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REPEAL OF DON’T ASK, DON’T TELL
Army Vignettes

SITUATION 1: You are the Non-Commissioned Officer in Charge at a high tempo recruiting office. Your top notch, high performing recruiter who has served in the military for 15 years asks to meet with you. Due to his personal religious beliefs, he tells you he cannot process an outstanding applicant who voluntarily states he is gay.

**Issue:** Accessions and Recruiting Policy. What actions should the NCOIC take? Has the Soldier committed misconduct?

**Discussion:** Normally, counseling and education should be your first course of action. As his supervisor, you counsel him on the new policy, informing him that sexual orientation is not a bar to military service, and his duty is to recruit the best qualified applicants within the enlistment standards set by the Service. Due to the Soldier’s stated religious concern, you may suggest the Soldier meet with the chaplain or another spiritual advisor. If the recruiter continues to refuse to process an otherwise qualified recruit, he could be subject to disciplinary or adverse administrative action. However, if the recruiter’s performance and professionalism are otherwise high, and he is able to carry out assigned duties but still cannot resolve the conflict with his personal beliefs, the NCOIC could work with the chain of command to explore their available options to include possible reassignment. In all situations, leaders are expected to enforce standards and correct behaviors that undermine unit cohesion. Positive leadership with a focus on professional obligations to uphold the policy while recruiting the best qualified applicants should be reinforced. Soldiers are expected to obey lawful orders and could be subject to discipline or adverse administrative action if they refuse orders, even if such refusal is based on strong, sincerely held, moral or religious beliefs.

SITUATION 2: You are the Non-Commissioned Officer in Charge at a high tempo recruiting office. Your top notch, high performing recruiter from Situation 1 has been doing a good job for the past couple of months after your discussion with him about Don’t Ask, Don’t Tell. He requested a reassignment but it was denied. The recruiter asks to see you and informs you that while he appreciates how the situation was handled, he has tried but he cannot resolve his personal beliefs with the repeal of Don’t Ask, Don’t Tell. He has two years remaining on his current enlistment and wants to know how he can request an early separation.

**Issue:** Release from Service Commitments. What actions should the NCOIC take? Can the recruiter be released early from his service commitment?
Discussion: The Army does not permit the early discharge of Soldiers based upon their opposition to a new policy. This includes a repeal of Don’t Ask, Don’t Tell. “Any Soldier may request early discharge at any time. However, the Army will only approve in cases where it is in the best interest of the Army.”

SITUATION 3: An applicant comes into a recruiting station and says that he would like to enlist. In accordance with Army policy, the recruiter does not ask any questions about the applicant’s sexual orientation; however, the applicant reveals of his own accord that he is gay.

Issue: Accessions and Recruiting Policy; Collection and Retention of Sexual Orientation Data. What should the recruiter do after hearing the applicant’s statement?

Discussion: Applicants will not be asked or required to reveal their sexual orientation during the accession process. If an applicant comes into a recruiting office and volunteers a statement that he or she is gay or lesbian, the recruiter should explain to the applicant that sexual orientation is considered a personal and private matter, and the comments about their sexual orientation is not part of administration and will not be used in their application into the Army. No Soldier is required to declare their sexual orientation. The recruiter should continue to administer the application unless the applicant is otherwise ineligible for service in the military.

SITUATION 4: A Lieutenant complains to her immediate supervisor that she believes the reason for her non-selection to a much-desired school was due to her sexual orientation. The supervisor informs the Soldier that the panel used for the selection process had no way of knowing her orientation, but he would check into the situation and get back to her. After an informal inquiry of the panel members, the supervisor concludes that the selection process used was fair and equitable. The Soldier is still not satisfied and wants to know what other course of action she can take. You refer her to the Commander who understands the Soldier has a right to redress suspected wrongs in the selection process, but is unsure if this is a matter for the Equal Opportunity Advisor, the IG or the chain of command.
Issue: Equal opportunity. The commander wonders if this is an issue under the Military Equal Opportunity Program (MEO), the Inspector General (IG), or something the chain of command should be made aware of to determine if the selection board acted appropriately.

