

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

B E T W E E N :

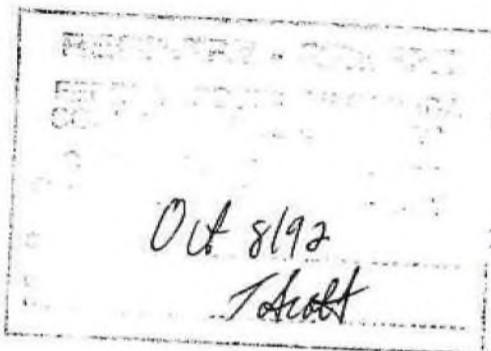
MICHELLE DOUGLAS

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant



AFFIDAVIT OF LAWRENCE J. KORB

(Sworn *October 6* , 1992)

INDEX

TAB NO.

1. Affidavit of Lawrence J. Korb
2. Exhibit "A" - Curriculum Vitae of Lawrence J. Korb
3. Exhibit "B" - Memorandum dated August 2, 1975 from the Chief of Naval Personnel to the Judge Advocate General in the United States
4. Exhibit "C" - State of Washington National Guard's policy re "Stoploss"

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TORONTO, Ontario.
M5R 1B2

Clayton C. Ruby
(416) 964-9664

Solicitors for the Plaintiff.

IN THE FEDERAL COURT OF CANADA
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B E T W E E N :

MICHELLE DOUGLAS

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- and -

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AFFIDAVIT OF LAWRENCE J. KORB

(Sworn *October* , 1992)

I, LAWRENCE J. KORB, of the City of Washington, in the District of Columbia, United States of America, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Director of the Centre for Public Policy Education and Senior Fellow in the Foreign Policy Studies Program at the Brookings Institution, a public policy research organization. During the years from 1981 to 1985 I served as the Assistant Secretary of Defence (Manpower, Reserve Affairs, Installations and Logistics) with the United States Government.
2. I received my Master's Degree in 1962 from St. Johns University and my Doctorate from the State University of New York at Albany. My Doctorate was in International Relations with a focus on Security Policy.
3. I served for four years on active duty as a Naval Flight Officer in the United States Navy. After my discharge from active duty I was affiliated with the Navy Reserve for 20 years. I retired in 1985 with the rank of Captain.
4. I have held several academic positions including four years at the United States Coast Guard Academy from 1971 to 1975, and five years at the United States Navel War College from 1975 to

1980. I served as the Dean of the Graduate School of Public and International Affairs at the University of Pittsburgh from 1985 to 1987. I am currently an Adjunct Professor at Georgetown University where I teach a course in the Pentagon on National Security Studies. Attached as Exhibit "A" to this my Affidavit is a true copy of my Curriculum Vitae.

5. My areas of study at the Brookings Institution include social issues impacting on the Armed Forces, particularly as regards the integration of women and minorities into the Military. My direct experience is with the United States Armed Forces, but through my research on foreign policy I am also familiar with the situation as regards the Canadian Armed Forces. My opinion and experience in the United States in this area can fairly be applied to Canada.

6. The policy of the United States Armed Forces is one which prohibits the employment of gay men and lesbians. In my opinion this policy is wrong. I am not aware of any empirically sound evidence which supports the thesis that homosexuality among the members of the Armed Forces would have any adverse affect on the completion of the mission of the Armed Forces. In this regard I have reviewed the Affidavit of Colonel Henderson, sworn August 25, 1992, and the Affidavit of Dr. Suedfeld, sworn August 26, 1992. Attached as Exhibit "B" to this my Affidavit is a true copy of a memorandum dated August 2, 1975, from the Chief of Naval Personnel to the Judge Advocate General in the United States concerning the Navy's homosexual discharge policy. In that memorandum the following question is asked: "Does the Navy have any empirical proof that homosexuality among its members has an adverse affect upon the completion of its mission?" and the following answer is given: "No such empirical proof is known at this time."

7. In my opinion the opportunity to serve one's country is one of the fullest embodiments of citizenship and any denial of this right should be based on hard evidence. In addition, the

Military also provides opportunities for education, training and other experiences which many people would otherwise be unable to take advantage of.

8. During my tenure at the Pentagon as Assistant Secretary of Defence I had to oversee the placing of mixed gender crews into Minuteman silos. Crews go down into silos for 24 hour periods. The argument was made that if men and women were placed in silos together cohesion, morale, order and discipline would be undermined. In spite of this argument mixed gender crews were introduced and it was discovered that the fears expressed were unfounded.

9. The experience cited above is a small one compared to the integration of Blacks into the Armed Forces which was instituted in 1948. At that time segregation between Blacks and Whites was very common in the United States. Many in the leadership in the Military took the position that Whites would not serve with Blacks and that to force them to do so would undermine cohesion, morale and discipline, thereby ruining the ability of the United States Armed Forces to conduct wars. This prediction proved false. In the United States we have instituted educational and training programs in the Armed Forces designed to counter prejudice and to make it clear that a person's Military career will suffer if one is unable to accept integration.

10. The privacy concerns expressed by the Military leadership are also concerns which have been expressed before, both with respect to Blacks and with respect to women. In the United States Navy there was considerable concern expressed about having men and women serving together in the closed confines of a ship, even if separate sleeping quarters could be established. In fact the integration has been successfully accomplished, again through education and leadership.

11. I am aware of the training and education involved in becoming a first class member of the Armed Forces in Canada and the

United States. When a member of the Armed Forces is released all that training and education is lost. The loss to the Armed Forces is twofold. The expertise and experience of the member is gone. In addition, the money spent on that member's training must now be spent to replace him or her.

12. The concern of people who are actively engaged in carrying out a dangerous military mission is to know that the other people engaged in the mission with them are qualified. Sexual orientation is of little importance in a situation of danger.

