provide a stronger basis for defending the policies and procedures in the courts. The GAO reported that the DoD directive precludes retention of an individual determined to be homosexual, except in very limited extenuating circumstances. The GAO also noted that the directive also affords the right to appeal all separations due to homosexuality. In addition, the GAO observed that, under the 1982 directive, homosexuals are no longer processed for separation by reason of unsuitability or

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misconduct--instead, they are processed under the category "homosexuality" and, therefore, may receive an honorable or a general discharge. The GAO also reported that a Service member, separated from Service under DoD policy may seek review by a Federal court as to whether the discharge was proper. (pp. 17-22/GAO Draft Report)

**DOD COMMENTS:** Partially concur. While it is true that the DoD has had an exclusionary policy on homosexuals serving in the Military since World War II, the GAO never clearly states that the DoD no longer bases its policy on any belief that homosexuality is a mental disorder. Stating that the current policy is a direct descendent of the World War II policy--which the GAO states was based, in part, on the belief that homosexuality was a mental disorder--could mislead readers into concluding that the current DoD policy is based on similar concerns. The GAO emphasis (later in the report) on studies by the American Psychiatric Association and the American Psychological Association reinforce such a misconception. It is important that it be made clear that the current DoD policy is not based upon any considerations of mental disorders among homosexuals.

The DoD policy is based solely upon concerns about homosexuality itself--that is, sexual desire or behavior directed toward a member of one's own sex. The policy stems from the unique requirements of the Military environment and the effect of such conduct on the ten separate concerns that underlie the policy. Those underlying concerns led to the professional Military judgement that the exclusionary policy promotes overall combat effectiveness. Some of those concerns, such as discipline, good order, and morale are so important they justify the policy by themselves. Other concerns, such as security, are of relatively lesser significance.

There are three critical factors underlying the DoD exclusionary policy on homosexuals that need to be recognized. First, the DoD policy is the result of the considered professional Military judgement based on years of experience, of civilian and Military leaders of the Department of Defense. Second, the policy is a matter of professional Military judgement, not scientific or sociological analysis. Third, the DoD policy is based solely on what contributes to overall combat effectiveness (i.e., accomplishment of the Military mission).

Based on surveys of the adult population of the United States by the Kinsey Institute in the 1940s and 1950s, the GAO speculates that 5 to 10 percent of Military personnel

are homosexual. However, at the same time, the GAO asserts that the Kinsey "samples of patients were flawed." It is not clear what predictive value or relevance surveys of the general public 40 or 50 years ago have to today's Military. The GAO also cites unnamed researchers for the proposition that the composition of the Military likely mirrors American society with respect to the number of homosexuals in the Military. The GAO fails to point out, however, the obvious differences--(1) the initial screening out of homosexuals during the enlistment/appointment process, (2) the limiting effect of the exclusion policy itself, and (3) the lack of acceptance of homosexuality in the Military environment.

In addition, the GAO does not put the discharges due to homosexuality in perspective. Such discharges make up less than one-third of 1 per cent of all discharges in any year, with fewer than one out of every 1,500 Military personnel discharged because of homosexuality.

Concerning Military administrative discharges, it needs to be recognized that the process is a complex one. For example, Service Members may seek judicial review of pending administrative discharge actions while still on active duty. Also, administrative boards do not make "innocent" or "guilty" determinations--they are not criminal courts. In addition, enlisted Service Members may be separated even though a Board recommends retention. On the other hand, Service members may be retained even if a board recommends separation, if the discharge authority makes certain findings. Also, Service Members do not appeal administrative separation decisions to Boards for the Correction of Military/ Naval Records or Discharge Review Boards. Instead, they petition those boards for relief--which is a separate administrative process.

**FINDING B: DoD Separation of Homosexuals (Management by Category)**. The GAO reported the DoD policy states categorically that homosexuality is incompatible with Military Service because the presence of persons who engage in, or demonstrate a propensity to engage in, homosexual conduct seriously impairs the accomplishment of the Military mission. The GAO explained, therefore, identification as a homosexual is the only criterion that needs to be met to discharge a person under that separation category--no specific determination of an individual's negative impact on the Military mission is needed prior to separation. The GAO found, for example, that in some cases Service members have been expelled for homosexuality despite their exemplary service records.

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The GAO further reported that, when individuals have contested those decisions, discharges for homosexuality have been upheld both in the Military administrative review process and in the civilian court system. The GAO found that to be so even in cases involving personnel with exemplary Service records.

The GAO found that, between FY 1980 and 1990, 16,919 U.S. servicemen and women were discharged under the separation category of homosexuality--an average of about 1,500 annually. The GAO reported that (1) most were enlisted, (2) most were men, and (3) most were white. The GAO noted that the cited statistics may be understated because they do not include separations under categories such as misconduct, personality/behavior disorder, and unfit/unsuitable--which also could include homosexuals. (pp. 26-28/GAO Draft Report)

**DOD COMMENTS:** Partially concur. The GAO is describing a concept that is vital to the management of the Military Services--i.e., management by category. That concept is not, however, discussed and, thus, the statements in the report could be interpreted to imply that the GAO is questioning the propriety of the management of Military personnel by category.

