

## 'We recruit'

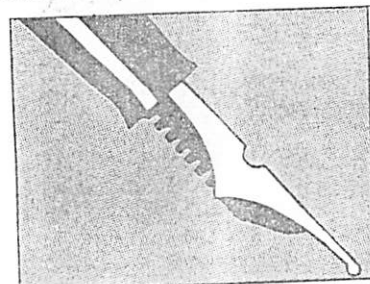
Democratic National Committee could require plan for recruiting Gay delegates.  
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## Men in uniform

Hundreds of leather lovers descend upon capital for annual festival.

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# The

# Washington Blade

SERVING THE NATION'S CAPITAL SINCE 1969

## Navy accused of deception AOL promises to strengthen privacy procedures

by Peter Freiberg and Wendy Johnson

After initially asserting it did nothing wrong, America Online admitted Wednesday that it violated its own policy when it divulged to the Navy the identity of an online user.

The user, a naval enlisted officer, is facing discharge under the military's "don't ask, don't tell" policy because his online "member profile" included the word "Gay" in a field labeled "marital status."

AOL said its internal review showed that a Navy investigator "misled" an AOL service representative into confirming information identifying Senior Chief Petty Officer Timothy R. McVeigh as the owner of the profile.

McVeigh's online screen name was "Boysrch."

"This [confirmation] clearly should not have happened and we regret it," said AOL in a press statement issued Jan. 21 from the online service's headquarters in Dulles, Va.

AOL is the world's largest online service with 11 million members, including many thousands of Gay members. In its statement, AOL said the McVeigh case has caused it to institute "additional measures that will reinforce our privacy policies and procedures to our member services representatives."

"This was a case of human error under very unusual circumstances," AOL said.

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Timothy R. McVeigh (center) leaves court in Washington, D.C. on Wednesday after asking a judge to stop his discharge from the Navy.

AP photo/William Philpott

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## National News

# America Online: Navy 'misled' its representative

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AOL made its admission the same day that Federal District Court Judge Stanley Sporkin held a hearing on a lawsuit filed by McVeigh, 36, a highly decorated 17-year Navy veteran. McVeigh's lawyers asked the court to stop his discharge, which was scheduled for midnight tonight, Friday, Jan. 23.

The Navy had planned to discharge McVeigh Jan. 15, but postponed it after he filed his lawsuit.

The Navy said it expects a ruling from Sporkin prior to the deadline for the discharge to take effect.

In his lawsuit, McVeigh charges that the Navy violated the federal Electronic Communications Privacy Act by not obtaining a court order or warrant before seeking information from AOL about him. He asserted the Navy has no right to use this "unlawfully obtained evidence."

McVeigh's lawsuit also accuses the Navy of violating the "don't ask, don't tell" policy on Gays in the military by launching an investigation of McVeigh without having the required "credible information" that he was likely to engage in "homosexual conduct." McVeigh has declined to reveal his sexual orientation and maintains that putting "Gay" in the profile was not a statement that he is Gay.

A Navy spokesperson, in an interview with the *Blade* following the court hearing, reiterated the service's contention that it had enough information about McVeigh — "even without further information provided" by AOL — to launch the discharge proceedings.

The McVeigh case has drawn enormous attention, both inside and outside the Gay community, because of questions it raises about the privacy of online users.

Many online users, including many Gays who are either closeted or just coming out, consider privacy crucial.

In its statement Wednesday, AOL charged that the Navy "deliberately ignored" federal laws because the investigator who telephoned AOL "did not identify himself properly and did not reveal the true purpose of his call."

The investigator testified last November at a Navy administrative hearing on charges against McVeigh that he simply

called AOL and told a service representative that he was "the third party in receipt of a fax and wanted to confirm the profile sheet, who it belonged to."

"They said it came from Hawaii and that it was Timothy R. McVeigh on the billing," the investigator testified.

But AOL spokesperson Tricia Primrose told the *Blade* this week that the online service's internal review showed that the Navy investigator posed as a "friend" of McVeigh's.

The investigator, according to AOL, said he wanted to confirm that the profile owner was Timothy McVeigh of Hawaii.