13. During the period of the "Persian Gulf" war a policy was instituted in the United States Military known as "Stoploss". Under this policy people who were otherwise in a position to leave the Armed Forces were told that they could not leave because they were needed to fight. The purpose of the policy was to allow the Armed Forces to enter the war with their units intact, without having to train new replacements. This policy was applied to gay men and lesbians. The effect was that men and women who had declared their sexual orientation as homosexual were required to serve with their units during the war. After their return, discharge proceedings were then instituted because of their sexual orientation regardless of how well they may have served in the Gulf war. Attached as Exhibit "C" to this my Affidavit is a true copy of the State of Washington National Guard's policy promulgated about "Stoploss". The policy regarding homosexuality is set forth at page 2-1-8 and reads as follows:

"22-Criteria: Homosexuality

- ACTION: a. If discharge has been requested and approved prior to the unit's receipt of alert notification, the member will be discharged prior to the unit's effective date of AD (Active Duty)(brackets added) IAW Chapter 10, AR 135-178.
- b. If discharge has been requested but not yet approved, delayed entry will be requested IAW AR 601-25 pending final determination.
- c. If discharge is not requested prior to the unit's receipt of alert notification

discharge is not authorized. Member will
enter AD with unit."

Part of the rationale for the "Stoploss" policy is to prevent false claims as to sexual orientation in an effort to avoid Active Duty. However, the Stoploss policy is equally a recognition of the fact that when you are going to war you want to maintain unit integrity such that trained men and women who have demonstrated themselves to be fine soldiers are not lost and replaced by unknown quantities. The existence of the policy undermines any argument that with declared homosexuals in its ranks the Armed Forces cannot accomplish its mission in a war. Furthermore, there is no evidence that the presence of known homosexuals in its ranks in any way undermined the effectiveness of the United States Military during the Persian Gulf war.

14. My own opinion, based on all my experience, is that neither unit cohesion, privacy concerns, nor fighting effectiveness would suffer if complete integration of gay men and lesbians was accomplished accompanied by appropriate training and educational programs.

SWORN before me at the
of Brocking Institution
in the District of Columbia
of
this 6th day of October, 1992.

Commissioner for Taking
Affidavits

Carey P. Hillman

My Commission Expires: December 31, 1992

LAWRENCE J. KORB

LAWRENCE J. KORB

Dr. Lawrence J. Korb is Director of the Center for Public Policy Education and Senior Fellow in the Foreign Policy Studies Program at The Brookings Institution. Prior to joining Brookings, he served as Dean of the Graduate School of Public and International Affairs at the University of Pittsburgh, and as Vice President, Corporate Operations for the Raytheon Company.

Dr. Korb served as Assistant Secretary of Defense (Manpower, Reserve Affairs, Installations and Logistics) from 1981 through 1985. In that position, he administered about 70 percent of the defense budget. His responsibilities included: recruiting and training the five million, active duty, reserve and civilian employees of the Department of Defense; maintaining the U.S. worldwide military base structure; and establishing supply, maintenance, and transportation policies for the land, sea and air forces of the United States. For his service in that position, he was awarded the Department of Defense's medal for Distinguished Public Service.

Dr. Korb is Vice Chairman of the Board of the Committee for National Security, and a Board Member of the USO, the Washington Center, the Procurement Round Table, the National Military Family Association, and the Council on Economic Priorities. He is also a member of the Council on Foreign Relations, the International Institute of Strategic Studies, and the National Academy of Public Administration; and he is an Adjunct Professor at Georgetown University.

In the past he has served as a Consultant to the Office of the Secretary of Defense and to the Office of Education. He was a member of the Defense Advisory Committee for President-Elect Reagan (1980), a member of the Transition Team, U.S. Arms Control and Disarmament Agency (1980), and a member of the Defense Issues Group for President-Elect Bush (1988).

Dr. Lawrence J. Korb received his M.A. from St. Johns University in 1962 and his Ph.D. in 1969 from the State University of New York at Albany. He has held several academic positions, among them: Assistant Professor of Political Science, the University of Dayton, 1969-71; Associate Professor of Government, U.S. Coast Guard Academy, 1971-75; and Professor of Management, U.S. Naval War College, 1975-80. He served on active duty for four years as a Naval Flight Officer and retired from the Navy Reserve with the rank of Captain.

Dr. Korb's many publications on national security issues include the books, The Joint Chiefs of Staff: The First Twenty-Five Years and The Fall and Rise of the Pentagon. He has appeared as a guest on such television programs as the Today Show, Good Morning America, Face the Nation, This Week with David Brinkley, the McNeil-Lehrer News Hour, Nightline, 60 Minutes, and the Phil Donahue Show. His op-ed pieces have appeared in such major newspapers as The Washington Post, The New York Times, The Wall Street Journal, The Los Angeles Times, and The Philadelphia Enquirer.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF LAWRENCE J. KORB
SWORN BEFORE ME THIS 6th DAY
OF OCTOBER 1992

Carol P. Halloran
A Commissioner, etc. My Commission Expires October 31, 1993

Pers-31-4-
2 Aug 1976

From: Chief of Naval Personnel (Pers-8)
To: Judge Advocate General (Code 14L)

Subj: Litigation involving the Navy's homosexual discharge policy

Ref: (a) JAG ltr JAG:145L:APL:pas Scr 14L/15337 of 21 Jul 1976

1. The below answers to questions are provided for use in current and future litigation as requested by reference (a).

- (a) Does the statement of policy contained in SECNAVINST 1900.9A relate only to initiating administrative processing, that is, is it addressed only to commanding officers?

SECNAVINST 1900.9A is addressed to all ships and stations. However, the only action required therein is the initiation of processing which is directed toward commanding officers only.

- (b) Restating (a) in perhaps another way, is the presumption of unfitness stated in SECNAVINST 1900.9A, meant to influence administrative discharge board deliberations or are board members entirely free to reach their own decisions on retention, without any direction from the Instruction's policy statement?

SECNAVINST 1900.9A is not intended to influence the deliberation of boards of officers or administrative discharge boards convened in accordance with pertinent regulations. Members are entirely free to reach their own findings, opinions and recommendations based upon the evidence presented to the board.