Of necessity, the DoD creates categories to guide accession and retention decisions. Categories include those mandated by law, such as age and citizenship (for officers), as well as those mandated by regulation--such as height and weight limits, physical and mental standards, and single parenthood. Each regulatory category is predicated on the professional Military judgement of DoD leaders that creating the category contributes to overall combat effectiveness.

The DoD exclusion policy on homosexuals serving in the Military clearly states that, because homosexual conduct in the Military environment adversely affects overall combat effectiveness, homosexuality is incompatible with Military Service. Thus, the DoD discharges homosexuals regardless of their individual performance records. The GAO is, therefore, correct in stating that, in some cases, Service Members have been separated for homosexuality despite having exemplary performance records.

The statistics cited by the GAO accurately reflect the number of Military personnel discharged under the DoD separation code of homosexuality. The figures are not, however, understated. Any statement that the DoD considers

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them to be understated is inaccurate. Rather, it is the DoD position that the separation code of homosexuality does not include all homosexuals who are separated from the Military.

Homosexual Military personnel whose sexuality is not known may be separated administratively for various reasons, like any other Service Member. For example, if they have a medical problem, they may be separated for medical reasons; if their Military performance is bad they may be separated for unsatisfactory/substandard performance; and if they complete their obligated service, they may be separated or retired for that reason.

**FINDING C: Discharges By Service.** The GAO found that the Navy, representing 27 percent of the active force during the period from FY 1980 through FY 1990, accounted for 51 percent of the total number of discharges (8,638 cases). The GAO observed that, while the Army represented 37 percent of the active force, it accounted for 25 percent of all homosexual discharges (4,230 cases), and the Air Force, representing 27 percent of the active force, accounted for 18 percent (2,993 cases). The GAO reported that the Marine Corps, however, represented 9 percent of the active force and only 6 percent of the total number of discharges (1,053 cases).

The GAO speculated that, while the total number of reported homosexual discharges DoD-wide dropped 47 percent between FY 1980 and FY 1990, the trend is probably not an accurate representation of the level of discharges associated with homosexual activity. The GAO explained that local commanders have the flexibility to handle situations involving homosexuality administratively (without bringing in an investigative agency) and to select an alternative separation category to homosexuality for discharging personnel. The GAO also pointed out that few officers are separated under the homosexuality category, because officers are more likely to be given the option of resigning--which eliminates the investigative process and the homosexual categorization. (pp. 28-30/GAO Draft Report)

**DOD COMMENTS:** Concur. The GAO discharge statistics are correct. Concerning the Navy, due to the Navy life at sea during extended deployments, identification of homosexuals may well occur more often than in the other Services. The DoD, therefore, draws no conclusions.

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The GAO also correctly states there has been a 47 percent decline in the number of discharges under the homosexuality separation code, but then speculates that the decline is probably not an accurate representation of the level of discharges associated with homosexual activity. It is emphasized that the alternative separation categories available today are the same as they have been for 10 years and the option of officer resignation is the same now as it has been for 10 years--there has been no change in DoD or Service policy in either area since 1981. Further, the 47 percent decline in administrative separations by reason of homosexuality reflects only cases where there was no criminal activity, or where the command decided that whatever criminal activity was present did not warrant court-martial.

It should be noted that the GAO also reviewed statistics from the Service criminal investigative agencies (see Finding I). Those statistics reflect cases where there were allegations of serious criminal activity. Of interest, the GAO reported that there also was a similar decline in cases involving homosexuality investigated by the criminal investigative agencies--a 48 percent decrease in only five years (1986-1990).

**FINDING D: Discharges By Race.** The GAO reported that, in each branch of the Military, whites were discharged for homosexuality at a rate consistently higher than their rate of representation. The GAO found that DoD-wide, for the period from FY 1980 through FY 1990, white men and women constituted 83 percent (14,125 cases) of all personnel discharged for homosexuality, while only making up about 72 percent of all personnel serving. The GAO observed that, conversely, black men and women accounted for only 13 percent (2,204 cases) of all discharges versus 20 percent of the total serving in the Military. (p. 31/GAO Draft Report)

**DOD COMMENTS:** Concur.

**FINDING E: Discharges By Gender.** The GAO reported that, in each branch of the Military Services, women were discharged for homosexuality at a rate consistently higher than their rate of representation. The GAO found that DoD-wide, from FY 1980 through FY 1990, women constituted 23 percent of homosexual discharges (3,900 cases), as contrasted with their representation as just 10 percent of all Military personnel. The GAO observed that, while women in

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all the Services were discharged for homosexuality at a rate consistently ranging two to three times higher than their rate of representation, that pattern was most noticeable in the Marine Corps, where the discharge rate for women was almost six times their rate of representation. The GAO found that women constituted 28 percent of all homosexual discharges (303 cases) in the Marine Corps, but only 5 percent of all personnel serving. The GAO noted that, conversely, on a DOD-wide basis, men represented 77 percent of discharges for homosexuality and 90 percent of all Military personnel. (p. 32/GAO Draft Report)

**DOD COMMENT:** Concur. The GAO statistics are correct, but could be misinterpreted. In a force as small as the Marine Corps, where women make up an even smaller percentage of the force, changes of even a few discharges more or less will greatly affect the percentages. In addition, the sample size used (i.e., Women Marines discharged due to homosexuality) is so small that any conclusions based on such a small sample size would be questionable. For example, in FY 1990, the Marine Corps discharged only ten women due to homosexuality.