Primrose said the AOL service representative should have asked the identity of the person seeking information and not given any confirmation. In the future, Primrose said, service representatives will be required to acknowledge in writing that they understand AOL's privacy policies.

"We will add a special section [during training]," said Primrose, "to underscore that our representatives are absolutely prohibited from confirming, even to a member's friends and family, any of the member's personal information, even that member's name."

According to the Servicemembers Legal Defense Network, which advises McVeigh and other military personnel charged with violating "don't ask, don't tell," linking McVeigh to the profile was crucial to the Navy's case.

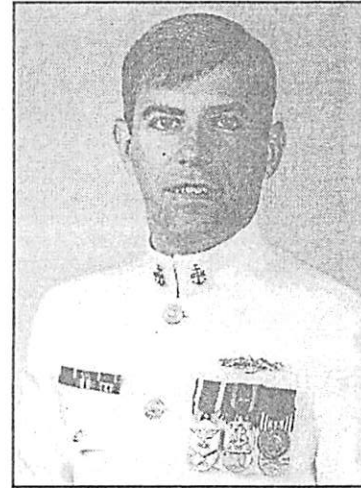
McVeigh's profile, which, like other profiles could be accessed by anyone on AOL, gave only "Tim" as his name. Next to "Hobbies," the profile listed "driving, boywatching, collecting pictures of other young studs." Next to "Personal Quote," McVeigh wrote, "My God, he's got a nice butt. And I know because I'm a bootyologist!"

McVeigh, who was granted leave to come to Washington for Wednesday's hearing, rose through the ranks to become chief enlisted officer on the nuclear submarine *USS Chicago*. He had received numerous medals and commendations. Honorable discharge will mean loss of his career, pension, and health benefits.

The Navy began its investigation after a crew member's wife, whom McVeigh e-mailed about a toy collection project

for children of the *USS Chicago* crew, noticed his "Boysrch" screen name and looked up his profile.

Military policy states that "any credible evidence, including a written or spo-



Timothy McVeigh's lawsuit asserts that the U.S. Navy has no right to use "unlawfully obtained evidence."

ken statement, which shows that a military member has a propensity or intent to engage in homosexual acts, may warrant initiation of administrative proceedings for discharge."

During the hour-long court hearing, Judge Sporkin asked McVeigh attorney Wolf why McVeigh put "Gay" on his AOL member profile.

Wolf replied that all McVeigh was doing was sending e-mail to a woman about a toy drive, not trying to "out" himself.

The Pentagon, said Wolf, allows servicemembers to go to Gay bars and pride marches and to receive Gay publications, and "certainly to have a private identity." The AOL information, Wolf said, was private. Besides, Wolf said, the profile was not an acknowledgement that McVeigh is Gay.

He noted that McVeigh had previously been engaged and was known to be in the company of women in social environments.

In questioning Justice Department attorney David Glass, representing the

Navy, Sporkin seemed skeptical that McVeigh's profile on AOL was an acknowledgement of engaging in "homosexual acts." But Glass said McVeigh's wording of his AOL profile implied he engaged in "homosexual acts" and therefore gave the Navy the right to investigate him.

McVeigh's attorney, Wolf, introduced into the record a statement by Charles Moskos, who helped author the "don't ask, don't tell" policy, that he believes the Navy's actions against McVeigh do violate that policy.

The Navy, Moskos said, launched its investigation "without there being credible evidence that ... McVeigh had engaged in homosexual acts or openly stated that he was a homosexual." Moskos said McVeigh did not "tell" — he simply sent an anonymous e-mail, which did not list his surname or Navy connection.

"[B]ut by launching an investigation solely on the basis of this e-mail, which required the Navy to obtain ... McVeigh's identity from [AOL]," Moskos said, "the Navy 'asked' in a way that should be forbidden under the policy."

Following the hearing, Wolf said McVeigh is still considering filing suit against AOL for breaching the privacy policy in its Terms of Service contract.

"For the [online] user community at large, the issue now is what is being done to prevent any repetition of this incident," said David Sobel, legal counsel to the Electronic Privacy Information Center.

"Unless somebody is fairly savvy with technology and takes conscious steps to preserve anonymity," said Sobel, "I think they need to be very cautious in making the assumption that they are anonymous."