Discussion: Soldiers should be evaluated only on individual merit. The IG and commanders work allegations of unfair treatment not associated with Equal Opportunity on a regular basis. The supervisor’s attempt to resolve the complaint through informal inquiry did not satisfy the Soldier’s concerns. The Soldier should attempt to continue to resolve the complaint within the chain of command, if possible. If the complaint is not resolved within the chain of command, the Soldier can seek resolution through the IG or other means established by the Services. In this case, the EO program is not appropriate for resolution because sexual orientation is not specified as a class eligible for the EO complaint resolution process.

SITUATION 5: A Soldier requests emergency leave after receiving a Red Cross message concerning the critical condition of his same-sex partner.

Issue: Benefits. Is the Soldier eligible for Emergency Leave?

Discussion: The Soldier may be eligible for emergency leave. The sexual orientation of the Soldier’s partner has no bearing on the decision. DoDI 1327.06 states that emergency leave may be appropriate in the following circumstance: the Soldier’s failure to return home places a severe or unusual hardship on the Soldier, his or her household or immediate family. Commanders may grant up to 30 days of emergency leave. The Commanding Officer should meet with the Soldier to obtain information about the emergency and verify that the Soldier’s presence can resolve or alleviate the situation. If in doubt, the Commander should seek legal advice and consult the chain of command. If circumstances and the military mission warrant granting emergency leave, the Commanding Officer should ensure swift processing of the request. If the situation does not fall within the guidelines of emergency leave and the mission will not be unacceptably impacted, every attempt should be made to resolve the situation swiftly and compassionately through other authorized alternatives. Considerate, professional understanding is the humane approach to granting leave requests, regardless of the situation or circumstances.

SITUATION 6: You are a Sergeant First Class in the Battalion S-3/Operations shop serving as the NCOIC. A Sergeant, who is a lesbian, approaches you and states she can no
longer tolerate her roommate. Through positive reinforcement, counseling and mentorship, you attempt to resolve the issue at the lowest level in the chain of command. However, you notice her performance starting to diminish and she and her roommate are making derogatory comments to co-workers about each other. The behavior has become disruptive to the entire unit and others are starting to complain. She puts in a request to be reassigned to another room in the barracks.

**Issue:** Privacy and Cohabitation. What options does the NCOIC have to address conflicts between roommates? What actions should the chain of command take to address this issue?

**Discussion:** The NCOIC must take a very active and positive leadership approach with a focus on conflict resolution and professional obligations to uphold the policy. The Sergeant First Class should counsel the individuals and help them to resolve their personal differences. A clear message must be received by both Soldiers, that respecting each other’s rights within a closed space is critical to maintaining good order and discipline. Standards of conduct apply equally to all Soldiers and inappropriate conduct by either roommate should be corrected appropriately. If the issue cannot be resolved and alternative barracks arrangements can be made within command policy and without degrading good order and discipline of the unit, the Commander may consider reassignment of roommates.

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**SITUATION 7:** You are the administrative chief of a unit personnel office. A newly commissioned Lieutenant reports to the unit with the expectation of starting his BAH at the “with dependent” rate. He informs you that he got married while executing PCS orders. He presents his marriage certificate. While reviewing the documents, you notice the Soldier was married to his same-sex partner in Vermont where same-sex marriage is legal. The newly-reported member informs you he thought he would receive BAH at the “with dependent” rate once Don’t Ask, Don’t Tell was rescinded.

**Issue:** Benefits. What entitlements are available to same-sex partners?

**Discussion:** The Defense of Marriage Act (DOMA) currently recognizes only opposite-sex marriages. Therefore, a Soldier cannot claim dependency for a same-sex partner, for BAH purposes. You inform the Lieutenant that he is not entitled to BAH at the “with dependent” rate based on a marriage to a same-sex partner. However, if the Soldier has a qualifying dependent such as a dependent child, then he is eligible for BAH at the “with dependent” rate. The question of benefits for unmarried partners is being studied by the DoD at this time. For further
explanation of the law and current entitlements available to the Soldier and his family, refer the Lieutenant to the Legal Office.