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**FINDING F: Discharges By Race and Gender.** The GAO reported that, in each Military Service, white women were discharged for homosexuality at a rate consistently higher than their rate of representation. The GAO found that DOD-wide, for the period from FY 1980 through FY 1990, white women constituted 20 percent of those discharged for homosexuality (3,421 cases), while they represented just 6 percent of all personnel serving. The GAO observed that the disproportionate discharge rate of white women was evident in all of the Services, but was most noticeable in the Marine Corps. The GAO noted that Marine Corps women constituted 24 percent of such discharges, while they represented just 3 percent of the personnel serving. The GAO found, conversely, white men represented 63 percent (10,704 cases) of such discharges and 66 percent of all serving. (p. 33/GAO Draft Report)

**DOD COMMENTS:** Concur. See DoD response to Finding E.

**FINDING G: Discharges By Rank.** The GAO reported that enlisted personnel have been discharged for homosexuality at a rate consistently higher than their rate of representation. The GAO noted, however, that their overall rate of discharge is also higher than that of officers. The GAO found that DoD-wide, for the period from FY 1980 through

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FY 1990, enlisted personnel constituted 99 percent of those discharged for homosexuality, while making up 86 percent of all personnel serving in the Military--a difference of 13 percent. The GAO observed that, conversely, officers represented only 1 percent of such separations and 14 percent of all those serving in the Military Services. (p. 34/GAO Draft Report)

**DOD COMMENTS:** Concur.

**FINDING H: Discharges By Occupational Code.** The GAO reported that DOD-wide, about 50 percent of all enlisted personnel, who served during the 11-year period it reviewed, were employed in the three job categories of (1) Electrical/Mechanical Equipment Repairer, (2) Infantry, Guncrews, Seamanship, and Functional Support, and (3) Administration. The GAO found that those three job categories accounted for approximately 36 percent of the homosexual discharges during the period. The GAO also found, however, that almost 24 percent of the homosexual discharges came from the "Nonoccupational" category (which includes patients, prisoners, and students), while only about 9 percent of the overall Military personnel belonged to that category. The GAO concluded that those personnel may have been re-categorized from other categories prior to their discharge or had been identified as homosexuals while incarcerated or in training. (p. 35/GAO Draft Report)

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**DOD COMMENTS:** Partially Concur. Although the statistics are correct, the DoD conclusion regarding the non-occupational category is speculation.

**FINDING I: Investigations of Homosexuality.** The GAO reported that there are three Military criminal investigative agencies within the DoD--(1) the Army Criminal Investigation Division, (2) the Air Force Office of Special Investigations, and (3) the Naval Investigative Service. The GAO noted that, when requested, those agencies investigate allegations of homosexuality and any associated charges of criminal activity involving force, assault, and battery. The GAO found that consistent and reliable information on investigations of homosexuality was not available from the three investigative agencies before 1986, and most did not maintain data by the categories of race, gender, rank, or occupational code. The GAO reported that, since FY 1986, the DoD investigative agencies experienced a total investigative caseload of about 186,000, of which 3,663 (an average of approximately 730 per year)

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were investigations related to homosexuality. The GAO explained, however, that the figure may be understated because each DoD investigative agency has its own policies and procedures governing investigations of homosexuality and its own coding process. The GAO reported, for example, that Navy investigations of homosexuality are categorized under the same offense code as sodomy and indecent assault, and investigations of homosexuality that are handled administratively at the local command level may not be reported or recorded in the system as such.

The GAO reported that, for FY 1986 through FY 1990, the Navy conducted 68 percent of all DoD-wide investigations of homosexuality, the Air Force conducted 26 percent, and the Army conducted 6 percent. The GAO found that, while overall investigative budgets appear to be increasing, the number of investigations of homosexuality appears to be decreasing. The GAO explained that the number of investigations of homosexuality throughout the Services dropped from 907 to 472-- a decline of 48 percent. The GAO reported that DoD officials speculated the drop could, in part, be due (1) to the shift in responsibility for homosexuality cases from investigative agencies to the Military police or the provost marshal, (2) to the advent of a higher caliber all-volunteer force, and (3) to a new focus. (pp. 35-38/GAO Draft Report)

**DOD COMMENTS:** Partially concur. There are no criminal investigations of "homosexuality," per se. The Military criminal investigative agencies only investigate specific allegations of criminal activity. Certain sex-related crimes, such as sodomy, may encompass either homosexual or heterosexual behavior.