One way of preserving privacy, Sobel said, is to first go to the Web site [www.anonymizer.com](http://www.anonymizer.com), a server that allows the user to proceed from that site to any other anonymously.

In its statement Wednesday, AOL said, "We want our members to know that their privacy is of paramount importance to AOL and we take our responsibility to protect it very seriously. We will do everything we can to maintain that commitment." ▼

# Gay support groups allowed on military bases

by Lou Chibbaro Jr.

High schools on U.S. military bases can form Gay support groups as long as they operate as "group counseling" sessions, get approval from school principals to exist, and limit membership to only those students who get parental permission to attend, according to a revised policy issued by the U.S. Department of Defense.

The policy was issued in October 1997, but didn't become public until last month. A DOD official said the policy, referred to as "group counseling protocols," applies to a variety of counseling groups at DOD-run schools, including groups for Gay students, students with drug problems, and students who become pregnant. The policy covers high schools operated by the DOD on or near military bases throughout the world for the dependent children of military personnel.

Although the policy does not specifically mention Gay students or Gay support groups, DOD General Counsel Judith Miller told the Lambda Legal Defense and Education Fund in an Oct. 27 letter that "there would be no bar" to Gay support groups under the new policy.

The new DOD policy that allowed the Gay support group to resume operating at the Okinawa base requires that such groups be considered a form of "group counseling." Under the policy, a student will be allowed to attend a Gay support group only if he or she is referred to such a group by a trained counselor, and the counselor concludes that "individual



by Chris Steib

Rea Carey said the parental consent requirement could pose problems for Gay students.

counseling is not the intervention of choice" for the student.

In addition, the policy prohibits students from participating in such a group unless they submit to school officials a consent form signed by one of their parents. In an effort to protect a student's privacy, the policy says the consent form should not contain "language describing the particular problem or student interest causing the student to be referred for group counseling."

Lambda, a Gay litigation group based in New York, hailed the DOD policy as an important breakthrough for Gay youth

and a positive example for other U.S. high schools.

The DOD issued the policy one year after Lambda and U.S. Rep. Barney Frank (D-Mass.) raised strong objections to a decision by a military official to disband a Gay support group at a high school on a U.S. military base in Okinawa, Japan. In that earlier decision, Mo Howard, chief of the DOD's Education Division, claimed that a Gay support group at the base's Kadena High School violated the Pentagon's "don't ask, don't tell" policy on Gays in the military.

Lambda and Frank argued that the "don't ask, don't tell" policy is limited to members of the military and has no relevance to civilian dependents of military personnel.

After more than a year of deliberation, the DOD's education division apparently agreed with the assessment by Lambda and Frank. As a result, the Gay support group at Kadena High resumed operating, as of early December, according to Lambda.

"The group's counselor has just confirmed that the group is, indeed, safely in place again," said David Buckel, a Lambda attorney who worked on the case.

Buckel noted, however, that the DOD policy is limited in scope — to groups that provide support and counseling to students. Buckel said the policy does not cover Gay student advocacy groups, such as the Gay-straight student alliances that have been forming in recent years in U.S. high schools.

Buckel said Lambda believes a separate federal law known as the Equal Access Act allows high school students — including those in DOD-run schools — to form Gay advocacy groups or Gay "clubs" as long as their high schools permit students to form other clubs.

Marsha Mouyal, an official with the DOD's education division, said this week that she is not aware of the existence of any Gay advocacy clubs at DOD-run schools but that she thinks such clubs would be allowed to form.

"I know of no rule that says you can't have a Gay club," Mouyal said.

The policy gives principals of all DOD-run schools the option of approving or disapproving any support group, including a Gay support group.

Rea Carey, executive director of the National Advocacy Coalition, which represents Gay youth groups, said the parental consent requirement could pose problems for Gay students despite the fact that the language does not specify the reason the student is participating in group counseling. According to Carey, a consent form calling on parents to approve group counseling would likely prompt a parent to closely question a student and his teacher or principal over why the student is entering such counseling.

Carey, while expressing overall support for the DOD policy, said the effectiveness of Gay support groups at DOD schools would likely depend on whether or not the counselors view homosexuality in a nonjudgmental way. ▼