

## American Psychological Association

### Report of the Task Force on Sexual Orientation and Military Service

January 16-18, 2004

The Board of Directors established the Task Force on Sexual Orientation and Military Service in October 2003. Board of Directors Member Barry Anton, PhD, was appointed Task Force chair. The Board charged the Task Force to consider issues of common concern between the Division of Military Psychology (Division 19) and the Society for the Psychological Study of Lesbian, Gay, and Bisexual Issues (Division 44), including the APA ban on advertising by the U.S. military in APA publications. Then APA President Robert Sternberg solicited nominations for the Task Force from the presidents of Divisions 19 & 44 and from the chair of APAGS. Dr. Sternberg appointed Debra Dunivin, PhD, Judith Glassgold, PsyD, Douglas Haldeman, PhD, Gregory Herek, PhD, Robert Nichols, PhD, Jessica Percodani, and Henry Taylor, PhD, to the Task Force. APA President Diane Halpern, PhD, appointed Robin Buhrke, PhD, to the Task Force, when Dr. Glassgold became unable to participate for health reasons. Dr. Dunivin, an active duty military officer, attended the Task Force meeting and consulted with the Task Force concerning the effect of the advertising ban, but otherwise recused herself from Task Force deliberations and decision making. The roster of the Task Force is attached as Appendix A.

During its meeting, the Task Force reviewed APA's current policy on sexual orientation and military service. The policy is embodied both in APA's advocacy against sexual orientation discrimination by the U.S. military (e.g., amicus briefs, Congressional testimony), which began in 1988 and continued until 1995 (Appendix B), and in the policy resolution *U.S. Department of Defense Policy on Sexual Orientation and Advertising in APA Publications* (Appendix C), which was adopted by the Council of Representatives in 1991.

The Task Force considered issues of common concern about the negative effects of the current U.S. statute that establishes the *Policy Concerning Homosexuality in the Armed Forces* (Appendix D) and of the Department of Defense regulations that implement the statute, popularly known as "Don't Ask, Don't Tell." The issues of common concern that were identified by the Task Force included the following:

- Confidentiality for military service members within mental health services;
- The training of service members;
- The training of military psychologists;
- Consultation with military mental health providers; and
- The Department of Defense implementation of the *Policy Concerning Homosexuality in the Armed Forces* and "Don't Ask, Don't Tell."

The Task Force consulted with Stephen Behnke, PhD, Director of the APA Ethics Office, regarding the ethical issues that might arise for military psychologists. The Task Force discussed with Dr. Behnke the possibility of collaboration among the Ethics Committee, Divisions 19 and 44, and APAGS in the development of educational resources to address the ethical issues for military psychologists. An item will be placed on the Spring Meeting agenda of the Ethics Committee to assess the Committee's interest in such collaboration.

The Task Force also consulted with Rhea Farberman, Executive Director for Public and Member Communications, and James McHugh, APA Senior Counsel, regarding the nature of the APA advertising policy. Ms. Farberman and Mr. McHugh clarified for the Task Force that APA advertising policy requires that all discriminatory employers include within their ads a statement about the nature of the discrimination. For example, the advertisements that APA publishes for the federal Bureau of Prisons state that the Bureau is legally permitted to discriminate by age in its recruitment. Thus, if the APA's specific policy prohibiting military advertisements were eliminated, ads submitted by the military would have to state the provisions of the U.S. law that prohibits service members from engaging in homosexual acts and prohibits lesbian, gay, or bisexual service members from stating their sexual orientation.

The Task Force on Sexual Orientation and Military Service developed the following recommendations for APA action.

- That the APA adopt a new policy resolution to be titled *Sexual Orientation and Military Service* (Appendix E); the resolution would replace the 1991 policy resolution; the fundamental implications of the proposed policy resolution are to reaffirm existing APA policy resolutions on lesbian, gay, and bisexual concerns; update, elaborate and strengthen the APA policy on sexual orientation and military service; and eliminate APA's prohibition on advertisements from the Department of Defense.<sup>1</sup>
- That the APA assess opportunities for advocacy to eliminate discrimination in the military based on sexual orientation, especially opportunities for coalitions with other professional organizations and/or civil rights advocacy organizations.
- That the APA facilitate the collection of data from military psychologists who are mental health providers about the implementation of the U.S. law on homosexuality in the armed services and the impact of the law on mental health services provision.
- That the APA develop educational materials with the goal of improving the capability of military psychologists to provide effective services and to help consumers of these services understand the limits of confidentiality.

With regard to the development of educational materials, the Task Force envisioned that the materials could be developed through a collaborative effort of Divisions 19 and 44, APAGS, and the APA Ethics Office. Such materials might include the following:

- A professional journal article on confidentiality and other issues related to providing psychological services to military personnel under the current law;
- Informational materials (e.g., pamphlet, webpage) summarizing issues relevant to sexual orientation and the provision of services by military psychologists; and
- Informational materials for service members addressing general issues of confidentiality in all psychological services in the U.S. military.