In addition, the statistics provided by the three Service criminal investigative agencies (and tabulated at Appendix IV of the report) are not comparable. The numbers for the Air Force Office of Special Investigations reflect sex crimes involving homosexual behavior. The Army Criminal Investigations Command numbers reflect only those criminal investigations involving homosexual behavior on file in the central-ized Crime Records Center index, not all investigations involving homosexual behavior. However, the Naval Investigative Service numbers reflect both heterosexual and homo-sexual sodomy/indecent sexual acts cases. The Naval Investigative Services statistics in appendix IV are, therefore, inaccurately labeled as "homosexual."

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The error in the Naval Investigative Service statistics means the GAO statement that there were 3,663 (1986-1990) investigations related to homosexuality by the three criminal investigative agencies is not valid (see report figure 2.7 and the related analysis). In addition, the statement that the Naval Investigative Service conducted 68 percent of the investigations also is not valid.

The report notes that the number of criminal investigations involving homosexual behavior declined by 48 percent during the 1986-1990 period. As noted above, this figure includes heterosexual behavior reported by the Naval Investigative Service. However, looking solely at the Office of Special Investigations and the Criminal Investigations Command statistics, a similar drop is apparent.

**FINDING J: Cost of Expulsion.** The GAO reported that the costs of administering the DoD exclusion policy were not available because the DoD does not maintain records on such costs on a routine basis. The GAO noted that the only costs that were readily identifiable were the costs of replacing troops discharged for homosexuality. The GAO estimated that, during FY 1990, those costs totaled about \$27 million. The GAO reported that other costs were not known--such as (1) the cost of original training and compensation, (2) the cost of out-processing, (3) the cost of court actions, and (4) the costs of dismissing cadets from training programs . (p. 38/GAO Draft Report)

**DOD COMMENT:** Nonconcur. Each year the Department of Defense separates about 300,000 Service members, approximately 100,000 of whom are separated for force management reasons. Homosexuals make up less than one-third of 1 percent of that total.

In estimating the cost, the GAO apparently assumed that none of those separated for homosexuality would be lost through normal attrition or for force management reasons. There also was no recognition that approximately one-half the enlisted force does not serve beyond the initial enlistment. The GAO cost estimate is, therefore, well in excess of what reasonably could be projected under normal circumstances.

Moreover, for the past 4 years the DoD has been required to reduce the Military force from 2.17 million in 1987 to 1.64 million by the end of FY 1995. Therefore, if the 1,000 personnel discharged annually during that period by reason of homosexuality had not been discharged, the DoD

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would have had to either discharge 1,000 other personnel or reduce accessions by 1,000. Thus, there was no replacement cost during that period and there will be none for some time in the future.

**FINDING K: Support for the DoD Policy on Homosexuality.**  
The GAO reported that, except for undertaking efforts to analyze the security risk associated with homosexuals, the DoD has conducted or commissioned only limited research to develop empirical evidence supporting the validity of the premises and rationale for its current policy on homosexuality. The GAO noted the DoD efforts to examine the security risk issue have concluded that there is no factual data to substantiate that specific premise. The GAO also pointed out that the professional psychiatric, psychological, and sociological associations and other experts familiar with the research conducted on homosexuality in the general population tend to disagree with the basic rationale underlying the DoD policy.

The GAO concluded that the DoD policy is not based on scientific or empirical data, but rather on the considered judgment of Military professionals, who know what it takes to field an effective fighting force to protect the vital interests of the nation. The GAO observed, however, that such judgment is primarily anecdotal in nature and based on the opinions and experiences of individuals in various leadership positions throughout the DoD and the Services. The GAO found that the policy is based on the conviction that homosexual behavior is incompatible with Military Service in that it interferes with maintaining good order, discipline, and morale.

The GAO observed that the DoD and the Services understand the elements critical to ensuring the proper emotional bonding of personnel in Military units. The GAO reported that, according to DoD officials, homosexuality is not an acceptable behavior in the eyes of society, and Military policy should reflect that standard. The GAO reported that the courts have consistently upheld the DoD position on homosexuality. The GAO concluded that the Department has no intention of changing its existing policy.  
(pp. 39-41/ GAO Draft Report)

**DOD COMMENT:** Partially concur. The responses to Findings M and O address the DoD studies and other expert opinion mentioned by the GAO.

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The DoD is concerned the GAO statement that the professional Military judgement underlying the exclusionary policy on homosexuals is "primarily anecdotal" in nature could be interpreted to imply professional Military judgement is not a valid basis for Military personnel policies. It is important to emphasize the DoD depends upon the professional judgement of Government officials to make many and various important decisions that are not capable of being determined authoritatively by scientific means or proven by studies. The Military homosexual exclusion policy is one of those types of decisions.

**FINDING L: Judicial Consideration of DoD Policy.** The GAO reported that the courts consistently have upheld the DoD policy as constitutional under a rational basis standard of review. The GAO explained that, under the standard, the Government is only required to establish that regulations implementing the policy are rationally related to legitimate Governmental interests. The GAO observed that the courts, in giving special deference to Military judgments, have accepted as legitimate Governmental interests such Military objectives as good order, morale, and discipline--without requiring the Government to produce scientific evidence to support the policy. (pp. 42/GAO Draft Report)

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**DOD COMMENT:** Concur. Federal courts have upheld the Military homosexual exclusion policy and accepted its rational relationship to legitimate Military purposes. In fact, since the current DoD policy on homosexuality became effective in 1982, every court that has ruled finally on the issue has upheld the homosexual exclusion policy.

