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DON'T ASK, DON'T TELL REVIEW

HEARING

BEFORE THE

MILITARY PERSONNEL SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

HEARING HELD
JULY 23, 2008

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DON'T ASK, DON'T TELL REVIEW

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
MILITARY PERSONNEL SUBCOMMITTEE,
Washington, DC, Wednesday, July 23, 2008.

The subcommittee met, pursuant to call, at 2:05 p.m. in room 2118, Rayburn House Office Building, Hon. Susan A. Davis (chairwoman of the subcommittee) presiding.

OPENING STATEMENT OF HON. SUSAN A. DAVIS, A REPRESENTATIVE FROM CALIFORNIA, CHAIRWOMAN, MILITARY PERSONNEL SUBCOMMITTEE

Mrs. DAVIS OF CALIFORNIA. Good afternoon. Welcome to the hearing. Today the Military Personnel Subcommittee will turn its attention to an issue that has not been before this body in 15 years, the issue of gay men and women serving openly in the military. At this time of war for our men and women in uniform, it has been asked why we would hold this hearing, and clearly this subcommittee has a number of competing issues that need our attention and that have received it. That is why we pushed through needed measures in the House version of the National Defense Authorization Act (NDAA) for fiscal year 2009 and have held hearings on health care for our service members and their families, mental health care for those returning from war and quality-of-life issues. This afternoon we are taking a closer look at yet another important issue impacting the men and women who serve.

Since 1993, the Department of Defense (DOD) has removed approximately 12,600 service members from the military under section 654, Title 10 U.S. Code, commonly known as the Don't Ask, Don't Tell policy. With this policy comes the loss of service members with critical skills needed in the field right now, including much-needed language expertise. In my opinion we must carefully review a policy that rejects otherwise well-suited individuals from military service. This is especially true at a time when the military is trying to reduce the strain on our military by growing the force.

Our purpose today is to begin a long overdue review of the various perspectives of this law and policy and to start a conversation about the real-life impact on our service members and their families, and, most importantly, on the operational readiness of our military.

This hearing is a bit different from the typical hearings conducted by this subcommittee. With two very distinct and strongly held views of the law and policy, the subcommittee has worked very hard to ensure that both sides are afforded identical opportunities to present congressional members with the data and real-life

examples to support their perspectives. While the focus of the hearing is to provide a fair and balance forum for debate, I think it is only fair to share my personal belief that the current policy should be repealed. I came to this position after talking with many service members, active duty, Reserve and retired, and concluded that the open service of gay men and women need not present an operational problem. Many Americans who happen to be gay or lesbian want to answer our Nation's call to service, and allowing them to serve in an open and honest manner would uphold the ideals of military service.

I would like to enter into the record a statement from the Department of Defense regarding Don't Ask, Don't Tell. The Department will not be testifying today and has been hesitant to address the issue in open session. I regret that the Department will not be here since I believe that there are issues that would likely be raised where their experience could prove to be helpful. However, when pressed to describe how they would respond to a change in the law, senior Department of Defense officials have indicated that they would comply fully with any new legislation, although they do not advocate in favor of changing the policy at this time. Without objection, I ask the Department of Defense statement be entered into the hearing record.

[The information referred to can be found in the Appendix on page 180.]

Mrs. DAVIS OF CALIFORNIA. Because equity is a priority characteristic of this hearing, I would remind witnesses that I intend to strictly adhere to the time limits for opening statements. Each side will be given 15 minutes to make their case.

Before I turn to Mr. McHugh, I would like to extend my appreciation to those on both sides of this issue who agree to testify. We all know that this is a very difficult issue. It is a very personal issue. It is a very emotional issue. And we expect that everyone here will be treated with the utmost respect during the course of this hearing.

[The prepared statement of Mrs. Davis can be found in the Appendix on page 51.]

Mrs. DAVIS OF CALIFORNIA. Mr. McHugh, I yield to you for your opening statement.

STATEMENT OF HON. JOHN M. MCHUGH, A REPRESENTATIVE FROM NEW YORK, RANKING MEMBER, MILITARY PERSONNEL SUBCOMMITTEE

Mr. MCHUGH. Thank you, Madam Chair. Let me echo your words of both appreciation and encouragement to everyone involved in this hearing today. Certainly we as a subcommittee on both sides thank the witnesses for agreeing to be with us, and we expect and look forward to a perhaps lively, but nevertheless informative and civil discussion of as what the chairlady described as one very important issue.

In 1993, when this subcommittee—and I might add I was here as a member of the full committee at that time—and the full committee examined proposals to change the policy regarding military service by gay and lesbian personnel, that process that was undertaken was, I think, fairly described as comprehensive, and it was

intense. There were no less than 5 hearings involving 37 witnesses ranging from the Secretary of Defense and Chairman of the Joint Chiefs to current as well as former military, sociologists, and legal experts who provided a wide range of views and perspectives. Not surprisingly, the issues that were expressed at that time were complex, and, again unsurprisingly, the debate was at times very passionate.

Interestingly, the chairman of the House Armed Services Committee (HASC) at that time supported the change, while the chairman of the Personnel Subcommittee did not, which I think rather illustrates the divisions that this question can give light to. In the end, the committee in the House and the Senate concluded, and I want to quote, "The presence in the Armed Forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards and morale, good order and discipline and unit cohesion that are the essence of the military capability."

That is the issue that should be at question here today. The gentlelady spoke, I think, very accurately to the passions that both sides bring to this question. I think we as a Congress owe it to both sides and to the American people to conduct our inquiries and whatever decisions may come out of this process based on that issue defined in the 1993 findings of the HASC and the Senate as good order and discipline and unit cohesion. That statement, even today, under brims the current law, and our challenge is to examine and determine whether that conclusion of 1993 remains valid here in 2008.

Let me note I certainly recognize the chairwoman's long-standing desire, as she stated it, to repeal the current law, and I would hope that she would commit to ensuring that no change would take place without a comprehensive, and open debate on the full range of issues.

I want to state I share the chairlady's disappointment that thus far the services as a whole have not agreed to step forward. I don't see as an individual member how I fully and fairly consider this question and, more importantly, the issue of changing this question without the input of those in the active military who have the heavy responsibility of commanding our forces at a time of war. I would hope and encourage both the Department of Defense and various services to reconsider their reluctance that they have displayed to this point.

While some will argue that much has changed since 1993, and the current law is no longer relevant or needed, one thing has not changed in those 15 years. As it was in 1993, the question of whether the law is to be changed shall ultimately rest on matters of military readiness, morale, good order and discipline.

So, Madam Chair, I join you, as I said earlier, in welcoming our witness today, and I truly look forward to their testimony. And I yield back.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. McHugh.

[The prepared statement of Mr. McHugh can be found in the Appendix on page 54.]

Mrs. DAVIS OF CALIFORNIA. I ask unanimous consent now that nonsubcommittee members be allowed to participate in today's

hearing after all subcommittee members have had an opportunity to ask questions. Is there any objection?

Without objection, nonsubcommittee members will be recognized at the appropriate time for five minutes.

Now I would like to introduce our panel. We will begin with witnesses representing the coalition seeking repeal of the current law and policy. First will be Major General Vance Coleman, United States Army, Retired, former Artillery Officer and Division Commander; Captain Joan Darrah, United States Navy, Retired, Former Naval Intelligence Officer, and Congressman Moran welcomes you to the hearing and thanks you for being here; Staff Sergeant Eric Alva, United States Marine Corps, Retired, wounded Iraq war veteran. Thank you very much.

Those witnesses will be followed by the witnesses representing the coalition that supports the current law, but opposes the Don't Ask, Don't Tell policy, which they view is improperly connected to the law: Ms. Elaine Donnelly, President, Center for Military Readiness; and Sergeant Major Brian Jones, United States Army, Retired, former Army Special Operations and current business owner and Chief Executive Officer (CEO).

Welcome to the hearing, and, General Coleman, if you will start, the three speakers will have five minutes apiece, and then when we move into—Ms. Elaine Donnelly will actually have 10 minutes, and then Sergeant Jones 5 minutes. We have 15 minutes per panel.

STATEMENT OF MAJ. GEN. VANCE COLEMAN, USA, (RET.), FORMER ARTILLERY OFFICER AND DIVISION COMMANDER

General COLEMAN. Thank you. Thank you, Madam Chairman.

Madam Chairman, members of the committee, and my fellow witnesses, during my more than 30 years of service to the United States, I have seen and experienced what happens when second-class citizens—and, conversely, what we can achieve when we reverse those views and embrace all of our troops as first-class patriots with an important contribution to make.

I enlisted in the Army when I was 17 in the days before we desegregated our unit fighting forces or our park fountains. I served in segregated units in the United States and in Europe before being selected to attend an integrated leadership academy and then on to Officer Candidate School (OCS).

After Officer Candidate School I was assigned to a combat unit. When I reported for duty, however, I was promptly reassigned to in an all-black service unit. The message was clear: It didn't matter that I was a qualified field artillery officer who was qualified to serve in the combat arms unit; it only mattered that I was black.

Madam Chairman, I know what it is like to be thought of as second-class, and I know what it is like to have your hard work dismissed because of who you are or what you look like. I also know the difference made when we place qualifications ahead of discrimination and tore down the walls of racial prejudice in our fighting forces.

As an Army commander, I also know how disruptive it would be to remove a trained, skilled service member from a unit. It is bewildering and counterintuitive to me that we maintain a Federal law

that says no matter how well a person does his or her job, no matter how integral they are to their unit, they must be removed, disrespected and dismissed because of who they happen to be or who they happen to love. That is why I am grateful to have the opportunity today to urge Congress to repeal Don't Ask, Don't Tell. The military has shown it excels at blending people together from different backgrounds and beliefs and putting the mission first. I ask Congress to repeal, Don't Ask, Don't Tell and allow the military to benefit from having the best and the brightest serve regardless of sexual orientation.

In Korea I was assigned to a field artillery unit that was totally integrated. The unit consisted of individuals from all walks of life, black, white and brown. There was never a problem of unit morale or unit cohesion. The only thing that mattered to the soldiers was the ability to perform and whether you could be depended upon when the going got tough.

One thing that I learned while serving in Korea in the Korean conflict is that in a 24-hour combat situation, the troops are not concerned about who you are or what you believe; they only want to know whether or not you can perform.

Performance would mean the difference between winning or losing, living or dying. I soon learned from the senior non-commissioned officers (NCOs) that the key to success was performance. That is true 50 years later, and it will be 100 years from now.

As a battery executive officer in Korea, I supervised a supervisor first class, who happened to be gay. He was the communication chief in our unit. He was in charge of the unit's communication, the system setup, the maintenance, and to make sure all the systems were working. He was, to put it in plain, essential terms, a critical part of that unit. Having to remove him from the position and from the Army entirely would have harmed our unit's ability to perform its mission.

This committee should be concerned first and foremost about the readiness of Armed Forces and the personnel policies that best serve that readiness. And all of us here today know that when the Federal Government gives the order, commanders reiterate it, and the service members salute and implement it.

As a combat leader I learned to constantly train my troops to adapt to change in combat situations, to change in weapons system, to change in terrain. In the 1980's, I was Division Commander of the 84th Army Reserve Training Division, testing our mobilization planning by establishing new training models. Military leadership indeed is about being able to constantly adapt. That is why we have the best military in the world, and that is why we are better than the outdated arguments that some still use to prop up Don't Ask, Don't Tell.

Don't Ask, Don't Tell hurts military readiness. It undermines our commitment to being a Nation where we are all equal in the eyes of the law, and it ties the hands of commanders who want to welcome and retain America's best and brightest into the military fold.

It is the time, for the sake of our military, to end this modern-day prejudice and embrace all of our troops as first class patriots with an important mission to make.

I will close by saying to you unequal treatment to one of us is unequal treatment to us all. Thank you.

Mrs. DAVIS OF CALIFORNIA. Thank you, General Coleman.

[The prepared statement of General Coleman can be found in the Appendix on page 56.]

Mrs. DAVIS OF CALIFORNIA. And if you could all make sure to speak into the mike, that would be very helpful.

Captain Darrah.

STATEMENT OF CAPT. JOAN E. DARRAH, USN, (RET.), FORMER NAVAL INTELLIGENCE OFFICER

Captain DARRAH. Good afternoon, Chairwoman Davis and committee members. Thank you so much for the opportunity to testify during this important review of the Don't Ask, Don't Tell law.

My name is Joan Darrah. I joined the Navy in 1972 and served for 29–1/2 years. I was an intelligence officer and retired in June 2002 at the rank of captain. I was awarded three Legions of Merit and three Meritorious Service Medals. My final tour of duty was as the officer and enlisted community manager where I was responsible for all policies that impacted recruiting and retention for the intelligence community. Thus I fully understand and appreciate the importance of being able to recruit and retain the highest-quality people.

When I join the Navy, I didn't know that I was gay. By the time I realized it, I was well into my Navy career. And according to my promotion record and my fitness reports, I was making a significant contribution.

It is only now that I have been retired for six years that I fully realize how incredibly stressful it was to live under Don't Ask, Don't Tell. For the last many years of my career, whenever the admiral would call me into his office, I would be 99.9 percent certain it was to discuss an operational issue, but there was always that fear in the back of my mind that somehow I had been outed, and that the admiral was calling me in to tell me that I was fired. The constant fear of being outed and fired, even though your performance is exceptional, is hard to quantify.

Don't Ask, Don't Tell discourages thousands of talented and patriotic citizens from joining the military because, rightly so, they refuse to live a lie. This is a tremendous loss to our military. When a smart, energetic young person who happens to be gay asks me about joining the service, I recommend that they do not join. I love the Navy. It is painful for me to encourage someone who could contribute so much to take their talents elsewhere.

When I was assigned as the deputy commander and chief of staff at the Naval Intelligence Command, I supervised almost 1,500 people and had several openly gay civilians in my command. The morale and productivity of the command was extremely high, and these gay employees were judged, like everyone else, on their demonstrated ability and performance.

In September 2001, the true impact of Don't Ask, Don't Tell on me personally came into sharp focus. On Tuesday, September 11th, I was at the Pentagon attending the weekly intelligence briefing. During the briefing we watched cable news network (CNN) as the planes hit the Twin Towers. Finally at 9:30 my meeting was ad-

journed. When American Flight 77 slammed into the Pentagon, I was at the bus stop. As it turned out, the space I had been seven minutes earlier was completely destroyed, and seven of my coworkers were killed. The reality is that if I had been killed, my partner then of 11 years would have been the last to know, as I had not dared list her name in any of my paperwork or on any of my emergency contact information.

It was the events of September 11th that made me realize that Don't Ask, Don't Tell was taking a much greater toll than I had ever admitted. It caused me to refocus my priorities, and on 1 June, 2002, one year earlier than I had originally planned, I retired.

Since I have retired, I have come out to many people with whom I served, seniors, juniors and coworkers. Many said they already knew that I was gay, and, without exception, everyone has said they were pleased that I continued to serve.

Military readiness is achieved by attracting and retaining the best and the brightest. Don't Ask, Don't Tell clearly undermines the military readiness of our country. When Don't Ask, Don't Tell is repealed and replaced with a policy of nondiscrimination, many highly qualified young people who refuse to live a lie will be much more inclined to join the military. Other people, especially younger ones who are likely already out to some of their shipmates, will be more apt to reenlist, while more senior, older personnel might opt to keep their sexual orientation private. At least they will finally be able to go to work each day without the fear of being fired because someone has discovered they are gay.

In summary, I care so much about the Navy, and I want our military to be the very best, but for us to have the most capable and ready military, we must be able to recruit and retain the best and the brightest. Don't Ask, Don't Tell stands in the way of that goal. Thank you.

Mrs. DAVIS OF CALIFORNIA. Thank you.

[The prepared statement of Captain Darrah can be found in the Appendix on page 62.]

Mrs. DAVIS OF CALIFORNIA. Sergeant Alva. I appreciate the fact that everybody is really keeping to the time.

STATEMENT OF STAFF SGT. ERIC ALVA, USMC, (RET.), WOUNDED IRAQ WAR VETERAN

Sergeant ALVA. Good afternoon, Ms. Chairwoman and members of the committee. My name is Eric Fidelis Alva. I was a staff sergeant in the United States Marine Corps. I am honored to testify today and to share my experiences with the subcommittee. Thank you for holding this hearing.

I grew up in a military family in Texas. My father served in Vietnam, my grandfather in World War II. I guess you could say that service was in my blood. I inherited my middle name, Fidelis, from my father and grandfather. As you know, the Marine credo, Semper Fi is short for Semper Fidelis, always faithful. Loyalty is literally my middle name. So I guess you could say that serving my country was my calling.

I joined the military because I wanted to serve. I joined the Marines because I wanted a challenge. I was 19 years old, I was patriotic, idealistic and also gay.

For 13 years I served in the Marines Corps. I served in Somalia during Operation Restore Hope. I loved the discipline and camaraderie. What I hated was concealing part of who I am.

My military service came to an end on March 21st, 2003. Three hours into the invasion of Iraq we had to stop to wait for orders. I went back to the Humvee to retrieve something, to this day I can't remember what, and as I crossed that dusty patch of desert for the third time that day, I triggered a land mine.

I was thrown through the air, landing 10 or 15 feet away from the vehicle. The pain was unimaginable. My fellow marines were rushing to my aid, cutting away my uniform to assess the damage and treat my wounds. I remember wondering why they weren't removing my right boot. It wasn't until later that I had realized that was because that leg was already gone. When I regained consciousness in a hospital outside Kuwait City my right leg was gone, my left leg was broken, and my right arm permanently damaged. I also had the dubious honor of being the first American injured in the Iraq war. I received a Purple Heart along with visits from the President and the First Lady. I was told I was a hero.

That land mine may have put an end to my military career that day, but it didn't put an end to my secret. That would come years later when I realized that I had fought and nearly died to secure the rights for others that I myself was not free to enjoy. I had proudly served a country that was not proud of me. More importantly, my experience just proved all the arguments against open service by gays and lesbians.

I knew I had to share my story. Even under the military's Don't Ask, Don't Tell law, I was out to a lot of my fellow marines. The typical reaction from my fellow service members: So what? I was the same person, I did my job well, and that is all they cared about. Today I am godfather to three of those men's children.

Normally I was cautious about whom I divulged my secret to; I thought I had to be. Then one evening out with some guys from our unit, I let my guard down. One of the guys commented on some women in a bar. When my response was less than enthusiastic, he asked me jokingly if I was gay. As a matter of fact I am, I responded. He swore to keep my secret, but I suppose he thought it was just too good a piece of gossip to pass up. He was wrong. No one he told cared. The response from everyone was the same as it had been from the friends in whom I confided: So what? I was still Eric, still one of them, still a marine. I was still trusted.

That was a very powerful thing for me, that I still had their trust, because the supporters of Don't Ask, Don't Tell are right about one thing: Unit cohesion is essential. What my experience proves, they are wrong about how to achieve it. My being gay and even many of my colleagues knowing about it didn't damage unit cohesion. They put their lives in my hands, and when I was injured, they risked their lives to save mine.

My experience gives me confidence in our military men and women. I am confident that just as they are capable of immense professionalism and dedication to duty, putting their lives on the

line every day, our soldiers are equally capable of putting aside personal bias and standing shoulder to shoulder with gay, lesbian, and bisexual service members. They are there to fulfill a mission. This is my unit, and our war. They will do their duty.

As a former marine and patriotic American, I am horrified that Don't Ask, Don't Tell forces trained and ready troops to chose between serving their country and living openly, a choice I myself would have been faced with had a land mine not made it for me. I am appalled that Don't Ask, Don't Tell forces the involuntary separation of thousands of skilled service members during a time of war, threatening our country's military readiness for no good reason.

My experiences serving the military demonstrate that Don't Ask, Don't Tell is an outdated, useless law. Since leaving the military, the opportunities I have had to speak with Americans, both gay and straight, have shown time and again that the American people support open service by gay, lesbian and bisexual troops. Those who support Don't Ask, Don't Tell claim they do so in the interest of unit cohesion, while as a former marine, I can tell you what it takes to build unit cohesion: Trust.

Mrs. DAVIS OF CALIFORNIA. Sergeant Alva, I am sorry, could you finish your remarks very quickly?

Sergeant ALVA. Yes, ma'am.

I can also tell you that Don't Ask, Don't Tell does nothing but undercut the trust and with it our Nation's security. I urge the members of the subcommittee to rethink this failed law. Thank you.

Mrs. DAVIS OF CALIFORNIA. Thank you very much.

[The prepared statement of Sergeant Alva can be found in the Appendix on page 68.]

Mrs. DAVIS OF CALIFORNIA. Ms. Donnelly.

STATEMENT OF ELAINE DONNELLY, PRESIDENT, CENTER FOR MILITARY READINESS

Ms. DONNELLY. Thank you for the opportunity to testify, Madam Chairman.

Mrs. DAVIS OF CALIFORNIA. Make sure your microphone is on.

Ms. DONNELLY. I am Elaine Donnelly. I founded the Center for Military Readiness in 1993. In that year Bill Clinton announced his intent to lift the ban on homosexuals in the military. He proposed a concept known as Don't Ask, Don't Tell, which Congress rejected.

In fact, most of the problems we are hearing about today are coming about because the Department of Defense—Bill Clinton imposed Don't Ask, Don't Tell on the military even though the law says something different. If the law had been given a name of its own, it would have been called the Military Personnel Eligibility Act of 1993, because, you see, it is all about eligibility, but it doesn't have a name of its own other than the technical name, section 654, Title 10. We support this law; we do not support Don't Ask, Don't Tell.

The law was passed with overwhelming bipartisan majorities, and it has been upheld as constitutional several times. The only compromise was the dropping of the question, are you homosexual? It used to be on induction forms. That question can be reinstated

at any time, and it should be, because to say that you can't ask questions about eligibility is like telling a bartender that you cannot serve liquor to people who are underage, but you cannot ask them for ID. It makes no sense. It is not good policy. But the law is good policy. The law is there and it is designed to promote good order and discipline.

I want to talk about the future. I would like to talk about what would happen if you actually repealed this law. The result would be devastating because the military doesn't do things halfway. If you say that this is in the tradition, the proud tradition, of civil rights, which we have seen in our history in positive ways, if we say that a sexual minority here on is going to have special rights, that means that anybody who disagrees is contrary to the zero tolerance policy. It means that anybody whose attitudes are different from what is advocated by the American Civil Leberties Union (ACLU) and the left—the San Francisco left, who want to impose their agenda on the military, those people become unacceptable, and they would have to eventually be forced out of the military.

You see, when promotions are denied, that means people get the message they cannot stay in the military. We would lose thousands of people if they were told under a zero tolerance policy that you must accept the new paradigm, which is forced cohabitation of men and women with homosexuals in the military, forced cohabitation in all branches of the service, all communities. I am talking about the infantry, Special Operations Forces, Navy SEALs, cramped submarines.

We are not talking about a Hollywood role here, but we are talking about real consequences for real people. If we say that this is going to be the new paradigm, we are going to tolerate absolutely no dissent, that would put a tremendous, perhaps unacceptable, burden on people who do have religious convictions or those who simply believe that the policy, the law as it is now, is a good idea. They would become unacceptable to the military and would be driven out. Some people say, "well, that is okay." for the sake of diversity we cannot afford to lose so many people if they disagree with this policy of forced cohabitation of heterosexuals and homosexuals in the military.

How would enforcement work? Well, if a female soldier reports an incident of harassment, she enjoys the presumption of truthfulness. But under the new civil rights standard or zero tolerance standard, if a male soldier reports or is made to feel that there is a sexual atmosphere that is unacceptable, the suspicion would be that he has intolerant attitudes. The military don't tolerate people with intolerant attitudes. That man is probably not going to make a complaint, but if he does, he will suffer serious sanctions.

In the messy disputes that would ensue, commanders are supposed to sort all of this out? You know, we have difficulties right now with sexual misconduct. We have issues with regard to male and female sexual misconduct of various kinds. If we want to increase that threefold, then we have a new policy that says we are going to have disputes or problems between male and male and female and female.

I invite you to read in my testimony a letter from a young woman named Cynthia Yost, who served in the Army, the experi-

ence she had with an assault. I invite you to think about her suggestion that when photographs were taken of her and her fellow soldiers in the shower, was this the kind of thing that we want to see in the future, especially in the days of the iPhone and the Internet? Do we want to have a sexualized atmosphere in our Armed Forces, all branches, submarines, infantry, all the rest of it?

There is not enough time to go into all the various kinds of things that would ensue, but perhaps I can talk about a couple of things. Number one, you will not get full information about what is happening in the field. We have had an incident just recently, a Navy chaplain who abused midshipmen and two other members of the service. He was Human Immunodeficiency Virus (HIV) positive, he abused his authority, and yet the record of his court martial doesn't show homosexual conduct. It shows the worst things that he did. But you will not get a feedback of what is happening in the field because as even *Navy Times* agreed we are not getting adequate information from the Department of Defense.

You should ask about cases like Lamar Dalton, the soldier who was HIV-positive, infected an 18-year old. You need to think about the situation of HIV positivity. We have troops who are not deployable because of HIV-positive status. The legislation to repeal the law says we should invite in everybody who was denied before. What will that do to our medical system? How does that encourage trust or help our military to have strong discipline and morale?

If we follow the example of the British military, they are now looking at the issue of transgenders in the military. They are very much into this model. They are different in their culture. They accepted a European court order to accept homosexuals in the military. We don't do that in our system. We have responsible people, people like you who look at these issues. We don't take orders from courts.

I would like to talk to you if there is time about many of the unconvincing arguments for repeal that we have heard. We keep hearing about polls. In an article that I wrote for *Duke University Journal of Gender Law & Policy,* I have analyzed every one of these reports. Every one of them falls apart under closer scrutiny. We don't need to make decisions based on polls. For instance, Zogby, they didn't mention the one question on the Zogby poll that mattered of military people supposedly: Do you agree or disagree with allowing homosexuals to serve openly in the military? Only 26 percent agreed. A combination of those who disagreed and were neutral was 69 percent. You did not hear about that poll unless you read the article that I wrote about it. The *Military Times* polls have consistently been 57 to 59 percent opposed. The polls are by no means an argument for repealing the law.

Discharges, how many discharges are there? The numbers are very small. You have my written testimony. The documentation is there. Pregnancy, weight loss standard violations, the discharges are much greater numbers.

Is the Department of Defense not enforcing the law? Well, I would agree the Department of Defense has been derelict. They have not enforced the law properly when they suggest there is nothing against gays and lesbians being in the military based on sexual orientation. That is dissembling. The law doesn't even say

that phrase, "sexual orientation." It is so vague, you cannot define it. It is based on conduct. A person who engages in that conduct and says so is someone who is not eligible to be in the military.

Do we have shortages in certain categories? Linguists, yes. There are ways to resolve that. The number one way would be to reinstate that question. Why was the Defense Language Institute training people who were not eligible to be in the Armed Forces? That is where the problem is. The problem is not with the law itself.

We have heard speculative claims all based on guesstimates and suppositions and assumptions. Sixty-five thousand homosexuals in the military? Have you looked at that report and seen just how flimsy the research is? Use common sense. We are talking about common sense. If people who disagree are driven out of the military, you are going to lose thousands of people in the military. We can't afford that.

Foreign militaries. We know their experience is very different. We know what they do in their military is nothing like the demands that we have in our Armed Forces. We have the strongest military in the world. Good order and discipline is important.

My recommendation would be support the law, keep the law, recommend the Department of Defense enforce it properly. We should drop the Don't Ask, Don't Tell regulations put in place by Bill Clinton. They are administrative and can be eliminated at any time. We need to keep priorities straight. Equal opportunity is important, but the needs of the military, our military, must come first. It is the only military we have, and we have to make sure that policy is the best we can have for our brave men and women in the military.

Thank you.

Mrs. DAVIS OF CALIFORNIA. Thank you.

[The prepared statement of Ms. Donnelly can be found in the Appendix on page 74.]

Mrs. DAVIS OF CALIFORNIA. Please go ahead.

STATEMENT OF SGT. MAJ. BRIAN JONES, USA, (RET.), FORMER ARMY SPECIAL OPERATIONS AND CURRENT BUSINESS OWNER AND CHIEF EXECUTIVE OFFICER

Major JONES. Thank you for the opportunity to testify today. I am a retired sergeant major, U.S. Army. I am a Ranger first, and I am a Ranger always. The most common attribute I see on a military evaluation report is selfless service. I chose a career path that placed me in a Ranger battalion. I served in Delta Force as a Detachment Sergeant Major in a Ranger Regiment.

Selfless service is what makes a good team great within the U.S. military. You won't find that in the corporate world. Selfless service is what an individual will do for the good of the team. Self-service is doing what is personal self-interest at the expense of the team.

Recently a U.S. Navy SEAL received a Congressional Medal of Honor by throwing himself on a grenade to protect his team. That is selfless service. While deployed to Somalia in 1993, commonly referred to as Black Hawk Down, two of my unit members received the Medal of Honor for asking to be inserted into a crash site to protect a pilot, knowing what their fate would be.

That is selfless service, and combat effectiveness depends on it. It doesn't happen by accident. It must be taught with concentrated training, no distractions. Selfless service is reinforced with discipline and encouraged by the example of combat leaders.

The Ranger way of life trained me for what I do now as a CEO of the company I started three years ago, Adventure Training Concepts (ATC). The concept is to use the U.S. Army training model to teach the value of teamwork during corporate team building and leadership development training.

Our clients are diverse, men and women, adventure seekers of all ages, and I suspect some are homosexuals. All of them enjoy and benefit professionally from the lessons and teamwork taught by our programs. There is a notable difference, however, between the ATC environment and military units such as infantry, Special Operations Force and submariners.

On my facility people learn about teamwork and leadership, but they do not share close, intimate living conditions comparable to those in the military. The difference is critically important and disregarded at great risk.

In the civilian business world, decisions frequently are based on bonuses and job security. In the military environment, team cohesion, morale and esprit de corps is a matter of life and death. Bonuses and job security comes second to the reality of writing a hard letter home to a loved one or holding the hand of a teammate who is fighting for his or her life.

In my 21 years of service in the U.S. Army, I sat and performed in as many leadership positions that I could. As a leader my first obligation was to the Nation. It meant keeping our soldiers ready for any situation for which our country called upon them. It meant taking care of each soldier I had the honor of leading. It meant being fair and impartial to every soldier. It also meant keeping the soldiers under my charge safe, secure, trained, equipped and informed as I possibly could. And on their behalf I would respectfully like to say at this time of war, I find it surprising that we are here today to talk about this issue of repealing the 1993 law.

Our soldiers are overtasked with deploying, fighting, redeploying, refitting and deploying again. These brave men and women have achieved what many million Americans thought impossible. With all the important issues that require attention, it is difficult to understand why a minority faction is demanding that their concerns be given priority over more important issues.

As a U.S. Army Ranger, I performed long-range patrols in severe weather conditions, teams of 10, with only mission-essential items on our back, no comfort items. The only way to keep from freezing at night was to get as close as possible for body heat, which means skin to skin. On several occasions, in the close quarters that a team lives, any attraction to the same sex teammates, real or perceived, would be known and would be a problem. The presence of openly gay men in these situations would elevate tensions and disrupt unit cohesion and morale. Repealing the 1993 law will not help us win this war on terrorism or any conflict that our military is called upon to fight and win in the future.

Too much time is being spent on how we can hinder our great men and women in the military. Let us do all we can do to lift the

morale, give them more resolve and motivate them to continue the absolutely great job they are doing. I hope that this Congress will not make their jobs more difficult and dangerous than they already are by repealing a solid law that continues to support the morale, discipline, and readiness of our troops.

Thank you.

Mrs. DAVIS OF CALIFORNIA. Thank you very much.

[The prepared statement of Sergeant Jones can be found in the Appendix on page 168.]