Division 19 and Division 44 plan to send representatives to each other's mid-winter executive committee meetings in order to explore further collaboration. The Ethics Committee will be asked to consider collaborating on educational materials during its Spring Meeting.

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<sup>1</sup> If the APA's specific policy prohibiting military advertisements were eliminated, ads submitted by the military would have to state the provisions of the U.S. law that prohibits service members from engaging in homosexual acts and prohibits lesbian, gay, or bisexual service members from stating their sexual orientation.

## **Appendix A**

### **Report of the Task Force on Sexual Orientation and Military Service**

**January 16-18, 2004**

### **Roster of the Task Force on Sexual Orientation and Military Service**

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## **Appendix B**

### **Report of the Task Force on Sexual Orientation and Military Service**

**January 16-18, 2004**

#### **Sexual Orientation Discrimination in the U.S. Military**

##### **A Chronology of APA Activities**

- 1988 Filed Watkins brief
- 1989 Filed Ben Shalom brief  
Joined Military Freedom Project  
Advocated GAO Report
- 1990 Joint letter to Secretary of Defense with A Psychiatric A, NASW, ANA
- 1991 Responded to GAO inquiry  
Convention symposium and invited address  
Adopted policy
- 1992 Lobbying and grass roots advocacy  
Sponsored Congressional briefing
- 1993 Created National Organizations Responding to Discrimination on the Basis of Sexual Orientation in the Military  
Grassroots advocacy  
House and Senate Armed Services Committee testimony  
Convention Symposium
- 1994 Blaesing letter  
Division 19 & 44 Continuing Education Workshop  
Convention Symposium on Rand Report
- 1995 Meeting with DoD Deputy General Counsel  
Division 19 newsletter article

## **Appendix C**

### **Report of the Task Force on Sexual Orientation and Military Service**

**January 16-18, 2004**

#### **APA Policy Resolution**

#### **U.S. Department of Defense Policy on Sexual Orientation and Advertising in APA Publications**

[Adopted by the American Psychological Association Council of Representatives, August 18, 1991.]

**WHEREAS**, the American Psychological Association (APA) deplores discrimination on the basis of sexual orientation; and

**WHEREAS**, APA will not let its publications, as advertising media, be used by others in support of discriminatory employment practices; and

**WHEREAS**, the U.S. Department of Defense (DoD) maintains a policy that homosexual orientation is "incompatible with military service"; and

**WHEREAS**, the DoD will not knowingly admit bisexual, lesbian or gay individuals to military service, including research and clinical internship programs in psychology; and

**WHEREAS**, an average of 1,500 men and women are unfairly discharged from military service each year because their sexual orientation becomes known;

**THEREFORE BE IT RESOLVED** that the APA opposes the DoD policy which finds homosexual orientation "incompatible with military service"; and

**BE IT FURTHER RESOLVED** that APA take a leadership role among national organizations in seeking to change this discriminatory DoD policy; and

**BE IT FURTHER RESOLVED** that APA will not permit its publications, as advertising media, to be used by the DoD after December 31, 1992, unless the DoD policy that homosexual orientation "is incompatible with military service" has been rescinded by that date. (Fox, 1992, p. 927).

#### **Reference**

Fox, R.E. (1992). Proceedings of the American Psychological Association, Incorporated, for the year 1991: Minutes of the annual meeting of the Council of Representatives. American Psychologist, 47, 893-934.

**Appendix D**

**Report of the Task Force on Sexual Orientation and Military Service**

**January 16-18, 2004**

**10 United States Code §654**

**Policy Concerning Homosexuality In The Armed Forces**

10 United States Code

§ 654. Policy concerning homosexuality in the armed forces

(a) Findings. Congress makes the following findings:

(1) Section 8 of article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation of the land and naval forces.

(2) There is no constitutional right to serve in the armed forces.

(3) Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

(4) The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

(5) The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

(6) Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

(7) One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

(8) Military life is fundamentally different from civilian life in that --

(A) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and

(B) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

(9) The standards of conduct for members of the armed forces regulate a member's life for 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

(10) Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

(11) The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

(12) The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

(13) The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.

(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(15) The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(b) Policy. A member of the armed forces shall be separated from the armed forces under regulations prescribed by the Secretary of Defense if one or more of the following findings is made and approved in accordance with procedures set forth in such regulations:

(1) That the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are further findings, made and approved in accordance with procedures set forth in such regulations, that the member has demonstrated that-

(A) such conduct is a departure from the member's usual and customary behavior;

(B) such conduct, under all the circumstances, is unlikely to recur:

(C) such conduct was not accomplished by use of force, coercion, or intimidation:

(D) under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and

(E) the member does not have a propensity or intent to engage in homosexual acts.