In consistently upholding the DoD policy, the courts have not required scientific evidence to support the DoD policy because the Military constitutes a specialized community, governed by a separate discipline from that of the civilian community. The courts consider the complex, subtle, and professional decisions as to the composition, training, equipping, and control of a Military force to be a matter of professional Military judgement.

**FINDING M: Studies Initiated By the DoD and the Services Do Not Support the Policy.** The GAO reported that the DOD and the Military Services could identify only two major studies initiated by the DOD and the Services about homosexuality in the Military--(1) the Navy 1957 "Crittenden Report" and (2) the Personnel Security Research and Education Center efforts, which were initiated in 1986.

The GAO found that the Crittenden Report was unable to uncover any statistical data to prove or disprove that homosexuals are more of a security risk than those engaged in other unsocial or immoral activity. The GAO noted that even the number of cases of blackmail revealed as a result of past investigations, which were cited to the Board, was negligible. The GAO observed the Crittenden Report determined that a homosexual is not necessarily more of a security risk, per se, than other transgressors of moral and criminal codes. The GAO noted that the report further determined that the propensities and vulnerabilities associated with homosexual activity, as in the case of promiscuous heterosexual activity, do provide serious security implications.

The GAO further reported that more recent efforts involving the examination of the correlation between homosexuality and security risk violations were undertaken by the Defense Personnel Security Research and Education Center at the direction of the Deputy Under Secretary of Defense for Security Policy. The GAO reported that the initial product from the center, entitled, Nonconforming Sexual Orientation and Military Suitability, was completed in December 1988, and echoed the findings of the Crittenden report. The GAO stated that the report revealed no evidence that homosexuality is related to security risk violations or that sexual orientation affected the suitability of an individual for Military Service. The GAO noted that the report concluded that the development of ethnology as an area of study has made possible more precise examination of the influence of biological factors on the formation of sexual orientation.

The GAO reported that, although completed in late 1988, the report was not finalized until September 1991--because of delays associated with the extensive review and revision it underwent. The GAO found that, although the scope of the finalized version of the report, dated September 1991, was more narrow (that is, it only addressed the security issue), it contained the same basic information included in the 1988 version. The GAO observed that the 1991 report stated:

"Few data have been put forward to support the belief that being homosexual predisposes a person to unreliability, disloyalty, or untrustworthiness."

The GAO noted that the conclusions and recommendations of the 1991 report were considerably narrower than those included in the 1988 version. (pp. 43-53/GAO Draft Report)

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**DOD COMMENTS:** Nonconcur. The GAO errs in stating that the two cited reports do not support the DoD policy. The Crittenden report clearly supports the policy. The Personnel Security Research and Education Center "report" (a 1988 draft of a study that was never completed) misstated the DoD policy; thus, its "analysis" was flawed. The completed Personnel Security Research and Education Center report, published in 1991, addressed only civilian security clearance policy and had nothing to do with the Military homosexual exclusion policy.

As stated, the Crittenden study was to look at the Navy procedures and standards in separating homosexuals. The premise that homosexuality is incompatible with Military Service was the foundation for the study, and the report did not question that premise.

The other "DoD study" that was addressed in the GAO report relates to a misdirected draft prepared by researchers for the Personnel Security Research and Education Center. The Center was tasked with studying the nexus, if any, between homosexuality and security clearances for DoD civilian employees and Government contractors. The purpose of the study was to help the Department assess homosexuality as a factor in adjudicating security clearances for civilian and contractor employees. It was never commissioned to address the homosexual exclusion policy--an entirely separate and broader issue based on uniquely Military concerns.

Notwithstanding its charge, in 1988, the Personnel Security Research and Education Center submitted a draft entitled--Nonconforming Sexual Orientation and Military Suitability. That draft document represented an abandonment of the tasking that had been given to the Center--instead, focusing on the Military homosexual exclusion policy. The authors of the draft did not discuss their research with those in the DoD most knowledgeable about the policy. As a result, they misunderstood the policy and its basis, and their subsequent "analysis" was flawed. The opinions expressed in the draft document were solely those of the authors, and did not and do not reflect those of the Department of Defense. It is, therefore, not accurate to refer to the Personnel Security Research and Education Center 1988 draft as a DoD report, or to consider its tentative findings, as they relate to the Military homosexual exclusion policy, to be authoritative.

**FINDING N:** Recent DoD Statements Indicate Security Risk Is No Longer A Concern. The GAO reported that recent testimony

by the Secretary of Defense indicated that there have been times in the past when the incompatibility of the gay lifestyle with Military service was based on a security risk notion. The GAO reported that the Secretary indicated it now is more a matter of the need of the Department to maintain the combat-effectiveness of the Military units--and, for that reason, the DoD has continued to pursue a policy that states certain kinds of individuals in our society do not serve in those combat units.