Mrs. DAVIS OF CALIFORNIA. We appreciate all of your testimony today, and I think before we start, we all want to recognize that we are the best military in the world because we have men and women who would want to serve their country today and serve very, very ably. All of them do.

Perhaps I will start with you, Sergeant Major Jones, because you have brought up an important issue that my colleague brought up initially, too, Mr. McHugh, the one of unit cohesion and how important that is. I wonder as we look at the numbers today, we are talking about serving in a time of war, that the separation of gays and lesbians from the service seems to be going down. And some would suggest that it is because commanders want to hold onto their skilled men or women in their units. And perhaps there has been a suggestion that they are looking the other way or they are not as concerned about it. How would you respond to that, and do you think that that is what is at issue here?

And I am also going to turn to Sergeant Alva about unit cohesion. Could you talk to us a little bit more about why you see that as a problem? Is that less a problem; is that why we are seeing the changes today?

Major JONES. No, ma'am. A lot of the problem that you see within the unit cohesion question regarding turning their backs on problems out there, I believe that is a myth. I am talking from experience. I have 21 years in mostly leadership positions in some of the hardest places to lead that you can imagine. When you get the troops as busy as they are right now, in part of my testimony I talked about the deploying, redeploying, refitting and deploying again, and that is what they are called to do right now. It is not that they turned back on problems, it is that they have no time to deal with it.

A problem person in a company for a commander takes a lot of time, because we are very thorough. And when you have two weeks to get your troops into the Iraqi theater or the Afghanistan theater, you are going to have to put that on hold. You are going to have to put that on the back burner and deal with it at a later time.

Well, just to talk a little bit more about the cohesion problem——

Mrs. DAVIS OF CALIFORNIA. May I ask, if you had a very capable person in a position, be it a medic or whoever that might be serving, and yet you knew you had a very important mission ahead of you, would you want that person separated from your unit if that person, in fact, was the very best, but you also knew that it had been recognized that this person was gay? Is there a choice that commanders make occasionally?

Major JONES. My first duty and responsibility to this Nation, which is utmost over everything, is to obey the laws and the orders,

and I take an oath to do that when I join the service. And every time I reenlist, I raise my right hand, and I mean every word of it when I say it. It is a very important time, and I remember every one of those times when I was in the Army that I did that.

My officers above me and my country gave me orders that just because I have someone I want in my unit, if they are there illegally, then my duty as a sergeant major is to get them out of that unit, because that is my duty.

Mrs. DAVIS OF CALIFORNIA. Could you speak to that, Sergeant Alva or Captain Darrah?

Sergeant ALVA. Unit cohesion is a very essential part of the military. That is one of the biggest priorities and goals of each unit, whether it be a squad, platoon or a company.

Speaking from experience, as the major has stated, we all have our different individual experiences, and my experience in 2001 while serving on a unit deployment program to Okinawa, Japan, in Camp Schwab, I was in charge of about 15 junior marines, and one of the examples of unit cohesion that can also be destroyed is the particular conduct of how a service member behaves when they don't want to adhere to orders regardless of who that person is in title or rank. Maybe it is the dereliction of duty that that one marine or soldier-airman has. And I particularly had one of those cases where this one particular marine had to go through two nonjudicial punishments, consecutive 45 days restriction, and still would break those. And every time he broke it or had another nonjudicial punishment, or even when we processed to his administrative court martial, it was destroying the unit cohesion of my other 14 marines, because they were having to do other things to make up for his dereliction of duties or not upholding his conduct, which the Uniform Code of Military Justice (UCMJ) states that each and every service member should do.

That is what destroyed our unit cohesion, someone who didn't do their job, someone who wasn't abiding by the professionalism and doing the merit that they should when they joined the United States Armed Forces. No one else was concerned about what he was doing, you know, as far as on the weekends or who he was dating while in Japan or anything. It was about the job he was not fulfilling to complete the unit cohesion that existed within our unit.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Captain Darrah.

Captain DARRAH. I think, frankly, it is much more disruptive to unit cohesion and morale if you have a hard-charging performer who is doing a bang-up job for the unit, and the next thing, the commanding officers have to fire this person because they figured out that they are gay. I think that causes much more disruption.

Mrs. DAVIS OF CALIFORNIA. Thank you. My time is up.

Mr. McHugh.

Mr. MCHUGH. Thank you very much, Madam Chair.

And to all of you, as I tried to indicate in the beginning, I deeply appreciate, as we all do, your being here. It is a difficult issue, and I know sharing your most innermost thoughts and passions is not easy, particularly before cameras, unless you are a politician. Then it is a different perspective. But for you I know it is difficult.

I appreciate particularly the service of the four of you who have given so much to this Nation and the uniform of your country. Regardless of what other labels are placed upon you, you are American heroes, and thank you for all that you did.

General Coleman, let me ask you a question, because I got a little confused. What year did you join the service, sir?

General COLEMAN. 1947.

Mr. MCHUGH. So you were one year before the segregation of the units pursuant to the order of integration, the order of the President, true?

General COLEMAN. Yes, sir.

Mr. MCHUGH. You were immediately assigned to a segregated unit?

General COLEMAN. Yes, sir. I took basic training in a segregated unit.

Mr. MCHUGH. And then I believe I heard you say in the Korean conflict you were again assigned to a segregated unit.

General COLEMAN. Yes, sir.

Mr. MCHUGH. Help me understand why it was after so many years after the order of desegregation you were still in segregated units in the Korean conflict.

General COLEMAN. In 1951, I completed Officer Candidate School at Fort Sill, Oklahoma, and was reassigned to a National Guard unit from Alabama, Mississippi, the southern part of the United States. I reported for duty in that organization. Incidentally, some of my classmates were also assigned to the same unit, and they were there.

Mr. MCHUGH. I should make it clear. I am not disbelieving you. I am curious as to what the process was in 1948 onward to desegregate previously segregated units. Apparently this took some time, because the Korean war they were still segregating units; is that accurate?

General COLEMAN. I was reassigned to a segregated unit once I reported for duty. That was 1951, and that was after President Truman had signed the Executive Order. I believe the process was taking place at that time, some units were integrating, some were not. All the services were not on board to comply with the Executive Order by the President. However, in Korea, the commanders in Korea were smart. They said, we want qualified people. I happened to be lucky enough to be one of those people, qualified people, who got assigned to a unit and to Korea in compliance with the Executive Order.

Mr. MCHUGH. So what I believe your experience would teach, and this is really the crux of my question, regardless of your talking about desegregation or lifting a Don't Ask, Don't Tell, do you think there ought to be some program available to accommodate the transition, or do you think it just should happen?

General COLEMAN. I——

Mr. MCHUGH. Because in your case it didn't just happen. In fact, I think we would find African American soldiers today that would argue in 2008 it still hasn't happened. Would you agree with that?

General COLEMAN. No. I think they are all integrated in 2008.

Mr. MCHUGH. Well, I mean, for practical purposes, not by numbers.

General COLEMAN. Now, I would say that in response to a question about a program, no, I don't think a program is necessary. What I see is a leadership decision, a leadership attitude, a leadership problem. A leadership problem. If a unit is integrated, no matter who gets assigned to my unit, they have been assigned to my unit, it is my responsibility to train and equip them and prepare them for combat.

Mr. MCHUGH. I was thinking more along those others who were assigned to units, rather than the command. I assume if command is given a command, they follow it. I don't want to be naive about it. I am just trying to understand, if this order were to be lifted, what the process should and might be to accommodate it. But I appreciate your response.

Let me ask Captain Darrah. I believe I heard you say you were not yet to the realization you were gay when you joined.

Captain DARRAH. That is true.

Mr. MCHUGH. If you were, would you have still joined? I know that is a hypothetical question, but to the best of your ability, what do you feel?

Captain DARRAH. If I were—if this—if I were 19 or 21 now today, I would not join.

Mr. MCHUGH. You would not join.

Captain DARRAH. I would not.

Mr. MCHUGH. Sergeant Alva, you were of the realization when you joined that you were gay?

Sergeant ALVA. Yes. Yes, sir.

Mr. MCHUGH. And you did join.

Sergeant ALVA. Yes, sir.

Mr. MCHUGH. Help me to understand your motivation and what your expectations were.

Sergeant ALVA. Well, in 1989, after graduating from high school, a five-foot-one individual weighing 90 pounds, it turned in more to a challenge when people told me I couldn't join because they didn't see me tall enough or even able enough to join, and I wanted to serve my country. As fellow high school seniors were coming back from boot camp, and I had seen the metamorphosis they have gone through from going away as boys and coming back as grown men and disciplined men, I wanted that same challenge. I wanted to serve my country as a patriotic American.

Mr. MCHUGH. So you were aware of Don't Ask, Don't Tell at the time?

Sergeant ALVA. Not at this time, sir. Don't Ask, Don't Tell wasn't until 1993. It was in 1991 when I joined.

Mr. MCHUGH. You joined in 1991. Would you have joined in 1991 had it been the policy in 1991?

Sergeant ALVA. Yes. Yes, sir.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. McHugh.

Dr. Snyder.

Mr. MCHUGH. Thank you.

Dr. SNYDER. Thank you, Madam Chair. I appreciate you.

Sergeant Major Jones, I was reading your biography, and it says, quote, "He is married to Michelle Jones, who spent 13 years in the U.S. Army. She was a captain who commanded two companies in the Transportation Corps to include one year in combat."

After this hearing you may want to have a discussion with Ms. Donnelly, because she has been leading the charge for the last several years to put more restrictions on women in the military, and we could use your help. And if this issue flares up again, which I don't think it will——

Ms. DONNELLY. Captain Jones is a friend of mine. I support her.

Dr. SNYDER. Excuse me, Ms. Donnelly, it is my time here. Thank you.

I wanted to ask on this issue of unit cohesion, what concerns me when we define or talk about that, this is not a novel concept. It has been written about a lot over the years, but it is a unit cohesion, as it is defined by the proponents of the status quo, by the lowest common denominator. There are people in the military who think unit cohesion would be enhanced if our military reflected the opportunity and freedom that we believe is America.

I am a veteran myself. I certainly have a lot of friends in the military currently, a lot of veterans. And so this idea that unit cohesion is somehow if we rock the boat with those who have the greatest fears, that unit cohesion is enhanced if we don't scare them, what about the people that want to see their military reflect the great strengths of America? I don't get this definition of unit cohesion. I think that is why this policy will fail.

Incidentally, Ms. Donnelly, you can comment if you like, I think the bringing up of HIV is so inappropriate. By this analysis, you know what we ought to do, we ought to recruit only lesbians for the military, because they have the lowest incidence of HIV in the country. I mean, I don't get it. I think—I have heard a lot of dumb things in my life, but that is one of them.

Ms. DONNELLY. Would you like me to comment?

Dr. SNYDER. I want to ask, if I might, Captain Darrah, I am going to pick on you a little bit if I might. One very specific—and this is really facetious. Ms. Donnelly in her written statement on page six refers to "inappropriate passive/aggressive actions common in the homosexual community." I am almost tempted to ask you to demonstrate that for me, but I don't think I will. I have never seen such bias, such discriminatory kind of—it is just bonkers.

I want you to spend the rest of my time, Captain Darrah, and talk about this issue of fear. I think that we tend to go above the issue when we talk about unit cohesion and those kinds of things and all-important readiness.

I agree with Sergeant Major Jones in terms of any big changes, we need to be careful about what—how we—implementation is key. But I don't think enough people appreciate the day-to-day life of a gay or lesbian person in the military who wants to serve. Would you talk more about that? What does that mean day to day with your coworkers, coming back from weekends, going to parties on the base, all those kinds of things?

Captain DARRAH. Well, I wanted to qualify my comment also to Representative McHugh.

I wouldn't join only because I spent 29–1/2 years, most of it, living under Don't Ask, Don't Tell; and I know how incredibly stressful it is. I still love our country, and I am so proud I had a chance to serve it.

It is the little things. It is day to day going to work and knowing, no matter how good your performance is, if somehow somebody outs you, you are fired. That is just—I mean, that is the day-to-day stress.

For example, if I——

Dr. SNYDER. That you could slip up.

Captain DARRAH. Absolutely.

Dr. SNYDER. And you could say——

Captain DARRAH. Yes, sir.

Dr. SNYDER [continuing]. I don't know your partner's name—Leslie and I had a great time at the beach.

Captain DARRAH. Right. My partner actually is Lynn Kennedy, sitting right behind me, a Library of Congress former employee, but yes. She wouldn't even dare to call me at work. If there were any kind of an emergency, she would get a male co-worker to call me.

And you are right. If I slipped up and said, my partner and I went to the movies, I would be fired. And I know so many people in the military that are still living under this, and I admire them, and that is why I am here.

Dr. SNYDER. Well, and my experience is that people who are out of the military, when they think of that time, as you have today, it continues to be something that they well up with tears to talk about. Here they are, we talk about special rights, the right to serve your country, and the tension and stresses.

My time is up. I appreciate your all service. And thank you, Madam Chair.

Mrs. DAVIS OF CALIFORNIA. Mr. Jones.

Mr. JONES OF NORTH CAROLINA. Madam Chairman, thank you very much.

And I join my colleagues who, no matter how you feel about this issue, thank you for being here today.

And I want to ask—and I am going to go to you, Ms. Donnelly, because I think you wanted to respond to my colleague, but I do have a question first. What other countries have the military opened the doors to the homosexuals who would like to join the military and how did that impact in those countries?

Ms. DONNELLY. There are very few. Britain accepted a European court order. They are now well into progressing to accepting not only homosexuals and bisexuals but also transgenderism is on the agenda now for the British military.

They do have recruiting and retention problems. They have problems and issues with what is called homosexual bullying. This is from the Stonewall Group that objects to anybody who objects to the agenda of the Stonewall Group.

When we hear about training, the question was asked earlier about a transitional program to teach our military to accept homosexuals in the military. Let us talk about that. And, Dr. Snyder, it is okay to ask me a question about my own testimony. I am more than happy to answer your question.

What do I mean by passive-aggressive behavior? It means something that is sexualized short of assault. It means the kind of thing like a woman who is stared at, her breasts are stared at. She is made to feel uncomfortable. She feels she has no recourse. She

feels she cannot say anything, can't complain about it, because it would hurt her career. That is the kind of thing I am talking about.

Only a year ago, in the Minneapolis Airport, the Nation was appalled to find that there were 39 men over a period of 3 months, and one of them a U.S. senator, who were found to be engaging in what I would call passive-aggressive behavior, something that sexualizes the atmosphere and makes it difficult for everybody else.

Brian Jones talked about the kind of impact on introducing erotic factors into that kind of a close combat unit. What that would do, it would be absolutely devastating to morale, because people would have no recourse. They can't leave.

In a Minneapolis Airport, you come and go. If you go to a facility that involves families, private facilities at a recreation center, there is a sign there that says no little boys are allowed, no little girls are allowed in the other one. Why is that? Because we respect the power of sexuality and the desire for modesty in sexual matters.

That is what this issue is all about. It is not about race. It is not about superficial things. It is about something very profound: the power and importance of sexuality.

We have to respect the feelings that people have for the sake of unit cohesion, for the sake of trust. We have to not go down the road of saying, well, we are going to try to teach our military to have different attitudes toward sexuality. How does that benefit our military? How does that make it stronger? And if people disagree they are going to be forced out of the military because we have a new policy called zero tolerance of any dissent. That means denial of promotions.

Major JONES. Can I add something to that? Because it is something that bothers me that I heard. We are trying to find out why we should do this, and one of the things was, well, all the other countries are doing it. Why don't we?

Well, let me tell you why. I can answer that question.

I went on Operation Deep Strike in Poland in 1999. It was the first deep strike operation into Poland. On a logistical post, transfer post going into Poland, I pulled in there as a sergeant major, and I found a situation that just appalled me. The captain, United States captain, had put all the females into a Polish infantry barracks. And in that barracks they were harassed. The females were absolutely traumatized.

I had to stop where I was at, and I couldn't go forward where I really need to be. I had to take charge there and fix that situation. It was just absolutely out of control.

The reason I say that is to help us to realize that nearly every country in the world wants an army like ours. The part that is missing is the values training. It is those character traits. And every single soldier that I have talked to, even in Iraq when I was deployed there recently in 2004, talked to me about the need for the discipline type training, the change in their life to get those things that our leaders teach that hardly any other country does to prepare our soldiers. And they are proud of that.

And if you want retention to go down, take that training away and make it a wide-open army and anything goes and see what happens. What is going to happen is retention rates are going to absolutely go down.

And I am not talking off of a poll that can be skewed any way you want it to read. I am talking to as a sergeant major that has 21 years of service experience in leadership positions, and I stay in tune with the soldiers that I lead.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Thank you, Mr. Jones. Your time is up.

Mr. Murphy.

Mr. MURPHY. Thank you, Chairwoman.

First, I want to say thank you to the panel for being here and your testimony today.

I want to introduce myself. I am Patrick Murphy. I am a freshman. I was in the Army, and I was in the 82nd Airborne Division over in Iraq, five years ago. Airborne, that is right, Sergeant Major.

Ms. Donnelly, you testified that gays and lesbians cannot serve openly in the military because, and I quote, it would be detrimental to unit cohesion, end quote. In essence, you are basically asserting that straight men and women in our military aren't professional enough to serve openly with gay troops while successfully completing their military mission. And, as a former Army officer, I can tell you I think that is an insult to me and to many of the soldiers.

To answer your question, Mr. Jones, it was 24 countries that military personnel served openly without any detrimental impact on unit cohesion. Ms. Donnelly, can you please justify your position that American service men and women are less professional and less mission capable than service members of other foreign militaries?

Ms. DONNELLY. I respect all our men and women in the military.

By the way, Dr. Snyder, Captain Michelle Jones—is a friend of mine.

Mr. MURPHY. No, it is just actually Patrick Murphy.

Ms. DONNELLY. But I had to answer the other question, because it wasn't put to me directly.

I respect all the people in the military, and I think your question is not quite the essence of what we are talking about here. If we say that forced cohabitation is the new rule and we are saying that if you don't like the way you feel then just relax and enjoy it or tolerate it, is that fair?

Mr. MURPHY. Ms. Donnelly, that is not actually the question. The question is, are you saying that you do not trust our military professionals to serve openly with other people that might not be heterosexual when 24 other countries do it? It has nothing about forced cohabitation. In fact, we have——

Ms. DONNELLY. Let me finish the question.

Mr. MURPHY. You can, but I don't want you to mischaracterize what my question was, Ms. Donnelly, with all due respect.

Ms. DONNELLY. You said professional, okay. Professional does not mean automatons. It does not mean that people are not human. They are human. People have sexual feelings, and they are not perfect. We know that in the Armed Forces with all the wonderful men and women we have, we do have issues regarding sexuality. Men and women have issues because they are not perfect.

Mr. MURPHY. And that is why there is the UCMJ and Army regulations and Marine Corps regulations. Because if there is——

Ms. DONNELLY. Let me ask you this.

Mr. MURPHY. Hold on now. It is my time, too.

Now, if there is misconduct, then there are regulations to deal with that misconduct.

Ms. DONNELLY. Yes.

Mr. MURPHY. But we are talking about orientation, not misconduct here. And that is the premise of my question to you, Ms. Donnelly, is that you are saying that our military, the greatest military in the world, one I was honored to serve with when I first put the uniform on back in 1993, is not as professional as 24 other countries because they can understand what is right and what is wrong.

Ms. DONNELLY. What would you say to Cynthia Yost, the woman who on a training exercise was assaulted by a group of lesbians?

Mr. MURPHY. I would say to her the same thing I would say to every single man or woman that serves in the military. You go to your superior officer, and they will get prosecuted under the Uniform Code of Military Justice. That is exactly what I will tell them Ms. Yost.

Sergeant Alva, you lost your leg in Iraq, and thank you for your service to our great country.

Sergeant ALVA. As well as you, sir. Thank you.

Mr. MURPHY. Can you please comment on my question about unit cohesion? Do you not think that a Marine can answer the call to duty if they are asked to by our Nation?

Sergeant ALVA. Yes, sir. In fact, there was two fellow Marines on my convey that day on March 21st. Losing my leg was an unimaginable tragedy that I never would have thought of. But on that convey that day—and people were aware of my orientation—no one stopped to prevent my life from going on. They did their job, which each man or woman is when we are going into Afghanistan or Iraq, and that is to take care of each other, accomplish the mission. And I was brought home because those Marines did their job. The unit cohesion was not broken. People did what they were supposed to do. They did their jobs.

Mr. MURPHY. General Coleman, you are a two-star general. You also got the Purple Heart in your service in Korea. When you joined our military, it was still segregated. It was desegregated, as you mentioned in your testimony. Sir, you testified that you felt like a second-class citizen; and could you expound on that? Do you think that in your role——

And, again, when you take that oath to support and defend the Constitution it is not just for your time on active duty, it is for a lifetime of service to our country. Can you comment on unit cohesion and your feelings on what we do with our military?

General COLEMAN. Yes sir.

Well, unit cohesion is a leadership issue, and that starts from the very lowest unit at the lowest level and works all the way to the top. And there is a commitment for everyone. And you build teams through cohesion. And if you take one member away from that team, then you are breaking the cohesion, regardless of what the sex is or what color they might be. You are building a team, and that team lives and works together.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Murphy. I am sorry. Mr. Murphy's time is up.

I am going to go in the numbers in which the people came in early. Ms. Shea-Porter is next.

Ms. SHEA-PORTER. Thank you very much.

I had the great honor of being a military spouse. In those days we called them military wives, because there weren't that many men around who were spouses. So I thank all of you for your service. And I know that when somebody is in the family, everybody is in. And that means your partner or your spouse or your children or anybody. So I thank all who have served and stood by those who have served.

Ms. Donnelly, I have a question, and you may not want to answer, but when did you decide to become a heterosexual?

Ms. DONNELLY. I don't understand the point of your question except to say this: Sexuality is important.

Ms. SHEA-PORTER. Let me ask you, was that a choice?

Ms. DONNELLY. Homosexuals are human.

Ms. SHEA-PORTER. I'm not interested in a long talk. I just want to know, do you think that is a choice or do you think you just are what you are?

Ms. DONNELLY. I am not an expert on why——

Ms. SHEA-PORTER. I have a pretty good sense that you would answer it differently, and I respect that. But the point that I am making is that this really does not interfere.

And from my experience—and, by the way, I have a cousin who also is in the submarines, and I spoke to him about this. It didn't bother him one bit. Because it really has to do with how people perform at their job, not who they are or what they are born to be.

So I think 10, 15 years from now we are going to look at this hearing and we are all going to be embarrassed that we actually sat here and talked about this. And I am embarrassed right now. Because I think what we are looking for are men and women who are willing to serve this country, love this country, step forward to serve this country, especially in times of great duress.

So I am going to ask you another question, Ms. Donnelly.

Ms. DONNELLY. May I comment on what you just said?

Ms. SHEA-PORTER. Well, actually, not yet, but I will give you a moment. What I would like to ask you is, are you aware that the Army is now allowing 10 percent of recruits to come in with moral waivers?

Ms. DONNELLY. Yes, and I think it is wrong. I think the Department of Defense could do much better than what they are doing.

Ms. SHEA-PORTER. Okay. So you are going to blame it on the Department of Defense.

Ms. DONNELLY. Joining the military starting with the President on down. And it is a problem. But you don't solve it by repealing the law and saying that homosexuals are going to be in the military.

Ms. SHEA-PORTER. Ms. Donnelly, I am not really sure why these good people are your target, frankly. Frankly, I do not understand it.

So I guess I will just turn to Captain Darrah and say that I listened to what you were talking about when you were saying how you constantly had to hide and how you lived in fear and how you would not recommend it for people to go in. What kind of talent

do you think we are losing right now because of this policy that we have?

Captain DARRAH. Oh, tremendous talent. Every day I speak to people that think about joining the military.

And my other fear is there is tremendous talent in the military, and people that are living under Don't Ask, Don't Tell and enduring the stress that I did, and if these people decide they don't want to serve anymore, that is another tremendous loss. So I think we lose a tremendous number of people. And there are wonderful people out there that happen to be gay that would love an opportunity to serve our country.

Ms. SHEA-PORTER. Right. And it is difficult, especially right now when we are having trouble recruiting, to walk away from people with a genuine love for their country.

Obviously, it is not a policy. And to turn away from people who have done nothing wrong and to choose others who have committed some offenses and have been arrested for offenses and to say you are somehow better than others simply because of who people are—I am embarrassed. I mean, there is not a whole lot more to say except that I apologize that we use the wrong yardstick to measure a person's worth and devotion to the country. And it is my fervent hope that in 15 or 20 years we will change. Because I will tell you for myself that I may be straight, but I am not narrow. And I think that this policy here is very, very narrow.

Thank you, and I yield back.

I am sorry, may I take that one question, Chairwoman?

Captain DARRAH. First, thank you for your remarks; and I certainly hope it is not 15 more years. But I wanted to comment again.

I was somewhat offended by the comments about military leadership. I mean, the military and I, as a leader and part of the military, pride ourselves on our ability to be good leaders and to take diverse groups of people, different colors, different genders, different religions, and figure out how to work together to accomplish the mission. And that was one of the most wonderful things in my experience in the military.

I had never met a black person when I joined the military. By the time I left, I didn't care anything about a person—their religion, their ethnic, their skin color. All I cared about was their performance and their ability to get the job done.

Ms. SHEA-PORTER. Thank you. And thank you, General Coleman, for being here as well to speak up for people who have not had the same opportunities. We are getting there. Thank you very much.

General COLEMAN. Do you still have time?

Mrs. DAVIS OF CALIFORNIA. We have a yellow. She has about two seconds left. Did you want to comment quickly?

General COLEMAN. Yes, please. I was sitting here listening to what is going on, which sent me back to 1948 when I first came into the Army. I graduated from OCS, and I said I am going into this unit with the same standards that people have been assigned to who are able to stay there because they were black—white. They weren't black. They were white, and I was black, and I couldn't stay there. And then I look at some of my gay peers, and I said

they are being treated the same way. And that is definitely, definitely not right, and we deserve equal ground.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Mr. Kline.

Mr. KLINE. Thank you, Madam Chair.

Thanks to all the panelists for being here today. Thanks for your service, your military service, much of it at great sacrifice and very distinguished service. This is—as you can tell by, sometimes, the heat of the comments and the questions, this is an emotional issue, and so I appreciate your participation here today.

I have got to say, just as a matter of sort of personal state pride, that we get a little bit defensive when people talk about the Minneapolis Airport, but I can understand where that might have come from.

My colleague, Mr. Murphy, said there were 24 countries who I understand, I think, Mr. Murphy, who allow gays, homosexuals to serve openly without any detriment to unit cohesion. I am not sure on what basis you have made that determination that there is no detriment. But I know that Sergeant Major Jones had started to address that issue earlier, and I wonder if you have any more that you would like to say about that.

Major JONES. Repeat the question, please.

Mr. KLINE. Yes. The question is, there are countries who have opened up their policies and allowed homosexuals to serve openly. And the claim is that has had no detrimental effect, and you started to say something about it.

Major JONES. Right. I wasn't able to finish my answer.

What I would like to say about that, the point I was trying to make is that every country—I have worked alongside a lot of them—Britain, France, England, Poland, the Italians—and what I have seen, or a common thread between all of them, is they want to be like us. And I can't for the world of me understand why we would compare ourselves to them and say, well, you need to be more like them.

We lead in every facet in the world here. They wait for us to make the first move. They know our Army is capable. And you talk about cohesion. We have the best cohesive Armed Forces across the board than anybody in this world.

I could give you more specifics on some of those things I have seen. The Italians in Iraq in 2004—I was on the ground there. And what they would do is hang out at the post exchange (PX) and wait for Army females to come shopping, and they would invite them to a party where they are allowed to drink, and drinking is encouraged. And the incidence of rapes just went through the roof, misconduct, and some of the things is just appalling. So they had to place the Italian compound off limits.

It didn't stop anything, because they always seemed to be one step ahead. They had poor discipline. They don't teach the same value system that we have.

And what I have seen across the board, like I said, in every aspect, the special operations, airborne units that I have worked beside have always wanted to find out how they could be more like us. A lot of that thing is it is the way we train and mold teams.

It is not a matter of, what I have heard earlier, discrimination. It is not that at all. We welcome anybody and everybody, even in the most elite special operation units, like Delta Force that I have been in. We welcome those Americans across the board. It is not a matter of that. It is a matter of having a team.

And some of the specific things I talked about, the trust factors there, that nobody lied about how they got in the military. Do we know that we can depend on these people? When we get on the ground in that 10 degrees Fahrenheit in the mountains somewhere and we can't build a fire and we have to huddle together to stay warm to keep from freezing in the night, there can't be any arousal. There can't be that awkward feeling. It is going to hurt the cohesion of the team. And those are the kinds of things that we have got to think about.

The other thing is, how are you going to implement this? And I have talked about how busy we are. We got enough on our plate. We are stretched as thin as we can. Okay, now let us stop and retrain the whole Armed Forces and see how we are going to make the time to implement that safely and securely so that no one gets offended or hurt or court-martialed or whatever the case may be. How in the world are we going to do it?

Mr. KLINE. Thank you very much, Sergeant Major.

Madam Chair, I see the light is getting ready to turn red, so I will yield back.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Ms. Tsongas.

Ms. TSONGAS. Thank you, Chairwoman Davis, for holding this long-overdue hearing; and as well thank you to our witnesses for participating today. I currently represent a district that was formally held by Congressman Marty Meehan who initiated a discussion around this issue; and I thank you all, also to Congresswoman Tauscher, for continuing the discussion. As you can see, it is so important.

I would like to read something. We had it read into the record. But the DOD statement regarding Don't Ask, Don't Tell, in part.

Quote, there is no ban on gay and lesbian service members. A service member's sexual orientation is viewed as a personal matter and is not a bar to continued service unless manifested by homosexual conduct. The law establishes a basis for separation from the Armed Forces as conduct, not sexual orientation.

I would like to ask Captain Darrah and Sergeant Alva, is that the military you served in.

Captain DARRAH. Yes ma'am. That is why I lived basically two lives. My conduct was exemplary, my performance was sufficient to promote me to the rank of captain and make me the deputy commander of the Naval Intelligence Command, but I lived two separate lives.

Sergeant ALVA. Thank you, Congresswoman.

I agree with Captain Darrah. The same is that, you know, in 13 years of service, you know, my orientation was not a factor. It was about me just doing my job. You know, especially going into Iraq, it was about me as a staff noncommissioned officer and is along the same lines. And I almost feel like we are along the same paths other than, you know, with Sergeant Major Jones.

I was in Somalia in 1992, 1993 and served along forces, with Canadian and Italian troops. And even 15 years later I have run into meeting some Canadian troops just out vacationing in Puerto Vallarta or riding on a plane traveling the country. And we always seem to discuss that—you know, because I wear shorts, they see my prosthesis, and they ask me did you get injured in the war? And I say, yes, sir. And they are like, well, what do you do now? And I tell them I was going to college; and I actually tell them, you know, that I actually speak on repealing Don't Ask, Don't Tell.

And every single person that I come across from a different country doesn't understand why our Nation is so further behind others when we seem to be the forefront of trying to be the example. And it is amazing because it is all about us just being recognized for doing a good job.

Ms. TSONGAS. And yet this is also a policy in which conduct is very broadly defined. So merely declaring your sexual orientation can lead to a presumption of conduct that is a basis for asking you to leave the service. So how does that compromise——

Sergeant Jones, you were talking about the issue of values, a values-based training, in which honesty is a very important factor; and yet honesty is a very much compromised value for someone who happens to be gay and can only stay in the military by remaining secretive or lying.

Ms. DONNELLY. May I comment on that, Brian? The statement from the Department of Defense is not accurate. The law states, and I quote, the prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.

That statement makes no sense. And notice the dissembling phrase, "sexual orientation". That phrase is nowhere in the law. The law says that if you say you are homosexual that means you will engage in the conduct that defines what homosexuality is. It is very straightforward.

