

July 21, 1993

Statement of Maj. Gen. John P. Otjen, Deputy Inspector
General for Inspections, USA, Senior Member, Military
Working Group, Accompanied by Brig. Gen. Jerry Miller, USMC;
Rear Adm. J. Scott Redd, USN; Maj. Gen. Burt Davitte, U.S.
Air Force; and Rear Adm. James M. Loy, USCG, Members,
Military Working Group

Statement of Hon. Jamie Gorelick, General Counsel,
Department of Defense, Accompanied by Maj. Leigh Bradley,
USAF and Capt. Tim Keating, USN

(137) Ms. Gorelick: . . . let me assure you that when we said a statement that one is homosexual or bisexual will trigger this presumption, which is essentially the current provision in the current policy, this was not setting out a requirement of specific words that had to be stated; it was a notion of what was being communicated. 773

(138) **Senator Warner:** It is the unit cohesion which is the principal concern of the military that would potentially suffer from the presence of a gay individual; is that correct? 780

General Otjen: That is correct. 780

[extracts continued]

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Senator GLENN. Ms. Gorelick, I think you said that it was okay if it did not bring dishonor to the service. Now, let us say the sergeant is down there in drag, pink hair, with a dress on, and he is walking in the parade, and the people recognize him as their sergeant. Now, he has not said, "I am a homosexual." What would happen?

Ms. GORELICK. Well, let me separate out the two.

Senator GLENN. It is sort of the case that Senator McCain, I think, addressed briefly yesterday, but I was just relating it back to the unit here, which is the perception of others. That is what we are up against. It is not individual rights as much as perception of others of that individual that interferes with combat effectiveness. And that is what I am getting at.

Ms. GORELICK. Well, I think that it is - as I think General Powell answered this question yesterday-I would say two things. Number one, one can draw conclusions from activities that, if you will, speak louder than words. And, number two, the military retains the full right and ability to constrain service members' activities, so that the are proper. There is still the ability to give a proper military order. And the commander can put certain bars off limits if the commander believes that improper activities are being undertaken there, and can proscribe dress or certain members.

But what you do not want to do is give guidance to people that says that it IS credible evidence of homosexuality if you assert that you believe in homosexual rights. There are cases specifically on point, and the courts are very clear that a service member can state, can march, can write, can speak in favor of homosexual rights. And I do not think it is appropriate to presume that someone who makes such statements is engaging in homosexual acts. Many heterosexuals believe in homosexual rights.

So, those are the distinctions one is making. It is not just honoring people's ability to speak.

Senator GLENN. I know we use extremes here. We have got cases that are just not too likely to come up. And I guess that is what we have to deal with in this case, because the trouble is all of these gradations of homosexuality, gradations of things. And that is where the devil is, in the details, obviously. You know, someone out on the parade ground at high noon observed in a homosexual act, obviously that IS going to be offensive to lots of people. That is one extreme, and that is going to get reaction.

Now, you come down, though, to something like, let us say that an individual had an orientation toward this. And I do not know how we define orientation, but that he would not be subject for being put out, but you said that saying you are bisexual would.

Ms. GORELICK. Well, I am only making that distinction because we have addressed collectively what it means to state, "I am a homosexual," "I am a bisexual. And that has been defined, Senator Glenn, in our directives for over a decade. It is just that no one has