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SITUATION 8: You are the supervisor of a Soldier who wants to file a complaint against a chaplain. The Soldier informs you that she attended a worship service at the post chapel over the weekend. The chaplain’s sermon included several direct statements that homosexuality is a sin and that marriage should be only between a man and woman. The Soldier disagreed with the chaplain’s remarks and felt they were discriminatory and biased and should not be allowed.

Issue: Moral and Religious Concerns. Can the Soldier file a complaint of discrimination or harassment against the chaplain? Should chaplains revise their sermons to avoid the perception of discrimination? What alternatives are available to assist the member or the chaplain?

Discussion: Chaplains have the right to express their religious beliefs during their conduct of a service of worship or religious study. Unless a chaplain’s speech is otherwise prohibited, such as publically maligning senior leaders, their sermons and/or teachings cannot be restricted, even with regard to socially controversial topics. This situation is a good opportunity to have a discussion with the Soldier about religious beliefs and the proper boundaries of religious expression in the military. You could offer to meet with the Soldier and the chaplain to facilitate a discussion on the topic. If either the chaplain or the Soldier feels that due to their religious views, speech or practice, they have been improperly treated, redress is available through their chain of command, existing Army policy or the IG if necessary. Chaplains facilitate the free exercise of religion for all personnel, regardless of the religious affiliation of either the chaplain or the individual. At the same time, regulations also recognize that chaplains minister to members in accordance with, and without compromising, the tenets of their faith. These boundaries are not always clearly defined. Finally, the Soldier may request assistance from the chaplain’s office in finding an alternate religious service to attend.

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SITUATION 9: You are a Senior NCO. After a company run, you witness two of your fellow Soldiers in the locker room joking and having a loud inappropriate conversation about gays and lesbians. The comments were directly related to their refusal to be naked and shower in front of a gay Soldier.
Issue: Standards of Conduct; Privacy. How do you address this situation? Is there a violation of the Standards of Conduct?

Discussion: Leaders at all levels are responsible for maintaining trust, cohesion, effectiveness and readiness of the all-volunteer force. Leaders are expected to dispassionately enforce standards and correct behaviors that undermine unit cohesion. You should advise them of the Army policy and inform them that discrimination, harassment or abuse against any Soldier is inappropriate. If a request is made to avoid showering with an individual, Commanders have the discretion to grant personal requests within unit policies and if the mission is not unacceptably impacted. As a general rule, the person making the request would have the burden of adapting to a different schedule. However, publicly joking about this issue is inappropriate behavior, as it undermines unit cohesion, and harassment or abuse based on sexual orientation is unacceptable.

SITUATION 10: You are a civilian working in the housing office. A Soldier who is a lesbian, recently adopted a son and reports to your office to discuss her Military Family Housing (MFH) application. She requests to be assigned specific quarters that are more isolated than others, for concerns of potential harassment of her family. She also requests that her same-sex partner, who is her son’s primary care provider, occupy the quarters as well.

Issue: Benefits; Standards of Conduct. Are there guidelines for same-sex partners occupying Military Family Housing? How should the housing office consider the request for specific quarters?

Discussion: You should inform the Soldier that because she has a qualifying dependent son that she is indeed authorized Military Family Housing. Local policies regarding live-in child care providers or other non-dependents living in on post housing should be followed for the same-sex partner. You explain to her that in accordance with the MFH assignment policy, she will be given several options pertaining to assignment of quarters, but her special request to be assigned isolated quarters may not necessarily fall within the guidelines of “special considerations.” If quarters are found inadequate for her needs, she has the option to obtain outside housing or discuss the issue with her chain of command. Since the Soldier also expressed a concern about harassment, it would be appropriate to refer her to her chain of command to discuss these concerns. Harassment for any reason is not tolerated within the Army and should be appropriately reported and corrected at all times.
SITUATION 11: You are the Executive Officer of your unit. While shopping at the local mall over the weekend, you observe two junior male Soldiers assigned to your unit and in civilian clothes kissing and hugging in the food court.