But the confusion, statements like that put out by the Department of Defense, that is the source of problem that we are hearing about today. Young people should know they can serve their country in many ways. But some people, many people, are not eligible to serve in the military. It is not a right. Sometimes it is an obligation. But there is no right to serve in the military.

And, by the way, who says that any group is any more perfect than others? Who says that homosexuals are any more perfect than heterosexuals? We know people are human. They have failings. We need policies that encourage discipline rather than indiscipline. If we know that it doesn't make sense to have men and women sharing the same quarters, no privacy 24/7, if we know that is not sound policy, why would we pretend that it is okay to pretend that homosexuality doesn't matter?

This is all about sexuality, respect for common sense, the desire for modesty in sexual matters. The sound policy of the law has been undermined by Don't Ask, Don't Tell.

The question are you a homosexual that used to be in the induction forms, that question ought to be reinstated. Otherwise, it is like, as I said before, when bartenders have said you have to enforce that law, you can't serve a person under age, but you can't

ask any proof, you can't have a sign that says we check ID, and if that young person goes out and has a fatal collision, well, then the bartender is responsible. That is bad policy. On that one point we all agree. But the law——

Mrs. DAVIS OF CALIFORNIA. Ms. Tsongas' time is up. Thank you.

Mrs. Boyda.

Mrs. BOYDA. Thank you very much, Madam Chairwoman, for calling this hearing.

Sergeant Major Jones, I just wanted to clarify something—and, again, I hope that you understand how much I deeply appreciate your service, everyone's service here today. Keeping our country safe is I think our number one—well, it is clearly the number one responsibility of our National and Federal Government.

And, Brian, when you were giving your opening remarks, I just wanted to ask you to clarify something. Because I think someone might have misinterpreted what you said, and I couldn't—I can't imagine——

You talked quite eloquently about selfless service, and I know that you were not implying that Staff Sergeant Eric Alva didn't perform selfless service in his line of duty, did you?

Major JONES. No, ma'am, not at all. In fact, I really appreciate his service to our country. And I know he is very sincere, and I am proud of his service, as I would be anyone.

If you would like me to talk a little bit more what I meant by selfless service, I could clarify.

Mrs. BOYDA. I would just caution you in this conversation, because I would have been shocked if you had said, no, I don't think it was selfless service. But I would just caution you as we move forward that we talk about the issue as openly and as respectfully as we can. Because many people who would have heard you and known what we were talking about, it wouldn't have been hard to say that you were implying that you have selfless service, a heterosexual. But that would have been easy to imply.

Major JONES. Would you let me explain what I mean by that?

Mrs. BOYDA. Actually, because I only have five minutes—if we have more time, then I would be happy to do that.

And, again, when you said that, I believe every word. I feel quite certain that Sergeant Alva believed every word as well, too. So I would just caution while we have this discussion——

And, Mrs. Donnelly, I just was curious, when we went back into the 1930's and 1940's and we were trying to deal with the very, very difficult issue of segregating and desegregation of our military when it came to issues of race, if you could take yourself back then, where would you have stood back in 1940 on that issue of race? Where would you—it wouldn't be hard. Put yourself back there. And now you are being asked to testify on behalf of this. Where would you have stood on that issue?

Ms. DONNELLY. Well, I wasn't born then, but I do know I remember in high school when friends of mine went and were part of the civil rights marches I was very proud of that movement, what Martin Luther King said and did. The history of the military with regard to civil rights is among our proudest chapters.

On the Presidential commission on which I serve that looked at the issue of women in combat, we established that the executive

order of Harry Truman was done for two reasons: to advance equal opportunity, yes, but its number one reason was to improve military necessity. We needed those soldiers, and we are proud of them. But when you make it a sexual issue, it doesn't fit the same tradition.

Mrs. BOYDA. Reclaiming my time here. What would you have—because, quite honestly, many of the same arguments were put forward then on unit cohesion. What it would do to undermine this great military? That we had the—you know, I think we all recognize that the arguments sound very, very, very similar in many, many ways, and it comes back mainly to unit cohesion. It sounds like you feel very passionately that that was a good decision.

Ms. DONNELLY. Yes.

Mrs. BOYDA. If you could again put yourself back there, what would you have said to those people to help convince them that, as well-intentioned as they were, they were just wrong. What would you have said to them?

Ms. DONNELLY. Prejudice is wrong. But feelings about sexuality are different.

Mrs. BOYDA. They weren't talking about prejudice. They were talking about unit cohesion. And they weren't making a case that black people were good or bad. They were just talking about what it would do to unit cohesion.

Ms. DONNELLY. Yes.

Mrs. BOYDA. How would you have said—do you think it would have—do you think their arguments about unit cohesion were valid or not valid?

Ms. DONNELLY. Prejudice is wrong. We are not talking about racial prejudice. We are talking about feelings of sexuality.

Mrs. BOYDA. Mrs. Donnelly, I am not asking you about that. I'm saying——

Ms. DONNELLY. Saying that sexuality does not matter——

Mrs. BOYDA. Excuse me. I reclaim my time. Just a moment.

Again, the whole argument on cohesion—I would like you to answer the question that I am asking. It sounds like you believe you would have been on the other side of that issue this time. And they were making an argument about unit cohesion, not prejudice. They certainly didn't make this argument on prejudice. What would you have said to somebody who was saying this is going to be a bad thing for unit cohesion? What would you have said to them?

Ms. DONNELLY. I would say prejudice is bad for unit cohesion. You do things for the best interest of the military.

What we are looking at today is the issue of sexuality. It is personal. It is private. It is something that if we set out as a military to say there will be zero tolerance on anybody who is not willing to go along with this——

Mrs. BOYDA. What I hear you saying then is it did not affect unit cohesion, although many people said that.

Ms. DONNELLY. I already answered your question at least three times. This is a totally different issue.

Mrs. DAVIS OF CALIFORNIA. I am going to move on to Mrs. Tauscher. Mrs. Tauscher.

Ms. TAUSCHER. Thank you, Madam Chairman. Thank you very much for holding this hearing, and thank all of you who have

served and are here today to help us talk about what is a very, very important issue.

I am the author of the Don't Ask, Don't Tell repeal. And I am very proud to be here, not only because this is the first time in 15 years that we have had the ability to talk about this issue, but because this week is also the 60th anniversary of President Truman signing the executive order ordering the racial integration of the Armed Services.

And contrary to what Ms. Donnelly wants you to believe, this is a civil rights issue. I believe that repealing the Don't Ask, Don't Tell policy is probably the last civil rights issue we have.

We have the finest military in the world. I think we all know that and believe it. And what the military has done for the American people over many generations is form a more perfect union. Because, over time, it has been the perfect union. Because it has been a place where we have gotten rid of racial discrimination far before we did it in our own country.

And now we have a chance to take away discrimination by sexual orientation; and I think that it is very, very important that we look forward to doing that. Because not only do we have issues of readiness that are very clear in our military now but because I think the American people always want us to strive to do better and because we know in our hearts that we have had gay and lesbians serving in the military probably from the first unit that was ever put together. And for now to have a policy where those fine Americans can only serve if they lie about who they are is a discredit to the American people. It is a discredit to their service and their opportunity. It is a discredit to people who have died in service. It is a discredit to their families. And I am very happy and very proud to stand with my colleagues who are supporting the future repeal of Don't Ask, Don't Tell.

General Coleman, oddly Ms. Donnelly refers in her testimony to inappropriate passive-aggressive actions common in the homosexual community. To me, that relies on a rather dubious assumption that the military does not have regulations and procedures needed to address inappropriate actions. I would like to ask you, is the military currently capable of addressing inappropriate actions by service members? And if Don't Ask, Don't Tell were repealed and replaced with a nondiscriminatory policy based on such sexual orientation, would that prevent commanders such as yourself from addressing inappropriate actions by gay and straight service members?

General COLEMAN. The military does have a policy that applies to all members, whether they be straight or gay or otherwise; and it does not prevent commanders from exercising that right. It is an exercise in leadership. As a matter of fact—leadership will do that.

I would like to add a couple of other comments about the company I led, training the Army during a long training program. The Army is in a constant state of change, a constant state of training. That is one of the things that we do in the Army, is to change and to train. If we didn't change, we wouldn't be the Army that we are. And it was very offensive to me to hear the comments regarding the condition of our Army, the people in the Army, how they react.

Having been there, that is unfair to the people that are there serving and serving well.

And this is not about sexuality. This is about military readiness. It is about giving young people the opportunity that want to serve and the opportunity to serve and giving them equality. And I hope when we look at that it is not at all about sexuality.

Ms. TAUSCHER. Thank you, General.

I have heard a lot in this testimony today that has surprised me and shocked me and disappointed me, including lots of loaded words like "San Francisco-based attitudes".

And, Sergeant Major, your inference that this is a minority faction that is pushing this, there is a poll just last week—and I know that you discredit polls unless they work for your argument—but the truth is that 75 percent of the American people believe that Don't Ask, Don't Tell is the wrong policy. Not shockingly, they are ahead of most of the military.

Major JONES. I have to agree with you. This may surprise you. I disagree with Don't Ask, Don't Tell, also.

Ms. TAUSCHER. Well, you disagree with it in a very narrow way.

But the truth of the matter is that they understand what this is, that this is a policy that discriminates against good Americans that are qualified to serve in the military for every reason except for their sexual orientation. And they understand how wrong it is.

And that poll says 75 percent of the American people believe that that law should be repealed. That says that they are, not shockingly, ahead of most of the military, you know, people like you, and they certainly are ahead of the Congress. And I think that it is important that we begin to listen to them. They understand that we need everybody in the country that wants to serve to be able to serve if they meet the qualifications.

And, Ms. Donnelly, you used the term eligibility in a way that, frankly, scares me. You used the term eligibility in a way to discriminate, and I don't really think that that is what you hope to do.

Ms. DONNELLY. Actually, I am not eligible to be in the military because I don't suit the eligibility standards of the military. There is lots of people who are not eligible.

Mrs. DAVIS OF CALIFORNIA. Excuse me, Mrs. Tauscher, your time is up. We can come back hopefully in another round.

Mr. Shays.

Mr. SHAYS. Thank you, Madam Chairman; and thank you so very much for allowing me to have this opportunity.

I have been the chairman of the National Security Subcommittee on the Government Reform Committee, and we have dealt with issues about sexual misconduct in the military in our academies, and they dealt with heterosexual misconduct. And I am just struck by the fact that some of our witnesses will talk about misconduct as if that is the issue that they pretend to be focused on. But all of us agree in this room that if it is heterosexual misconduct, homosexual misconduct, gay misconduct, it would result in someone losing their command and being forced out of the military. So there is no argument about that. And then when you bring it up, when some of the witnesses brought it up, I just think it is somewhat scurrilous because it really distorts the issue.

The issue is, if someone performs perfectly well but they have a different sexual orientation, should they be allowed to serve in the military? In my home state in Connecticut, on Memorial Day, we read off the names in Greenwich, Connecticut, of everyone who lost their life from the French and Indian War. I suspect some of them happened to have been gay. I don't have a statistic of how many. I suspect when I look at Arlington Cemetery some happened to be gay. I suspect—and I have a little more proof of this—that the first person injured in the Iraqi War happened to have been gay. God bless everyone who served.

I think the Don't Ask, Don't Tell policy is unpatriotic, I think it is counterproductive. In fact, I think it is absolutely cruel.

So I am going and meeting with an individual who served here, Jim Kolbe. He shows me that he was a river rat in Vietnam. I said, my God, you risked your life almost every day.

And then I thought about myself. I was a conscientious objector, and I was in the Peace Corps with my wife, but I was deemed worthy, but he wasn't. And for nothing else I am here for Jim Kolbe.

And I have to say to you, Captain, I know that every day you had to be afraid that you would be found out, that you would have lost your command, you would have been forced out of the service in disgrace. And, frankly, I don't care what you do with your partner. What I care about is what you did for your service to our country. God bless you. And it is just really an outrage I think that you even have to be here to defend your amazing service to our country.

Would you please tell me, Ms. Donnelly, why I should give one twit about this woman's sexual orientation when it didn't interfere one bit with her service?

Ms. DONNELLY. I am here to talk about policy.

Mr. SHAYS. Answer my question, please. You are a witness before us.

Ms. DONNELLY. I respect the service of Captain Darrah, General Coleman, Sergeant Alva, everybody who serves in the military.

Mr. SHAYS. How do you respect their service? You want them out.

Ms. DONNELLY. I am standing for sound policy, Congressman. We can't ignore the importance——

Mr. SHAYS. Can you answer my question?

Ms. DONNELLY. I am trying to answer your question.

Mr. SHAYS. No. Let me make sure you know what my question is. My question is, what difference does it make—let me say it differently. How does the relationship that Captain Darrah has with her partner have any impact on the service as long as it is her own personal experience?

Ms. DONNELLY. Mr. Shays, in the military, we don't make policy based on individuals. We have groups of people who serve in conditions of little or no privacy. "Forced intimacy" is the phrase that is used in the law. That is what it is all about, Congressman. And it is not fair to tell young men and women that their feelings are going to be so disapproved of that they will be in violation of——

Mr. SHAYS. Well, this is what I think is not fair. You answered my question. Now you are saying something else.

Ms. DONNELLY. I am answering your question.

Mr. SHAYS. I want my time back, and I want to be clear with you. What you are saying is that she has no right to risk her life and protect fellow soldiers, sailors and Marines. You are saying that she has no right to serve her country because she happens to have a different sexual orientation than you. And I say, so what?

Ms. DONNELLY. Congressman, you are saying that Cynthia Yost, who wrote a letter to this committee, if she is assaulted by a group of lesbians, that——

Mr. SHAYS. Then the lesbians should be let out. The lesbians should be let out. That is what should happen. They should be out immediately because of their bad conduct. Just like when I had my hearing and we had people, men, who were sexually assaulting women soldiers, they should be let out. Their conduct is what matters in the service.

Ms. DONNELLY. You just made my point. If you want to have three times as many incidents of sexual misconduct——

Mr. SHAYS. We don't have three times as much. I don't know of any misconduct to Ms. Darrah. Do you have any misconduct, Ms. Darrah?

Mrs. DAVIS OF CALIFORNIA. Mr. Shays, your time is up. We are going to move to the next——

Ms. DONNELLY. That is not what we are talking about here.

Mrs. DAVIS OF CALIFORNIA. Mr. Sestak.

Mr. SESTAK. Thanks, Madam Chair.

I don't have any—I couldn't ask it better than you did sir, and so I just have a few—may I make a few comments?

There is this wonderful painting in the Pentagon right across from the Secretary of Defense's Office. It is a young service member kneeling in church with his young wife beside him and a young child beside him. And under it that wonderful saying in the Book of Isaiah where God turns to Isaiah and says, who shall I send? Who will go for us? And Isaiah replies, here am I. Send me.

It may not be a right, but it is an equal opportunity for all of us to give selfless service to our Nation. I joined the military in 1970. I can remember on an aircraft carrier you didn't go below deck if you were an officer unless you had a master of arms with you because of the racial tensions at that time. And I can remember 35 or so years later having commanded a carrier battle group in the war in Afghanistan and watching a woman the first night off that dove down and saved four Special Forces that had been surprised by the Taliban. We worked our way through those racial and gender issues in those decades I was in the military.

I can always remember a young man coming up to me and starting to tell me he was gay; and all I could think about is, please don't tell me, you are just too good. We knew by outside surveys all those years I went into combat that we had gays in the military. I never understood how you could come back home and say you don't have equal rights or equal opportunity.

To my mind, it all began with George Washington—Sergeant Major, you know it well—when he gave the very first medal in the U.S. Army. And he says, with this little piece of purple ribbon, it was only to be given to an enlisted man. Because he wanted to demonstrate that the way to the top was open to everyone, unlike the Hessians and the British that we were fighting.

It was brought home to me when I pulled into a country in the Middle East and we asked several officers to get under way with us. It was my first command as a young commander. And as these officers left one of them turned to me and said, you know, Captain, you treat your enlisted different than we do. You treat them as though they are equal to you.

And I said, they say, yes, sir, or no, sir.

He said, no, no, no. You treat them as if they are equal human beings.

We have commanders, we have NCOs, we have chief petty officers in the Navy to take care of the disciplinary problems that my colleague from Connecticut put out. We worked our way, as Patrick Murphy knows and others here, through all of those issues because we had good leaders.

Because, ultimately, what I found out as we went around the world all those decades is that we aren't born better, but we are different in America. And at those times where our character doesn't show through, potentially at a time like this, we somehow happen to hold up a national mirror to ourselves and say, that is not who we are. We are better than that.

Equal human beings, that is what George Washington told the first enlisted. They were men at the time, white; and we worked our way through black and gender and now sexual orientation because we are better than that.

Thank you all for your selfless service.

Mrs. DAVIS OF CALIFORNIA. Thank you.

We will go on to another round. Mr. Gingrey, would you like to ask a question? I was told you didn't have one.

Dr. GINGREY. Thank you, Madam Chair. I don't have a question right now. Thank you very much.

Mrs. DAVIS OF CALIFORNIA. All right. Thank you very much.

Then I am going to start again, and we will try to get a round. I don't know how far we are going to go because we do have some votes coming up.

One of the underlying issues and concerns—and I think it has been pretty well expressed here by everybody—number one, I think we know that we do put people in difficult positions in the services. We especially do that with the integration of gender. And there are issues that people face, and they face them every day in the services, and we all learn to live with that. The service members learn to live with that.

And it is not always easy, but there are rules around it, and we try and enforce them as best we can. Quite honestly, I know that this committee is aware that we don't always do our best in doing that, but we really do have some regulations, and we need to follow them.

But I am also sensing a concern on the part of Ms. Donnelly, and certainly Sergeant Major Jones, that perhaps it would be more harassment of homosexuals—of heterosexuals, I am sorry, if in fact this policy changed and that it might be difficult to prosecute because people would be uncomfortable coming forward. They perhaps would not feel that they would be heard from properly. And I am asking you if you believe that. And perhaps, Sergeant Alva, whether you are hearing that people are asking for different kinds

of structure, a different kind of protection to heterosexuals or to homosexuals in order to have a policy that works?

Captain Darrah.

Captain DARRAH. I would say, at the moment, the situation you have for a gay person, if they happen to be being harassed, they can't do anything.

If a black person or a female or anyone else in the military, for that matter, is not being treated properly, they go to the chain of command and then the leadership intervenes. A gay person, unfortunately, is faced with the situation they can either go to the chain of command and complain that for some reason they are not being treated fairly, but if they do that then they will have to out themselves, and they will be fired.

Mrs. DAVIS OF CALIFORNIA. Yes.

General COLEMAN. As I was saying, prior to 1993, we didn't have a problem with gays in the military. We created a problem with Don't Ask, Don't Tell. People lived together, worked together, and this family performed, our Army, my Army.

I spent most of my life in the military with my peers, regardless of their sexual orientation; and there were absolutely no problems. And I think we are obligated to improve military readiness by lifting the ban Don't Ask, Don't Tell.

If I use myself as an example, if I might, as you can tell, I am black, I am straight. But as a 17-year old I was probably a day or two from a life of crime. Three of my peers ended up over-dosing (OD'ing); the other four ended up spending time in and out of jail. The Army saved me. The Army will save others. We just got to give them the opportunity.

Mrs. DAVIS OF CALIFORNIA. Sergeant Major Jones, are you suggesting that perhaps people would be asking for policies that would protect gay men, lesbian women in the military differently than they would the heterosexual community?

Major JONES. I am going give you a very honest answer, and I am going to base it on the experience I had as a leader in the Army many, many times, as many as I could find. And what would happen if you repeal this 1993 law would be a knee-jerk reaction—and we see it in the military all the time—of overkill. And what would happen is, as you see now, it is very hard to ask questions.

And that is why you see some of the problems with the assaults. It is not a gang violence thing that we can fix. It is something that people are afraid to ask about. Even in investigation stages, a leader really has to be careful because the leader might end up being the one in trouble.

What would happen if we lift this is you would see that the problem would become a lot worse. It is going to be a—there is going to be a whole lot of harassment. There is going to be a whole lot of people not understanding until they are trained.

Mrs. DAVIS OF CALIFORNIA. I think one of the questions that has been asked is, if you believe that people are not up to that task, that professionalism of the service is not such that people can——

Major JONES. Yes, they are up to the task. The average American soldier can complete any task that is assigned to him, and they will, because they follow the law. And you heard me talk about

raising their right hand and taking the oath and following the law. Yes, they will do it.

Is it the best thing for the military to do that? I don't think so. Is it going to get us more ready for what we are facing right now, which a lot of people in America said that we had failed before we started, the last buildup, going back into Iraq and trying to win this? We were told you are going to fail. We were told you did fail. In fact, we are about to win this.

Mrs. DAVIS OF CALIFORNIA. I appreciate your response. My time is up. Thank you.

Mr. McHugh.

Mr. MCHUGH. Well, Madam Chair, I am not sure I have any more questions. I think, after having sat here for some two hours, I am pretty well convinced where everyone on the panel is on this issue. And I certainly respect all of their perspectives.

I would say to Captain Darrah, because she understandably followed up for my question about would you have joined. I hope—I don't think you did, but I hope that my question didn't suggest in any way that there was an integration factor to your service. I was trying to understand how this policy would have affected someone like you who was affected by it ultimately had they had the opportunity to think about it.

And similarly with Staff Sergeant Alva, who didn't know about that policy but in fact was banned under the existing law at that time still joined.

So I was trying to get a perspective on that. So no question to disservice.

Captain DARRAH. I totally understood your question.

And it is—as I mentioned in my statement, it is hard for me when I see young, energetic, patriotic gay kids that say I want to join the military, that would be great, and I find myself telling them no because I know how hard it is to try and pretend.

Mr. MCHUGH. I understand. But, as I said, from a policy perspective, I am trying to understand the net effect of it.

And I would say to General Coleman, who not just served during the time of desegregation but obviously lived with it, my question was intended to try to better recognize what process, if any, was implemented back in 1948 under President Truman's directive; and lessons learned is a big issue in the military and maybe find some lessons learned with respect to what would be required were we to change this policy.

But let me say, after, as I mentioned, two hours, Madam Chair, for all of the passion—and I might say it was reflected at times on this panel as well, meaning this side of the dais. I think, if nothing else, it underscores what I tried to indicate in my opening comments, how difficult this decision is, how good people who have done amazing things can come to our table and give totally opposite views and underscores, in my judgment at least, the need to explore in a very substantive way the data and the other opinions that are out there in the Palm Center study, for example, and the polling data that is often cited as to why this should be accommodated and is, at the same time, cited as to why it should not.

Again, to underscore my opening comments about my disappointment in the military services, because we have to at some point,

I would assume, come to a decision as to whose opinion prevails and what is the greater good here. And with all due deference and respect and appreciation to this panel and the five individuals who have appeared here, that kind of waiting decision from my perspective ought to be based on a much broader foundation of input. And I would trust, as I again mentioned in my opening comments, Madam Chair, that you would afford us the opportunity to conduct those kinds of inquiries so whatever we do, whatever we do at the end of the day is the right thing for our men and women in uniform and, of course, the right thing to do as the proud Americans that I trust we all are.

So again, in a closing word of appreciation to our panelists and the deepest thanks for their service and obviously their sacrifice, I will yield back.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. McHugh.

Dr. Snyder.

Dr. SNYDER. Thank you.

Captain Darrah, you introduced your partner. I'm sorry, what was her name again? .

Captain DARRAH. Lynn Kennedy.

Dr. SNYDER. How long have you been together?

Captain DARRAH. Now 17–1/2 years.

Dr. SNYDER. Does Ms. Kennedy have any comments she would like to make about those stresses, what it was like for her?

Captain DARRAH. Based on the last two days, she might have liked it better when she was not part of my life.

Dr. SNYDER. So I will take that as no, she wouldn't.

I wanted to ask you, Ms. Donnelly, I think the only openly gay man that who serves in the Congress here is Chairman Barney Frank, the Chairman of the House Financial Service Committee. Barney has been adding a lot to this country, particularly since he has been Chairman of the Financial Services, given the great issues that we have facing us economically. I thought he would add a lot here because of his intelligence, humor and his great, great knowledge of these issues. It may be after hearing your testimony today it is because he sexualizes the atmosphere. And that was your phrase, "sexualizes the atmosphere." So I want to pursue this a little bit, if I might.

As I went through your list of concerns, forced cohabitation was one of them, your belief that there would be increased risk of sexual misconduct, physical abuse, you brought up what I thought was ill advised, but it is in your list, potential for HIV. Those are all issues that also would affect the civilian side of our government.

We have had thousands of DOD civilians serve in Iraq. We have had I don't know what the total number is of folks from other agencies, United States Agency for International Development (USAID). In fact, my subcommittee has done hearings, and we put out a report on the whole issue of other civilians, Department of Agriculture, Justice, Treasury, all these people serving in Iraq. We had the issue of embedded reporters. We have had contractors from other places. And I just confirmed, you may have seen my whispering session with one of my fellows who served two tours there, when they are in those areas, they serve. They use the same show-

ers. They have to find places for them to stay. They are treated—in terms of living conditions, they are in the same area.

Based on the arguments you are giving today, is it your recommendation this Congress should consider banning all gays and lesbians for participating in overseas activities on the civilian side also?

Ms. DONNELLY. No, because in the civilian world people don't live together. They don't cohabit together.

Dr. SNYDER. So you just missed my point, didn't you, Ms. Donnelly? I just gave you the situation, the scenario overseas. They do live together. Apparently they are taking their phones in the shower and taking pictures.

Ms. DONNELLY. Not in the same——

Dr. SNYDER. Of course they do.

Major JONES. Do you mind if I comment? I was a DOD civilian in Iraq in 2004, and I can address this.

Dr. SNYDER. Ms. Donnelly is the one who has made what I think is a pretty egregious argument here.

Ms. DONNELLY. I will defer to him.

Major JONES. I have experience on that, sir, to give you the best answer I can possibly give.

Dr. SNYDER. Go ahead.

Well, my question is, is it your recommendation, Sergeant Major Jones, that all civilians, U.S. Government civilians, who are gay or lesbian not be assigned overseas to Iraq or Afghanistan?

Major JONES. I believe they should be able to serve overseas.

Dr. SNYDER. I do, too. The problem I have, then, with Ms. Donnelly's arguments is then it is okay, forced cohabitation with civilians, the risk of sexual misconduct, the risk of physical abuse.

Major JONES. That is why I would like to give you my take on that.

Sir, as I stated, I did serve over there in 2004 for Department of Defense as a military action officer. And, no, I did not have to shower with our civilians——

Dr. SNYDER. No, but you missed my point. What I set this up with, they clearly do. I mean, you may not have. I am not saying every civilian does, but when they go overseas, they do. That is the reality of the situation.

Ms. DONNELLY. Dr. Snyder, I would like to comment.

Dr. SNYDER. That is why the call it embedded reporters. They use the same facilities. So I agree with you. I am sure Ambassador Crocker does not shower with all the military guys as a civilian, but a significant number of them do. That is very clear.

Ms. DONNELLY. Dr. Snyder, Congressman Frank—I am not aware that Members of Congress are cohabiting with Congressman Frank. I don't think I would have brought——

Dr. SNYDER. We are in agreement. Ms. Donnelly, you finally found it. You have found something that you and I agree with. On that note I will end. Thank you.

Mrs. DAVIS OF CALIFORNIA. Mr. Murphy.

Mr. MURPHY. Thanks, Ms. Chairwoman.

I want to comment about Mrs. Tauscher's and Mr. Sestak's earlier remarks. Earlier this week is the 60th anniversary of the Executive Order of President Truman, and you think that when—we de-

segregated the Army when half of our country was still segregated, and really the powerful thing that was when there was a lot of social tensions obviously were there when that decision was made. And Ms. Donnelly mentioned it was a civil rights issue, but also, as you mentioned, a military necessity why he made that decision.

I would like to point to the fact that since we implemented the Don't Ask, Don't Tell policy in our military, there have been 12,000 servicemen and women who have been forced to chapter out of the military; since 9/11, a combat brigade, 3,500, specifically 58 Arabic speakers, which they could be on the ground right now in Iraq or Afghanistan producing vital intelligence that would help us win the war on terror.

When I was in Iraq with the 82nd Airborne Division, my men did not care if you were gay or straight. They just wanted to get the mission done and come home alive.

So, you know, I would like to direct this first to Ms. Donnelly. What would be the greater threat to a national security military necessity, leaving a terrorist document untranslated or having a gay soldier fight alongside a straight one?

Ms. DONNELLY. In order to have the documents translated, we need to have the Defense Language Institute training people eligible—who are eligible to be in the Armed Forces——

Mr. MURPHY. There were 58 that actually were trained, and they were put out of the military.

Ms. DONNELLY [continuing]. About who is the best linguist, by the way. We need people who are good linguists, but not necessarily should they be gay. I mean, that is a stereotype.

Mr. MURPHY. Ms. Donnelly, come on, let us be straight here. Let us be straight here. That is what the American people want. The fact is when we talk about military necessity, we are in desperate need of more troops in Iraq, and especially in Afghanistan. And we have let go 12,000 American men, women, soldiers, not for sexual misconduct, but because of their sexual orientation. Fifty-eight of those are translators.

Now, I tell you, if we are still running convoys over there, I wish we had more translators. We are in desperate need of Arabic speakers, and we don't have enough of them. It is a military necessity.

Would you not agree that we have more troops right now in Iraq than Afghanistan?

Ms. DONNELLY. We need to find those linguists, and the State Department is already working with that. I come from community with a very large Arabic American community. There are lots of things that can be done. But the number of discharges, if you see this attached to my testimony, the smallest column is the discharges for homosexuality, pregnancy, weight standards, other kinds of things far more. But you could reduce this number to zero or near zero if the Department of Defense dropped Don't Ask, Don't Tell and enforced the law properly. We should not be training people who are not eligible to be in the Armed Forces. It is a very simple principle.

Mr. MURPHY. I understand your point that they shouldn't belong in Armed Services, and we are going to have a fundamental disagreement on that, but I would like to restate that there is a mili-

tary necessity right now to keep our Nation safe, and it is a detriment to our national security the fact that we are discriminating against people for openly serving in our military when there are already rules in place to address sexual misconduct, whether it is homosexual misconduct or heterosexual misconduct, as compared to your orientation.

I would like to mention also when you talk about military necessity that, Sergeant, I think you would agree, we need more soldiers in our military, and Army, and our Navy as well, and the Marine Corps, especially when you look at the rapid amount of deployments, the fact that the divorce rate is as high as it has ever been. And the suicide rate in 2007 is the highest it has ever been. We need help, and we need more good people, whether they are gay or straight, to join our military and to serve honorably.

Ms. DONNELLY. As a daughter of a submariner, do you think that there would be more people to join the submarine force if they know that professed homosexuals would be on submarines? I don't think so.

Mr. MURPHY. Well, you and I would agree, I have faith in those 18- or 19-year-olds. You asked me a question, I want to answer it. Usually it comes from the other side of the dais. But the fact is that I have a lot of respect for the 18- or 19-year-old heroes, the best of the best that join our military, and the fact that I have faith in them, as the commander said before, the fact is I can grab a paratrooper in the 82nd Airborne Division and say, listen, soldier, paratrooper, you are going to run that space shuttle in one week, you better learn to you to fly that thing. By golly, that paratrooper will find out a way to make that happen.

The fact is that we are—President Truman had faith in the American people and our men and women in uniform. He said, I don't care if you are black or white, you wear green in the Army. That is what we need right now.

The fact is, Sergeant Major, when you were a Ranger, and thank you again for your service, you probably weren't happy when General Shinseki said, hey, Rangers, you are not wearing a black beret anymore, you have to wear a tan one. I know I wasn't happy about it, but hey. You just salute, and you execute those orders.

We need to have faith in our young American men and women who do the right thing on behalf of equality in our Constitution and what America is all about. I see my time is up, Chairwoman. I thank you for my time.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Murphy.