- (c) Does the Chief of Naval Personnel employ a presumption of unfitness when reviewing administrative discharge cases involving homosexual conduct?

The Chief of Naval Personnel does not employ a presumption of unfitness when reviewing cases involving homosexual conduct or any other type case. Each case is reviewed entirely on its own merits.

- (d) Does the Chief of Naval Personnel have the discretion to retain a homosexual?

Yes.

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF LAWRENCE J. KORB
SWORN BEFORE ME THIS 6th DAY
OF OCTOBER 1992

Carol P. Holloman
A Commissioner, etc.

My Commission Expires October 31, 1993

Subj: Litigation involving the Navy's homosexual discharge policy

- (j) If there are no general guidelines for either discharge or character of discharge, how are those decisions reached?

With respect to the decision to discharge, see question (f) above. With respect to character of discharge, not applicable.

- (k) Why is homosexual conduct misconduct?

Homosexual conduct is misconduct because it is prohibited by Articles 125, 133, 134 of the Uniform Code of Military Justice and by the laws of most states.

- (l) Why do homosexual tendencies make one unfit?

Technically the term "unfit" is not correct. Since 1 Apr 1975 the term "unfit" is no longer applied with respect to discharges. However, in the more normal use of the word "unfit," the following factors would render such an individual unfit for naval service:

(1) An individual's performance of duties could be unduly influenced by emotional relationships with other homosexuals which would interfere with proper command relationships.

(2) Such an individual would be liable for court martial or civil punishment as a result of manifestations of homosexual tendencies.

(3) Such individuals might force their desires on others resulting in sexual assaults.

(4) Additionally, an officer or senior enlisted person who exhibits homosexual tendencies will be unable to maintain the necessary respect and trust from the great majority of naval personnel who detest/abhor homosexuality. This lack of respect and trust would most certainly degrade the officer's ability to successfully perform his duties of supervision and command.

- (m) Does the Navy have any empirical proof that homosexuality among its members has an adverse effect upon the completion of its mission.

No such empirical proof is known at this time.

OW
General



STATE OF WASHINGTON
MILITARY DEPARTMENT

Camp Murray • Tacoma, Washington 98430-5000

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF LAWRENCE J. KORB
SWORN BEFORE ME THIS 6th DAY
OF OCTOBER 1992

Carole P. Hallock
A Commissioner, etc.

My Commission Expires October 31, 1993

DCSPA (601)

1 February 1991

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: STOP LOSS Implementing Instructions

1. Reference DCSPA Memorandum SAB, dated 1 February 1991.
2. All units of the Washington Army National Guard will immediately comply with the requirements of stop loss, as specified by reference 1 above and this memorandum.
3. Unit commander responsibilities:
 - a. Ensure that the provisions of STOP LOSS are explained to all soldiers present at the unit's February 1991 IDT, preferably in a unit formation.
 - b. Specifically notify each absent soldier of the provisions of STOP LOSS.
 - c. Involuntarily extend all soldiers of the unit whose expiration term of service date (ETS) falls within the period of STOP LOSS, who do not voluntarily execute an oath of extension.
4. Instructions on actions to be taken regarding soldiers who refuse to participate when involuntarily extended under STOP LOSS (including soldiers now listed as unsatisfactory participants) will be issued separately.
5. Definitions:
 - a. Selected Reserve means all soldiers of troop units of the Washington Army National Guard, whether in a statutory or contractual obligation.
 - b. Reference paragraph 1.B. of the message, AWOL is unsatisfactory participation, and is not considered unsatisfactory performance in the context of the referenced message or under AR 135-178, chapter 6.

DCSPA (601)

SUBJECT: STOP LOSS Implementing Instructions

(a) First increment - ETS is 19 January 1991 through 31 March 1991. DOCUMENT SUSPENSE DATE TO DCSPA-S IS 15 FEBRUARY 1991.

(b) Second increment - ETS is 1 April 1991 through 18 January 1992. DOCUMENT SUSPENSE DATE TO DCSPA-S IS 1 MARCH 1991.

(3) Voluntary extensions will be accomplished on DA Form 4836 under normal Rules A or B of Table 7-1, NGR 600-200, as appropriate to the soldier's PEBD.

(4) Involuntary extensions will be for a period of 71 months prepared on DA Form 4187, per enclosure, signed by the unit commander (NO DELEGATION), and distributed as follows:

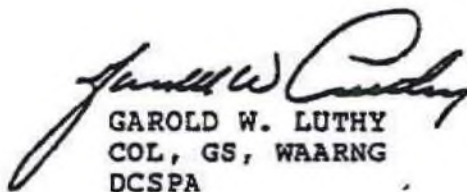
(a) File the original in the soldier's DA 201 file in the same manner as a DA Form 4836.

(b) Forward one copy to DCSPA-S by the suspense date listed in paragraph 6.f(2) above.

7. POC at this headquarters is CW4 Thomas W. Brewer, SCAN 431-1257, DSN 355-7257, or commercial (206) 581-8257.

FOR THE ADJUTANT GENERAL:

Encls


GAROLD W. LUTHY
COL, GS, WAARNG
DCSPA

DISTRIBUTION:

A

PERSONNEL ACTION
For use of DA Form 502-6 and AR 600-10: The information entered is subject to change.

DATA REQUESTED BY THE PRIVACY ACT

Authority: Title 5, Section 552; Title 38, U.S.C. § 507. Principal Purpose: Use by service members to maintain and DA Form 502-6 when requesting a personnel action. Secondary Purpose: To maintain the accuracy of a personnel action being initiated by the service member. Confidentiality: Subject to privacy.

ENTER NAME & ADDRESS OF UNIT WHERE SOLDIER IS ASSIGNED.