The GAO further reported that the Chairman of the Joint Chiefs of Staff, in a February 1992 statement before the House Budget Committee, expressed agreement with the Secretary of Defense. The GAO observed the Chairman indicated that the ban is not justified by the onetime DoD contention that homosexuals pose a greater security risk--but, instead, is based on the premise that homosexual behavior is inconsistent with maintaining good order and discipline. The GAO noted that the Chairman indicated that it is difficult, in a Military setting where there is no privacy, to introduce a group of individuals--who are proud, brave, loyal, good Americans but favor a homosexual lifestyle--to a group of heterosexuals, who would prefer not to have a person of the same sex find them sexually attractive. (pp. 53-54/GAO Draft Report)

**DOD COMMENT:** Partially concur. Both the Secretary of Defense and the Chairman, Joint Chiefs of Staff, have stated that the Military homosexual exclusion policy is not based solely on security considerations. In the case of Military personnel other factors, such as good order and discipline, unit cohesion, and morale are much more important factors. For DoD civilian employees, homosexuality, per se, is not grounds for denial of employment or security clearances. It is, however, a relevant factor in a determination of whether a person should be entrusted with classified information. Its significance must be determined on a case-by-case basis, in light of the particular circumstances involved.

**FINDING O: Scientific Evaluations of Homosexuality.** The GAO reported that scientific and medical studies tend to disagree with the long-standing Military policy, which holds that homosexuals are incompatible with Military service. The GAO noted that the American Psychiatric Association and the American Psychological Association, as well as other mental health professionals, do not support the DoD exclusion. The GAO noted that those organizations are trying to convince the Military to change the DoD policy to improve the mental health and functioning of its members

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and to help end the discrimination that they believe can lead to psychological distress and psychiatric disorder. The GAO observed that those organizations have taken steps, including (1) supporting dialogue between gay and lesbian groups and the Military, (2) banning of Military advertising and recruiting either at association meetings or in association publications, and (3) protesting Military training programs on university and college campuses, such as the Reserve Officer Training Corps programs.

The GAO reported that current research tends to support the idea that homosexuality can no longer be viewed as abnormal, if a significant minority of the population engage in it at some time in their adult lives. The GAO further reported that many experts believe that the Military policy (1) is unsupported, unfair, and counterproductive, (2) has no validity according to current scientific research and opinions, and (3) appears to be based on the same type of prejudicial suppositions that were used to discriminate against blacks and women before those policies were changed. The GAO explained many experts also believe the DoD exclusion policy perpetuates discrimination against homosexuals, which leads to an atmosphere that is not conducive to the mental health of both the homosexual individual and those prejudiced against them. (pp. 54-57/GAO Draft Report)

**DOD COMMENT:** Partially concur. The American Psychological Association and the American Psychiatric Association have written to the DoD expressing their disagreement with the DoD policy, but neither addressed the issue of overall combat effectiveness. As the GAO noted, instead, both groups focused on those arguments with which the DoD simply takes no position because they are not the basis for the exclusionary policy--i.e., that homosexuality is not a mental disorder and/or that homosexuality, per se, implies no impairment in judgement, stability, reliability, or general social or vocational capability.

In short, both groups, as well as many other social science experts, look at the Military homosexual exclusion policy from a social policy perspective. They focus on homosexuals in the general population and the relationships between homosexuality and the mental health of the individual. The DoD, on the other hand, looks at the policy solely from a Military, overall combat effectiveness standpoint, and draws no conclusion about the broader social issue.

**FINDING P: Public Attitudes and Other Views.** The GAO reported that recent national polls have shown a shift in

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society thinking on homosexuality. The GAO noted that previous national polls, conducted in the mid-1980s, showed an increasing intolerance of homosexuality at a time when the fear of contracting Acquired Immune Deficiency Syndrome (AIDS) was at its highest point among the general public, but new surveys show that the trend is reversing. The GAO reported that one national poll shows that the public attitude toward homosexuals serving in the Military has changed. The GAO observed that 81 percent of Americans believe that homosexuals should not be discharged from Military Service because of their sexual orientation, while 14 percent believed they should. (pp. 58-60/GAO Draft Report)

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**DOD COMMENT:** Partially concur. The GAO summarizes three public opinion polls, but does not include them in the report. Therefore, it is difficult to make specific comments. However, other information from the public, and from within the DoD, also is of interest.

See comment 1.

The DoD receives many letters concerning its exclusion policy on homosexuals. In the past, the DoD heard mainly from those opposed to the policy. More recently, however, that has not been the case. Mail from the public now is running more than 2 to 1 in support of the policy.

See comment 2.

Moreover, a recent Navy study concluded that, despite the apparent increase in society's acceptance of homosexuals, there was virtually no support among Navy women and men at all levels, and at every site visited, to change the current Navy homosexual exclusion policy. The study noted that, although many young people entering the Navy today view the homosexual life style as a legitimate choice, experience with the exceptionally close living and working environment in the Navy tends to convince many of the junior personnel homosexuality cannot be tolerated among Navy members.