Ms. Shea-Porter.

Ms. SHEA-PORTER. Thank you.

I would like to point out that I grew up in a household that both my parents were conservative Republicans and Roman Catholics. And I grew up with a wonderful attitude, I think, of loving and accepting everybody. My mother was working in a naval hospital and worked with a lot of Navy corpsmen, and that was her first experience with people who were actually "out."

All of my early experience with these issues is one of understanding that these were all people of great worth and dignity. And I am grateful to my conservative Republican parents for teaching me that, that we are all God's children.

We have a lot more to worry about right now. We have wars going on. We have a shortage, as my colleague pointed out, of good military people who are entering the service at this time. I have been in Iraq twice. I was very concerned in March when I went there and found out that our gates are being guarded by Ugandan contractors instead of American soldiers. I think maybe we better question them to find out who they are and what they think, because we need American soldiers, good American soldiers, to step up for this country.

I have also, as I said, been to Iraq twice. I have been on aircraft carriers. I have sat with men on submarines. I have been on Coast Guard cutters. When I say, what is on your mind, nobody has said that. So that tells me maybe anecdotally these are the men and women serving our country, and that is not the number one issue, I can assure you that.

So I just want to say in closing that while I am appreciating your perspective here, and certainly very grateful for your service—and I think you indicate that you are the daughter of a military man; did I hear that right?

Ms. DONNELLY. Yes.

Ms. SHEA-PORTER. And I thank you, because, as I pointed out, we really have to think about what is best for this country and how do we best respect individuals who want to serve this country. And I think you have heard the answer pretty loudly and clearly here that those of us who have the great opportunity to see the men and women who serve this country know that we have really difficult issues, and we should not divide ourselves. We should not split ourselves, and we should not attack each other for something that—when I asked you when did you decide to be a heterosexual, something that really is just is not a choice, it is just who we are. We need to embrace who we are, who we really are, Americans wanting to serve our Nation.

Thank you, and I yield back.

Mrs. DAVIS OF CALIFORNIA. Thank you.

Mrs. Boyda.

Mrs. BOYDA. Thank you, Madam Chairwoman.

I would just like to associate myself with the remarks of Mr. McHugh. I think this has been a very interesting and helpful hearing. It has been people's stories, their feelings, opinions. And while it has been interesting, I would like to see a little bit more just hard data on what is going on, a few things that we could—again, interesting anecdotes, but generally what we are talking about today are people's opinions and feelings. I would love to see that as we get into this issue more.

Mr. Jones, I would like to ask you a question, and I really don't have an agenda with this. I am curious about something.

Major JONES. Okay.

Mrs. BOYDA. I will assume—and maybe I am wrong on this—I assume that you think that homosexuality is immoral?

Major JONES. No. I am not saying that at all. As I said, as the good Congresswoman just pointed out, you can't help the way you are made and you are born. If I were 6-foot–8 and I wanted to be a pilot in the Air Force, I couldn't because I am too tall.

Mrs. BOYDA. Let me ask you a question. Maybe this is hypothetical. If we had somebody who is a first sergeant, a staff sergeant, sergeant major, and they did believe, do you think—I thought—what I was going to ask you is do we think our NCO officers, as well as our other officers—do you think they are well just not—if they do really feel like this is just terribly, terribly wrong, that they are not going to be able to do their function?

Major JONES. The reason I am here, and what I believe is true across the Armed Forces, it comes to a question of what is best for our Nation right now, what is best for our Armed Forces, especially at a time now when they are in a fight for us. And I think the timing is bad. I really think the timing is bad. I feel like we are sitting here discussing an issue that I believe we could be sitting here discussing things that are a lot more important.

Mrs. BOYDA. Let me clarify. If this were in a different time, then you would be okay with getting rid of Don't Ask, Don't Tell?

Major JONES. I can't answer for that different time, because I can't see in the future. What I can see is where we are today and what our military men and women are facing. And I understand that. And I think a lot of Americans, if you haven't really spent a lot of time in the military in a lot of leadership positions, they just really don't understand; the American people don't understand what you are asking the military to do, the Armed Forces people across the board.

Mrs. BOYDA. So to clarify, it sounds as if what I hear you saying is that this is really about not the policy, it is just about implementing this change, because it is a change.

Major JONES. No, change is good, but you have to pick the right change for the right time. I have seen it too many times where the timing has been bad in the military, they are asked to do something——

Mrs. BOYDA. I am trying to clarify again. You are more concerned about the timing of this than the actual policy itself is what it sounds like, or are you saying that this is because the time. If we were in a different time, and I would like to envision that we are going to be in a different time—I am glad the military, thank God they are here to serve the country, but at some point I would like that we would find some stability.

Major JONES. You are asking me to answer a question about what I am going to feel about something in the future.

We heard the captain. She didn't know she was homosexual until later on in her Navy career. So if you had asked her that on day 1, she couldn't say, oh, yeah, I am going to be straight in 10 years. She couldn't. And that is what I am trying to express to you now. I couldn't know where I am going to stand on this 10 years from now. But today I think—put it to you this way. I am very—I am kind of baffled that we are sitting in here today with this issue being this hot when we need to be finding ways in supporting our troops and figuring out how we are going to win this war in Iran, in Afghanistan and Iraq as soon as possible, and as efficiently as possible. I think that is where we should be concentrating.

Like I was trying to say a little bit earlier is that you really don't know what you are asking the American Armed Forces to do, but when you put such a huge policy change or a law change into ac-

tion as this would be on the repercussions of that, what are those repercussions going to be?

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Jones. We will move on.

Mrs. Tauscher.

Ms. TAUSCHER. Sergeant Major Jones, I don't want you to think that this 2 hours and 20 minutes that we have spent on this issue is time that we are not spending as we do every day, working very hard for the American people. I am a Chairman on Armed Services. I Chair the Strategic Forces Subcommittee. We have $50 billion of defense programs, all the nuclear weapons-based intelligence, classified military intelligence programs. We have hearings all the time.

Major JONES. Yes.

Ms. TAUSCHER. And we are good multitaskers. We can actually do more than one thing at a time.

Major JONES. I understand that.

Ms. TAUSCHER. But after 15 years of not talking about this, I certainly don't think that this is a waste of time to have this hearing today.

Major JONES. I didn't mean to come across that way.

Ms. TAUSCHER. We appreciate you being here, but, once again, this is about having the most perfect union. We have constitutional responsibilities given to us by the Founding Fathers, with good women, I assume, standing right behind them, making sure that we have—the American people are making clear what kind of military they want. And that is a lot what this is about. And I do believe that this is the last frontier of civil rights opportunities we have in this country, that we have figured out how to deal with racial integration, gender integration, and that this is the last frontier. And this is a special thing, our United States military.

Major JONES. Yes.

Ms. TAUSCHER. A little overused now, not appreciated as much as it might have been. When the decision was made to go into Iraq, lots of people serving multiple tours, lots of needs for different skills. As my colleague Mr. Murphy said, 12,000 people separated. That is a lot of people, a lot of skills to be separated. And we have to make sure that the military not only has everything it needs, has our respect, has our support, but it also reflects American society and values. And that is why the aspiration for the most perfect union has always resided in the military. You are not going to be surprised to find out that the best child care in the world is in the American military.

Major JONES. Yes, I am not surprised.

Ms. TAUSCHER. Racial integration, as General Coleman said, started in the military. We are not perfect on gender, we are working it hard, but there is a special reason why we want to be sure.

And, Ms. Donnelly, you have never really been for American women serving in combat, and now you are not for this. And I really think that what we need is to find a way to make sure that we have the strongest American military, and that means that we cannot have people that are well qualified to serve that are eligible except for anything other than their sexual orientation. We have plenty of laws in the UCMJ that say that people that are aggres-

sive, that are predatory, they are assaulting types of people, are going to get adjudicated——

Ms. DONNELLY. Please——

Ms. TAUSCHER [continuing]. Whether they are straight—excuse me, I am not asking a question—whether they are straight or gay. And it is mystifying to me what the real opposition is that you have.

I want to ask Sergeant Alva, in his testimony Sergeant Major Jones talks about experiences in Somalia in 1992. You were there, too, weren't you?

Sergeant ALVA. Yes, ma'am. I lived in the stadium.

Ms. TAUSCHER. Do you believe the presence of openly gay soldiers would have compromised that mission in Somalia?

Sergeant ALVA. Not at all. And just as in Iraq, I had confided in several of my marines in my platoon that I was gay. And we made several trips to the port, and the airfield, and riding in a Humvee on a security patrol, whether I was in the front or rear of that security patrol, and that marine was with me. Our job was to make sure that convoy made it to the port with any conflicts.

As we saw early in Somalia in 1993, there weren't that many conflicts arising until late in 1993. But we did live amongst each other, we slept—the stadium was pretty full with 3,000 to 5,000 Marines and Navy trying to live together. Some of our cots were touching each other. We didn't have portable showers like they do in Iraq as today. They were built out of plywood and makeshift hoses that were made as our showers. Everybody was there to do a job, regardless of how someone showered or slept had nothing to do with it. It was there to make sure we all finished the mission and came home.

Ms. TAUSCHER. Do you think it is appropriate, Captain Darrah, to characterize anybody's work environment as sexualized? Do you think people go to work thinking about, I am too tired, frankly, to think about anything about going to work, but I do think that because there are gay or lesbians in a work environment that the work environment becomes sexualized, as Ms. Donnelly wants us to believe?

Mrs. DAVIS OF CALIFORNIA. Mrs. Tauscher, I am going to let—Mr. Shays, if it is all right on your time, can they answer that, and then we will go to you. It will be part of your time. Is that okay?

Mr. SHAYS. I would like to ask my questions.

Mrs. DAVIS OF CALIFORNIA. I am being very strict, as you can see, but we also have votes coming up. But I would actually like to hear the answer to her question.

Mr. Shays.

Mr. SHAYS. If you want to have her answer.

Mrs. DAVIS OF CALIFORNIA. I am going to put it under your time.

Mr. SHAYS. I am sorry, I didn't hear the question. I am still wrestling with anyone in this panel saying, I don't understand why we are having this hearing. I could give you a lot of reasons. Sergeant Alva is one reason. He lost his leg. He will never have his leg back. And he risked his life for everyone in this room, and we are asking why are we having this hearing. He is serving in the military; I am not. We know that gays have served in every conflict in our

country. They served in every war, and we know that gays have given their lives for everyone in this room.

So, Sergeant Jones, that is why we are having this hearing, because gays have given their lives in service to our country, and you and every one of us has benefited from their service. That is why we are having this hearing.

Major JONES. Sir, I am not denying that.

Mr. SHAYS. We are having this hearing because we are trying to determine by not allowing gays to serve, are we losing the advantage of a whole group of people who could help make this country safer and better? That is why we are having this hearing. We are having this hearing because when we go to Iraq and we visit with all the men and women who have served, who are serving like Mr. Alva, some may be gay, and they fear they may be killed by the enemy, and they also fear that they may be forced out of the military by their own government. That is why we are having this hearing.

The amazing thing is when I go to Walter Reed Hospital or Bethesda to talk to the men and women who have been brutally damaged by the war, and they don't have a limb, and they say to me, sir, I can't wait to get back to my comrades, my buddies; I want to come home with them when they leave Iraq or when they leave Afghanistan. The spirit that is in these people is just unbelievable. That is why we are having this hearing.

We are having this hearing because do we think that maybe all Americans should be allowed to serve their country if their service is exemplary and in no way impacts on their conduct while in the military? That is why we are having this hearing.

I had someone tell me, you better not come to that hearing because there will be some people who will object to you feeling that maybe gays should be allowed to serve in the military as long as their conduct is exemplary. I thought, you know what? There are probably millions of people who require me to be here because they gave their life for their country and they were gay. That is why we are having this hearing.

Mrs. DAVIS OF CALIFORNIA. Thank you, Mr. Shays.

In following up with the last question, you have a few more minutes, I think the question was whether the environment has become so sexualized that people are not able to function.

Captain DARRAH. I mentioned when I was the deputy and chief of staff of the Naval Intelligence Command, I had about 400 military and about 1,100 civilians and contractors. The civilians, I had several openly gay civilians. We all worked together. Everybody was judged on their performance and their ability, and there was no problem at all.

Mrs. DAVIS OF CALIFORNIA. Thank you.

We have come to the end of the hearing, and I really appreciate all of you being here sincerely, and for all of you who have served our country so admirably, thank you very much. We appreciate that, and certainly the work that you have all put in. And I know, Ms. Donnelly, you spent years looking at this issue, and we appreciate that effort as well.

You know, I sat at the service this afternoon commemorating the 60th anniversary of the integration of the troops, and even though

I know people perhaps critique the idea of whether this is the same situation that we are talking about, and I happen to think it is a very important right that we are talking about, I couldn't help but just change some of the words that were being stated about how important it is for us to have equal treatment under the law. I know everybody who was there felt the same way.

I have been concerned by some of the discussion, because there has been a sense that somehow if this policy is changed, we will it will be an atmosphere where anything goes, and I question that wholeheartedly. I think we do have laws and policies in this country that demand that people act appropriately. They don't always. We know that, we are realistic. And yet we need to be certain that we develop the leaders who are able to hold people accountable, and I think that is also what this has been about.

And so we look to more conversations. As we said quite publicly, this is starting a conversation. It is a conversation that hasn't been held for a lot of years. It is a different time. We are in the middle of two wars, and I totally appreciate your concerns, Sergeant Major, that maybe this isn't the best time, but I think you have to ask when is the best time? And is this not the best time, because we have men and women today who are on three and four and five deployments who don't even know their children anymore. That is wrong. And this won't solve that problem. But when you have men and women who want so badly to serve and to serve openly and honestly, then I think we have to at least listen to what that change in policy could bring about.

So we know this is the beginning of the conversation. We know that hopefully there will be other hearings. We absolutely want the Department of Defense to be here. I would hope that they would help us out with the operational issues as they see them or don't see them, but that we can have those conversations in the future, too. And I thank you very much for being here. And I thank the audience also for your demeanor. Thank you very much.

[Whereupon, at 4:35 p.m., the subcommittee was adjourned.]

A P P E N D I X

JULY 23, 2008

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

JULY 23, 2008

Opening Statement Chairwoman Davis
Hearing on Don't Ask, Don't Tell Review
July 23, 2008

Today, the Subcommittee will turn its attention to an issue that has been simmering for 15 years, the issue of gay men, lesbians, and bisexuals serving openly in the military. Our purpose today is to begin a long overdue review of the various perspectives of the law and policy commonly referred to as Don't Ask, Don't Tell which remains highly controversial, and, in the view of many, a flawed temporary remedy that has outlived its usefulness.

This hearing is a bit different from the typical hearing conducted by this Subcommittee. With two very distinct and strongly held views of the law and policy, the Subcommittee has worked very hard to ensure that both sides are afforded identical opportunities to present Congressional Members with the rationale to support their perspectives. The choices that have been made regarding witness selection and presentation of arguments and materials were choices made by coalitions of organizations representing each side of the debate.

While the focus of the hearing is to provide a fair and balanced forum for debate, let there be no doubt about my personal position that the Don't Ask, Don't Tell policy should be repealed and replaced by Representative

Tauscher's bill, H.R. 1246, a bill to establish a policy of nondiscrimination on the basis of sexual orientation.

I came to this position after much reflection and dialogue. While I have long been an advocate for the rights of gay men and lesbians, it was after further review and consultation with a wide variety of military and non-military sources that I concluded that the open service of gays and lesbians would not affect military readiness. In my view, the Don't Ask, Don't Tell policy and accompanying law are political inventions that do not serve the needs of our armed forces and should be repealed.

The current approach of the Department of Defense to this policy matter seems to be staking out the middle ground in this debate providing little support to either side and laying the issue squarely at the feet of the Congress. The essence of the DOD policy is that the Department complies with the law. In short, DOD does not enlist gay, lesbian, and bisexual recruits and separates them when their conduct causes authorities to conclude they are gay, lesbian, or bisexual. When pressed to describe how they would respond to a change in the law, senior DOD officials have indicated that they would comply with the new law.

Because equity is the priority characteristic of this hearing, I would caution witnesses that I intend to strictly adhere to the time limits for

opening statements. Each coalition will be given 15 minutes to make their case.

Mr. McHugh, I yield to you for your opening comments.

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Thank you Mr. McHugh.

I would now like to introduce our panel.

We will begin with witnesses representing the coalition seeking repeal of the current law and policy.

Major General Vance Coleman, United States Army, Retired
Former artillery officer and Division Commander

Captain Joan E. Darrah, United States Navy, Retired
Former Naval intelligence officer

Staff Sergeant Eric Alva, United States Marine Corps, Retired
Wounded Iraq War veteran

Those witnesses will be followed by the witnesses representing the coalition that supports the current law, but opposes the Don't Ask, Don't Tell policy which they view as improperly connected to the law.

Ms. Elaine Donnelly
President, Center for Military Readiness

Sergeant Major Brian Jones, United States Army, Retired
Former Army Special Operations and current business owner and chief executive officer

Opening Remarks – Rep. John M. McHugh
Military Personnel Subcommittee Hearing
Policy and Law on Homosexuals
in the Military
23 July 2008

In 1993, when this subcommittee and the full committee examined proposals to change the policy regarding military service by gay and lesbian personnel, the process was comprehensive and intense. There were no less than five hearings, involving 37 witnesses ranging from the Secretary of Defense and Chairman of the Joints Chiefs of Staff, to current and former military, sociologists, and legal experts who provided a wide range of views and perspectives. The issues were complex and the debate at times passionate. The Chairman of the HASC supported the change, while the Military Personnel Subcommittee chairman opposed the change.

In the end, the committee, and the House and Senate concluded that, "the presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good

order and discipline, and unit cohesion that are the essence of military capability."

That statement underpins the current law and we begin today as a subcommittee to examine whether that conclusion remains valid.

I understand the chairwoman's longstanding desire to repeal the current law, and I appreciate her commitment to ensuring that no change takes place without a comprehensive and open debate on the full range of issues.

While some will argue that much has changed since 1993 and the current law is no longer relevant or needed, one thing has not changed in those 15 years. As it was in 1993, the question of whether the law is to be changed should ultimately rest on the matters of military readiness, morale, good order and discipline.

So Madam Chairwoman, I join you in welcoming our witnesses today and look forward to their testimony.

Written Statement of

Major General Vance Coleman, U.S. Army (Ret.)

To the

Subcommittee on Military Personnel

House Armed Services Committee

U.S. House of Representatives

Madam Chairman, Members of the Committee and my fellow witnesses,

During my more than 30 years of service to the United States, I have seen and experienced what happens when our armed forces treat some service personnel as second-class citizens and, conversely, what we can achieve when we reverse those views and embrace all of our troops as first-class patriots with an important contribution to make.

I enlisted in the Army when I was 17 – in the days before we desegregated our fighting units or our park fountains. My father was a laborer, and my mother was a domestic worker. And there was, quite simply, no way I was headed to college. So I decided to head to the military instead.

I served in segregated units in both the United States and Europe before being selected to attend an integrated Leadership Academy and then Officers Candidate School. After Officers Candidate School, I was assigned to a combat arms unit. When I reported for duty, however, I was promptly reassigned to a service unit that was all-black.

The message was clear: It did not matter that I was a qualified Field Artillery Officer who was qualified to serve in the all-white combat arms unit. It only mattered that I was black.

Madam Chairman, I know what it is like to be thought of as second-class, and I know what it is like to have your hard work dismissed because of who you are or what you look like. I also know what a difference it made when we placed qualification ahead of discrimination and tore down the walls of racial prejudice in our fighting forces.

As an Army commander, I also know how disruptive it would be to remove a trained, skilled service member from a unit. It is bewildering, and counter-intuitive, to me that we maintain a federal law that says, no matter how well a person does his or her job . . . no matter how integral to their unit they are . . . they must be removed, disrespected and dismissed because of who they happen to be, or who they happen to love.

That is why I am grateful to have the opportunity today to urge Congress to repeal "Don't Ask, Don't Tell." The military has shown it excels at blending people together from different backgrounds and beliefs, putting the mission first. I ask Congress to repeal "Don't Ask, Don't Tell" and allow the military to benefit from having the best and the brightest serve regardless of sexual orientation.

In Korea, I was assigned to a Field Artillery Unit that was totally integrated. The unit consisted of individuals from all walks of life who were white, black and brown. There was never a problem of unit morale or unit cohesion. The only thing that the soldiers were interested in was your ability to perform, and whether you could be depended upon when the going got tough.

One thing that I learned from serving in the Korean conflict is that in a 24 hour combat situation, the troops are not concerned about who you are or what you believe, but whether you can perform. Performance would mean the difference between winning or losing, life or death. I soon learned from the Senior NCO's that the key to success was performance. That is true fifty years later and it will be true one hundred years into the future.

As Battery Executive Officer in Korea, I supervised a Sergeant First Class, a communication Chief, who happened to be gay.

The Sergeant was in charge of the unit's communication system, including maintenance, organization and design. He was, to put it plainly, essential to the unit's performance, and he was damn good at his job, too. Having to remove him from that position, and from the Army entirely, would have harmed our unit's ability to get our job done.

There are some who say that removing a few gay troops won't make a difference. But to commanders who need an Arabic linguist on the ground in Iraq, it can make a very big difference, indeed. And to a parent whose son is bleeding on the battlefield, and being saved by a lesbian nurse, it makes quite a difference, too. Our armed services have always believed in, and promoted, the very true idea that one person can make a real difference in our country and our military.

This committee should be concerned, first and foremost, about the readiness of armed forces, and the personnel policies that best serve that readiness. And all of us here today know that, when the federal government gives the order, commanders re-iterate it and service members salute and follow it.

As a combat leader, I learned to constantly train my troops to adapt to changing combat conditions, to changing weapons systems, to changing terrain. In the 1980's, I was Division Commander of the 84th Reserve Training Division, testing our mobilization planning by establishing new training models. Military leadership, indeed, is about being able to constantly adapt to change. That is why we are the best military in the world and that is why we are better than the outdated arguments that some still use to prop up "Don't Ask, Don't Tell."

Because of this law, five dozen Arabic language experts have been dismissed. Nearly 800 people with skills the DoD admits are 'mission-critical' have been sent home. And, according to sound research,

another 41,000 lesbian and gay Americans who want to serve have been reluctant to sign up. That's the equivalent of 15 to 20 brigades. And it's unacceptable that we have said we do not want them.

"Don't Ask, Don't Tell" hurts our military readiness. It undermines our commitment to being a nation where we are all equal in the eyes of the law. And it ties the hands of commanders who want to welcome and retain America's best and brightest into the military fold.

It's time, for the sake of our military, to end this modern-day prejudice and embrace all of our troops as first-class patriots with an important contribution to make.

DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 110th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: MAJOR GENERAL VANCE COLEMAN, USA, RET.

Capacity in which appearing: (check one)

X Individual

___Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: N/A

FISCAL YEAR 2008

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

FISCAL YEAR 2007

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

FISCAL YEAR 2006

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information: N/A

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2008):_____;
Fiscal year 2007:_____;
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House Committee on Armed Services
Subcommittee on Military Personnel
Testimony of Captain Joan E. Darrah, U.S. Navy (Ret)
July 23, 2008

Good afternoon. Chairwoman Davis and Committee Members, thank you for the opportunity to testify during this review of the "Don't Ask, Don't Tell" law.

My name is Joan Darrah. I joined the Navy in 1972 and served 29 ½ years. I retired in June 2002 as a Captain. Throughout my career, as a Naval Intelligence officer, I had many different assignments ranging from operational to administrative in focus. I am a graduate of the Navy War College and served as the Aide to the President of the War College. I was the senior Intelligence officer for all East Coast P-3 squadrons. I was the Deputy Commander and Chief of Staff of the Naval Intelligence Command. My final tour of duty was on the staff of the Director of Naval Intelligence where I was the Officer and Enlisted Community Manager and was responsible for all polices that impacted recruiting and retention for the Intelligence community. Thus, I fully understand and appreciate the importance of being able to recruit and retain the highest quality people.

In all of these assignments, I was the first woman to hold the position. During my career, I was awarded numerous medals and personal decorations, including three Legion of Merit and three Meritorious Service medals.

When I joined the Navy, I didn't know I was gay. By the time I realized it, I was well into my Navy career and, according to my promotion record and fitness reports, I was making a difference.

It is only now that I have been retired for six years that I fully realize how incredibly stressful it was to live under Don't Ask, Don't Tell. For the last many years of my career, whenever the Admiral would call me to his office, I would be 99.9% certain it was to discuss an operational issue, but there was always that fear in the back of my mind that somehow I had been outed and the Admiral was calling me in to tell me that I was fired. The constant fear of being outed and fired even though your performance is exceptional, is hard to quantify.

Don't Ask, Don't Tell discourages thousands of talented and patriotic citizens from joining the military because, rightly so, they refuse to live a lie. This is a tremendous loss to our military. When a smart, energetic, young person, who happens to be gay, asks me about joining the service, I strongly recommend that they do not join. I love the Navy. It is painful to me to recommend to someone, who could contribute so much, to take their talents elsewhere.

In my opinion, gay kids are no longer willing to pretend to be straight and straight kids don't expect them to pretend. Rather than join the military, young gay people will seek out an

employer who values them for all that they are. Times have changed; young people today have clearly demonstrated that they are able to work in harmony with all kinds of people.

When I was assigned as the Deputy Commander and Chief of Staff at the Naval Intelligence Command, I supervised almost 1500 people and had several openly gay civilians in my command. The morale and productivity of the command was extremely high and these gay employees were judged, like everyone else, on their demonstrated ability and performance.

During my career, I watched helplessly as several highly-trained and experienced intelligence specialists were forced to leave the Navy because they were gay. I have met many gay service members, who upon separating, were immediately hired by other employers who were eager to have such highly-trained and motivated subject matter experts. Military readiness is achieved by attracting and retaining the best and the brightest; Don't Ask, Don't Tell clearly undermines the military readiness of our country.

In September of 2001, the true impact of Don't Ask, Don't Tell on me personally came into sharp focus. On Tuesday, September 11, I was at the Pentagon attending the weekly 8:30 intelligence briefing. During the briefing, we watched on CNN as the planes hit the Twin Towers. Finally at 9:30 my meeting was adjourned. When American Flight 77 slammed into the Pentagon, I was at the Pentagon bus stop. As it turned out, the space I had been in seven minutes earlier was completely destroyed. Seven of my co-workers were killed. The reality is that if I had been killed, my partner then of 11 years, would have been the last to know as I had not dared to list her in my emergency contact information. It was the events of Sept 11 that made me realize that Don't Ask, Don't Tell was taking a much greater toll than I had ever admitted. It caused me to refocus my priorities, and on 1 June, 2002, one year earlier than I had originally planned, I retired.

Since I have retired, I have come out to many people with whom I served – seniors, juniors, and co-workers. Many said they already knew that I was gay, and without exception, everyone has said they were pleased that I had continued to serve in spite of the extra stress I had to endure.

I care so much about the Navy and want our military to be the best it can be. Twenty-four countries who also care about the quality of their military, have determined that allowing gays to serve openly is the right policy. I am certain that this is also the right policy for the U.S. military. There is no empirical data showing that gays serving openly are in any way disruptive to good order and discipline. The homophobia of a few is the only explanation for keeping Don't Ask, Don't All.

We didn't let racism prevent us from integrating Blacks. We didn't let sexism prevent us from dramatically expanding the role of women. We cannot let homophobia continue to prevent us from doing what is right now.

When Don't Ask, Don't Tell is repealed and replaced with a policy of non-discrimination, many highly-qualified young gay people who refuse to live a lie will be much more inclined to join the military. Other people, especially younger ones, who are likely already out to some of their shipmates, will be much more inclined to reenlist. While more senior/older personnel might opt to keep their sexual orientation private, at least they will finally be able to go to work each day without the fear of being fired because someone has discovered they are gay.

In summary, if we want to have the most capable and ready military, we must be able to recruit and retain the best and the brightest. Don't Ask, Don't Tell stands in the way of that goal.

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Witness name: CAPTAIN JOAN DARRAH, USN, RET.

Capacity in which appearing: (check one)

X Individual

___ Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: N/A

FISCAL YEAR 2008

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
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Written Statement of
Staff Sergeant Eric Alva

To the

Subcommittee on Military Personnel
House Armed Services Committee
U.S. House of Representatives
Room 2118
Rayburn House Office Building
June 23, 2008

Ms. Chairwoman and Members of the Subcommittee:

My name is Eric Fidelis Alva. I was a Staff Sergeant in the United States Marine Corps. I am honored to testify today. Thank you for holding this critical discussion of the repeal of the military's "Don't Ask, Don't Tell" policy and for giving me the opportunity to share my experiences with the Subcommittee.

I grew up in a military family in Texas. My father served in Vietnam, my grandfather in World War II. I guess you could say that service was in my blood.

I inherited my middle name, Fidelis, from my father and grandfather. As you know, the Marine credo, Semper Fi, is short for Semper Fidelis – "always faithful." Loyalty is literally my middle name. So I guess you could say that serving my country was my calling.

I joined the military because I wanted to serve; I joined the Marines because I wanted a challenge. I was 19 years old. I was patriotic, idealistic; I was also gay.

For 13 years I served in the Marine Corps. I served in Somalia during Operation Restore Hope. I loved the discipline and the camaraderie, what I hated was concealing part of who I am.

My military service came to an end on March 21, 2003. It was the first day of the ground war in Iraq; mine was one of the first battalions in. Three hours into the invasion, we had stopped to wait for orders. I went back to the Humvee to retrieve something – to this day I can't remember what – and, as I crossed that dusty patch of desert for the third time that day, I triggered a landmine.

I was thrown through the air, landing 10 or 15 feet away. The pain was unimaginable. My fellow marines were rushing to my aid, cutting away my uniform to assess the damage and treat my wounds. I remember wondering why they weren't removing my right boot – it wasn't until later that I realized it was because that leg was already gone.

Another landmine detonated, though I couldn't hear it because the first had temporarily deafened me; it wasn't until later that I learned it had taken the leg of my friend and fellow Texan Brian Alaniz, then a medical corpsman in the Navy, as he tried to help me.

When I awoke, groggily, in a hospital tent outside Kuwait City my right leg was gone, my left leg was broken, and my right arm permanently damaged. I also had the dubious honor of being the first American injured in the war. I received the Purple Heart, along with visits from the President and First Lady. I was told I was a hero.

That landmine may have put an end to my military career that day, but it didn't put an end to my secret. That would come years later, when I realized that I had fought and nearly died to secure rights for others that I myself was not free to enjoy. I had proudly served a country that was not proud of me. More importantly, my experience disproved all the arguments against open service by gays and lesbians – I knew I had to share my story.

Even under the military's "Don't Ask, Don't Tell" policy, I was out to a lot of my fellow Marines. The typical reaction from my straight, often married friends was "so what?" I was the same person, I did my job well, and that's all they cared about. Today I'm godfather to three of those men's children.

Normally, I was cautious about whom I divulged my secret to – I felt I had to be. Then one evening, out with some guys from our unit, I let my guard down. One of the guys commented on some women in the bar; when my response was less than enthusiastic he asked me, jokingly, if I was gay. "As a matter of fact, I am," I responded. He swore to keep my secret, but I suppose he thought it was just too good a piece of gossip to pass up. He was wrong. No one he told cared. The response from everyone was the same as it had been from the friends in whom I'd confided: "so what?" I was still Eric, still one of them, still a Marine; I was still trusted.

That was a very powerful thing for me, that I still had their trust, because the supporters of "Don't Ask, Don't Tell" are right about one thing – unit cohesion is essential. What my experience proves is that they're wrong about how to achieve it. My being gay, and even many of my colleagues knowing about it, didn't damage unit cohesion. They still put their lives in my hands, and when I was injured they risked those lives to save mine.