THRU: (Leave blank) ENTER NAME & ADDRESS OF NEXT HIGHER HQ.	TO: (Leave blank) The Adjutant General State of Washington ATTN: DCSPA-S Cp Murray, Tacoma WA 98430-5000	FROM: (Leave blank) COMMANDER
---	--	---

SECTION I - PERSONAL IDENTIFICATION

NAME (Last, first, MI) SOLDIER SAMUEL S.	GRADE OR RANK/PROB (End only) SPC	SOCIAL SECURITY NUMBER 000-00-0000
--	---	--

SECTION II - DUTY STATUS CHANGE (Form 502-6, DA Form 502-6)

The above member's duty status is changing from _____ to _____.

SECTION III - REQUEST FOR PERSONNEL ACTION

TYPE OF ACTION	PROCEDURE
Service School (End only)	1. Reassignment within Army Component
ROTC or Reserve Component Duty	2. Reassignment
Volunteering for Overseas Service	3. Officer Candidate School
Retired (Leave blank)	4. Active or Part with Exceptional Family Members
Reserve Active Family Problems	5. Identification Card
Exchange Reassignment (End only)	6. Identification Tests
Active Transfer	7. Security Matters
Service Forces Training/Assignment	8. Leave - Extension/Adverse/Unfavorable CONUS
On-the-job Training (End only)	9. Change of Name/SSN/DOB
Reserve in Active Personnel Tests	XX Other (Specify) Extension - End Part 9-12

SIGNATURE OF MEMBER (Leave blank) _____ DATE _____

SECTION IV - REMARKS (Form 502-6, DA Form 502-6)

Action: Involuntary extension of enlistment.
 Period of extension: 71 months.
 Effective date:
 Authority: Maj CNGB Washington DC//NGB-ARP//290700Z JAN 91, subject: Stop Loss Implementing Instructions, and Title 10 U.S.C. 673c.

SECTION V - CERTIFICATION/APPROVAL/DISAPPROVAL

I certify that the duty status change (Section II) or the request for personnel action (Section III) entered herein is:

☐ HAS BEEN VERIFIED ☒ IS APPROVED ☐ RECOMMEND APPROVAL ☐ RECOMMEND DISAPPROVAL

COMMANDER/AUTHORIZED REPRESENTATIVE
ALFRED A. ARMOR, CPT, AR, WAARNG
 Commanding

SIGNATURE
Alfred A. Armor

DATE
19 Jan 91

DA FORM 4187 DEC 92

SECTION OF FEB 91 WILL BE

COPY 1

COMMANDER SIGNS -
 NO DELEGATION OF AUTHORITY!

WIG GREGORY P. BARLOW
The Adjutant General



STATE OF WASHINGTON
MILITARY DEPARTMENT
Camp Murray • Tacoma, Washington 98430-5000

DCSPA (600)

1 February 1991

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: STOP LOSS Implementing Instructions

1. Enclosure 1 is an extract from CNGB Message, SAB, dated 29 January 1991.
2. Contents of the subject message are listed below, by subject, paragraph, and page number, for easy reference.

<u>Subject</u>	<u>Paragraph</u>	<u>Page</u>
Exceptions for members of ARNG	1	1
Officers/Warrant Officers	2	1
Provisions of NGR 600-100 Suspended	2.B.	2
Rules for order to active duty of officers who qualify for mandatory removal for age or length of service	3	3
Enlisted	5	4
Separation Provisions	6	4
Unsatisfactory Participation	7	4
Conditional Releases	8	5
Interstate/Intrastate Transfers	9	5
Conditional Releases to join Active Component	10	5
Delayed Entry Program	11	5

The following is an extract from CNGB Message, SAB, dated 29 January 1991.

"1. All members of the ARNG have been determined to be essential to the national security of United States with the exception of:

A. Those who are separated for humanitarian or special consideration reasons (e.g., hardship, pregnancy, conscientious objection, etc.).

B. Those who are being separated for cause (e.g., misconduct, unsatisfactory performance, etc.).

C. Those who are subject to mandatory and disability retirement/separation. (Mandatory means any time the soldier, by law or regulation, no longer has the option to continue to serve).

2. Officers/Warrant Officers (NGB-ARP-0):

A. Effective 19 Jan. 91, the following provisions of NGR 635-100 are suspended (for officers other than general officers) until further notice:

(1) Paragraph 5A(3), Resignations.

(2) Paragraph 5A(4), AWOL.

(3) Paragraph 5A(7), Vacation of Appointment.

(4) Paragraph 5A(9), As a Result of Screening UP AR 135-133.

(5) Paragraph 5A(13), Employment with any Foreign Government.

(6) Paragraph 5A (15 A-E), Expiration of Overstrength, etc.

(7) Paragraph 5A(20), Failure to Complete an OBC Before Completing 18 Months of Commissioned Service.

(9) Paragraph 18-28(5), is modified to exclude those ARNG warrant officers federalized for Operation Desert Storm.

3. The following rules will be used to determine the order to active duty of officers who qualify for mandatory removal for age or length of service.

A. All officers subject to mandatory removal during the first 120 days the unit is on active duty will be exempted from active duty and separated on their MRD, UP NGR 635-100, paragraph 5A(1) or 5A(2).

B. Officers subject to mandatory removal for age or length of service, UP NGR 635-100, paragraph 5A(1) or 5A(2), and not excluded by paragraph 3A above, will be ordered to active duty with their unit and separated on their mandatory removal date.

4. All provisions of NGR 635-101 and AR 135-175, Chapter 2, remain in effect.

5. Enlisted (NGR-ARP-E):

A. All separation provisions of AR 135-178 are suspended effective 19 Jan 91, except as follows:

(1) Chapter 3, paragraphs 3-2 (Immediate Reenlistment), and 3-4 (Appointment as a Commissioned or Warrant Officer).

(2) Chapter 4, paragraphs 4-4 (Secretarial Authority), 4-8A(4) (Personality Disorder), 4-10 (Involuntary Separation Due to Parenthood), and 4-22 (Surviving Sons or Daughters).

(3) Chapter 4, Paragraph 4-9 (Pregnancy) and AR 135-91, Chapter 4, Section V (Pregnancy).