(2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding, made and approved in accordance with procedures set forth in the regulations, that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(3) That the member has married or attempted to marry a person known to be of the same biological sex.

(c) Entry standards and documents.

(1) The Secretary of Defense shall ensure that the standards for enlistment and appointment of members of the armed forces reflect the policies set forth in subsection (b).

(2) The documents used to effectuate the enlistment or appointment of a person as a member of the armed forces shall set forth the provisions of subsection (b).

(d) Required briefings. The briefings that members of the armed forces receive upon entry into the armed forces and periodically thereafter under section 937 of this title (article 137 of the Uniform Code of Military

Justice) shall include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies prescribed under subsection (b).

(e) Rule of construction. Nothing in subsection (b) shall be construed to require that a member of the armed forces be processed for separation from the armed forces when a determination is made in accordance with regulations prescribed by the Secretary of Defense that --

(1) the member engaged in conduct or made statements avoiding or terminating military service; and

(2) separation of the member would not be in the best forces.

(f) Definitions. In this section:

(1) The term "homosexual" means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms "gay" and "lesbian".

(2) The term "bisexual" means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

(3) The term "homosexual act" means-

(A) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and

(B) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (A).



## **Appendix E**

### **Report of the Task Force on Sexual Orientation and Military Service**

**January 16-18, 2004**

#### **Proposed APA Policy Resolution**

#### **Sexual Orientation and Military Service**

- WHEREAS, the American Psychological Association (APA) has long opposed discrimination on the basis of sexual orientation; and
- WHEREAS, the “Don’t Ask, Don’t Tell, Don’t Pursue” policy as mandated by Title 10 of the U.S. Code (Section 654) discriminates on the basis of sexual orientation, and has caused many qualified personnel to be involuntarily separated from military service solely because of their sexual orientation; and
- WHEREAS, there is a long history of collaboration between psychology and the military (Dunivin, 1994; Yerkes, 1921); and
- WHEREAS, the law creates ethical dilemmas for military psychologists and it is APA’s responsibility to address these concerns (American Psychological Association, 2002); and
- WHEREAS, empirical evidence fails to show that sexual orientation is germane to any aspect of military effectiveness including unit cohesion, morale, recruitment and retention (Belkin, 2003; Belkin & Bateman, 2003; Herek, Jobe, & Carney, 1996; MacCoun, 1996; National Defense Research Institute, 1993); and
- WHEREAS, comparative data from foreign militaries and domestic police and fire departments show that when lesbians, gay men and bisexuals are allowed to serve openly there is no disruption or loss of mission effectiveness (Belkin & McNichol, 2000-2001; Gade, Segal, & Johnson, 1996; Koegel, 1996); and
- WHEREAS, when openly gay, lesbian and bisexual individuals have been allowed to serve in the U.S. Armed Forces there has been no disruption or loss of mission effectiveness (citations pending); and
- WHEREAS, the U.S. military is capable of integrating members of groups historically excluded from its ranks, as demonstrated by its success in reducing both racial and gender discrimination (Binkin & Bach, 1977; Binkin, Eitelberg, Schexnider, & Smith, 1982; Kauth & Landis, 1996; Landis, Hope, & Day, 1984; Thomas & Thomas, 1996);
- THEREFORE BE IT RESOLVED that APA reaffirms its opposition to discrimination based on sexual orientation; and
- BE IT FURTHER RESOLVED that APA reaffirms its support for our men and women in uniform and its dedication to promoting their health and well-being; and
- BE IT FURTHER RESOLVED that APA recognizes and abhors the many detrimental effects that the law has had on individual service members, the military, and American society since its enactment in 1994; and
- BE IT FURTHER RESOLVED that APA take a leadership role among national organizations in seeking to eliminate discrimination in and by the military based on sexual orientation through federal advocacy and all other appropriate means; and
- BE IT FURTHER RESOLVED that APA act to ameliorate the negative effects of the current law through the training and education of psychologists; and
- BE IT FURTHER RESOLVED that APA disseminate scientific knowledge and professional expertise relevant to implementing this resolution; and
- BE IT FURTHER RESOLVED that this resolution replaces the 1991 resolution “U.S. Department of Defense Policy on Sexual Orientation and Advertising in APA Publications;” and

- BE IT FURTHER RESOLVED that APA reaffirms its strong commitment to removing the stigma of mental illness that has long been associated with homosexual and bisexual behavior and orientations; promoting the health and well-being of lesbian, gay, and bisexual adults and youth; and working to ensure the equality of lesbian, gay, and bisexual people, both as individuals and members of committed same-sex relationships, in such areas as employment, housing, public accommodation, licensing, parenting, and access to legal benefits.

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