My experience gives me confidence in our military men and women. I am confident that, just as they are capable of immense professionalism and dedication to duty - putting their lives on the line every day - our soldiers are equally capable of putting aside personal bias and standing shoulder to shoulder with gay, lesbian and bisexual service members. They are there to fulfill a mission, just as my unit and I were. They will do their duty.

As a former Marine and patriotic American, I am deeply disturbed that "Don't Ask, Don't Tell" is discouraging young patriots from joining the Military at a time when our country needs their service. I am horrified that "Don't Ask, Don't Tell" forces trained and ready troops to choose between serving their country and living openly – a choice I

myself would have been faced with, had a landmine not made it for me. I am appalled at the involuntary separation of thousands of skilled service members during a time of war – threatening our country's military readiness for no good reason. I am also thankful for the acceptance of my unit members, whose support protected me from a similar fate.

My experiences serving in the military demonstrate that "Don't Ask, Don't Tell" is a solution looking for a problem. Since leaving the military, the opportunities I've had to speak with Americans, both gay and straight, have showed time and again that the American people support open service by gay, lesbian and bisexual troops.

Looking back on my years in the military, I am proud. I'm proud, not only of my service and my sacrifice, but of the way my unit members accepted me. I'm proud, not only of how American culture is becoming more accepting, but of how the American military is evolving, too. Now is the time to revisit this ill-considered law. It is costing us far too much, and purchasing us nothing in return.

Those who support "Don't Ask, Don't Tell" claim that they do so in the interest of unit cohesion. Well, as a former Marine, I can tell you what it takes to build unit cohesion: trust. It takes trust in your fellow unit members to have your back and do their job. And I can also tell you that "Don't Ask, Don't Tell" does nothing but undercut that trust, and with it our nation's security. "Don't Ask, Don't Tell" imposes secrecy and undermines unit cohesion, ousting gays and lesbians at the expense of the military readiness of the United States. Allowing gay, lesbian and bisexual service members to serve openly will only improve unit cohesion and in turn our military. I urge the members of the subcommittee to rethink this failed policy and thank you for the opportunity to share my story today. Thank you.

DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 110th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: ERIC ALVA

Capacity in which appearing: (check one)

✓ Individual

___ Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: _____

FISCAL YEAR 2008

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
CONTRACT	EPA	$500	SPEAKER

FISCAL YEAR 2007

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant

FISCAL YEAR 2006

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2008): 1;
Fiscal year 2007: _____;
Fiscal year 2006: _____.

Federal agencies with which federal contracts are held:

Current fiscal year (2008): EPA;
Fiscal year 2007: _____;
Fiscal year 2006: _____.

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2008): SPEAKER;
Fiscal year 2007: _____;
Fiscal year 2006: _____.

Aggregate dollar value of federal contracts held:

Current fiscal year (2008): $500;
Fiscal year 2007: _____;
Fiscal year 2006: _____.

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2008):_____;
Fiscal year 2007:_____;
Fiscal year 2006:_____.

Federal agencies with which federal grants are held:

Current fiscal year (2008):_____;
Fiscal year 2007:_____;
Fiscal year 2006:_____.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2008):_____;
Fiscal year 2007:_____;
Fiscal year 2006:_____.

Aggregate dollar value of federal grants held:

Current fiscal year (2008):_____;
Fiscal year 2007:_____;
Fiscal year 2006:_____.

STATEMENT OF ELAINE DONNELLY
PRESIDENT, CENTER FOR MILITARY READINESS

HOUSE ARMED SERVICES COMMITTEE
SUBCOMMITTEE ON PERSONNEL

In Support of Section 654, Title 10, the 1993 Law Stating that Homosexuals are not Eligible to Serve in the Military

Rayburn House Office Building, Washington D.C.
July 23, 2008

Thank you for the opportunity to testify before this committee today on an issue that is important to the strength, readiness, and culture of our military. The Center for Military Readiness (CMR) is an independent 501(c)(3) public policy organization that specializes in military/social issues. I founded CMR in 1993, and we are supported by civilians, retired and active duty military people in all 50 states and all branches of the armed forces. CMR is not affiliated with or funded by the Department of Defense.

In 1993 President Bill Clinton attempted to lift the ban on homosexuals in the military. It was one of the most contentious efforts of his administration, sparking months of intense debate. Following twelve legislative hearings and field trips, Congress passed a law codifying and confirming the pre-Clinton policy. That statute, technically named Section 654, Title 10, P.L. 103-160, [1] is frequently mislabeled "Don't Ask, Don't Tell." A more accurate name would have been the "Military Personnel Eligibility Act of 1993." [2] The statute, which has been upheld by the courts as constitutional several times, clearly states that homosexuals are not eligible for military service.

In 1993 members of Congress gave serious consideration to a proposal known as "Don't Ask, Don't Tell," which was announced by President Clinton on July 19, 1993. The concept suggested that homosexuals could serve in the military as long as they didn't *say* they were homosexual. Congress wisely rejected the convoluted "Don't Ask, Don't Tell" concept and did not write it into law. Members recognized an inherent inconsistency that would render that

[1] *See* National Defense Authorization Act for Fiscal Year 1994, Pub. L. No 103-160, § 571, 107 Stat. 1547, 1670 (1993) (codified at 10 U.S.C. § 654 (2000)) (reprinted in Appendix). The 1993 law codified long-standing Defense Department regulations regarding homosexual conduct, which were based on the principle that homosexuality is incompatible with military service. See Elaine Donnelly, Duke University *Journal of Gender Law & Policy*, "Constructing the Co-Ed Military," May 2007, hereinafter cited as "Duke *Law Journal*," pp. 908-910. Excerpts of the peer-reviewed 137-page article, and copy of the statute, are appended to this statement. The Duke *Law Journal* article is available in full at http://www.law.duke.edu/shell/cite.pl?14+Duke+J.+Gender+L.+&+Pol%27y+815l,

[2] Legislative history clearly shows that members of Congress did not intend to accommodate professed homosexuals in the military. See House Report, reprinted in the Appendix. Also see Duke *Law Journal* article, pp. 905-908, and the July 2007 CMR articles, "Give the Law a Name," available on the website, www.cmrlink.org, at http://cmrlink.org/printfriendly.asp?docID=300.

policy unworkable and indefensible in court: If homosexuality is not a disqualifying characteristic, how can the armed forces justify dismissal of a person who merely reveals the presence of such a characteristic? Instead of approving such a convoluted and legally-questionable concept, Congress chose to codify Defense Department regulations that were in place long before Bill Clinton took office. [3]

The resulting law, identified as Section 654, Title 10, continued the long-standing Defense Department policy stating that homosexuals are ineligible for military service. Following extensive debate in both Houses, the legislation passed with overwhelming, veto-proof bipartisan majority votes. [4] In writing this law, members wisely chose statutory language almost identical to the 1981 Defense Department Directives regarding homosexual conduct, stating that "homosexuality is incompatible with military service." Those regulations had already been challenged and upheld as constitutional by the federal courts.[5]

The 1993 statute was designed to encourage good order and discipline, not the dishonesty inherent in "Don't Ask, Don't Tell." Congress rejected that concept, and chose instead to codify unambiguous findings and statements that were understandable, enforceable, consistent with the unique requirements of the military, and devoid of the First Amendment conundrums that were obvious in President Clinton's July 19 proposal. [6]

A thorough search of media reports at the time, however, reveals that there were few news stories reporting passage of the law. Those that did appear in print failed to report its

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[3] See Duke *Law Journal*, pp. 904-907.

[4] On Sept. 9, 1993, the Senate approved language in the FY 1994 Defense Authorization bill that codified the homosexual ban, using language almost identical to that in the Defense Department directive that had been in place since 1981. An amendment offered by Sen. Barbara Boxer (D-Cal.), which would have allowed the president to decide policy regarding gays in the military, was defeated on Sept. 9, 1993, on a bipartisan 63-33 vote. On Sept. 28, the House rejected a similar amendment, sponsored by Rep. Martin Meehan (D-MA) and Rep. Patricia Schroeder (D-CO), which would have stricken the Senate-approved language and expressed the sense that the issue should be decided by the President and his advisors. The Meehan/Schroeder amendment was defeated on a bipartisan roll-call vote, 264 to 169.

[5] *See* P. L. No. 103-160, § 571(d), 107 Stat. at 1673, reprinted in Appendix A, and the analysis of legislative history published by the Duke University *Journal of Gender Law & Policy*, pp. 903-910. Also see University of Missouri-Kansas City Law Review article by William A. Woodruff, "Homosexuality and Military Service," 64 UMKC L. Rev. 121, 123–24 (Fall 1995). Prior to retiring from active duty in the Judge Advocate General's Corps, Professor Woodruff served as Chief of the Litigation Division in the Office of the Judge Advocate General, where he was responsible for defending the Army's interests in civil litigation, including litigation challenges to the homosexual exclusion policy.

[6] Among other things, the law states that "military life is fundamentally different from civilian life," and standards of conduct apply "whether the member is on base or off base, and whether the member is on duty or off duty." It further notes that members of the armed forces must "involuntarily...accept living conditions and working conditions that are...characterized by forced intimacy with little or no privacy." Therefore, "The prohibition against homosexual conduct is a long-standing element of military law that continues to be necessary in the unique conditions of military service." These findings and statements are very different from the language proposed by Bill Clinton on July 19, 1993, which Congress did not write into law: "Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry or continued service unless manifested by homosexual conduct." See Duke *Law Journal*, pp. 908-911.

language and meaning with accuracy. [7] Those reports and convoluted Defense Department statements since then have confused the issue by erroneously suggesting that Congress voted for Bill Clinton's flawed proposal, known by the catch-phrase "Don't Ask, Don't Tell." [8]

Describing the law as a "compromise" and referring to it as "Don't Ask, Don't Tell" gave political cover to President Clinton, who had promised to lift the ban shortly after his election in 1992. In fact, due to overwhelming public opposition, President Clinton failed to deliver on his promise. The only "compromise" involved allowed the Clinton administration to continue its "interim policy" of not asking "the question" regarding homosexuality that used to appear on routine induction forms. [9]

This politically expedient concession on a matter of process was ill-advised, but it did not nullify the language of the law. The Secretary of Defense is authorized to restore "the question" about homosexuality at any time, without additional legislation.

It is significant to note that the vague phrase "sexual orientation," stated twice in Bill Clinton's original "Don't Ask, Don't Tell" proposal, was not incorporated anywhere in the law that Congress actually passed. Members of Congress recognized that the phrase would be difficult to define or enforce. Instead, the law is firmly based on conduct, evidenced by actions or statements. Absent unusual circumstances, a person who says that he is homosexual is presumed to engage in the conduct that defines what homosexuality is.

Legislation dealing with intensely controversial issues does not become law by accident. Contrary to frequent misstatements of the law then and now, there is no way that bipartisan, veto-proof majorities would have passed a law making it "easier" for homosexuals to serve. Rep. Steve Buyer (R-IN), then-Chairman of the HASC Personnel Subcommittee, underscored the point in a December 16, 1999, memorandum to his colleagues:

> "Although some would assert that section 654 of Title 10, US Code . . . embodied the compromise now referred to as "Don't Ask, Don't Tell," there is no evidence to suggest that the Congress believed the new law to be anything other than a continuation of a firm prohibition against military service for homosexuals that had been the historical policy.
>
> "The law, as well as accompanying legislative findings and explanatory report language, makes absolutely clear that known homosexuals, identified based on acts or self admission, must be separated from the military. After extensive testimony and debate, the Congress made a calculated judgment to confirm the continued bar to the service of homosexuals in the military. The case supporting the Congressional position is well documented and compelling. . . .

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[7] See July 2007 CMR article, "Why the Law Did Not Get a Name of Its Own," available at http://cmrlink.org/HMilitary.asp?docID=299

[8] Statutory language mandated briefings and educational materials to clarify the meaning and intent of the law, but the Department of Defense has failed to comply with this provision. Official spokesmen continue to mention the 1993 law in suggesting, erroneously, that homosexuals are eligible for military service if they do not *say* they are homosexual. See Pub. L. No. 103-160, § 571(d), 107 Stat. at 1673, reprinted in Appendix A.

[9] Duke *Law Journal*, pp. 900-908.

"Those that claim that the Don't Ask, Don't Tell policy has failed simply do not understand the underlying law. The prospect of a homosexual openly serving in the military was never contemplated by the Congress and any policy that suggests that the military should be receptive to the service of homosexuals is in direct violation of the law. " [10]

The difference between what should been named the "Military Personnel Eligibility Act" and the Clinton enforcement policy explains why factions on both sides of the issue are critical of "Don't Ask, Don't Tell." Even though Congress rejected, with good reason, the "Don't Ask, Don't Tell" concept in 1993, the Clinton Administration imposed it on the military anyway in the form of enforcement regulations that were announced in December 1993. Those expendable regulations, unfortunately, remain in effect today. [11]

In 1996 the U.S. Court of Appeals for the Fourth Circuit said in a ruling upholding the constitutionality of the law that the Clinton Administration's enforcement policies ("Don't Ask, Don't Tell") were not consistent with the statute that Congress actually passed; i.e., Section 654, Title 10. [12] The Clinton Administration disregarded the Court, and perpetuated deliberate confusion by retaining its inconsistent "Don't Ask, Don't Tell" policy in Defense Department enforcement regulations.

It is not difficult to recognize just how inefficient and contrary to sound policy the "Don't Ask" concept is. In the civilian world, it would be tantamount to a state law forbidding bartenders to check ID before serving younger customers who may not be of legal age. Such a law would force the proprietor of a bar to *assume the risk* that if an under-age customer drives and hurts someone on the way home, the proprietor of the bar will be held liable. That risk is reduced by the posting and enforcement of signs stating "We Check ID." [13]

In the same way, it makes no sense for the Department of Defense to forbid routine questions on induction forms that help to determine eligibility for military service. Such a policy

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[10] Memorandum for Members of the Republican Conference from Rep. Steve Buyer, Chairman of the House Armed Services Subcommittee on Personnel, "Policy Regarding the Present Ban on Homosexuals in the Military," Dec. 16, 1999.

[11] The DoD News Release announcing regulations to enforce Section 654, Title 10, referred to the "Don't Ask, Don't Tell" policy announced by President Clinton on July 19, 1993. Few members of the media noticed (or chose to write about) the glaring discrepancy, which has been the source of confusion and controversy ever since. *See* DoD Release No. 605-93, Dec. 22, 1993.

[12] In a 9-4 decision that denied the appeal of Navy Lt. Paul G. Thomasson, a professed homosexual who wanted to stay in the Navy, U.S. Circuit Judge Michael Luttig wrote about the exclusion law: "Like the pre-1993 [policy] it codifies, [the statute] unambiguously prohibits all known homosexuals from serving in the military . . . ." Judge Luttig added that the Clinton Administration "fully understands" that the law and DoD enforcement regulations are inconsistent and has engaged in "repeated mischaracterization of the statute itself . . . ." This ruling should have prompted the Defense Department to drop the problematic "Don't Ask, Don't Tell" policy/regulations, but the Clinton administration failed to strengthen enforcement of Section 654, Title 10, by dropping the administrative policy known as "Don't Ask, Don't Tell."

[13] Commander Wayne L. Johnson, JAGC Navy (Ret.), stated this analogy in a communication with CMR.

("Don't Ask, Don't Tell") forces the armed forces to *assume the risk* that persons who engage in homosexual conduct will be inducted or retained in the military.

We keep hearing about personnel losses that have occurred since 1994 when military personnel announce that they are homosexual, and are honorably discharged. In comparison to discharges for other reasons, such as pregnancy or violations of weight standards, these numbers are relatively small. [14] They could be reduced to near-zero if the Defense Department stopped issuing misleading information about the eligibility of homosexuals to serve in uniform. The routine inquiry about homosexuality can and should be reinstated now; no additional legislation is required.

Activists keep complaining that this convoluted policy does not "work." The most relevant question is, "work to do what?" If the goal is to allow homosexuals to serve, Clinton's permissive "Don't Ask, Don't Tell" regulations do not go far enough. But if the goal is to preserve military morale, discipline, and readiness for combat (it is), then the Clinton policy goes too far—in the wrong direction. Everyone can serve our country in some way, but not everyone is eligible to serve in the military.

Fifteen years after passage of the law, we are hearing about problems that members of Congress predicted when they voted to reject "Don't Ask, Don't Tell." Contradictions between policy and law are the main cause of emotional problems the committee likely will hear about today. Most of these problems could have been avoided if the law had been properly enforced. The answer is not to repeal the 1993 law, but to improve understanding of what the statute actually says, and why.

For years, less than credible "studies," which are based on questionable methodology and unsupported theories, have been released by activist sources trying to create an illusion of momentum for their cause. I have analyzed most of these polemics, which cannot withstand close scrutiny, in my comprehensive article for the Duke University *Journal of Gender Law and Policy*, excerpts of which are attached to this statement.

My primary purpose in the limited time available today is to focus attention on some of the consequences that would result from repeal of this law, Section 654, Title 10. In this statement and supporting documents I am submitting for the record, I would like to address these issues in detail.

1. Repeal of the Law and Forced Cohabitation

If Congress repeals the 1993 statute stating that homosexuals are not eligible to serve in uniform, and the military is ordered to accommodate professed (not discreet) homosexuals, the culture of the military will be radically changed. Recruiters will be directed to accept and even seek out professed homosexuals for induction in all branches of the military, including direct ground combat communities. This means that heterosexuals—the majority of men and women who volunteer to serve—will be required to live in forced cohabitation with professed (not discreet) homosexuals, on all military bases and ships at sea, on a 24/7 basis. Such a policy

[14] See Duke Law Journal, pp. 919-923, and graph prepared and prepared by the Center for Military Readiness, posted here: http://cmrlink.org/CMRNotes/HomosexualDischarges100107.pdf

would impose new, unneeded burdens of sexual tension on men and women serving in high-pressure working conditions, far from home, that are unlike any occupation in the civilian world.

The real-world issue here is not superficial. Nor is it a Hollywood fantasy portrayed for laughs in a television sitcom. We are talking about human sexuality and the normal, human desire for personal privacy and modesty in sexual matters. Repealing the 1993 law would be tantamount to forcing female soldiers to cohabit with men in intimate quarters, on all military bases and ships at sea, on a 24/7 basis. Stated in gender-neutral terms, forced cohabitation in military conditions that offer little or no privacy would force *persons* to live with *persons* who might be sexually attracted to them.

Inappropriate passive/aggressive actions common in the homosexual community, short of physical touching and assault, will be permitted in all military communities, to include Army and Marine infantry battalions, Special Operations Forces. Navy SEALS, and cramped submarines that patrol the seas for months at a time.

The ensuing sexual tension will hurt discipline and morale, but commanders will not have the power to improve the situation. Individuals whose beliefs and feelings about sexuality are violated by the new policy will have no recourse. The only option will be to avoid or leave the service. Forced cohabitation with homosexuals in the military, 24/7, would be unfair, demoralizing, and harmful to the culture of the volunteer force, on which our national security depends.

We keep hearing that in the brave new "Will & Grace" world, none of this matters. And yet, it was only a year ago when the nation reacted with universal disapproval of Sen. Larry Craig (R-ID) and 39 others who were arrested for inappropriate behavior in a public but transient place at the Minneapolis airport over a period of three months. [15]

Columnist Michael Medved drew a valid comparison in an insightful article titled "Larry Craig and 'Don't Tap, Don't Tell." Medved asked a fair question: If preventing public sex in airport men's rooms is important enough to justify the deployment of undercover cops, isn't it similarly important to deter the sexualization of private facilities in the military? [16]

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[15] Duff Wilson, the *New York Times*, "Sting Charges Against Craig Harsher Than Some," Sept. 10, 2007. A defense lawyer for another man accused of disorderly conduct in the Minneapolis Airport restroom stated the behavior attributed to his client, which was short of actually having sex in the bathroom, should not be considered a crime. This is the type of mindset that would excuse similar passive/aggressive behavior in the military.

[16] Townhall.com, Sept. 5, 2007, reprinted in Appendix. Medved noted that the same principle would invite men and women to occupy the private areas of the opposite sex, and that advocates rely on "rules that would, theoretically, prevent gay men from hassling other men in the head would prevent hetero men from harassing women (or vice versa)..."but that wouldn't make [them] any more welcome in a female facility." Commenting on the "national shudder of discomfort and queasiness" that ensued when Sen. Craig was arrested in 2007, Medved added, "We have a common and compelling interest in keeping such places free of erotic tension and that's why we dispatch police officers to patrol public rest stations—even though they are hardly needed to prevent outright assaults. And if regular users of airport or public park facilities have a right to escape suggestive glances or inviting gestures...how much more so do young recruits (many of them 18 or 19 years old) have the same right to avoid similar attentions (or even suspicions) from their fellow soldiers in the intimate quarters necessitated by military service?"

Contrary to the misleading name assigned to legislation proposed to repeal Section 654, Title 10, personnel policies that cause turbulence and division in military units, instead of uniting them, would detract from readiness, not "enhance" it. [17]

2. Implications of the "Civil Rights" Argument

Activists who demand repeal of the 1993 law invoke the honored standard of "civil rights." [18] Their cause, however, bears little resemblance to our military's proud history of racial integration. [19] If this is deemed a civil rights issue, the argument should be taken to its logical conclusion. If the military is ordered to accommodate homosexuals, it will follow the civil rights model in counter-productive attempts to make the new paradigm "work."

The principle of "zero tolerance" in matters of civil rights is well established. The military does not do things half-way. Nor does it tolerate members who do not support civil rights and equal opportunity in the military.

This means that any military man or woman who expresses concerns about professed homosexuals in the military, for any reason, will be assumed "intolerant," and suspected of harassment, homophobia, "bullying," bigotry, or worse. Since our military does not tolerate sexual harassment or bigotry, disciplinary penalties and career-ending denials of promotions would be the logical consequence of treating homosexuals in the military as a "civil rights" issue. [20]

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[17] Military Readiness Enhancement Act of 2007, sponsored by Rep. Ellen Tauscher. (D-CA). The legislation as drafted purports to eliminate discrimination on the basis of "sexual orientation," an indefinable phrase that refers to "heterosexuality, homosexuality, or bisexuality, whether the orientation is real or perceived, and includes statements and consensual sexual conduct manifesting heterosexuality, homosexuality, or bisexuality." The phrase "real or perceived,"opens the door to transgenderism and other exotic forms of sexual expression. See footnote 38 below, regarding advocacy of transgenderism in the British military.

[18] In a statement before a Senate Committee hearing on this issue on April 29, 1993, Lt. Gen. Calvin A. H. Waller, a highly-respected African-American military leader, was asked by Sen. Sam Nunn (D-GA) whether he agreed with the racial analogy, equating homosexual rights and civil rights for racial minorities. Waller replied, "We are talking about the lifestyle or the sexuality of a person who wants to be open with their sexuality or with their lifestyle into a force or into the Armed Forces where I think that is detrimental to readiness and to good law and order and discipline." Waller further commented that he strongly disagreed with the racial analogy. "I am opposed to that. I do not like that analogy. I do not think it is the same in any respect." Respected sociologist Charles Moskos, testifying on the same day, added "I think the black/white analogy vis-à-vis gays/straights which General Waller has tossed out a couple of times really is the misleading one. It really is the male/female analogy." *See* Senate Hearing 103-845, pp. 399-404 and 424.

[19] President Harry Truman's Executive Order to end racial discrimination in 1948 advanced civil rights, but its primary purpose was to serve the needs of the military. Title VII of the Civil Rights Act of 1964 does not apply to uniformed military personnel because its provisions might detract from the needs of the military, which is charged to confront enemies that are not subject to similar rules. See Report of the Presidential Commission on the Assignment of Women in the Armed Forces, Nov. 30, 1992, Findings 1.32, 1.33, and 1.33A, p. C-40.

[20] The British military provided an example of how the "civil rights" principle and "zero tolerance" enforcement can be taken to intolerant extremes. In 1999 the European Court of Human Rights ordered the United Kingdom to accommodate homosexuals in their armed forces. According to the London *Telegraph*, a former Army major recently was suspended for allegedly telling a lesbian soldier that lesbians and gays should not be serving in the Army. Stephen Adams, Telegraph .co.uk, "Army Anti-Sex Harassment Head Suspended for Alleged Harassment," Jun. 18, 2008.

This mandate would be particularly divisive among men and women whose religious convictions are thrown into direct conflict with official military policy. As a result, thousands of valuable troops could feel compelled to avoid or leave military service.

In the most recent "study" released by the Palm Center, formerly named the Center for the Study of Sexual Minorities in the Military (CSSMM), a panel of four retired military officers showed little concern about this problem. In "Finding Five" of the document, the panel conceded that an estimated 4,000 military personnel would be lost to the service if the law were repealed. They also claimed, with no credible support, that the loss would be "a wash in terms of recruiting and retention" because 4,000 gays and lesbians would enlist to take their places.

The report based its estimates of potential personnel losses on responses to a survey question in a Zogby Poll, which the Palm Center commissioned and paid for in late 2006. Upon closer analysis, the estimate of potential losses would be more than five times *greater* than 4,000. [21] The prospect of losing thousands of personnel apparently did not disturb the panel members, however, because the military would become more "diverse" as a result. This statement discredits the perception that the campaign to repeal the 1993 law is motivated by a concern for recruiting, retention, or any other factor associated with military necessity.

3. Affirmative Action and Retroactive Consequences of a "Civil Rights" Standard

If the civil rights model is followed in all matters involving homosexuals, it is likely that a wide array of disruptive policies will be implemented by bureaucrats or judges taking the principle to its logical conclusion. That could mean recruiting quotas for gay personnel, the offer of enlistment to those previously denied, retroactive promotions, and financial settlements for persons claiming past discrimination.

In a recent communication with the Center for Military Readiness, Campbell University Law Professor William Woodruff, an expert on the issue of homosexuals in the military, expressed concern that the full impact of applying the "civil rights" standard to homosexuals in the military could be imposed by the federal courts, based on legal and administrative precedents:

> "We all know that the military has used various "affirmative action" measures to promote women and minorities. Every selection board instruction by the secretary of the service tells the promotion board to look specifically at minorities and women and make sure they are given fair consideration for promotion because they may not have had the best assignments or gotten the best OERs—evaluations that need to be considered in that context. This is a generalization, but some language in some promotion board instructions has actually been interpreted as an expectation of recruiting quotas.

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[21] Palm Center Report Finding #5, p. 9: "In the worst case scenario, if it turns out to be true that the numbers cancel out and 4,000 heterosexuals refrain from enlisting, while 4,000 gays, lesbians, and bisexuals do enlist, the group nevertheless points to the many official pronouncements about the importance of building and maintaining a diverse force to represent the values of a free, pluralist democracy. Building and maintaining a diverse force is a central component to winning the war on terror because the diversity of the armed forces can serve as a living example to peoples living under authoritarian rule, and demonstrate that pluralism and tolerance offer a better way of life." See Elaine Donnelly, *Human Events* Online, "PM Polemic for Gays in the Military," July 15, 2008.

"Several successful court cases have resulted in back pay for officers non-selected for promotion or who have been forced into selective early retirement because women and minorities were given special consideration in the board's instructions. Should secretarial guidance to selection boards include similar language with regard to homosexuals? Clearly, they have been subject to past "discrimination." Should "affirmative action" be required to remedy those past "injustices?" If so, what should the board's guidance be?

"This opens a can of worms that most folks won't want to deal with. But, in affirmative-action-land a history of institutional discrimination is one of the factors that courts look to in determining whether quotas or other preferential policies are warranted. I suggest that in context, homosexuals will have a stronger argument for affirmative action recruiting than women and minorities. Will application of the affirmative action efforts require the service to "ask" about sexual orientation? How else can you identify the people entitled to special consideration?" [22]

Before voting to repeal the 1993 law for "civil rights" reasons, members of Congress need to give serious thought to the cost of all potential consequences — legal, cultural, financial, and operational. The next step is to answer an obvious question: How will all of these costs benefit discipline, morale, and readiness in the volunteer force? None of these consequences would burden the military if Congress remembers that the institution exists to defend the country; it is not just another equal opportunity employer.

4. Enforcement of Laws and Regulations Re Sexual Misconduct

Activists demanding repeal of the law dismiss concerns about sexual misconduct by claiming that existing regulations against heterosexual misconduct can and should be equally applied to misconduct involving professed homosexuals. This is an unrealistic argument, which betrays an elitist attitude and false assumptions about military culture and law.

It is theoretically possible that incidents of sexual assault by homosexuals in our military would be punished in an even-handed way, but in actual practice this would be small comfort to persons experiencing forced cohabitation with others whose inappropriate behavior causes sexual tension and division in groups that need to be cohesive in order to be effective. (The previous sentence applies to forced cohabitation involving both homosexuals and heterosexuals) [23]

When a female soldier reports an incident of sexual harassment or abuse, she enjoys the presumption of truthfulness. But under the new civil rights standard, if a male soldier reports an incident of homosexual harassment or abuse, he will face the suspicion, if not the presumption, of unacceptable attitudes toward fellow soldiers who are gay.

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[22] According to a report in the London TimesOnline, in 2007 the British Ministry of Defence issued an open apology last year to all servicemen and servicewomen who were not admitted to or retained in the military before the ban on homosexuality was lifted (by order of the European Court of Human Rights) eight years ago. *See* Damian Barr and Lucy Bannerman, "Soldiers Can Wear Their Uniforms with Pride at Gay Parade, says MoD," June 14, 2008.

[23] See House Report 103-200, 103rd Congress, 1st Session, National Defense Authorization Act for F.Y. 1994, Report of the Committee on Armed Services, House of Representatives, on H.R. 2401, July 30, 1993.

Since charges of harassment will be met with counter charges of "bigotry" or "homophobic bullying," heterosexuals whose values are violated will hesitate to file complaints, lest they be suspected and probably accused of attitudes that violate the new "zero tolerance" policy, favoring homosexuals in the military.

In messy, emotionally-charged disputes such as this, commanders themselves will be accused of homophobic attitudes if they take the side of the heterosexual person over the homosexual one. Who is bullying whom? In close quarters it wouldn't matter—the effect on unit cohesion would be the same.

In recent months the Center for Military Readiness has received several messages from active duty and retired military person with personal knowledge of disruptive behavior, harassment, and assault by male and female homosexuals. One of the most graphic messages came from Cynthia Yost, a former Army a medical corpsman (91B). In the mid-1970s, she wrote, there was a heightened sensitivity to inappropriate attitudes regarding race. A group of lesbian women separated themselves from everyone else, and training classes tended to elevate tensions, rather than alleviate them. On one occasion, wrote Yost,

> "Some of them were ethnic minorities, and it was a group of black lesbians who decided to gang-assault me. I don't know what else you would call it. This incident happened in the spring of 1974, at Fort Jackson, South Carolina. We were riding crowded together in a "cattle truck", and suddenly they all began groping my crotch and breasts through my fatigues, talking suggestively, rubbing my thighs, hugging me tightly around the waist and shoulders, and giggling.
>
> "This was in 1974, when the military brass lived in terror of accusations of racist attitudes among military personnel. It was assumed that any white person hitting or attacking a black one for any reason, even in self-defense, was, ipso facto, a racist. Such an incident, reported, meant a letter of reprimand in one's permanent record, and many tedious hours of "race relations" classes.
>
> "...I didn't report the assault because I wanted to keep my record clean, and I didn't defend myself from their physical assault for the same reason. I didn't want a permanent label of "racist" to derail my military career. So, I restrained my nausea and outrage, and just kept pushing their hands and arms off me and telling them to please stop. They finally did, when they were tired of it.
>
> "The way these women behaved in the company, and the assault, soured me on the idea that homosexuals had any "right" to be in the military. If they are allowed in openly, we'd be on a steep slippery slope, indeed. I'd bet that within five years an assault like the one I endured would be "de-criminalized," on the grounds that the victim is a "homophobe" if they won't just "relax and enjoy" being sexually assaulted. [24]

In a subsequent message to CMR, Ms. Yost made an additional point that is as contemporary as the latest iPhone. Shortly after the assault that she suffered, one of the lesbians

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[24] Letter from Cynthia Yost to House Armed Services Committee Chairman and Ranking Member, July 18, 2008.

began surreptitiously taking pictures of Yost and other female soldiers while they were showering, running off and laughing when they turned to look. Wrote Yost, "Such behavior then was bad enough. But in these days of digital cameras and camera phones with Internet access, such photos could be sent anywhere and everywhere in the world in seconds, along with the victim's name and location." Her warning should not be disregarded.