(4) Chapter 4, Section IV (Dependency or Hardship) and Section VII (National or Community Health, Safety, or Interest). See Ref C, para 2D(7)(C) for approval authority for national cases.

unit and must report if their unit is federalized and that they are subject to prosecution under the UCMJ if they fail to report.

8. Conditional releases to join other Reserve Components will not be granted unless they are associated with a geographical move by the soldier. Every effort will be made to arrange an interstate or intrastate transfer to another ARNG unit prior to approval. Authority to approve such requests is the State AG.

9. Commanders should ensure that unit readiness requirements are weighed against the needs of the soldier prior to approving interstate or intrastate transfers of soldiers not moving geographically. Approval authority is the lowest level commander with control of both units for intrastate transfers to state AG for interstate transfers.

10. Conditional releases to join an active component may be granted only in those cases where it will alleviate a personal hardship (i.e., unemployment) or provide a significant training, education, advancement, or bonus opportunity. Unit readiness requirements will be weighed against the needs of the soldier prior to approval. Approval authority is the State AG.

11. Conditional releases to enlist in a delayed entry program (DEP) of any component still are not, REPEAT, are not authorized. (NGR 600-200, para 3-46F)

12. Soldiers who were granted conditional releases prior to the date of this message will be notified that the conditional release will expire on 15 Feb 91.

13. Soldiers who were granted conditional releases but have not joined another unit/component prior to alert notification will federalize with their unit.

18. AGR Resignations: Title 32 AGR soldiers not previously addressed may only resign and revert to M-Day status with the prior approval of NGB-ARM. Title 10 AGR soldiers fall under the provisions of the Active Army STOP LOSS and must request an exception IAW Ref A, Para 4.

19. Exceptions to Policy: Soldiers subject to STOP LOSS desiring voluntary separation for compelling compassionate reasons or in the best interest of the Army and the ARNG, can submit requests for exception to policy through their chain of command to the Chief, National Guard Bureau, before their unit is federalized or to Commander, PERSCOM after federalization. All separation requests meriting approval will be forwarded by NGB and PERSCOM through DCSPER (DAPE-MPE) to ASA (M&RA) for decision."

UROW
eral



STATE OF WASHINGTON
MILITARY DEPARTMENT
Camp Murray • Tacoma, Washington 98430-5000

DCSPA (600)

24 August 1990

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Volunteers for Transfer to Mobilizing Units in Support of Operation Desert Shield

1. Soldiers volunteering to fill units called to Active Duty, for Operation Desert Shield, must be identified prior to the actual notification. Request all units notify interested soldiers of the following procedures:

a. Volunteers must complete the enclosed MIL Form 613, except for the "Unit to which transfer is requested" line. This form will then be forwarded to this headquarters, ATTN: DCSPA, as soon as possible.

b. A waiting list will be maintained at DCSPA, for selection for transfer, based on the needs of the activating units.

2. Volunteer applications will also be used to identify soldiers available to fill vacancies in other states or Active Army units under the "Temporary Tour of Active Duty" (TTAD) program.

a. Soldiers selected for transfer to activated units or selected for the TTAD program will be contacted, by telephone by DCSPA, to verify their availability before orders are published or given instructions for processing.

b. Volunteers must be MOS qualified and meet the deployability criteria specified in Table 2-1, Paragraph 3, Volume III, FORMDEPS; "Commanders Handbook" and Table 3-1, AR 614-30.

3. It is essential that all soldiers being processed for Active Duty are enrolled in Sure-Pay, otherwise checks will automatically be routed to the assigned unit instead of any address other than a financial institution.

DCSPA (600)

SUBJECT: Volunteers for Transfer to Mobilizing Units in Support
of Operation Desert Shield

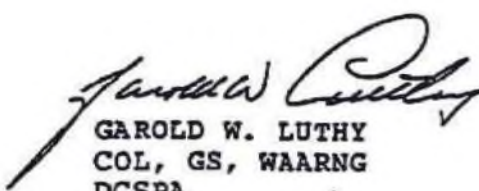
4. POC for further information are:

a. Officer Branch - CW2 Anderson, DSN 355-7440, SCAN
431-1440, or commercial (206) 581-8440.

b. Enlisted Branch - CW4 Brewer, DSN 355-7257, SCAN
431-1257, or commercial (206) 581-8257.

FOR THE ADJUTANT GENERAL:

Encl
as


GAROLD W. LUTHY
COL, GS, WAARNG
DCSPA

DISTRIBUTION:
A

TABLE 2-1. Criteria for Personnel Action

The following rules describe criteria which may require personnel actions during the mobilization process, and establish the appropriate personnel action procedures. Numerous administrative responsibilities are identified for the unit commander throughout the following paragraphs. The unit commander should attempt to locally solve as many personnel administrative problems as possible. However, as the accelerating mobilization burden prevents local solution, these actions should be turned over, through channels, to the STARC/MUSARC or MS with record of those actions that have been taken at the unit level. The unit commander's main concerns should be in assembling the unit, preparing to move to the MS, and identifying no-shows so that followup actions can be taken by STARC/MUSARC or MS personnel.

INDEX OF RULES

- 1 Member on IET, ADT or FTTD.
- 2 Awaiting IET or AIT Phase of Split Option Training.
- 3 Civilian Acquired Skill Program (CASP) personnel not yet awarded MOS.
- 4 SMP Participant.
- 5 Applicants for SMP not yet enrolled in Advanced ROTC.
- 6 High School Student.
- 7 Female in Direct Combat Probability Coded PI unit/duty position.
- 8 Attachment to mobilizing unit as individual or augmentation team.
- 9 AGR personnel serving in a FTUS status.
- 10 Excess/Surplus personnel.
- 11 Promotable Officer.
- 12 Federal recognition in higher grade not received.
- 13 Promotable Enlisted member.
- 14 Sickness, Injury or Disability Existing Prior to AD.
- 15 Sickness or Injury occurring on or after M-date.
- 16 ING member.
- 17 Defective Enlistment.
- 18 Dependency (4 or more).
- 19 Pregnancy.
- 20 Profile.
- 21 Pending transfer or reassignment.
- 22 Homosexuality.
- 23 Overgrade.
- 24 Overage or Overweight.
- 25 Pending Retirement, Separation or Discharge action.
- 26 Non-deployable personnel.
- 27 Individual is not duty MOS/SSI qualified.
- 28 Conscientious Objector.
- 29 Death of Member.
- 30 Key Employee.
- 31 Minister or Theological Student.
- 32 Personal/Community Hardship.
- 33 Officer Candidate.
- 34 Civil Confinement.
- 35 Failure to Report to AD.

