

## REPORT OF BOARD OF INQUIRY

A. Report of Board of Inquiry held on 12-13 July 1994, in the case of Lieutenant Junior Grade Richard D. Selland, SC, USN, xxx-xx-xxxx/3100.

B. Findings of the Board:

We have thoroughly reviewed the guidance and evidence provided by the recorder and counsel for the respondent. Clearly our decision must be based on the regulations and requirements of DOD instruction 1332.30 and CNO NAVADMIN 033/94.

In determining whether LTJG Selland violated DOD policy regarding homosexuality, the Board had to answer two questions:

1. Did the respondent make a statement which created a rebuttable presumption of homosexual conduct?
2. Did the respondent present evidence demonstrating that he does not engage in, attempt to engage in or have a propensity to engage in homosexual acts?

Further, we had to bear in mind, that the DOD policy states that the member bears the burden of proving **by a preponderance of the evidence** that he is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

While we acknowledge LTJG Selland's competence and dedication to the Navy, we did not believe the evidence submitted concerning them to be relevant to answering the questions stated above.

In addressing the first question, the Board finds that there is sufficient evidence to believe that the respondent did, in fact, state that he is a homosexual. A review of that evidence indicates that, although LTJG Selland had several opportunities to recant his statement to CDR Hasslinger (up to and including his unsworn statement), he chose not to do so. In fact, the specific evidence (respondent's exhibit FF, recorders's exhibit 9, the testimonies of CDR Hasslinger and CAPT Brown, and LTJG Selland's own unsworn statement) clearly indicate that LTJG Selland wishes to publicly acknowledge his homosexuality.

The Board found the circumstances of LTJG Selland's statement to CDR Hasslinger troubling. We examined his assertion that his statement was made, at the urging of a Navy chaplain, in privacy, to his commanding officer, in order to stop wardroom harassment. We concluded that, as a naval officer, LTJG Selland should have realized that the burdens of command preclude a commanding officer from maintaining confidences with his subordinates in the matter of violations of regulations. Once informed by LTJG Selland of his homosexuality, CDR Hasslinger was compelled, by duty, to act on that knowledge. In the matter of easing wardroom harassment, LTJG

Selland could have pursued alternative courses of action through the chain of command, which did not require his open declaration of homosexuality.

In considering the second question, the Board focused on CDR Hasslinger's testimony that LTJG Selland stated that he was involved in a monogamous homosexual relationship. Respondent's lack of rebuttal of this testimony in his unsworn statement provides the Board with sufficient evidence to believe that LTJG Selland did engage in homosexual acts. The Board looked for, and would have been receptive to, evidence that LTJG Selland does not intend to engage in future homosexual acts. That evidence was not forthcoming. The only piece of evidence which addressed respondent's future intentions was LTJG Selland's unsworn statement that he "will not engage in conduct that interferes with the military mission." Had LTJG Selland simply stated that he will not engage in future homosexual acts, the Board's deliberations may have followed a different course.

Lacking LTJG Selland's statement that he would refrain from future homosexual conduct, the Board considered the question of "propensity to engage in homosexual acts" by examining the documentary evidence submitted by the respondent. The Congressional Research Service report (respondent's exhibit CC) states that the distinctions between orientation and behavior are difficult to make. The board found this to be true in its deliberations. While DR Herek is quite emphatic, in his work, that admission of sexual orientation does not necessarily imply conduct, this assertion could also be stated that homosexual orientation may imply conduct. Once again, the Board searched for respondent's evidence to rebut the presumption of homosexual conduct, but could find none. Therefore the Board believes that the propensity for LTJG Selland to commit homosexual acts exists.

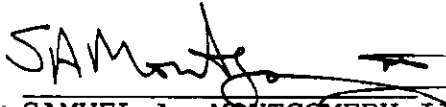
Accordingly, the Board finds by a vote of

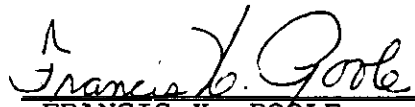
3 to 0 The statements of LTJG Selland, are homosexual conduct within the meaning of paragraph 3 of CNO Message 010300Z Mar 94 (NAVADMIN 033/94) and the presumption of homosexual conduct thereby raised is not rebutted.


C. Recommendation of the Board:

By a vote of 3 to 0, the Board recommends that:

LTJG Selland has failed to show cause for retention in the Naval service and he should be separated with an Honorable Discharge.

  
SAMUEL A. MONTGOMERY III  
CAPT, USN

  
FRANCIS X. POOLE  
CAPT, SC, USN

  
DALE S. FELTES  
CAPT, SC, USN

Dissent, if any: NONE

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D. Authentication by senior member

  
SAMUEL A. MONTGOMERY III  
CAPT, USN

E. Reviewed by legal counsel

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JAMES D. SECOR  
LT, JAGC, USNR

F. Reviewed by counsel for the respondent

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JEFFREY C. GOOD  
LCDR, USCG