

March 25, 2010

A Military Downgrading of 'Don't Ask, Don't Tell'

By **THOM SHANKER**

WASHINGTON — Two distinct messages could be heard after Defense Secretary Robert M. Gates announced new measures on Thursday to make it more difficult for the military to discharge openly gay men and lesbians.

Political activists who support President Obama's call for Congress to repeal the "don't ask, don't tell" policy heard of the interim steps and offered full support — even though they criticized the administration as having taken too long.

Military personnel, in particular members of the officer corps, heard that they face reprimand or worse if they go outside the official Pentagon review of "don't ask, don't tell" to publicly advocate maintaining the policy.

Both Mr. Gates and Adm. Mike Mullen, chairman of the Joint Chiefs of Staff, criticized a three-star general in command of Army forces in the Pacific for urging those who support the ban to write their elected officials and lobby their unit's leaders.

"If those of us who are in favor of retaining the current policy do not speak up, there is no chance to retain the current policy," the commander, Lt. Gen. Benjamin R. Mixon, wrote in a letter published March 8 in Stars and Stripes.

Mr. Gates made his frustration clear. "I think that for an active-duty officer to comment on an issue like this is inappropriate," he said at a news conference.

Mr. Gates and Admiral Mullen have said that all service members who wish to express an opinion on the ban will have an opportunity through channels during the Pentagon review. Admiral Mullen said he had spoken with the Army chief of staff about General Mixon's letter.

The developments that played out at the Pentagon, across the military and among gay rights groups served as more evidence of the deep disagreements over the current policy,

adopted in 1993, which allows gay men and lesbians to serve in the military if they keep their sexual orientation a secret. Only Congress can repeal the law, a step Mr. Obama is urging.

The Pentagon study, expected by the end of the year, will assess the views of service members, families and other relevant groups on how lifting the ban should be carried out. Mr. Gates said the study was not to determine whether to repeal the law, only how best to institute any repeal voted by Congress. "Doing it hastily is very risky," Mr. Gates said.

The four armed services chiefs — representing the Army, Navy, Marine Corps and Air Force — have testified that they remain concerned about moving too swiftly to lift the ban, saying it could make it harder for their forces to do their jobs while fighting two wars.

The interim measures take effect immediately, Mr. Gates said, and will ensure that the current policy is carried out in "a fairer and more appropriate manner," and in a way based on "common sense and common decency."

The new rules require that only an officer with the rank of at least a one-star general or admiral can initiate a fact-finding inquiry or other proceeding, or order any discharge under "don't ask, don't tell."

The guidelines raise the standard for evidence, an effort to prevent "malicious outing" by a third party or a jilted partner. Information provided by a third party must be given under oath.

Also prohibited would be information provided to lawyers, clergy members or psychotherapists, as well as to doctors involved in the person's medical treatment or gathered in a security clearance investigation, in accordance with current policies.

"This looks like a good step forward on the administration's promise to end discrimination against gays in the military," said Richard Socarides, a lawyer who served as the Clinton administration's special assistant for gay rights issues. "My only question is, What took them so long?"

Any open cases now must be reviewed under the new guidelines. Jeh C. Johnson, the Defense Department general counsel, told reporters that 428 service members were separated from duty last year under the law. He declined to predict how many cases

under review might be thrown out under the new guidelines.

Aubrey Sarvis, executive director of the Servicemembers Legal Defense Network, an advocacy organization, said, "The regulatory changes announced today are another major step forward in making the 1993 ban less draconian." The repeal of the ban, he said, appears "inevitable."