(2) Unit commander will authorize a delayed entry on AD for all members not terminated from ADT/FTTD and whose completion of IET/ADT/FTTD will allow the member sufficient time to travel to the unit location and become POR qualified to meet the unit's deployment schedule. Delay letter will be prepared IAW AR 601-25 and will specify the date and location at which the member is to report to his unit. If the military situation permits, up to 10 days delay in reporting after completion of IET/ADT/FTTD may be granted for member to return home to settle personal affairs. The delay letter will be sent to the member with a copy to the supervisor/commander of the IET/ADT/FTTD location and a copy for the member's personnel records which will be given to the MS MILPO during unit inprocessing.

b. If IET/ADT/FTTD tour is scheduled to end after the unit's scheduled deployment date:

- (1) The individual will be assessed into AD status at the installation at which serving and will be cleared from the rolls of the mobilizing unit as of the effective date of the unit's order to AD.
- (2) STARC/MUSARC will notify direct, by letter, the commanding officer of the installation at which the member is serving on IET/ADT/FTTD, advising that the member is to be accessed into active duty status with the installation at which serving effective the

TABLE 2-1 (cont'd)

<u>Rule</u>	<u>Discussion</u>
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1	CRITERIA: Member on IET, ADT or FTID..
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	<p>ACTION: a. Unit commander may request release and return to unit for those members on ADT or FTID but not IET (BT/AIT, OBC). For those on tours not terminated early, if IET/ADT/FTID tour is scheduled to end prior to the unit's scheduled OCONUS deployment date:</p>
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1. The member will be returned to the unit and will

TABLE 2-1 (cont'd)

Rule Discussion

1 Cont'd

date of the unit's order to AD and is not to return to the original unit of assignment. The member will be reassigned according to the needs of the Army. Member's records will be shipped to the member's location along with the letter.

- (3) If the level of mobilization is such that a deployment date is not initially defined for a unit, all personnel are expected to return to the unit. If a deployment date is later assigned, a second letter must be sent for those who have not yet returned to the unit.

2 **CRITERIA:** Awaiting IET or AIT Phase of Split Option Training.

ACTION: a. Member will be ordered to AD with the unit and accompany the unit to MS unless the MS arrival date for the unit is seven or more days after the unit M-date, in which case the individual will accompany the advance party to MS. Personnel records will accompany the member. Health records will be shipped separately or in a second vehicle.

b. At MS, the member will be assessed to AD with the unit and then be transferred from the unit to the MS reception center/garrison for reassignment to appropriate training. MS will request new training reservation quota IAW existing enlistment contract or the needs of the Army as defined by HQDA.

c. Personnel will be processed through the reception center/garrison IAW AR 612-201. DA Form 201 (to include DA Forms 3444 and 3716) will be sent to the training centers IAW AR 640-10.

3 **CRITERIA:** CASP personnel not yet awarded MOS.

ACTION: Member will be ordered to AD with the unit. MS commander will determine if reassignment is required IAW AR 601-201.

a. Members who have not yet attended Basic Training will be processed IAW Rule 2.

b. Members who have completed Basic Training but have not yet been awarded an MOS based on completion of the 48 hours of proficiency training required by Chapter 7, AR

TABLE 2-1 (cont'd)

<u>Rule</u>	<u>Discussion</u>
3	<p>Cont'd</p> <p>601-210 will be ordered to AD with the unit. MS commander will determine if reassignment to complete proficiency training is required.</p>
4	<p>CRITERIA: SMP Participant.</p> <p>ACTION: Transfer ROTC SMP participants (MOS 09R20) to USAR Control Group ROTC IAW AR 145-1. Effective date of orders will be the day before the M-date of the unit. Request for orders will be sent to STARC/MUSARC with all individual records. ROTC cadets will be ordered to AD by their ROTC region when appropriate.</p>
5	<p>CRITERIA: Applicants for SMP not yet enrolled in Advanced ROTC.</p> <p>ACTION: Applicants (MOS 09R10) will be ordered to AD with the unit in enlisted status.</p>
6	<p>CRITERIA: High School Student.</p> <p>ACTION: Transfer to USAR Control Group (Standby - Ineligible) IAW AR 601-25. Effective date of orders will be the day before the M-date of the unit. Request for orders will be sent to STARC/ MUSARC with all individual records along with official verification of high school attendance and expected date of graduation. Upon graduation or age 20, whichever occurs first, the individual will be ordered to AD by ARPERCEN IAW the needs of the service.</p>
7	<p>CRITERIA: Female in Direct Combat Probability Coded PI unit/duty position.</p> <p>ACTION: Member will be ordered to AD with the unit. MS commander will reassign as appropriate IAW DA policy existing at that time.</p>
8	<p>CRITERIA: Attachment to mobilizing unit as individual or augmentation team.</p> <p>ACTION: a. The attachment of individuals from the IRR to units for IDT and retirement points must terminate when the unit enters on AD. Unit will request termination orders from ARPERCEN. IRR members will be ordered to active duty by orders issued by ARPERCEN that direct them to report where their skill and grade are most needed by the Army.</p>

TABLE 2-1 (cont'd)