In Britain, which homosexual activists point to as an example to be followed by the American military, the gay activist group Stonewall praised the Ministry of Defence (MoD) for working with the group on "homophobic bullying." [25] This is an interesting comment since activists claim that the British experience has been completely positive.

The London *Telegraph* also reported in the past month that a former Army major who now heads an Equal Opportunities Inquiry Team (EOIT) in the British military was suspended for allegedly abusing a lesbian sergeant verbally. John Wooldridge, 51, who reportedly had been previously involved in "several" inquiries into homosexual behavior among military personnel before 2000, was disciplined for saying on more than one occasion that "lesbians and gays should not be serving in the Army." [26] Accusations such as this could become common in the American military if the 1993 law is repealed.

In some cases, a person accused of homosexual conduct tries to escape punishment by claiming that the act was consensual. Air Force Capt. Devery L. Taylor, for example, who was convicted and sentenced to 50 years in prison for raping four men and attempting to rape two others, claimed that he was the victim of consensual partners who lied to protect their military careers. [27]

The question must be asked, how would all this turmoil improve readiness, morale, and discipline? The only beneficiaries, it seems, would be lawyers needed to defend military personnel accused of "bad attitudes," and professional diversity trainers paid to conduct "diversity" and "sensitivity training" that is supposed to change personal feelings about sexuality.

5. Inadequate Reports and Risks of Physical Abuse

If the 1993 law is repealed, it is highly unlikely that evidence of problems will be reported for objective evaluation by Congress or the general public. In Britain, held out as a model for the United States on social change, the Ministry of Defence barred interviews with military personnel by the *New York Times*, on or off the record, on the subject of gays in the military. The resulting article nevertheless was headlined as if the British experience is an unqualified success. [28]

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[25] Chris Gourley, London TimesOnline, "Armed Forces March United for Gay Rights at Pride London," July 5, 2008.

[26] Stephen Adams, Telegraph.co.uk, "Army Anti-Sex Harassment Head Suspended for Alleged Harassment," June 18, 2008.

[27] Eglin AFB, Air Force Times, "Officer Accused of Rape Says He Rejected Alleged Victim," Mar. 5, 2007. See also Duke *Law Journal*, p. 926. See more about the Devery Taylor case elsewhere in this testimony.

[28] Sarah Lyall, the New York Times, "Gay Britons Serve in Military With Little Fuss, as Predicted Discord Does Not Occur," May 21, 2007, p. 8.

A *Navy Times* editorial commenting on the disturbing case of Navy Lt. Cmdr. John Thomas Lee, described below, noted that unlike the civilian judicial system, military courts do not offer a publicly accessible docket of pending court martial cases. As a result, "military commanders release that information at will, giving them unmatched control over information that should be out in the open." [29]

The *Navy Times* further reported that incidents of male sexual assault often are underreported and may be more prevalent in the military than in other parts of society. Studies suggest that sexual assault among military men is most prevalent among junior enlisted ranks. [30] Authorizing policies that would increase the number of sexual harassment cases among men would achieve a type of "equality," but this is not the kind of equality that we need in the volunteer force.

We also know that current discharges of persons who engage in homosexual conduct frequently are not reported as such. If an offender is court-martialed and punished for a more serious offense involving same-sex assault, or for disobedience of orders forbidding sexual activity for HIV-positive individuals, discharge records are more likely to show the more serious offense, but not homosexual conduct. Two cases summarized below demonstrate the high risk of sexual abuse that could occur with little or no public notice if the 1993 law if repealed:

- ***Navy Lt. Commander John Thomas Lee***

The court martial of Navy Lt. Commander John Thomas Lee is a recent case of egregious sexual abuse resulting from the "Don't Ask, Don't Tell" policy. Lt. Cmdr. Lee, a 42 year-old Catholic priest, is a Navy chaplain who tested positive for HIV in 2005. Between 2003 and 2007, Chaplain Lee, who was assigned to counsel midshipmen at the U.S. Naval Academy and Marines at Quantico, VA, engaged in gross misconduct that Navy officials should have punished severely.

The *Washington Post* reported on December 7, 2007, that Lt. Cmdr. Lee pleaded guilty to several serious charges: consensual and forcible sodomy with several men, including a Naval Academy midshipman, an Air Force lieutenant colonel, and a Marine corporal. Lee's misconduct involved indecent acts, aggravated assault for not informing at least one victim of his contagious HIV status, and conduct unbecoming an officer that was all the more reprehensible because of the betrayal of trust associated with Lee's status as a priest and chaplain. [31]

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[29] Editorial, *Navy Times*, "Corps Puts Spin Control Ahead of Victims' Health," Dec. 17, 2007, p. 44.

[30] Andrew Tilghman, *Navy Times*, "Military Among Settings in Which Assault 'Most Likely'," Dec. 17, 2007, p. 9. This article quotes Mic Hunter, a psychologist and author of *Honor Betrayed: Sexual Abuse in America's Military*, "The military, boarding schools, sports teams and prison – these are the settings where a male is most likely to be assaulted." An estimated 3% of junior enlisted men reported incidents of sexual coercion during a 12-month period, and about 2% reported sexual assaults during the previous year, according to the Armed Forces 2002 Sexual Harassment Survey conducted by the Defense Department.

[31] Ernesto Londono, the *Washington Post*, "Navy Chaplain Pleads Guilty: HIV-Positive Priest is Sentenced in Sex Case," Dec. 7, 2007, B-1. In one of the pornographic photos obtained by the *Post*, Lt. Cmdr. Lee is sitting nude on

According to court testimony and factual stipulations signed by Lee and Navy prosecutors, Lee plied the male midshipman with dinner and drinks, followed by gay sex acts and unwanted touching. Lee also misused government computers to solicit sex partners, saving and sending more than 375 pornographic images of himself and other men. Some of the photos were taken by Lee's victims, in his office or other locations. For all of these offenses, worsened by the element of violated trust, Lt. Cmdr. Lee got off with a twelve-year prison sentence reduced to two, with only 18 months to be served. The plea bargain, currently under appellate review, effectively swept the case under the rug with little public awareness that the scandal even happened.

The abuses of a Navy chaplain priest who was engaged in homosexual conduct of the most dangerous kind, exposing his victims to HIV infection should give rise to questions about why Lt. Cmdr. Lee was in the Navy at all. Had the 1993 law been properly enforced, these abuses would not have occurred.

An alarming article in *Newsweek* stated that according to a recent report, up to 60 military chaplains have been convicted or at least are strongly suspected of committing sexual abuse over the past four decades, sometimes against the children of military personnel. In many cases, the priests were involved in abusing children, but their churches did not bring the charges to the military's attention. [32]

The experience of the Roman Catholic Church is a cautionary tale. For many years, the church did not ask questions about homosexuality among seminarians and priests. With few exceptions, lay people did not suspect that anything was amiss when they entrusted their young sons to the care of these priests. A huge and costly nationwide scandal developed over time, doing enormous damage to the church as an institution. Scandals comparable to this could undermine public support for the volunteer force at a time when that support is needed most.

- ***Pfc. Johnny Lamar Dalton***

In another disturbing case reported last year in the *Raleigh News & Observer,* Pfc. Johnny Lamar Dalton, 25, was charged with assault with a deadly weapon — the HIV virus, an indicator of AIDS. [33] Pfc. Dalton reportedly had unprotected sex while HIV-positive. The civilian mother of an 18 year-old reported that her son appeared to become ill shortly after his encounter with Dalton. The soldier reportedly failed to tell the teenager about his HIV-positive status before they had unprotected, consensual sex. The unnamed young man previously had been HIV-negative.

In addition to misdemeanor charges for assault with the deadly weapon of HIV, Dalton

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a sofa in his office flanked by an image of the Virgin Mary and a framed photo of Marine Gen. Peter Pace, former Chairman of the Joint Chiefs of Staff. Also see

[32] Dan Ephron, *Newsweek*, "Questionable Conduct," Dec. 15, 2007.

[33] Michael Moore, *Raleigh News & Observer*, "Soldier at Bragg Charged with HIV Assault," July 18, 2007.

was charged with "a crime against nature" — illegal under the Uniform Code of Military Justice and a felony in North Carolina. Following a 5-month investigation, Dalton was sent to the county jail in lieu of $50,000 bail. The AP later reported that Dalton pleaded guilty to assault for unprotected sex, and he was sentenced to 40 months in prison, reduction in rank, and a dishonorable discharge. [34] In answer to an inquiry from CMR, an Army spokesman confirmed that Dalton's records will only show his criminal violations, not the lesser offense of homosexual conduct. [35] This case demonstrates why figures on discharges that involve homosexual conduct may not be reported accurately.

In the same way, when a servicemember reveals that he is homosexual just prior to the end of his tour of duty, discharge papers may not show homosexuality as the reason for separation. A case in point was that of former Navy Petty Officer Jason D. Knight, who revealed that he was homosexual just before the end of his term of enlistment. His discharge forms were not properly coded to indicate that he was a homosexual. Due to the bureaucratic error, Knight later received a computer-generated inquiry, along with many others, asking if he would consider volunteering for re-mobilization in the war.

Knight could have been honest with Navy officials who re-enlisted him, but by his own admission, reported by *Stars & Stripes*, he said nothing. [36] Instead of making the case for repeal of the law, the story of Jason Knight demonstrates that accurate information about homosexual conduct in the military can be misleading or incomplete. If the 1993 law is repealed, members of Congress and the general public should not expect to get complete and candid information on the incidence, age and gender breakdown, and nature of homosexual conduct in the military.

6. Risks of HIV-Positive Non-Deployable Personnel

During the 1993 debate that culminated in the law banning homosexuals from the military, Congress recognized that all soldiers serving in a combat environment are potential blood donors for each other. As stated in the 1993 law, the armed forces cannot afford the elevated risk of disruptive homosexual conduct in the ranks. That risk is even more dangerous when HIV infection enters the picture.

Any behavior or propensity to behave in a manner that raises risks to survival for any servicemember should be eliminated to the greatest extent possible. Persons found to be HIV-

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[34] AP, the *Washington Post*, "US: HIV-Positive Paratrooper Pleads Guilty to Assault for Unprotected Sex," Nov. 1, 2007.

[35] E-mail communication from Maj. Thomas Earnhardt, MIL USA FORSCOM to Elaine Donnelly, Jan. 28, 2008. Maj. Earnhardt wrote that Pfc. Dalton was not charged with homosexual conduct because "[I]it's not in the Army's interest to pursue an additional charge that imposes no criminal penalty. Our goal was to punish Dalton for his blatant disregard for orders and public safety. As far as the criminality of his case was concerned, Dalton was guilty of serious crimes above and beyond engaging in homosexual activity. Those crimes carry penalties far greater than simple discharge."

[36] Chris Amos, *Navy Times*, "Coming Out, Then Coming Back?" July 2, 2007, p. 12; *Stars & Stripes*, "Navy Disputes Gay Sailor's Claim of Discharge, Recall", May 12, 2007. Knight was reported to be a spokesman for the Servicemembers Legal Defense Network's campaign to repeal the 1993 law.

positive are not eligible for induction, but once they are in uniform they must be retained for as long as they are physically able, with access to appropriate medical care. These personnel, however, are not deployable. [37]

An examination of military HIV non-deployability cases shows that since the passage of Section 654, Title 10, the incidence of HIV service-wide has trended downward. [38] Reasons for the trend are not clear, but it is reasonable to expect that the if the law is repealed and great numbers of men having sex with men (MSM) are inducted into the military,[39] the line indicating non-deployable personnel who are HIV-positive probably would trend upward.

Given the officially-recognized correlation between homosexual conduct and HIV infection, it is reasonable to expect that repeal of the law could increase the number of troops who require medical benefits for many years but cannot be deployed. At a time when multiple deployments are putting great stress on the volunteer force, Congress should not make a major change in policy that could increase the number of non-deployable personnel.

7. Social Issues and Training to Enforce Acceptance of Homosexuality

Since our military has a tradition of leading the way in matters of social change, the armed forces will be pressured to follow the example of Britain in creating some sort of legal/social status for same-sex couples, and providing quarters for same-sex couples in family housing. In a short amount of time civilian institutions, such as marriage bureaus, schools, and possibly churches will be pressured to follow the military's lead. If the Marine Corps recognize same-sex couples, why should the schools and churches not do the same?

Activists who demand repeal of the law regarding homosexual in the military often claim that if the military's civil rights tradition is followed, programs of "sensitivity training" would be sufficient to resolve any problems. They also expect "Diversity Day" events and other occasions to celebrate homosexual servicemembers, in the same way that other minority groups and women are recognized by the military.

The Department of Defense demonstrated how this would be done early in the Clinton Administration, when it sponsored a day-long "Diversity Day Training Event" in Arlington, Virginia's Crystal City area near the Pentagon. The program, co-sponsored with 18 other government agencies, featured lectures, panel discussions, exhibits, workshops, and video presentations, including a video titled "On Being Gay." [40]

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[37] Department of Defense Instruction No. 6485.01, Oct. 17, 2006.

[38] See analysis and graph prepared and posted by the Center for Military Readiness at http://cmrlink.org/cmrnotes/HIV_Statistics100107.pdf

[39] Sarah Kershaw, the *New York Times*, "New H.I.V. Cases Drop but Rise in Young Gay Men", Jan. 2, 2008. This is the demographic group that the Center for Disease Control has repeatedly identified as being at highest risk of HIV infection.

[40] Rowan Scarborough, the *Washington Times*, "Navy Officers Balk at Pro-Gay Seminar, Sep. 8, 1994, A-1, and Department of the Navy, Memorandum for All Hands from Cmdr. G.R. Stermer, Naval Sea Systems, Subject: Diversity Day 1993 Event, Aug. 26, 1994, on file with the author. Some participants in the program reported anti-

Our civilian and military cultures are very different from cultural practices in Britain, but our military is being pressured to follow the example of the United Kingdom, which capitulated to a European Court ordering inclusion of homosexuals in the military. If the United States follows the British example, it is likely that official advisory committees will be invited to work with Pentagon officials to advance a comprehensive agenda, including acceptance of transgenderism. [41] The implications of similar policies in the American military are disturbing, but members of Congress must contemplate them seriously before the law is repealed, not afterwards.

British military personnel have been permitted to march in Gay Pride parades, and same-sex couples are permitted to live in family housing. Despite these "outreach" efforts, which surely contribute to the advertised level of satisfaction among homosexuals who serve, an April 2007 report of the British Parliament indicated that the armed forces remain short of servicemen and women. [42]

The only people likely to benefit from pursuit of such programs would be professional "diversity trainers" and outside activists who would be invited to participate. Even if professional trainers could succeed in that goal, this is not a suitable mission for the armed forces of the United States.

C. Unconvincing Arguments for Repeal

1. *Surveys & Polls*

In January 2007, retired Army Gen. John M. Shalikashvili, Chairman of the Joint Chiefs of Staff from 1993 to 1997, became a "celebrity endorser" for the gays-in-the-military cause by writing an op-ed for publication in the *New York Times*, a newspaper that has been in the forefront of efforts to repeal the 1993 homosexual conduct law. [43] The General's article drew attention to a December 2006 poll of 545 service members conducted by Zogby International,

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Christian hostility similar to that leveled last year against the former Chairman of the Joint Chiefs of Staff, Marine General Peter Pace.

[41] In the British military, inclusion of persons having a trangendered "orientation" is prominently discussed and displayed on the website of the Ministry of Defense LGBT Forum,. The website displays a multi-colored "rainbow" version of the MoD's official seal. *See* LGBT Newsletter and other documents on the Ministry of Defense website: http://www.mod.uk/NR/rdonlyres/370C9F8D-4728-4805-BE98-27A0207C2271/0/LGBTNewsletterMay08.pdf

[42] Chris Gourley, *TimesOnLine*, "Armed Forces March United for Gay Rights at Pride London," Jul. 5, 2008. Also see the United Kingdom Parliament, Public Accounts – Thirty-Fourth Report, Summary, Jul. 3, 2007. Concerns about the current war are a contributing factor, but the inclusion of homosexuals has not proved to be the solution to the British military's recruitment and retention problems.

[43] John M. Shalikashvili, Op-Ed, the *New York Times*, "Second Thoughts on Gays in the Military," Jan. 2, 2007, p. 17.

indicating that 73% of the respondents said they were "comfortable interacting with gay people."[44]

The only surprising thing about this innocuous question was that the favorable percentage was not closer to 100%. The Zogby poll asked another, more important question that was not even mentioned in the news release announcing the poll's results: *"Do you agree or disagree with allowing gays and lesbians to serve openly in the military?"* On that question, 26% of those surveyed "Agreed," but 37% "Disagreed." The Zogby poll also found that 32% of respondents were "Neutral" and only 5% were "Not sure."[45]

If this poll were considered representative of military personnel, the 26% of respondents who wanted the law repealed were far fewer than the combined 69% of people who were opposed to or neutral on repeal. This minority opinion was hardly a mandate for radical change. The poll was nevertheless trumpeted as if it were.

Polling organizations recognize that respondents who believe a policy is already in place are more likely to favor that policy, while those who know otherwise are less likely.[46] For this reason, widely-believed but inaccurate claims, such as the idea that homosexuals can serve in the military as long as they do not *say* they are gay, probably are skewing polls of civilians on this question.

People in the military, however, are more likely to understand what the law is.[47] In the 2006 poll announced by the *Military Times* newspapers, in response to the question *"Do you think openly homosexual people should be allowed to serve in the military?"* 30% answered "Yes," but 59% answered "No," and 10% answered "No Opinion."[48] The same percentage—

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[44] Zogby International, Opinions of Military Personnel on Gays in the Military, Dec. 2006, Submitted to Aaron Belkin, Director, Michael D. Palm Center [herineafter Zogby Poll], *available at* http://www.zogby.com/news/ReadNews.dbm?ID=1222.

[45] *See* Zogby Poll, pp. 14–15. Responses to this question revealed additional findings that received little notice:

> "Within military subgroups, the highest agreement rates [supporting gays in the military] were found among Veterans (35%) and those having served less than four years (37%). The lowest acceptance rates were among Active Duty Personnel (23%), officers (23%), those serving between 10 and 14 years (22%) and those serving more than 20 (19%). Active Duty Personnel were also among those with the highest disapproval rates (39%), as were those serving between 15 and 19 years (40%), those serving more than 20 (49%), and officers (47%).

[46] Presidential Commission Report, Nov. 15 1992, p. C-135 (Commissioner Generated Finding 14) (citing Roper Organization, Inc., "Attitudes Regarding the Assignment of Women in the Armed Forces: The Public Perspective" (Sept. 1992).

[47] Robert Hodierne, *Navy Times*, "We Asked What You Think. You Told Us," Jan. 3, 2005, at 14–15 (citing the section on Race, Gender, Gay, Question 6), *available at* http://www.militarycity.com/ polls/2004_chart3.php. Annual *Military Times* surveys are done by mailing questionnaires randomly to subscribers to the affiliated newspapers *Air Force Times*, *Army Times*, *Navy Times*, and *Marine Corps Times*. The polls tabulate only responses from active-duty personnel. Results are published in all four affiliated newspapers.

[48] Robert Hodierne, *Army Times*, "Down on the War," Dec. 29, 2006, pp. 12–14. The *Military Times* survey was done by mailing questionnaires randomly to subscribers of affiliated newspapers, but the poll only tabulated responses (954) from active-duty personnel. Results were published in all four affiliated newspapers.

59% in opposition—was reported by the *Military Times* survey in the previous year, and the figure for 2007 was 57.4%.

A closer look at the Zogby poll reveals more interesting details that should have been recognized by news media people reporting on it:

a. The Zogby news release announcing results clearly stated that the survey was designed in conjunction with Aaron Belkin, Director of the Michael D. Palm Center, formerly the Center for Sexual Minorities in the Military. This is an activist group promoting homosexuals in the military.

b. The poll claimed to be of 545 people *"who have served in Iraq and Afghanistan (or in combat support roles directly supporting those operations), from a purchased list of U.S. Military Personnel."* However, the U.S. military does not sell or provide access to personnel lists. Due to security rules that were tightened in the aftermath of 9/11, personal details and even general information about the location of individual personnel is highly restricted. [49]

c. The apparent absence of random access undermined the credibility of the poll, which inflated the claim that, *"The panel used for this survey is composed of over 1 million members and correlates closely with the U.S. population on all key profiles."* [50]

d. Activists frequently claim that the greater comfort of younger people with homosexuals is evidence enough to justify changing the law. However, if that were the case, all referenda banning same-sex marriage would have been soundly defeated. On the contrary, the voters of several states have approved 26 of 27 such referenda, often with comfortable majorities. [51]

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[49] Memorandum from Deputy Secretary of Defense Paul Wolfowitz to Secretaries of the Military Departments et al., Oct. 18, 2001, addressing "Operations Security Throughout the Department of Defense" (on file with author). Zogby International did not respond to a telephone request from this author for more information on its selection of survey participants.

[50] Zogby Poll, *p.* 2. Zogby's polling sample is somewhat questionable, but "internal" data in the poll reveals interesting insights on the question of whether opinions among younger people might make it more acceptable to accommodate gays in the military. The Zogby poll seems to indicate that opinions on this issue have more to do with military occupation than they do with age. Active duty people in the younger and older ranks are more favorable to the idea, but the ones in the middle age and experience group, who are more likely to be involved in close combat situations, are more strongly opposed. (See footnote #45) It is possible that an objective poll of identified military personnel—similar to the official survey done by the Roper Organization for the 1992 Presidential Commission on the Assignment of Women in the Armed Forces—would show similar results.

[51] *See* Human Rights Campaign, State Prohibitions on Marriage for Same Sex Couples 1 (Nov. 2006), http://www.hrc.org/TemplateRedirect.cfm?Template=/ContentManagement/Content Display.cfm&ContentID=28225 (listing twenty-six states that have a voter-approved constitutional amendment prohibiting same-sex marriage and nineteen states that have a law prohibiting same-sex marriage). To date, Arizona is the only state in which voters have repudiated an attempt to amend a state constitution to ban same-sex civil marriage. *See* CNN.com, America Votes 2006, Key Ballot Measures, http://www.cnn.com/ ELECTION/2006/pages/results/ballot.measures/ (reporting on the failure of Arizona Proposition 107 on November 7, 2006).

A recent *Washington Post*/ABC News poll, released on July 19, 2008, was typical of several polls of civilians on this issue. Surveys such as this both reflect and help to shape public opinion as part of a relentless public relations (PR) perception management (PM) campaign that has been going on for years.

The *Washington Post*/ABC News poll was less than persuasive because it included two questions that demonstrate how misinformation and diversionary questions can affect the results of polls: [52]

- The two questions on the subject of homosexuals in the military did not frame the real issue: *Should the military require, as a matter of policy, forced cohabitation between heterosexuals and homosexuals in all military units, including the infantry, Special Operations Forces, and submarines?*

- Instead, the questions used confusing double negatives, which end with the phrase, *"or not?"* It is difficult to find a clear statement in the poll on which to state an opinion.[53]

- The questions suggested that the main issue was being "undisclosed" or "disclosed" as a homosexual in the military. The true key issue was eligibility to serve, not disclosure of homosexuality.

- The survey questions also used the permissive word *"allowed,"* not the more accurate term, *"required,"* as in *"should members of the military be required...?"* Instead, the poll focused only on the desires of homosexuals who want to serve in the military. The issues of military discipline, morale, and readiness were not mentioned at all.

- Survey respondents in this poll were civilians who know little about the military and its culture, including the essential need for discipline and morale. This is tantamount to asking Americans what they think about issues currently being debated by the Canadian Parliament. [54]

The *Washington Post*-ABC News poll and others like it are not an accurate reflection of what Americans think. It was another example of perception management techniques made easier by "Don't Ask, Don't Tell."

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[52] Kyle Dropp and Jon Cohen, the *Washington Post*, "Acceptance of Gay People in Military Grows Dramatically," July 19, 2003, p. A03.

[53] Washington Post-ABC News Poll Question #33: *"[D]o you think homosexuals who do NOT publicly disclose their sexual orientation should be allowed to serve in the military or not?"* (Responses: Yes, 78%, No, 18% No Opinion, 5%) Question #34: *"[D]o you think homosexuals who DO publicly disclose their sexual orientation should be allowed to serve in the military or not?"* (Responses: Yes, 75%, No, 22%, No Opinion 3%)

[54] While 71% of self-identified veterans in the poll said gay people who do not declare themselves as such should be allowed to serve, that number dropped sharply, to 50%, for those who are open about their sexuality.

2. *The National Security Argument: Too Many Discharges of Homosexuals*

Supporters of legislation to repeal the 1993 homosexual conduct law have tried to reframe their argument in terms of military necessity, rather than equal opportunity. The "national security" argument for gays in the military usually centers on the number of discharges of homosexual servicemen and women that have occurred and suggests that recruiting problems and shortages could be solved if only the military were open to professed homosexuals. [55]

A report done by the Government Accountability Office (GAO) early in 2005 provided statistical data on the number of "unprogrammed separations." [56] The GAO report essentially estimated the "replacement costs" of discharging and replacing homosexual service members from FY 1994 through FY 2003 to be approximately $190.5 million.

Dr. David Chu, Under Secretary of Defense for Personnel and Readiness, responded to the GAO report with a two-page memorandum.[57] Figures cited by Dr. Chu indicated that discharges due to the homosexual exclusion policy between 1994 and 2003 amounted to only 0.37% of discharges for all reasons (about 5% of unplanned separations) during that period. There were, for example, 26,446 discharges for pregnancy; 36,513 for violations of weight standards; 38,178 for "serious offenses;" 20,527 for parenthood, 59,098 for "drug offenses/use"; and 9501 for homosexuality.

The Santa Barbara based Center for the Study of Sexual Minorities in the Military (CSSMM), now called the Michael D. Palm Center, was not satisfied with the $190 million dollar estimate. CSSMM Executive Director Aaron Belkin organized a "Blue Ribbon Commission," which he chairs. [58] This non-governmental "Blue Ribbon Commission" claimed in a February 2006 report that the GAO estimate of "replacement costs" was too low. The CSSMM argued that a more accurate estimate of the costs of discharges for homosexuality would be $363 million—approximately $173.3 million, or 91% higher, than the GAO estimate.

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[55] John Henren, *Los Angeles Times*, "Ban on Gays in Military Assailed," Feb. 25, 2005, p. A24; Josh White, the *Washington Post*, "Don't Ask" Costs More Than Expected, " Feb. 14, 2006, p. A04.

[56] Government Accountability Office, Military Personnel: Financial Costs and Loss of Critical Skills Due to DOD's Homosexual Conduct Policy Cannot Be Completely Estimated (Feb. 2005) [hereinafter GAO, Financial Costs Cannot Be Estimated], *available at* http://www.gao.gov/new.items/d05299.pdf.

[57] Memorandum from Dr. David Chu, Under Secretary of Defense for Personnel & Readiness, to Derek Stewart, Director of Defense Capabilities and Management at the GAO (Feb. 7, 2005), *reprinted in* GAO, Financial Costs Cannot Be Estimated, *pp.* 42–43.

[58] Frank J. Barrett et al., The Palm Center, Financial Analysis of "Don't Ask, Don't Tell": How Much Does the Gay Ban Cost?, at 1, 3 (Feb. 2006), *available at* http://www.palmcenter. org/files/active/0/2006-FebBlueRibbonFinalRpt.pdf. In addition to Prof. Belkin, this non-governmentally authorized, private group includes Lawrence Korb, Adm. John D. Hutson, USN (Ret.), and other activists supporting repeal of the law regarding homosexual conduct in the military. The report also acknowledges receiving help from the offices of Rep. Marty Meehan (D-Mass.) and Sen. Frank Lautenberg (D-N.J.), sponsors of legislation to repeal the 1993 law.

The Comptroller General responded by addressing a letter to Sen. Edward Kennedy (D-Mass.) on July 13, 2006, which "stood by" the original GAO estimate. [59]

The entire debate about numbers generated publicity, but it missed the point. The cost of personnel losses related to the homosexual conduct law, whatever it is, could be reduced to near-zero if all potential recruits were fully and accurately notified that the 1993 law means that homosexuals are not eligible to serve. It is bad policy to enforce a regulatory policy such as "Don't Ask, Don't Tell," which misinforms potential recruits about the conditions of eligibility and encourages people to be less than honest about their homosexuality—only to be subject to discharge later.

The GAO document provided useful information, but you do not get the right answers if you do not ask the right questions. The issue is not "replacement cost." It is the cost of recruiting and training individuals who are not eligible to serve in the military because they are homosexual.

3. *Contradiction: Too Few Discharges Due to the War*

Many of the same people who claim that the military is losing too many homosexual personnel simultaneously make a contradictory claim: Dismissals have declined because gays are needed to fight in the war.[60] A Congressional Research Service Report to Congress discussed this argument:

> Some have claimed that discharges decline during time of war, suggesting that the military ignores homosexuality when soldiers are most needed, only to "kick them out" once the crisis has passed. It is notable that during wartime, the military services can, and have, instituted actions "to suspend certain laws relating to . . . separation" that can limit administrative discharges. These actions, know [sic] as "stop-loss," allow the services to minimize the disruptive effects of personnel turnover during a crisis. However, administrative discharges for homosexual conduct are not affected by stop-loss. It can be speculated that a claim of homosexuality during a crisis may be viewed skeptically and under the policy would require an investigation. . . . [but if] such a claim were found to be in violation of the law on homosexual conduct, the services could not use "stop-loss" to delay an administrative discharge.[61]

Two news releases from the Center for the Study of Sexual Minorities in the Military in September 2005 claimed to have evidence that homosexual service members were being retained

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[59] Letter from David M. Walker, Comptroller General of the United States, to Sen. Edward Kennedy (July 13, 2006), *available at* http://www.gao.gov/htext/d06909r.html.

[60] Associated Press, the *Washington Post*, "Don't Ask" Dismissals Drop in Wartime," Mar. 24, 2004, at A22; Evelyn Nieves & Ann Scott Tyson, the *Washington Post*, "Fewer Gays Being Discharged Since 9/11, " Feb. 12, 2005, at A01.

[61] Congressional Research Service, Homosexuals and U.S. Military Policy: Current Issues 9–10 May 27, 2005 , *available at* http://www.fas.org/ sgp/crs/natsec/RL30113.pdf.

to serve the needs of war, despite the homosexual conduct law.[62] But a spokesman at the Forces Command at Fort McPherson, Georgia, where this evidence allegedly was found, has countered that argument with a clarification. According to the spokesman, if a soldier declares himself to be homosexual just prior to a deployment, an investigation ensues, lasting eight to ten weeks, which may not be completed prior to deployment. If the investigation does find that a person is homosexual and therefore not eligible to serve, an honorable discharge is ordered, even if the person is deployed. [63]

Anecdotes about homosexuals being allowed to remain in the military demonstrate the need for accurate information on what the "Military Personnel Eligibility Act of 1993" actually says. Commanders who do not understand Section 654, Title 10, or enforce the law should be given accurate information and support when taking steps to comply with it. Officials who choose to disregard this law should be held accountable in the same way that they would be for other failures to comply with duly enacted law.