Issue: Standards of Conduct. Is this within standards of personal and professional conduct?

Discussion: If the observed behavior crosses acceptable boundaries as defined in applicable standards of conduct for your unit and the Army, then an appropriate correction should be made. Your assessment should be made without regard to sexual orientation.

SITUATION 12: A Soldier has been observed entering, leaving and generally “hanging around” a gay bar. The Commander is notified of the observations but isn’t sure what action, if any, she should take.

Issue: Standards of Conduct. What should the Commander do? Can she take administrative disciplinary action and charge the Soldier for patronizing a gay bar? Should she conduct a Commander’s inquiry?

Discussion: Installation Commanders can place an establishment off-limits for certain reasons, such as known or suspected criminal activity or drug use. An establishment would not be placed off-limits just for catering to gay clientele. Unless the establishment is designated off-limits by the installation Commander or there is evidence of behavior by the Soldier that is counter to Army standards of conduct, there is no prohibition against going to a gay bar. In this case, the Commander should take no action.

SITUATION 13: A Warrant Officer is watching the local TV news coverage of a gay rights parade when he notices a female Soldier assigned to his unit marching in the parade in civilian clothes, carrying a handmade placard. As the television camera zooms in on the Soldier’s sign, the Warrant Officer can clearly read the handwritten words “Support Gays and Lesbians in the military!” The next morning, he reports the incident to his Commander.
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**Issue:** Standards of Conduct. Is this prohibited activity? Should the Commander inquire into what meaning this Soldier had intended to convey by carrying that particular sign in the gay rights parade?

**Discussion:** A Soldier’s participation and carrying a banner or sign in a gay rights activity would not in and of itself constitute misconduct unless the Soldier’s actions are otherwise prohibited or would discredit the military. For example, participating in uniform or while on duty hours would be prohibited unless approved by authorized command authorities. In this case, the Soldier chose to carry a sign that acknowledged positive support for gay and lesbian Soldiers serving in the military. The parade was a local community-sanctioned event and was not a protest or dissident activity prohibited by existing policy. Furthermore, the Soldier was off-duty and in civilian clothes. Participation in the parade as described is within the Soldier’s right of expression and consistent with good order and discipline. However, if there is any doubt about participating in any off-post event, the Commander should contact the SJA for advice.

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**SITUATION 14:** You are the Command Sergeant Major of a Garrison. A Soldier with sixteen years of service requests to see you about her next assignment. Due to a medical concern of her same-sex partner, she would like to request a post where her partner would have access to the medical care. She states that if she cannot get the care, she intends to turn down her next assignment. She wants to know if she can receive any assignment priority based on the needs of her partner.

**Issue:** Duty Assignments. What actions should the Command Sergeant Major take? Can the Assignment Officer take into consideration the member’s honest acknowledgement concerning her partner and assign her to the desired location? Can the member decline assignment orders without consequences?

**Discussion:** Soldiers are assigned permanent change of station orders based on the needs of the Service. Soldiers can share personal information with assignment personnel for consideration in making assignments. Assignment personnel then make assignments within existing Service assignment policy. In general, a Soldier’s sexual orientation should have no bearing on the assignments process. In this case, the same-sex partner would not qualify the Soldier for assignment priority under existing Army policy. However, the Soldier can provide any information that she is comfortable sharing for consideration. The Soldier could also share her concerns with the Commander who could make an input to the assignment process within
existing Service regulations. If the assignment can be made within existing assignment policy and the needs of the Army, then this request should be considered. The Soldier may turn down the assignment and separate if she does not have an existing service commitment that would prevent her from separating. If the Soldier has further questions about assignment priority based on her situation, she should be referred to the legal office.