<u>Rule</u>	<u>Discussion</u>
8	<p>Cont'd</p> <p>b. Members assigned to a unit will mobilize unless directed differently by another Rule of this table. Members attached to other units will be recovered to mobilize with the unit. Members attached from other units will be released to their assigned unit.</p>
9	<p>CRITERIA: AGR personnel serving in a FTUS status.</p> <p>ACTION: AGR performing FTUS duties are converted from voluntary AD to the same AD status as the members of the unit in which serving and are assigned to the unit effective on the unit's M-date.</p>
10	<p>CRITERIA: Excess/Surplus personnel.</p> <p>ACTION: Members will be ordered to AD with the unit and accompany the unit to the MS where they will be cross-leveled or reassigned as appropriate by the MS commander. STARC surplus personnel not able to fill a STARC MOBIDA position will be reported to the SI IAW MTBSP for reassignment. MS commander will report the following Special Branch Officers to HQDA for assignment:</p> <p>a. Chaplain Officers. HQDA (DACH-PER) Wash, DC 20310.</p> <p>b. SJA Officers. HQDA (DAJA-PT) Wash, DC 20319.</p>
11	<p>CRITERIA: Promotable Officer.</p> <p>ACTION:</p> <p>a. If previously selected for unit vacancy promotion, promote before the unit's M-date IAW AR 135-155.</p> <p>b. If selected by mandatory promotion board, promote on the promotion eligibility date if it is before the unit's M-date IAW AR 135-155.</p> <p>c. Officers on a period of declination of promotion are authorized to be promoted if they are in a unit position requiring the higher grade prior to the unit's M-date.</p> <p>d. After the unit's M-date, officer promotions will be IAW AR 624-100. Unit vacancy or mandatory promotions scheduled for after the unit's M-date will not be executed.</p>

TABLE 2-1 (cont'd)

Rule Discussion

- 12 **CRITERIA:** Federal recognition in higher grade not received.
- ACTION:** ARNG officers (not including general officers) and warrant officers who have appeared before a federal recognition board and have been recommended for federal recognition will be ordered to AD in the higher grade regardless of not having yet received federal recognition or appointment as Reserves of the Army in that grade.
- 13 **CRITERIA:** Promotable Enlisted member.
- ACTION:** a. If previously selected for promotion by local promotion board, promote before the unit's M-date.
- b. After the unit's M-date, enlisted promotions will be in accordance with AR 600-200. Members on unit recommended lists but not promoted prior to entry on AD will have their promotion point worksheet included in their MPRJ for integration into AC recommended lists of eligibility for HQDA Centralized Board consideration. Members in grades E4 and E5 will be integrated into Active Army lists IAW Chapter 7, AR 600-200. E6 and above must meet AC criteria.
- 14 **CRITERIA:** Sickness, injury or disability existing prior to AD.
- ACTION:** All unit members who are not under previously initiated removal actions for reasons of medical profile or disability will be ordered to AD with the unit. If a member subsequently claims inability to report as ordered due to sickness or injury, the unit commander will immediately obtain a determination from the attending physician of the seriousness of the sickness/injury and the prognosis for recovery.
- a. If the sickness/injury is so minor and temporary that the member can travel without discomfort or danger to health, the member will enter AD and move with the unit to the MS.
- b. If the sickness/injury is such that the member is hospitalized or that travel would be a significant discomfort or danger to health, but the individual is expected to fully recover, a delayed entry on AD may be authorized IAW Section I, Chapter III, AR 601-25 and Paragraph 4-8g, AR 135-210. Personnel records for all personnel granted

TABLE 2-1 (cont'd)

Rule Discussion

- 14 Cont'd a delay will be taken to the MS with the unit. If the unit deploys prior to member's arrival at MS member's records will be transferred to MS.
- c. If the sickness/injury is such that the member will be permanently physically disabled, the situation will be immediately reported through channels to the STARC/MUSARC for disposition instructions and discharge action.
- 15 CRITERIA: Sickness or injury occurring on or after M-date.
- ACTION: Sickness or injury occurring after entry on AD at ES or while enroute to MS will be handled and reported IAW AR 40-3.
- 16 CRITERIA: ING member.
- ACTION: Member is ordered to AD with the unit to which assigned IAW NGR 614-1 and accompanies unit to MS. ARNG unit will request orders from STARC for assignment of ING members effective on unit's M-date.
- 17 CRITERIA: Defective enlistment.
- ACTION: a. If final determination has been received prior to the effective date of AD, member will be released from enlistment IAW Chapter 9, AR 135-178.
- b. If final determination has not been received, delayed entry will be requested IAW AR 601-25 pending final determination.
- 18 CRITERIA: Dependency (4 or more).
- ACTION: a. If discharge by reason of dependency has been requested and approved prior to the unit's receipt of alert notification, the member will be discharged prior to the unit's effective date of AD IAW AR 135-133 and 135-178.
- b. If discharge has been requested but not yet approved, delayed entry will be requested IAW AR 601-25 pending final determination.
- c. If discharge is not requested prior to the unit's receipt of alert notification, discharge is not authorized. Member will enter AD with the unit.

TABLE 2-1 (cont'd)

Rule	Discussion
19	<p>CRITERIA: Pregnancy.</p> <p>ACTION: Based on medical verification of pregnancy, member may be delayed in entry on AD, transferred to the IRR or discharged. Determination will be made and requests submitted IAW AR 135-91, 135-175 and 135-178. If transfer/discharge is not requested prior to the unit's receipt of <u>alert</u> notification, transfer or discharge is not authorized. Member will enter AD with the unit unless delayed IAW AR 601-25.</p>
20	<p>CRITERIA: Profile.</p> <p>ACTION: Reassignment or discharge due to physical profile is IAW AR 600-60 and NGR 600-200. If reassignment or discharge is not requested prior to the unit's receipt of <u>alert</u> notification, reassignment or discharge is not authorized. Member will enter AD with the unit.</p>
21	<p>CRITERIA: Pending transfer or reassignment.</p> <p>ACTION: If orders have been issued with an effective date prior to the unit's receipt of the alert notification, the transfer or reassignment action will remain valid. Transfer and reassignment between units and IRR will not occur after alert notification. Members who have moved out of the geographical area of the unit and are looking for a new unit assignment but have not reported one to the original unit remain the responsibility of the original unit commander to locate and mobilize. Commanders desiring transfer or reassignment within their subordinate units after alert should prepare a plan for reassignments that will be presented to the MS MILPO.</p>
22	<p>CRITERIA: Homosexuality.</p> <p>ACTION: a. If discharge has been requested and approved prior to the unit's receipt of <u>alert</u> notification, the member will be discharged prior to the unit's effective date of AD IAW Chapter 10, AR 135-178.</p> <p>b. If discharge has been requested but not yet approved, delayed entry will be requested IAW AR 601-25 pending final determination.</p>