4. *Linguists and the Defense Language Institute*

The "Don't Ask, Don't Tell" policy/regulations have caused widespread confusion and costly errors, such as the admittance of twelve homosexual language trainees to the Army's Defense Language Institute (DLI) in Monterey, California. Two of the students were found in bed together, and the others voluntarily admitted their homosexuality. [64]

All were honorably discharged. Gay activist groups decried the dismissals as a loss for national security. The true loss occurred, however, when twelve students who were not eligible to serve occupied the spaces of other language trainees who could be participating in the current war. This wasted time and money was a direct result of President Clinton's calculated action to accommodate homosexuals in the military, despite prohibitions in the law. [65]

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[62] The Michael D. Palm Center, Researchers Locate Army Document Ordering Commanders Not to Fire Gays (Sept. 13, 2005), *available at* http://www.palmcenter.org/press/dadt/releases/researchers_locate_army_document_ordering_commanders_not_to_fire_gays; The Michael D. Palm Center, Pentagon Acknowledges Sending Openly Gay Service Members to War (Sept. 23, 2005), *available at* http://www.palmcenter.org/press/dadt/releases/pentagon_acknowledges_sending_openly_gay_service_members_to_war_acknowledgement_follows_discovery_of_regulat.

[63] E-mail correspondence from Major Nate Flegler, Chief, Media Division, FORSCOM Public Affairs, to author (Nov. 15, 2005) (on file with author).

> When a Guard or Reserve unit is mobilized to active duty, Forces Command Regulation 500-3-3 . . . identifies 35 different criteria that may prevent a Soldier from deploying with his or her unit. Examples include being overweight, facing criminal prosecution, or medical problems. . . . Should a Soldier declare him or herself homosexual, a process defined not by FORMDEPS but by other regulations is begun to determine the veracity of the assertion and whether the assertion constitutes grounds to discharge the Soldier from military service. This process can last eight to ten weeks. . . . While our spokesman may have been accurately quoted as saying, "they still have to go to war and the homosexual issue is postponed until they return to the U.S. and the unit is demobilized," we wish to clarify that the Soldier's case is not postponed until the unit returns. The review process continues while the unit is deployed and there is no delay in resolving the matter or discharging the Soldier if that is the resolution.

[64] *See* Nathaniel Frank, *The New Republic*, "Don't Ask, Don't Tell" v. the War on Terrorism," Nov. 18, 2002, at 18; Op-Ed, Alistair Gamble, *New York Times*, "*A Military at War Needs Its Gay Soldiers*," Nov. 29, 2002.

[65] On December 11, 2002, the Center for Military Readiness filed a formal Request for Assistance with the Army Inspector General, asking for an investigation of this waste of educational resources by authorities at DLI. No response was received. A subsequent Freedom of Information (FOIA) request, which did not ask for individual

Military specialty schools such as the DLI should not be misusing scarce resources to train linguists who are not eligible to serve in the military. Instead of perpetuating unwarranted stereotypes about the homosexuals being more suited for some occupations than others, the Department of Defense should encourage and pursue more constructive options to solve the problem.

For example, Congress can work with the Department of State to expand the number of visas available for pro-American Iraqi and Afghan immigrants who are willing to serve as interpreters. [66] The Department of State also should lend support to refugees from Iraq whose lives are being threatened because they provided help to American troops.

According to a recent CBS News "*60 Minutes*" report, a young private citizen, Kirk Johnson, has been tirelessly working, almost single-handedly, to provide urgent assistance to Iraqis who worked with and for the Americans in many occupations, including as translators. Threatened by enemies as collaborators with the United States, many were subjected to torture, rape and death threats. [67] Efforts such as this deserve support for national security as well as humanitarian reasons.

On the day that Baghdad was liberated in 2003 thousands of patriotic Iraqi-Americans danced in the streets, waving American flags. Background checks and security clearances are important, but more could and should be done to expedite the process of recruiting qualified people to become translators for our military. There is no need to repeal the 1993 law regarding homosexuals in the military.

5. *Alleged Shortages in Critical Specialties*

In July 1994, the Center for the Study of Sexual Minorities in the Military (CSSMM, as noted earlier, now known as The Michael D. Palm Center) claimed the military was discharging valuable personnel in important military specialties. These included, for example, "49 nuclear, biological, and chemical warfare specialists; 212 medical-care workers; 90 nuclear power engineers; 52 missile guidance and control operators; 10 rocket, missile and other artillery specialists; 340 infantrymen; 88 linguists; and 163 law-enforcement specialists."[68] The story was

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information, was addressed in a letter to the DoD Inspector General on November 17, 2003. The FOIA request was initially denied and later "answered" with largely blank pages marked with FOIA exemption code "(b)(7)(c)." That code is used when government officials refuse to confirm or deny that disciplinary proceedings have taken place.

[66] Michelle Tan, *Army Times*, "Legislation Would Expand Visas for Iraqi, Afghan Interpreters," Jun. 9, 2008, p. 12.

[67] CBS News, "The List, A Mission to Save Iraqi Lives," May 18, 2008, available at http://www.cbsnews.com/stories/2008/05/16/60minutes/printable4103104.shtml.

[68] Vince Crawley, *Air Force Times*, "Hundreds of Discharged Gays Served in Critical Specialties," June 12, 2004, *available at* http://docs.newsbank.com/openurl?ctx_ver=z39.88-2004&rft_id=info:sid/iw.newsbank.com:AFNB:AFTB&rft_val_format=info:ofi/fmt:kev:mtx:ctx&rft_dat=103F530765572C3E&svc_dat=InfoWeb:aggregated4&req_dat=0F56A02D68496F45 *See also* Kim Curtis, *Associated Press*, "Report: Number of Gay Linguists Discharged Higher than Thought," Jan. 13, 2005.

based on data that the CSSMM obtained from the Defense Manpower Data Center (DMDC) by means of a Freedom of Information Request.[69]

A closer look at the same data, obtained from the DMDC, reveals several disparities with those quoted in the "study" released by the CSSMM. For example, according to the official who provided the same DMDC data to the Center for Military Readiness, the category of persons in the "nuclear power" field does not necessarily mean that all the people in question were "nuclear power engineers."

As for the 88 discharged linguists, the list of "Primary DoD Occupation Code" titles includes, at number 241, "Language interrogation," an occupation from which a total of 15 persons were separated due to homosexuality. But that is 73 persons short of the number of discharged "linguists" cited. How to account for the discrepancy? A Duty Base Facility Identifier Table, also provided by the DMDC, indicates that a total of 73 persons were separated from the Presidio of Monterey, where the Defense Language Institute is located. It is not clear how the CSSMM came up with the claim that "88 linguists" were discharged due to the "Don't Ask, Don't Tell" policy. Fifteen plus 73, coincidentally, equals 88. There is no "linguist" category listed among the DMDC categories of occupations.

Another round of news reports and hand-wringing commentaries centered on the loss of "54 Arabic linguists" trained for military service. [70] This number is in a column of personnel losses noted by the General Accountability Office (GAO) in 2005. [71] The referenced number is broken down, however, by type and level of proficiency of the language trainees, which varied considerably. Again, the number of language trainees lost after any time in training could be reduced to near zero if the law, which should have been called the "Military Personnel Eligibility Act of 1993," were accurately explained and enforced by the Department of Defense.

6. *The Urban Institute – 65,000 Homosexuals in the Military?*

In September 2004, the Urban Institute, a nonpartisan social policy and research organization, issued a report estimating that approximately 65,000 gay personnel are now serving in the U.S. military, and another one million gays and lesbians are veterans. [72] Activists

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[69] Defense Manpower Data Center, tables titled "Separations Due to Homosexual Conduct, FY 1998–2003," and "Duty Base Facility Identifier, (FY 1998–2003)" (on file with author).

[70] *See, e.g.*, Mackubin Thomas Owens, *National Review*, "Ask, Tell, Whatever?: Gays-in-the-Military Comes Up Again," Apr. 16, 2007; Debra Saunders, *Washington Times*, "Don't Ask, Don't Tell for the Devout," Mar. 17, 2007, at A13.

[71] GAO, Financial Costs Cannot be Completely Estimated, (Feb. 2005), p. 21. *available at* http://www.gao.gov/new.items/d05299.pdf.

[72] Gary J. Gates, *The Urban Institute*, "*Gay Men and Lesbians in the U.S. Military: Estimates from Census 2000,*" at iii (2004), *available at* http://www.urban.org/UploadedPDF/ 411069_GayLesbianMilitary.pdf.

constantly cite this report when advocating repeal of the 1993 homosexual conduct law[73]—sometimes touting the data as if it is brand new and "solid." [74]

The document, however, reveals questionable methodology, based on presumptions about the percentage of homosexuals in the general population and about the sexuality of persons interviewed by the census. [75] The speculative claim that 3% of women and 4% of men are homosexual was applied to 2000 census data on the number of persons of the same sex living in the same household—one of whom is or has been involved with one more branches of the military. Citing mathematical computations and other reports, the study speculated that household-mates of the same sex are homosexual.

Adding different sets of speculative figures regarding different military communities; i.e., active duty, guard, and reserve, the document leaped to the conclusion that there are *"2.8% or 65,000 gay or lesbian military personnel."* This number is frequently trumpeted by gay activists and like-minded journalists. One guess-timate on top of another, however, does not a "solid" fact make. The census does not ask questions about sexual orientation or behavior, and all estimates are based on sheer speculation, dressed up with a public relations spin.

The Urban Institute report, which was prepared in consultation with the activist Center for the Study of Sexual Minorities in the Military and the Servicemembers Legal Defense Network, is more like an urban legend than a credible piece of scholarship.

7. *Harassment of Homosexuals and Heterosexuals*

Contrary to exaggerated claims by activist groups, more than 80% of homosexual service members discharged since the law was enacted left the service not because of witch hunts rooting them out but because of voluntary statements admitting homosexuality. According to a 1998 DoD Task Force report, there were only four cases of anti-homosexual harassment reported since 1994. Two of those cases involved anonymous letters that could not be traced. [76]

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[73] *See* Joanne Kimberlin, *Virginian-Pilot,* "Study Finds 65,000 Gay Men, Women in the Military," Oct. 21, 2004, at A10; Denise M. Bonilla, *Newsday,* "Don't Ask, Don't Tell: A Policy Under Fire," Aug. 6, 2006, at G05.

[74] *See* Deb Price, *Detroit News,* "UCLA Researcher Mines Data to Make Gays Visible," Apr. 2, 2007, at 13A. In this article, self-identified gay columnist Deb Price praises Gary J. Gates, now affiliated with the progressive Williams Institute at the University of California at Los Angeles, for producing "solid numbers" that will help persuade Congress to lift the ban on homosexuals in the military.

[75] GAO, "Financial Costs Cannot be Completely Estimated," (Feb. 2005), p. 4. *available at* http://www.gao.gov/new.items/d05299.pdf. The report, which includes many caveats, concedes that "the census does not ask any questions about sexual orientation, sexual behavior, or sexual attraction (three common ways used to identify gay men and lesbians in surveys)."

[76] Office of the Under Secretary of Defense for Personnel and Readiness, Report to the Secretary of Defense, Review of the Effectiveness of the Application and Enforcement of the Department's Policy on Homosexual Conduct in the Military 6 (Apr. 1998) [hereinafter DOD TASK FORCE REPORT 1998, *available at* http://dont.stanford.edu/casestudy/appendixG_ short.pdf; Dep't of Defense News Release, No. 158-98 (Apr. 7, 1998).

In 1999, homosexual activists crafted a polemic campaign that focused on the brutal murder of Army Pfc. Barry Winchell, an alleged homosexual, at Fort Campbell, Kentucky, in July of that year. [77] The savage killing of Pfc. Barry Winchell has been cited as evidence that more must be done to end "hate crimes" and harassment of homosexuals. [78]

The confessed killer, Pvt. Calvin Glover, assaulted Winchell in the barracks with a baseball bat on July 4, 1999, several hours after Winchell had beaten him in a drunken brawl.[79] Evidence of Glover's hostile attitude toward Winchell, who was involved with a transgender male nightclub entertainer who appeared to be a woman, was a factor in his trial and sentencing to life in prison.

An Army Inspector General investigation cleared Fort Campbell commanders, but noted poor morale and a tolerance of underage drinking and anti-gay language by the senior sergeant in the battalion. The report also noted the reluctance of battalion commanders to ask questions about matters involving alleged homosexuality.[80]

Military discipline requires constant awareness of what is happening in military units, throughout the chain of command. A policy such as "Don't Ask, Don't Tell" that discourages the asking of legitimate questions interferes with sound leadership. In this tragic case, a failure to ask questions apparently was a factor in the creation of a volatile situation that exploded with violence. Perpetrators of this crime have been rightly punished, but there is no need for additional legislation to stop harassment or murderous assaults—of anyone—in the barracks.

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[77] Jane McHugh, *Army Times,* "Murder in the Barracks," Aug. 23, 1999, at 12; Jane McHugh, *Army Times,* "Second Soldier Implicated in Possible Hate Crime," Aug. 2, 1999, at 8.

[78] *See* News Release No. 432-00, "Department of Defense Issues Anti-Harassment Guidelines," July 21, 2000, and Tom Ricks, the *Washington Post,* "Pentagon Vows to Enforce 'Don't Ask, Don't Tell,' " July 22, 2000, p. 1A. This article quotes Carol Battiste, head of a Pentagon panel set up to review the seven year-old "Don't Ask, Don't Tell" policy in 2000. Battiste said that military leaders face a "dilemma" when they try to counter discrimination against homosexuals, who cannot identify themselves. Ricks added, "One reason the military establishment continues to be uncomfortable with 'Don't Ask, Don't Tell' is that it is a policy that is purposely ambiguous, while military culture tends to value clarity." Actually, a policy that encourages deception is not workable in any institution. This is one of the reasons why members of Congress did not vote for the proposal known as "Don't Ask, Don't Tell." Instead of wringing their hands about "ambiguity" and "dilemmas," Pentagon officials should scrap the "Don't Ask, Don't Tell" regulations and issue informational materials that include the text and legislative history of the law, Section 654, Title 10.

[79] David France, *New York Times Magazine,* "An Inconvenient Woman," May 28, 2000, *available at* http://www1.nytimes.com/library/magazine/home/index.html; Brian Dunn, *Army Times,* "Private Confessed to 'Gay Bash' Slaying, Inmate Says," Sept. 13, 1999, p. 16.

[80] Jane McHugh, *Army Times*,"1st Sgt. Faulted in report on Gay Beating Death," July 31, 2000, p. 8. This article reported on the Army Inspector General's Investigation of the July 1999 beating death of Army Pfc. Barry Winchell. The report found that the command environment at Fort Campbell, Kentucky, was generally positive, but the unit in which the killing occurred suffered from poor morale and a tolerance for underage drinking—a major factor in the case. According to *The Army Times*, the report also found that commanders were frustrated and confused by the "Don't Ask, Don't Tell" policy.

> [Some were] afraid to violate military law by retaining soldiers who admit homosexuality. But they are also afraid that some of these soldiers might be saying they are gay just to get out of the Army. Either way, commanders are reluctant to investigate. They fear that looking into the matter would only hurt unit and soldier morale.

Some recent cases of harassment involving persons of the same sex deserve closer scrutiny and objective analysis of whether the "Don't Ask, Don't Tell" policy created conditions conducive to abuse. For example, the Associated Press reported that a drill sergeant at Fort Eustis, Virginia, faced molestation charges for forcing a trainee to dress as Superman and submit to sexual acts. A Fort Eustis spokeswoman, Karla Gonzalez, confirmed that Army Staff Sgt. Edmundo F. Estrada, 35 years-old, was accused of indecent assault, having an inappropriate relationship with a trainee, and cruelty and maltreatment of subordinates.[81]

Air Force Captain Devery L. Taylor was convicted and sentenced to twenty-eight to fifty years in prison for raping four men, allegedly with date-rape drugs. According to a report in *Air Force Times*, an investigator interrogating Taylor, now a convicted serial rapist, said that he would not ask any questions about the man's sexual practices because such questions are not allowed. This statement demonstrated how misunderstandings about the 1993 homosexual conduct law help to create volatile conditions that undermine good order and discipline.[82]

Sexual assault of any kind is wrong and especially demoralizing in a military setting, where people live in conditions of "forced intimacy" and are not free to change jobs if someone threatens them. Such misconduct should not be considered "off limits" to questioning just because it happens to occur between persons of the same sex.

8. *Foreign Militaries*

The Palm Center and other activist groups frequently point to the experiences of other countries, such as Great Britain, Canada, Australia, the Netherlands, and Israel, which have no restrictions on professed homosexuals in their militaries.[83]

The United Kingdom was ordered by the European Court of Human Rights to open its ranks to homosexuals in September 1999. [84] There was some controversy in the Parliament, but instead of appealing or challenging the ruling, ultimately the nation complied—something the

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[81] Associated Press, "Fort Eustis Drill Sergeant Faces Charges of Molesting Trainees," Mar. 4, 2007. Sgt. Estrada pleaded guilty to the charges at his court-martial on April 23, 2007, to three counts of mistreating soldiers, as well as to violating regulations not to develop relationships with subordinates. Associated Press, *Army Times*, "Sgt. Pleads Guilty to Sexually Harassing Trainees," May 7, 2007, p. 45. Estrada faced six months in prison, a bad-conduct discharge and reduction in rank.

[82] *Air Force Times*, "Captain Sentenced to 50 Years for Raping 4 Men," Mar. 12, 2007, p. 15; *Air Force Times*, "Officer Accused of Rape Says He Rejected Alleged Victim," Mar. 5, 2007, *available at* http://buzztracker.org/2005//01/19/cache/441692.html. The March 5 article, reported from Eglin Air Force Base, Florida, reported that in a video of an interview with Taylor, shown during his February 22 court-martial, an Air Force Office of Special Investigations investigator told Taylor, "[It] doesn't concern me if it (the sexual encounter) was consensual . . . I'm not allowed to talk about your preferences. That has nothing to do with your military career as far as the people who do my job are concerned." (alteration added). This was an astonishing statement for the investigator to have made, particularly in view of Capt. Taylor's convictions for raping four men.

[83] Aaron Belkin, *Parameters*, "Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity?," (U.S. Army War Coll. Q.), Summer 2003, at 108–19.

[84] Lustig-Prean and Beckett v. United Kingdom, 29 Euro. Ct. H.R. 548, 587 (1999); Human Rights Watch: Uniform Discrimination, at 38; *BBC News*, "Delight and Despair at Gay Ban Ruling," Sept. 27, 1999, http://news.bbc.co.uk/2/hi/uk_news/458842.stm (reporting that the ruling of the European Court of Human Rights was "not binding on the UK Government").

United States would be unlikely to do. Contrary to the notion that all has gone well, European newspapers have reported recruiting and disciplinary problems in the British military. [85]

Canada, Australia, and the Netherlands have cultures quite different from the United States [86] and live under the protection of the American military. The late Prof. Charles Moskos has noted that nations without official restrictions on gays in the military are also very restrictive in actual practice. Germany, for example, dropped criminal sanctions against homosexual activities in 1969, but also imposed many restrictions on open homosexual behavior and imposed career penalties such as denial of promotions and access to classified information.[87]

Israel's situation differs from the United States because all able-bodied citizens, including women, are compelled to serve in the military. Israeli soldiers usually do not reveal their homosexuality and are barred from elite combat positions if they do. [88]

The Michael D. Palm Center frequently claims that no problems have been experienced in all of the countries listed above and is critical of those who support the ban, demanding that opponents provide "empirical" evidence to support their case. The irony is that the Palm Center and other activist groups base most of their arguments on anecdotal information and opinion, largely gathered from like-minded sources.

In a letter to *Parameters* responding to a Summer 2003 article by Aaron Belkin, Maj. Joseph A. Craft, USMC, pointed out that the CSSMM (Palm Center) Executive Director had based his case on interviews with only 104 "experts" in four countries—all of whom were advocates of gays in the military. Wrote Craft,

> "One of Belkin's key arguments is that Don't Ask, Don't Tell (DADT) is based on anecdotes and misleading surveys instead of quantitative evidence. . . . Yet Belkin's article is entirely anecdotal. It is nothing more than selected quotes from supposed experts who claim that homosexual integration has had no impact on unit cohesion or military readiness. A quick review of the author's endnotes, cross-checked with an internet search, reveals the questionable credentials and political leanings of most of these experts. At one point, Belkin

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[85] BBC News, "Deepcut Army Sex Attacker Jailed," Oct. 22, 2004, http://news.bbc.co.uk/1/hi/england/southern_counties/3634474.stm; Nicholas Hellen, *TimesOnLine (London),* "Navy Signals for Help to Recruit Gay Sailors," Feb. 20, 2005, http://www.timesonline.co.uk/tol/news/uk/ article516647.ece; Tony Czuczka, Associated Press, *Washington Times,* "British Soldier Admits to Assault on Captive," Jan. 19, 2005, *available at* http://www.buzztracker.org/2005//01/19/cache/441692.html; Michael Evans, *Times (London),* "War Blamed as 6,000 Quit Territorial Army," Oct. 30, 2005, at 2; Michael Evans, *Times (London),* "Iraq Factor Takes Toll on the TA," Oct. 31, 2005, at 8. The reported abuse of male Iraqi soldiers with a forklift involved forced sexual acts, but details are not known because of court-ordered gag orders.

[86] Kate Monaghan, *CNSNews.com,* "Dutch Political Party Wants to Normalize Pedophilia," July 26, 2006, http://www.cnsnews.com/ViewSpecialReports.asp?Page=/SpecialReports/archive/ 200607/SPE20060726a.html.

[87] Otto Kreisher, *Sacramento Union,* "Few Armies Accept Homosexuals," June 7, 1993, at A5.

[88] Tom Philpott, *Army Times,* "In Israel: The Hard Reality—Gays Are Allowed to Serve in the Military but They Are Not Fully Accepted," Jan. 11, 1993, P. 11; Tom Philpott, *Army Times,* "Gay Israelis Avoid Ridicule, Get Ahead by Staying in Closet," Jan. 11, 1993, P. 13; Charles Moskos, *Richmond-Times Dispatch,* "Services Will Suffer If Used for Social Experiments," Feb. 28, 1993, P. F1.

refers to a 1995 Canadian government report, which supposedly indicates that lifting the ban on gays in the military had "no effect." However, his endnote does not cite the report but a "personal communication with Karol Wenek." [89]

The issue of homosexuals in the military is a major political question that has been dealt with through the political system, as established by the U.S. Constitution. Major decisions such as this should not be decided by international courts, federal courts in the United States, or by politicians who are misinformed about the nature of the 1993 law and the rationale behind it.

9. *Religious Bias*

Finally, advocates of gays in the military have attempted to fire up their cause by criticizing Marine Gen. Peter Pace, former Chairman of the Joint Chiefs of Staff, who expressed his personal views regarding gays in the military and personal morality during an interview on March 11, 2007. [90] A wave of name-calling and demands for an apology ensued, but Gen. Pace had no reason to apologize for a law duly enacted by Congress. [91]

The 1993 statute reflects the views of people who see the issue in moral terms, but it uses secular language emphasizing military discipline. Duly enacted laws—including prohibitions against lying, stealing, and murder—should not be repealed just because they coincide with religious principles and moral codes such as the Ten Commandments.

D. Recommendations and Conclusion

1. *Enforce the 1993 Homosexual Conduct Law*

Activists who want to repeal the law banning homosexuals from the military are determined to impose their agenda on the military. This would include the full range of benefits and "sensitivity training" programs designed to promote acceptance of the homosexual lifestyle and conduct. For the sake of civilian institutions as well as the military, they should not be allowed to succeed.

The President of the United States is obligated by the U.S. Constitution to enforce all laws, but he is not required to retain administrative regulations written or retained by predecessors, including the policy known by the catch phrase "Don't Ask, Don't Tell." Whether

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[89] Joseph A. Craft, Letter to the Editor, *Parameters (U.S. Army War Coll. Q.),"Legitimate Debate or Gay Propaganda?,"* June 22, 2004, p. 132.

[90] Aamer Madhani, *Chicago Tribune,* "Top General Calls Homosexuality 'Immoral,'" Mar. 12, 2007, p. 1; Associated Press, "Group Wants Gen. Pace Apology for Calling Gays "Immoral," Mar. 13, 2007; Editorial, *USA Today,* "Old Prejudice Dishonors New Military Generation," Mar. 14, 2007, p. 10A; Elaine Donnelly, *Washington Times,* "Gen. Pace vs. PC Police," Mar. 18, 2007, at B3.

[91] On June 19, 2008, President George W. Bush awarded to Gen. Peter Pace the Presidential Medal of Freedom.

intended or not, inconsistencies between Clinton's policy and the 1993 homosexual conduct law create an advantage for activists who want to repeal both.

> he Department of Defense should not apologize or be intimidated by civil rights analogies and pejorative accusations. Gen. Colin Powell, who was Chairman of the Joint Chief of Staff early in the Clinton Administration, wrote a classic letter addressing the subject to then-Rep. Patricia Schroeder (D-CO) in 1993. Dismissing Schroeder's argument that his position reminded her of arguments used in the 1950s against desegregating the military, Gen. Powell replied:

> "I know you are a history major but I can assure you I need no reminders concerning the history of African-Americans in the defense of their nation and the tribulations they faced. I am part of that history. . . . Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument." [92]

Columnist Charles Krauthammer agreed:

> "Powell's case does not just rest on tradition or fear. It rests on the distinction between behavioral and non-behavioral characteristics. Skin color is a non-behavioral trait. Homosexuality, like gender, is not. Consider the behavioral implications of gender differences: Men and women are sexually attracted to each other and sexual attraction engenders feelings not just of desire but shame and a wish for privacy. . . .
> That is why if a white person refuses association with blacks, the military tells him that the refusal is irrational and will not be respected. But the military does respect the difference between men and women. Because the cramped and intimate quarters of the military afford no privacy, the military sensibly and non-controversially does not force man and women to share barracks.[93]

In recent years, advocates of gays in the military have been promoting the idea that sexual modesty does not matter, since modern military facilities provide more privacy than older ones. Even if people are exposed to others in the field, they say, younger people are used to it, and this is not a big deal.[94] This is an elitist argument, which is contradicted in numerous ways that usually escape notice.

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[92] Karen DeYoung, *Soldier: The Life of Colin Powell*, Alfred A. Knopf, 2006, pp. 230-233. Colin Powell and other members of the Joint Chiefs of Staff, particularly Marine General Carl E. Mundy, Jr., resisted President Clinton's move to lift the ban on gays in the military. Powell was frustrated that the issue was overtaking every other issue. *"He had never been attacked by liberals before, particularly as a bigot; it bothered him far more than he had anticipated..."* In the same way, Senator Sam Nunn (D-GA) was and is still being vilified for not embracing the full agenda for gays in the military. This intimidation factor should be considered when prominent people appear to demur when asked to comment on this issue.

[93] Charles Krauthammer, Op-Ed, *Washington Post*, "Powell Needs No Lectures," Jan. 29, 1993, at A23.

[94] Aaron Belkin & Melissa Sheridan Embser-Herbert, *27 Int'l Sec. "A Modest Proposal,"* 178 (Fall 2002).

A midwestern family-oriented recreation center, for example, has separate locker rooms for men and women, next to the community pool. Inside the entrance of the women's locker room is a sign clearly stating that boys of any age are not permitted. A similar sign, regarding girls, is posted in the men's locker room. The signs are there not as an affront to young boys (or girls). They are there because the community respects the desire for sexual modesty in conditions of forced intimacy. This is the case even though people who use the recreation center do not live and sleep there for months at a time.

Servicemen and women in the military deserve the same consideration, and much more. As columnist Thomas Sowell wrote, "Military morale is an intangible, but it is one of those intangibles without which the tangibles do not work." [95] Military people depend on policymakers to remember basic realities and to guard their best interests. Considerations such as this strengthen vertical cohesion—the indispensable bond of trust between military leaders and the troops they lead.

To ensure that the intent of Congress is carried out with regard to homosexuals in the military, the Secretary of Defense should:

- Improve understanding and enforcement of the law by eliminating the Clinton Administration's enforcement regulations, known as "Don't Ask, Don't Tell," which are inconsistent with the 1993 law that Congress actually passed, and (better yet) restore "the question" about homosexuality that used to be on induction forms prior to January 1993.

- Oppose any legislative attempt to repeal the 1993 homosexual conduct law in Congress.

- Ensure that the 1993 statute is vigorously defended every time it is challenged in the federal courts.

- Prepare and distribute accurate instructional materials for potential recruits, recruiters, and all military personnel that include the text and legislative history of the 1993 law.

- Remind the media that everyone can serve their country in some way, but not everyone is eligible to be in the military.

2. *The Only Military We Have*

Many institutions in civilian life have been affected negatively by unsuccessful social experimentation. The baby boomer and "Gen-X" generations, for example, have been subjected to "look-say" reading, "new math," and "civics" courses that fail to teach students fundamentals about history and the U.S. Constitution. In matters of urban policy, whole cities have been threatened by unrestrained crime, ruinous taxes, and crumbling neighborhoods.

Parents who are dissatisfied with the public schools can choose private ones or teach their children at home. If residents do not like the way their city is being managed, they can run for

[95] Thomas Sowell, the *Washington Times,* "The Anointed and Those Who Aren't," Feb. 8, 1993, p. E3.

local office or move to another city. Some states gain population while others lose. Consumers constantly choose favored products over less desirable ones. This is a free country, and limitless choices are always available.

When it comes to national defense, however, there are no options from which to choose. Today's volunteer force is the only military we have. All of our freedoms are guaranteed by a strong national defense, which cannot be taken for granted in a dangerous world.

In a communication with CMR, Professor of Law William A. Woodruff wrote, "The American military does not fight an armed enemy sworn to destroy our way of life by showing how enlightened and progressive our popular culture is. The armed forces exist to project combat power as an arm of foreign policy and to protect our vital national interests. Anything, whether it is height, weight, IQ, character, physical fitness, medical condition, or any other condition that detracts from unit cohesion and combat effectiveness disqualifies an otherwise patriotic American from serving in the military. The military is not popular culture. It is very different and must remain so to defend the freedoms that advance our popular culture."

Woodruff added, "Those who favor personnel policies grounded in notions of fairness to the individual must be required to demonstrate beyond any doubt that military discipline, unit cohesion, and combat effectiveness will not be diminished one iota by adoption of their preferred policy. Otherwise, it elevates the individual over the mission and that is the antithesis of military service."

Our national security depends on the men and women of the military. For our own sake as well as theirs, the United States armed forces must be constructed on foundations that are sound. We have to get this right; it is the only military we have. Ours is the strongest military in the world, and we have an obligation to keep it that way.

* * * * *

Biography - Elaine Donnelly

Elaine Donnelly is founder and President of the Center for Military Readiness, an independent public policy organization that specializes in military personnel issues. CMR advocates high, single standards in training, and sound priorities in military/social policies. In 2008 the Center, based in Michigan and in Washington, D.C., will celebrate its 15th anniversary.

In 1984, then-Defense Secretary Caspar Weinberger appointed Mrs. Donnelly to be a member of the Defense Advisory Committee on Women in the Services (DACOWITS) for a three-year term. In 1992 she was appointed by President George H.W. Bush to serve as a member of the Presidential Commission on the Assignment of Women in the Armed Forces.

As a member of the DACOWITS and the presidential commission, Mrs. Donnelly participated in fact-finding visits to numerous military bases all over the country, including the Army's Fort Bragg, three Marine training bases, the Naval Academy and U.S. Military Academy, several ships, submarines and a SEAL training facility.

Her comprehensive, peer-reviewed article for the Duke University *Journal of Gender Law & Policy*, titled "Constructing the Co-Ed Military," was published in the May 2007 edition. She is a contributor to *Human Events* and National Review Online's "The Tank." Additional articles on military personnel issues have been published in many newspapers nationwide, including the *Washington Post*, *USA Today*, the *Washington Times*, and the Naval Institute's *Proceedings*. Mrs. Donnelly has appeared on most network and cable channel networks, and participated in a PBS 2-hour *National Review "Firing Line"* debate.