See comment 3.

**FINDING O: Other Nation Policies.** The GAO reported that different nations have various, sometimes diametrically opposed, approaches to (and legislation affecting the presence of) homosexuals in their armed forces--and some do not view homosexuality as a legal or a Military issue. The GAO found, for example, that among 18 country policies it reviewed, five had policies specifically excluding homosexuals from serving in the armed forces, while seven had no written policy addressing homosexuality. The GAO noted that some countries, such as Australia, Canada, and Britain, have very strict policies and procedures. The GAO noted, however, that the current Australian policy is

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being reviewed and may be updated to balance the Military requirements against human rights (privacy, freedom, and so on). The GAO reported that the Canadian Defense Force also has had a long standing policy of not accepting declared homosexuals into the Canadian Defense Forces. The GAO reported that the British Defense Force, like the U.S. Military, is an all-volunteer force and is opposed to having homosexuals serve in the Military. The GAO noted that the British Defense Force does not knowingly accept homosexuals. (pp. 59-63/GAO Draft Report)

**DOD COMMENT:** Concur. Military personnel policies in the United States are, however, based upon the unique factors in our nation that go into the overall combat effectiveness equation. Thus, while policies in other nations may be of interest, they can never be dispositive. The U.S. must make its own policies based upon what is best for the national security.

**FINDING R: Police/Fire Department Policies.** The GAO reported that all but one of the eight police and fire departments (in four cities) it visited had written policies dictating nondiscrimination on the basis of sexual preference or allowing the employment of homosexuals. The GAO noted that many of the policies dated as far back as the 1970s. The GAO reported that none of the officials it interviewed viewed homosexuality as an issue. The GAO reported that, in terms of security breaches, most police and fire department officials stated that, while some assignments are considered confidential or secret in nature, most department officials believed that homosexuals, whether "closeted" or admitted, were no more subject to breaches of security or blackmail than heterosexuals. The GAO pointed out that most of the police and fire departments with policies endorsed by the city mayors and department chiefs target their recruiting to gay and lesbian communities, as well as to the communities of blacks, Hispanics and Asians. (pp. 63-65/GAO Draft Report)

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**DOD COMMENT:** Partially concur. While not disputing the information relating to police and fire departments, the DoD is concerned about possible comparisons with the Military Services. Although there are some organizational similarities between police or fire departments and the armed forces, there are also some very fundamental differences. The mission and related training, deployments, work environment, authority of the commander over subordinates, living conditions, and lack of personal privacy combine to make any such comparison misleading.

**FINDING 8: Overall GAO Conclusions.** The GAO reported that, for more than 50 years, the DoD and its predecessors have had a policy of excluding homosexuals from Military Service, based on the belief that the presence of homosexuals seriously impairs the accomplishment of the Military mission. The GAO noted that, because the policy is based largely on Military judgment, it is difficult to challenge--and the courts have routinely accepted the DoD judgment. The GAO concluded, however, that the DoD policy is not based on scientific or sociological analysis. The GAO further concluded it is unlikely that any such analysis could prove conclusively the policy is right or wrong. The GAO pointed out that, although studies of the security risk issue have tended to refute the DoD position, there are other bases for the policy that do not lend themselves to conclusive analysis. Recognizing that more study alone cannot solve the problem, the GAO nonetheless concluded that it may be appropriate for the DoD to take a new look at its policy.

The GAO reported that its conclusion is based on the following factors:

- since the DOD last examined the policy in 1982, public attitudes toward homosexuals have been changing, and DoD studies have raised questions about the policy;
- several National Atlantic Treaty Organization countries allow homosexuals into the Military or are reassessing their policies on homosexuals;
- many U.S. police and fire departments have accepted homosexuals into their ranks and have not reported any adverse impacts;
- recent congressional testimony by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff indicate that the concern over homosexuals being security risks, which was once a significant basis for the policy, is no longer a serious issue;
- there are many avenues for discharging Military personnel, including homosexuals, who have behavior problems and changing the policy to permit homosexuals to remain in the Military would not entail condoning inappropriate behavior; and

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- a careful look at the policy may reveal a middle ground similar to what some other countries have taken--for example, discouraging homosexuals from joining the Military but not automatically discharging those who are in. (pp. 66-67/GAO Draft Report)

**DOD COMMENTS:** Nonconcur. Each of the factors appearing in the overall conclusion section has been addressed separately in other findings. There is no new information presented that would lead the DoD to consider changing the Military homosexual exclusion policy.

\* \* \* \* \*

**MATTER FOR CONGRESSIONAL CONSIDERATION**

**SUGGESTION:** Because (1) it has been ten years since the DOD last examined its policy and regulations, (2) public attitudes toward homosexuality are changing, (3) formal DOD studies of the issue have challenged the [security] basis for its policy, and (4) DOD officials have stated that the Department will not change its policy unless it is mandated to do so by the Congress--the GAO suggested that Members of the Congress consider directing the DOD to reexamine the basis for the policy and determine whether the policy could be revised to better serve Military needs. (p. 68/GAO Draft Report)

**DOD COMMENT:** Nonconcur. The DoD continually reviews all Military personnel policies as the situation warrants, and the Military homosexual exclusion policy is no exception. There is no new information in the GAO report related to overall combat effectiveness that would cause the DoD to change that policy.