TABLE 2-1 (cont'd)

Rule Discussion

- 22 Cont'd c. If discharge is not requested prior to the unit's receipt of alert notification discharge is not authorized. Member will enter AD with the unit.
- 23 CRITERIA: Overgrade.
ACTION: Individual will enter AD with the unit.
- 24 CRITERIA: Overage or overweight.
ACTION: Members who have not been discharged for overage/overweight prior to the unit's receipt of alert notification will enter AD with the unit.
- 25 CRITERIA: Pending retirement, separation or discharge action.
ACTION: a. If retirement, separation or discharge action is required or is requested prior to the unit's receipt of alert notification, member's action will be effected prior to the unit's M-date.
b. If retirement, separation or discharge is required but the effective date is after the receipt of the alert, removal will be suspended and the member will enter AD with the unit unless exemption is authorized in the alert announcement. If separation orders have already been published with a separation date after the unit's effective date of active duty they will be revoked.
- 26 CRITERIA: Non-deployable personnel.
ACTION: Members who are ineligible for overseas service IAW Table 3-1, AR 614-30 will be ordered to AD with the unit. MS commander will reassign to a non-deploying unit.
- 27 CRITERIA: Individual does not possess required special skills.
ACTION: Members who are not qualified in special skills required for their SSI/MOS or duty position (flight, jump, ranger, etc.) IAW AR 600-200 will be ordered to AD with the unit. MS commander will initiate action to acquire skills or reassign the member to another unit.

TABLE 2-1 (cont'd)

<u>Rule</u>	<u>Discussion</u>
28	<p>CRITERIA: Conscientious Objector (CO).</p> <p>ACTION: Member will be ordered to AD with the unit. Those with applications for classification as 1-0 or 1-A-0 which were pending prior to the unit's receipt of alert notification and those previously classified 1-A-0 will be transferred to a non-combatant unit if necessary by the MS commander IAW AR 600-43.</p>
29	<p>CRITERIA: Death of member.</p> <p>ACTION: Members who die at anytime after departing home to report to the unit assembly site based on unit order to AD will be reported/processed IAW AR 600-10.</p>
30	<p>CRITERIA: Key employee.</p> <p>ACTION: Removal of key employees from the Selected Reserve is a mandatory peacetime requirement under AR 135-133 and AR 690-11. If removal has not been requested prior to the unit's receipt of alert notification, the member will be ordered to AD with the unit.</p>
31	<p>CRITERIA: Minister or Theological Student.</p> <p>ACTION: Transfer or discharge of ministers or theological students is a peacetime requirement under AR 135-133. If transfer or discharge has not been requested prior to the unit's receipt of alert notification, the member will be ordered to AD with the unit.</p>
32	<p>CRITERIA: Personal/Community Hardship.</p> <p>ACTION: a. If discharge by reason of hardship has been requested and approved prior to the unit's receipt of <u>alert</u> notification, the member will be discharged prior to the unit's effective date of AD IAW AR 135-133 and 135-178.</p> <p>b. If discharge has been requested but not yet approved, delayed entry will be requested IAW AR 601-25 pending final determination.</p> <p>c. If discharge is not requested prior to the unit's receipt of <u>alert</u> notification or requested discharge is not approved, discharge is not authorized. Member will enter AD with the unit unless granted delayed entry.</p>

TABLE 2-1 (cont'd)

Rule	Discussion
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33	CRITERIA: Officer Candidate.
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| | <p>ACTION: a. Officer candidates attending an AC OCS program will be processed IAW Rule 1.</p> <p>b. Members enrolled as cadets in state operated OCS programs will be offered one of the following options upon mobilization of their unit:</p> <ol style="list-style-type: none"> (1) Withdraw from the state OCS program and enter AD with assigned unit as enlisted member. (2) Remain enrolled in the state OCS program until commissioned or such time as it terminates, and then be designated to attend Branch Immaterial OCS. <p>c. During a 100K call-up and the early stages of partial mobilization, the non-federalized STARC will retain the capability to continue State Military Academy courses. Depending on available time, STARC may consolidate and accelerate state programs in coordination with NGB. Under the above conditions, members who elect to remain enrolled in the state OCS program will be transferred out of their unit effective the day prior to the unit's effective date of AD. ARNG members will be transferred to the STARC. USAR members will be transferred to the appropriate MUSARC. Upon graduation or release from the state OCS program, members will be transferred to a non-mobilized ARNG/USAR unit, if available, or to the USAR Control Group. Commissioned graduates transferred to units will be processed for officer branch basic school quotas by STARC/MUSARC. Commissioned graduates transferred to the USAR Control Group will be processed for quotas by ARPERCEN. Those members who are not commissioned and were transferred to units or Control Group will be subject to mobilization as enlisted members with their unit or as individuals by ARPERCEN IAW the needs of the Army.</p> <p>d. Upon mobilization and federalization of the STARC no policy or procedures are currently in place to provide for the termination of state military academies and transition of cadets into AC schools. Recommended policy currently being staffed will have all State Military Academies terminate with academy staff personnel entering AD with the STARC and being processed under Rule 10, Excess/Surplus Personnel, unless separate assignment instructions are issued by HQDA. Students will return to their assigned units.</p> |
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Court File No. T-160-90

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

B E T W E E N :

MICHELLE DOUGLAS

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

AFFIDAVIT OF
LAWRENCE J. KORB

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