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**RECOMMENDATIONS TO THE DEPARTMENT OF DEFENSE**

NONE.

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The following are GAO's comments on DOD's letter dated April 17, 1992.

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## GAO Comments

1. We believe that we have included sufficient evidence in the report to establish a clear trend toward increasing support for permitting homosexuals in the work place. Table 4.1 shows an increasingly more positive attitude on an identically worded opinion question that was administered six different times over 14 years to the same population by the same survey organization.
2. Tabulations of self-initiated letters are not valuable when, as in this case, stronger evidence is available in the form of more technically sound, public opinion poll evidence.
3. The information that DOD provides about its own "recent Navy study" is not sufficient to determine the value of the study. For example, DOD does not provide information about the sample design, the reliability of the opinion measurement process, the actual questions asked of personnel, or steps, if any, that were taken to ensure confidentiality for those who were critical of existing policies.

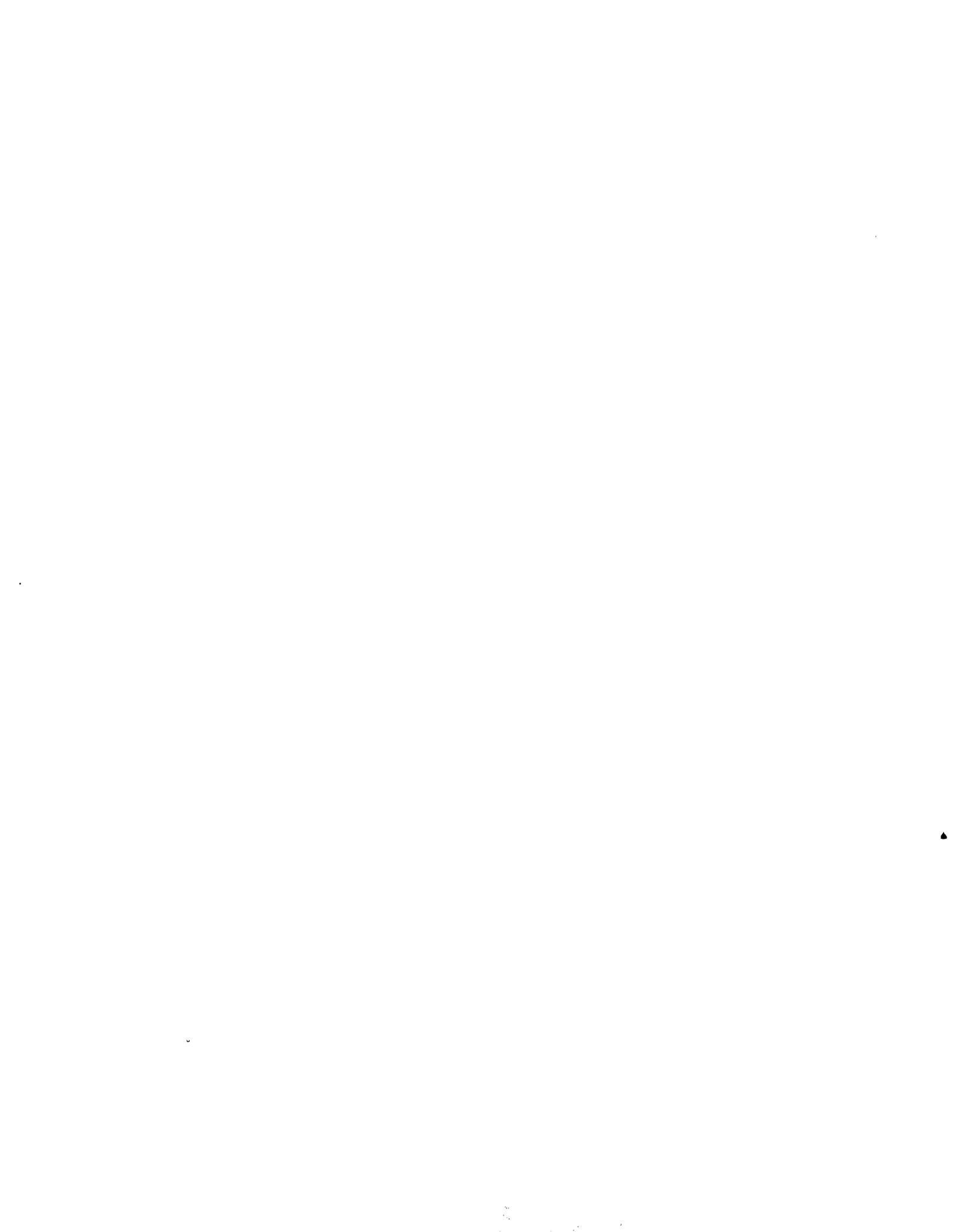
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