In1997 Elaine Donnelly was the first woman to receive the Adm. John Henry Towers award from the New York Naval Aviation Commandery, in recognition of her support for naval aviation. At the 2002 Annual Conservative Political Action Conference (CPAC), she was presented with the prestigious Ronald Reagan Award.

Elaine Donnelly has testified before congressional committees, and participated in educational programs sponsored by the Naval Institute, Hillsdale College, the Foreign Policy Institute, the Konrad Adenauer Foundation, the Heritage Foundation, Independent Women's Forum, and a number of events sponsored by veterans' groups and military academy alumni organizations. She attended Schoolcraft College and the University of Detroit, and resides in Livonia, Michigan, with her husband, Terry, and is the mother of two grown daughters.

July 2008

APPENDIX A

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994, PUB. L. NO. 103-160, § 571, 107 STAT. 1547, 1670 (1993) (CODIFIED AT 10 U.S.C. § 654 (2000))

(a) Codification.—(1) Chapter 37 of title 10, United States Code, is amended by adding at the end the following new section:

§ 654. Policy concerning homosexuality in the armed forces

(a) Findings.—Congress makes the following findings:

(1) Section 8 of article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation of the land and naval forces.

(2) There is no constitutional right to serve in the armed forces.

(3) Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

(4) The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

(5) The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

(6) Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

(7) One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

(8) Military life is fundamentally different from civilian life in that—

(A) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and

(B) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

(9) The standards of conduct for members of the armed forces regulate a member's life for 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

(10) Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

(11) The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

(12) The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

(13) The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.

(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(15) The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(b) Policy.--A member of the armed forces shall be separated from the armed forces under regulations prescribed by the Secretary of Defense if one or more of the following findings is made and approved in accordance with procedures set forth in such regulations:

(1) That the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are further findings, made and approved in accordance with procedures set forth in such regulations, that the member has demonstrated that--

(A) such conduct is a departure from the member's usual and customary behavior;

(B) such conduct, under all the circumstances, is unlikely to recur;

(C) such conduct was not accomplished by use of force, coercion, or intimidation;

(D) under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and

(E) the member does not have a propensity or intent to engage in homosexual acts.

(2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding, made and approved

in accordance with procedures set forth in the regulations, that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(3) That the member has married or attempted to marry a person known to be of the same biological sex.

(c) Entry standards and documents.—

(1) The Secretary of Defense shall ensure that the standards for enlistment and appointment of members of the armed forces reflect the policies set forth in subsection (b).

(2) The documents used to effectuate the enlistment or appointment of a person as a member of the armed forces shall set forth the provisions of subsection (b).

(d) Required briefings.—The briefings that members of the armed forces receive upon entry into the armed forces and periodically thereafter under section 937 of this title [10 U.S.C. § 937] (article 137 of the Uniform Code of Military Justice) shall include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies prescribed under subsection (b).

(e) Rule of construction.—Nothing in subsection (b) shall be construed to require that a member of the armed forces be processed for separation from the armed forces when a determination is made in accordance with regulations prescribed by the Secretary of Defense that—

(1) the member engaged in conduct or made statements for the purpose of avoiding or terminating military service; and

(2) separation of the member would not be in the best interest of the armed forces.

(f) Definitions.—In this section:

(1) The term "homosexual" means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms "gay" and "lesbian".

(2) The term "bisexual" means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

(3) The term "homosexual act" means—

(A) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and

(B) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (A).

(b) Regulations.—Not later than 90 days after the date of enactment of this Act [Nov. 30, 1993], the Secretary of Defense shall revise Department of Defense regulations, and issue such new regulations as may be necessary, to implement section 654 of title 10, United States Code, as added by subsection (a).

(c) Savings Provision.—Nothing in this section or section 654 of title 10, United States Code, as added by subsection (a), may be construed to invalidate any inquiry, investigation, administrative action or proceeding, court-martial, or judicial proceeding conducted before the effective date of regulations issued by the Secretary of Defense to implement such section 654.

(d) Sense of Congress.—It is the sense of Congress that—

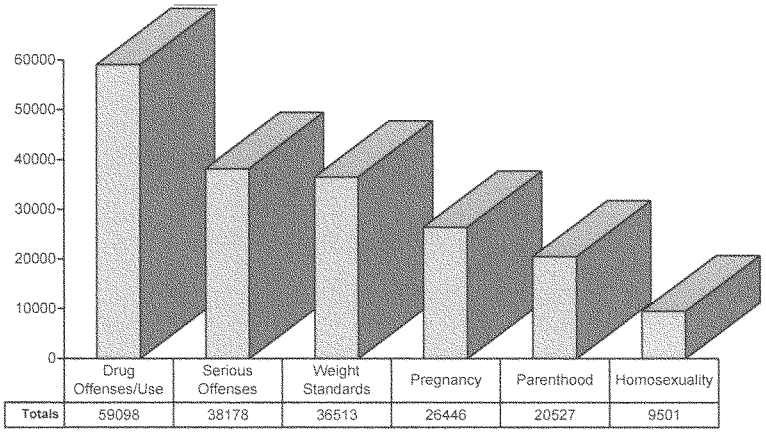
(1) the suspension of questioning concerning homosexuality as part of the processing of individuals for accession into the Armed Forces under the interim policy of January 29, 1993, should be continued, but the Secretary of Defense may reinstate that questioning with such questions or such revised questions as he considers appropriate if the Secretary determines that it is necessary to do so in order to effectuate the policy set forth in section 654 of title 10, United States Code, as added by subsection (a); and

(2) the Secretary of Defense should consider issuing guidance governing the circumstances under which members of the Armed Forces questioned about homosexuality for administrative purposes should be afforded warnings similar to the warnings under section 831(b) of title 10, United States Code (article 31(b) of the Uniform Code of Military Justice).

Invalid National Security Arguments for Homosexuals in the Military

Discharges Due to Homosexual Conduct

Advocates of homosexuals in the military frequently contend that the discharges of approximately 10,000 homosexuals since 1994 have done grievous harm to military readiness. The truth is that annual numbers of discharges due to homosexuality, compared to discharges for other reasons, actually are quite small. According to figures provided to the General Accountability Office (GAO) by the Department of Defense, discharges due to homosexuality amounted to only 0.37% of discharges for all reasons (about 5% of unplanned separations) between the years 1994 and 2003. During that ten year period there were 59,098 discharges for "drug offenses/use; 38,178 for "serious offenses; 36,513 for violations of weight standards; 26,446 for pregnancy, 20,527 for parenthood, and 9,501 for homosexuality.



	Drug Offenses/Use	Serious Offenses	Weight Standards	Pregnancy	Parenthood	Homosexuality
Totals	59098	38178	36513	26446	20527	9501

Comparative Numbers of Military Discharges, 1993-2004

Source: Letter from Dr. David Chu, Under Secretary of Defense for Personnel & Readiness, February 7, 2005. Published in the GAO Report *Military Personnel Financial Costs and Loss of Critical Skills Due to DoD's Homosexual Conduct Policy Cannot be Completely Estimated* , GAO-05-299, February 2005, pp. 42-43.

The numbers of discharges for homosexuality could be reduced to near zero if the 1993 law were enforced as Congress intended, with full and accurate information on the meaning of the law. That statute, which codified the Defense Department's pre-Clinton policy of excluding homosexuals from the military, passed with bipartisan veto proof majorities in both houses of Congress. "Title 10, Section 654," which should have been called the "Military Personnel Eligibility Act of 1993," is very different from "Don't Ask, Don't Tell," a set of inconsistent enforcement regulations that then-President Bill Clinton imposed on the military. (Presidential candidate Hillary Clinton has admitted that her husband intended "Don't Ask, Don't Tell" to be a "transitional" policy toward full acceptance of gays in the military.)

The only compromise in the 1993 law involved elimination of "the question" regarding homosexuality, which used to appear on induction forms. That inquiry can and should be reinstated at any time—no new legislation required. Administratively dropping "Don't Ask, Don't Tell" and reinstating "the question" about homosexuality would help to end widespread confusion. Homosexuals can serve our country in many ways, but they are not eligible to serve in the military.

103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–200

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994

REPORT

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ON

H.R. 2401

together with

ADDITIONAL AND DISSENTING VIEWS

[Including cost estimate of the Congressional Budget Office]

JULY 30, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
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the Secretary of Defense to issue new regulations implementing the policies no later than 90 days after enactment of this act.

The committee believes that military service is a unique calling that has no counterpart in civilian society, and the primary purpose of the armed forces is to prepare for and prevail in combat when necessary. Moreover, the committee firmly believes that the maintenance of military unit cohesion—which is the key to combat capability—and the promotion of morale, welfare, and discipline must remain paramount over the desires of a single individual or group. The committee further concludes that combat capability is unalterably tied to the ability of the armed forces to foster mutual trust and confidence among service members; to ensure integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the military services; to maintain the public acceptability of military service; and to prevent breaches of security.

Guided by those views, and based on an extensive hearing record, as well as a full consideration of the extended public debate on this issue, the committee carried forward the fundamental tenets upon which the DOD policy regarding homosexuals has long been based. In short, the committee concludes that homosexuality is incompatible with military service. This principle, which has served as the basis of previous DOD policy, would be carried forward by this section, as would be the requirement for separation of a service member for homosexual conduct.

Specifically, this section would require commanders to initiate separation proceedings if one or more of the following criteria were met: (1) the service member has engaged in, solicited another to engage in, or attempted to engage in a homosexual act or acts; (2) the member has married or attempted to marry a person of the same sex; or (3) the service member has made either a verbal or nonverbal statement that the member is homosexual or bisexual. Such a statement is compelling evidence that the service member has in the past and is likely to again engage in homosexual conduct and, furthermore, is rational, reasonable and reliable evidence of a desire and propensity to engage in homosexual acts.

The committee interpretation that statements as a basis for separation include non-verbal statements reflects extended testimony that certain conduct, behavior, or other manifestations, not involving speech, by a service member could communicate to a reasonable person that the service member was a homosexual, as defined by this section. Whether or not a non-verbal statement, in fact, is grounds for separation, or serves just as a basis for beginning an inquiry, is dependent upon the totality of the circumstances. One non-verbal statement in and of itself could be grounds for separation. Similarly, it might require several non-verbal statements—indicating a pattern of behavior—to communicate to a reasonable person that the service member was a homosexual. The committee believes that commanders, NCOs and others in authority are the persons best able to judge the impact such non-verbal statements would have on unit cohesion, morale, and good order and discipline; and they should retain the discretion to take whatever action is appropriate under the circumstances.

This section would provide that the service member facing separation for homosexual conduct would be afforded an opportunity to establish certain facts to avoid separation. The facts to be established vary, depending on whether the separation is for acts, marriage, or statements. However, in all cases separation is required unless the service member establishes the facts by a preponderance of the evidence.

The committee recognizes that some individuals may make statements or engage in certain conduct in an effort to avoid their legitimate service obligations. This section would allow retention of such members if the member engaged in the conduct or made the statements for the purpose of avoiding or terminating service and separation would not be in the best interest of the armed forces. Furthermore, nothing in this section would preclude commanders from taking action in appropriate cases to separate a member under another provision of law or to refer the case to trial by court-martial.

This section would also require the Secretary of Defense to establish standards for enlistment and appointment of members of the armed forces consistent with the policy that homosexual conduct is proscribed in the military, and to ensure that enlistment and appointment documents notify prospective service members of the policies and penalties regarding homosexual conduct. The committee believes that such notice will discourage those who engage in, intend to engage in, or have a propensity to engage in homosexual conduct from entering the military and will also provide potential service members fair warning of proscribed conduct.

Furthermore, this section would require the Secretary of Defense to ensure that members of the armed forces are briefed upon entry into service, and periodically thereafter, regarding the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies regarding homosexual conduct.

This section would also express the sense of Congress that the Secretary of Defense has the discretion to continue the practice, established by the interim DOD policy of January 29, 1993, of not asking prospective service members about homosexual conduct. In addition, the section would express the sense of Congress that the Secretary of Defense should consider issuing guidance governing the circumstances under which service members being questioned about homosexuality for administrative purposes would be advised about the prohibition on compulsory self-incrimination.

Throughout the public discussion and debate on this issue, there have been numerous recommendations to create an environment in the military that would allow a homosexual to serve discreetly, and to prevent or limit military authorities from intruding into that area of discretion. Such recommendations usually took one of the following forms:

(1) Prescribing places and circumstances, so-called "zones of privacy," where homosexual activity by service members would be acceptable. For example, on- post activity would be prohibited, but off-post conduct would be permissible.

(2) Restricting in one manner or another the authority of the commander, the NCO, or the military criminal investigator to inquire into or investigate the sexual conduct of service members. For example, one recommendation was that military officials could not, at any time or under any circumstances, ask about a service member's sexual orientation.

(3) Attempting to define the parameters for military authorities as to what constituted credible evidence or indications of homosexual activity or conduct. For example, in one formulation, seeing a service member visiting a gay bar or marching in a gay rights parade would not individually constitute homosexual activity by that soldier; however, seeing a service member visit a gay bar and engage in some other overt homosexual act would constitute homosexual activity.

With regard to such recommendations, the committee concluded that any effort to create—as a matter of policy—a sanctuary in the military where homosexuals could serve discreetly and still be subject to separation for proscribed conduct would be a policy inimical to unit cohesion, morale welfare and discipline, unenforceable in the field, and open to legal challenge. For these reasons, the committee would neither restrict the authority of commanders, NCOs or other military authorities regarding homosexuals, nor create any special prerogatives for homosexuals. The committee expects the Secretary of Defense to follow the committee lead in developing directives and regulations implementing this section.

The committee also heard assertions that military personnel had abused their authority by conducting so-called "witch-hunts" to ferret out homosexuals. Although the committee believes that all abuses of authority by commanders and others should be punished under existing laws and regulations, the committee also believes that commanders, NCOs and others in the military chain of command charged with maintaining the military capability, unit cohesion and morale, welfare and discipline of their organizations should have great discretion as to what constitutes sufficient information to begin an inquiry or questioning of a subordinate about behavior or actions that could have an impact on unit cohesion, morale, welfare and discipline.

Similarly, the committee found no reason to impose guidelines as to when or on what basis a military criminal investigative organization should become involved in inquiring into homosexual conduct. The committee notes that most discharges for homosexuality historically have been the result of an administrative process, and that criminal investigative forces are limited. As a result, the committee believes that the most efficient use of limited resources would be to focus them on clearly criminal activity and not to divert them unnecessarily to cases that initially appear to be headed for administrative proceedings. If, however, at any time a commander has reason to believe that criminal activity has occurred, nothing in this section would prevent the use of criminal investigative elements. Similarly, if a criminal investigation turns up evidence or information that could be used in an administrative separation proceeding, nothing in this policy would preclude the use of

the evidence or information in the administrative separation proceeding.

The committee also heard a recommendation that the department should, as a matter of policy, enforce the Uniform Code of Military Justice equally on heterosexuals and homosexuals. The committee believes that all rules and regulations should be administered in a fair and impartial manner. The purpose of military law is to provide for both discipline and justice. As the testimony received by the committee from a panel of legal experts indicated, an "equal application" enforcement requirement could cause the deferral of government prosecution of legitimate criminal cases by leaving the government subject to challenges based on a failure to meet artificial quotas and goals. The committee believes that such an eventuality is neither conducive to justice nor discipline. Violations of the Uniform Code of Military Justice ought to be prosecuted on their individual merits, without an effort to compel the department to equalize prosecutions among groups of people, offenses, or artificially comparative categories.

The committee believes that the department should, as a matter of policy, investigate and prosecute violations of the Uniform Code of Military Justice in a fair and impartial manner, regardless of whether a homosexual or heterosexual is involved. The committee also believes that violations of the Uniform Code of Military Justice should be investigated and prosecuted on their individual merits, with no requirement to compel the department to equalize investigations or prosecutions among groups of people, offenses, or artificially comparative categories.

SECTION 576—FOREIGN LANGUAGE PROFICIENCY PAY

This section would require the Secretary of Defense to develop and carry out a test program for improving foreign language proficiency in the Department of Defense. The test program would focus on evaluating changes in the management of the foreign language proficiency program recommended in a June, 1993 report by the Department of Defense Inspector General and the Sixth Quadrennial Review of Military Compensation. The test program would include an evaluation of adjustments in compensation, including foreign language proficiency pay for active and reserve component personnel, larger enlistment and reenlistment bonuses, and special duty assignment pay.

There is general agreement in the Department of Defense and among members of the Committee on Armed Services and the House Permanent Select Committee on Intelligence concerning the need to increase foreign language proficiency in the department. The test program would be intended to demonstrate the best ways to achieve the objective.

ITEM OF SPECIAL INTEREST

CREATION OF AN ENVIRONMENTAL OFFICER POSITION FOR THE NAVY

The Navy is aggressively pursuing an environmental program to ensure that they are in compliance with all applicable laws and regulations regarding the environment. Their objectives are to re-

COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515–6035

ONE HUNDRED SIXTH CONGRESS

FLOYD D. SPENCE, SOUTH CAROLINA, CHAIRMAN

December 16, 1999

Memorandum for Members of the Republican Conference

From: Steve Buyer, Chairman, Military Personnel Subcommittee

Subject: **Policy Regarding the Present Ban on Homosexuals in the Military**

In response to recent press attention on homosexuals in the military, the purpose of this memorandum is to provide background information about the underlying law on the issue.

Although some would assert that section 654 of title 10, United States Code (included in the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, November 30, 1993) embodied the compromise now referred to as "Don't Ask, Don't Tell," **there is no evidence to suggest that the Congress believed the new law to be anything other than a continuation of a firm prohibition against military service for homosexuals that had been the historical policy. The law, as well as the accompanying legislative findings and explanatory report language, makes absolutely clear that known homosexuals, identified based on acts or self admission, must be separated from the military. After extensive testimony and debate, the Congress made a calculated judgment to confirm the continued bar to the service of homosexuals in the military.** The case supporting the Congressional position is well documented and compelling. *

Some of the findings (section 654, title 10, United States Code) and statements of the Congress (House Report 103-200, pages 287-290, July 30, 1993; Senate Report 103-112, pages 263-297, July 27, 1993) include the following:

- There is no constitutional right to serve in the military.
- Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.
- Military life is fundamentally different from civilian life with unique conditions and responsibilities that require the military community to exist as a specialized society characterized by its own laws, rules, customs, and traditions, including restrictions on personal behavior that would not be acceptable in civilian society.
- Standards of conduct apply to military members 24 hours a day whether on duty or off duty, or on base or off base.
- Military missions require members to involuntarily accept living and working conditions that are Spartan, primitive, and characterized by forced intimacy with little or no privacy.
- Homosexuality is incompatible with military service and presents a risk to the morale, good order and discipline, and unit cohesion that is the essence of military capability.
- Commanders and NCOs in the military chain of command charged with maintaining the military capability, unit cohesion, morale, welfare, and discipline of their units should have great discretion as to what constitutes sufficient information upon which to question a member on their status as a homosexual.

The only element of the November 1993 law that could be considered a compromise was the suspension of the long-standing military policy of asking recruit candidates if they were homosexual before entering service. On a personal note, I have reservations about the suspension of asking the question because I believe it is disingenuous and creates a misunderstanding that is a disservice to the homosexual recruit candidate and the military.

Those condemning the current policy often blame the increased rate of discharges on a hostile environment where homosexuals are ruthlessly pursued. In fact, the vast majority of homosexuals are separated because of unprompted self admissions which I believe result from the false expectations of the "Don't Ask, Don't Tell" policy that misleads homosexuals to believe they may serve in the military.

Those that claim the "Don't Ask, Don't Tell" policy has failed simply do not understand the underlying law. The prospect of a homosexual openly serving in the military was never contemplated by the Congress and any policy that suggests that the military should be receptive to the service of homosexuals is in direct violation of the law.

It is important for all members to understand that any call for lifting the ban on military service for homosexuals, or improving access and quality of life for open homosexuals in the military would require a change in the law.

Larry Craig and "Don't Tap, Don't Tell"
By Michael Medved
Wednesday, September 5, 2007

The ignominious fall of Senator Larry Craig casts new light on the importance of the nation's "don't ask, don't tell" policy banning open homosexuals from military service.

If preventing public sex in airport men's rooms is important enough to justify the deployment of undercover cops, isn't it similarly significant to avoid, at all costs, sexual encounters in military latrines?

Imagine the impact on morale and unit cohesion if two guys from the same barracks engaged in toe-tapping hanky-panky (and perhaps much more) while occupying adjacent bathroom stalls in the military facilities?

Of course, advocates for gays in the military will insist that any such indulgence would involve a violation of the rules, with offenders facing stiff, severe consequences. But the impact of gay GI's on bathroom atmospherics doesn't just stem from the real chance of actual sex acts in the latrine, it involves whole sexualization of one of the most frequented and important conveniences on any base.

If openly gay males do nothing to compromise restroom integrity and security, why not invite female soldiers into men's bathrooms, or open the door of women's facilities to males? Surely, the same rules that would, theoretically, prevent gay men from hassling other men in the head would prevent hetero males from harassing women (or vice verse). Just as a gay male in the military would receive punishment for bathroom misbehavior, so to a straight guy could be busted for making improper overtures to women in the ladies room – but that wouldn't make him any more welcome in a female facility.

The problem isn't just the chance of molestation, it's the radical change of mood and sensibility if you know you may be checked out as a sex object at a very private moment (of urination or defecation) when most normal people prefer to avoid any and all thoughts of physical intimacy. A bathroom becomes a vastly more uncomfortable and even menacing place if it's used for sexual encounters, whether those connections involve gay or straight sexuality.

In a column in Sunday's New York Times, Laura MacDonald insists that toilet sex never involves one-sided, unwanted attentions. According to the research she cites (based on "a groundbreaking dissertation" of a doctoral candidate at Washington University nearly 30 years ago) "a straight man would be left alone after that first tap or cough or look went unanswered. The initiator does not want to be beaten up or arrested or chased by teenagers, so he engages in safeguards to ensure that any physical advance will be reciprocated."

Certainly in the case of Larry Craig, the arresting officer did nothing to discourage the Senator's attentions until the very moment of the arrest and almost certainly invited his advances. The near unanimous revulsion regarding the incident (from Republican and Democrat, gay and straight alike) therefore has nothing to do with sexual assault or attempted rape, or any notion of the mild-mannered, bespectacled 62-year-old legislator somehow forcing himself on the burly, buff and much younger cop.

The disgust for the three term Senate toe-tapper arises instead from the very association of men's rooms and amorous meet-ups, of toilet stalls and sex acts. We have a common and compelling interest in keeping such places free of erotic tension and that's why we dispatch police officers to patrol public rest stations—even though they're hardly needed to prevent outright assaults.

And if regular users of airport or public park facilities have a right to escape suggestive glances or inviting gestures that can poison an already fetid atmosphere, how much more so do young recruits (many of them eighteen or nineteen years old) the same right to avoid similar attentions (or even suspicions) from their fellow soldiers in the intimate quarters necessitated by military service? It's no wonder that despite some fifteen years of relentless propaganda, most high ranking members of the armed services remain unconvinced that we should alter regulations to allow participation of open homosexuals.

The national shudder of discomfort and queasiness associated with any introduction of homosexual eroticism into public men's rooms should make us more determined than ever to resist the injection of those lurid attitudes into the even more explosive situation of the U.S. military.

Michael Medved, nationally syndicated talk radio host, is author of 10 non-fiction books, including ***The Shadow Presidents*** *and* ***Right Turns****.*

The Honorable Susan Davis
Chairman, House Armed Services Committee
Subcommittee on Personnel
2120 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John McHugh
Ranking Member, House Armed Services Committee
Subcommittee on Personnel
2340 Rayburn House Office Building
Washington, D.C. 20515

July 18, 2008

Dear Congresswoman Davis and Congressman McHugh:

My name is Cynthia Yost, and I served in the Army as a medical corpsman, 91B, from March 1974 to September 1975. It has come to my attention, through the Center for Military Readiness, that you are conducting a hearing on the issue of homosexuals in the military. This is an issue that I care about deeply.

When I got to basic training at Fort Jackson, South Carolina in March 1974, it was clear very quickly that a small percentage of the women in the company were blatantly lesbian. They talked about it, they publicly hugged and kissed passionately, they stroked each other's waist and thighs, they even held hands when in the center of a dodge ball game. They sat next to each other, pressed together like honeymooners, arms around each other. Many of them wore men's perfume, or men's clothing when off-duty. They traveled and ate in a lesbians-only group, treating the straight gals like we were invisible or inferior, and slept together in the same part of the bay at night (we had two bays for our company, each with over 100 bunk beds, and the lesbians made the straights all clear out of one area, and that's where they bunked and had their lockers, desks and dressers).

Some of them were ethnic minorities, and it was a group of black lesbians who decided to gang-assault me. I don't know what else you would call it. This incident happened in the spring of 1974, at Fort Jackson, South Carolina. We were riding crowded together in a "cattle truck", and suddenly they all began groping my crotch and breasts through my fatigues, talking suggestively, rubbing my thighs, hugging me tightly around the waist and shoulders, and giggling.

This was in 1974, when the military brass lived in terror of accusations of racist attitudes among military personnel. It was assumed that any white person hitting or attacking a black one for any reason, even in self-defense, was, ipso facto, a racist. Such an incident, reported, meant a letter of reprimand in one's permanent record, and many tedious hours of "race relations" classes.

All basic trainees were required to attend several hours of those classes, and in one, we white gals had the fun of having to sit in forced silence while one of our black lesbian comrades said, in an acid voice, that she hated all white people because of slavery.

I didn't report the assault because I wanted to keep my record clean, and I didn't defend myself from their physical assault for the same reason. I didn't want a permanent label of "racist" to derail my military career. So, I restrained my nausea and outrage, and just kept pushing their hands and arms off me and telling them to please stop. They finally did, when they were tired of it.

The way these women behaved in the company, and the assault, soured me on the idea that homosexuals had any "right" to be in the military. If they are allowed in openly, we'd be on a steep slippery slope, indeed. I'd bet that within five years an assault like the one I endured would be "de-criminalized," on the grounds that the victim is a "homophobe" if they won't just "relax and enjoy" being sexually assaulted.

After all down deep, they say, everyone is "homoerotic." (Another delusion the homosexual community blinds themselves with.) I worry that in a combat situation, soldiers such as this would not respond to the call to duty until they'd seen to their lovers and friends first. By then it might be too late, the battle might already be lost.

I hope that as you debate this issue, you will seriously consider the many real-world issues involved, such as health issues, good order, discipline and morale. My experience is relevant too, since repeal of the law would put many more soldiers in the same situation. I feel very strongly about this, and I know I am not alone. If you look at these issues objectively, I hope you will come to the conclusion that current law should be retained, and all efforts to repeal it should be opposed.

If you have any questions about my experience, I would be happy to answer them and to help in any way that I can.

Sincerely,

CC: Elaine Donnelly
President, Center for Military Readiness

3-5-07 AFT

Officer accused of rape says he rejected alleged victim

EGLIN AIR FORCE BASE, Fla. — In a five-hour interview with military investigators, an Air Force officer accused of raping four men said one of his alleged victims tried to force him to have sex.

Capt. Devery L. Taylor, a medic and the former chief of patient administration at Eglin Regional Hospital, said he took care of the man, trying to help him find his hotel when he had too much to drink at an area bar. He said he eventually took the man to his own home and let him sleep it off there after determining he was too drunk to find his hotel.

Taylor, 38, pleaded not guilty Feb. 19 to raping four men and attempting to rape two others. Prosecutors described him as a serial rapist who used the date-rape drug GHB to incapacitate his victims. He faces a maximum sentence of life in prison without parole if convicted of all the charges against him. There are two counts of attempted sodomy, four counts of forcible sodomy, three counts of kidnapping and one count of unlawful entry.

In a video of Taylor's interview, shown Feb. 22 during his court-martial proceedings, investigators from the Office of Special Investigations told Taylor that another Air Force captain claimed something happened to him at Taylor's apartment in 2004 and that there was trace evidence that consensual sex might have occurred there.

"That doesn't concern me if it was consensual," the investigator told Taylor. "I'm not allowed to talk about your preferences. That has nothing to do with your military career as far as the people who do my job are concerned."

The investigator then suggested that the man might have changed his story and said he was raped after his military buddies questioned him about spending time with Taylor at the bar.

"I think this guy is making up these allegations because a couple of the guys he was with are trying to give him a hard time," the investigator said.

But Taylor said he did not have consensual sex with the man.

"That's charging me with homosexuality and that's against the UCMJ [Uniform Code of Military Justice]. I didn't force anything on this guy. This guy came onto me at AJ's [bar], and he came onto me at my place and I said 'No, I don't do that,' but he said 'Come on, come on,'" Taylor said.

Taylor's civilian attorney, Martin Regan, has since said that Taylor is gay and had consensual sex with his alleged victims. Regan said all but one of the men were either in the military or wanted to be in the military when they knew Taylor, and feared being discovered as gay would jeopardize their careers. Under the military's "don't ask, don't tell" policy, members who are openly gay are subject to discharge.

Taylor later told investigators that the Air Force captain undressed him and attempted to force himself on him but that Taylor forced him away. During the lengthy interview, Taylor initially said he could not remember whether another person was in his apartment, but then said a friend helped him put the man in his car and return him to his hotel.

In their opening arguments, prosecutors said the Air Force captain claimed he was attacked by more than one man in Taylor's apartment. □

— The Associated Press

AF CAPT. GETS 50 YEARS IN RAPES

An Air Force captain was sentenced Feb. 28 to 50 years in prison for raping four men and attempting to rape two others, according to The Associated Press.

Taylor

Capt. Devery L. Taylor was found guilty of drugging and kidnapping servicemen he met in bars. Taylor was dismissed from the Air Force and will not be eligible for parole for 20 years.

He was convicted of two counts of attempted sodomy, four counts of forcible sodomy, two counts of kidnapping and one count of unlawful entry.

He had testified that he had consensual sex with five of the men and that the sixth, who is openly gay, raped him. Taylor's attorney said the men lied to protect their military careers.

AT 3-12-07

navytet@navytimes.com

EDITORIAL

Corps put spin control ahead of victims' health

Lt. Cmdr. John Thomas Matthew Lee, a Catholic chaplain who led a second, secret life as an HIV-positive homosexual predator, acknowledged to a military court that he lied when a lieutenant colonel asked him about his health prior to a sexual liaison in 2006. He told the officer he was fine, knowing full well he could infect him with the incurable virus that causes AIDS.

After being exposed when his advances toward an enlisted Marine were rebuffed, Lee was removed from his post as a chaplain at Marine Corps Base Quantico, Va., in June and court-martialed Dec. 6.

Now, having abused his rank and position and having disgraced his church and his service, he will serve only a criminal two-year sentence.

With good behavior, he could be out in 19 months.

In a deal between Quantico's base commander and Lee's attorney, Lee earned his lenient sentence in exchange for his guilty plea and telling the government all the people he had sex with — or at least as many as he can remember.

After the trial, Lee's attorney said the Marine Corps should be lauded because "their primary interest here was to protect people."

But the truth of the matter is, the Marine Corps — which refused to release vital public information with respect to the charges before the Dec. 6 general court-martial — was trying to protect itself.

Lee was quietly removed from his chaplain's duties in June. And he was quietly charged Aug. 24, Nov. 1 and Nov. 6. And had it not been for a timely leak to this newspaper, the Corps may have quietly court-martialed Lee to avoid the inevitable embarrassment cast on the services by such a scandal.

The facts of this case are startling. Lee apparently led a double life for much of his 12-year career as an officer, and many of his sexual partners were service members. In at least one known case, he used alcohol, his rank and his role as a chaplain to seduce a midshipman during a tour of duty at the Naval Academy.

Such facts are explosive enough to ensure Lee's picture would appear in the news and his story would get more than its share of headlines and air time. Those partners didn't need the government to come knocking and tell them that they might be at risk for HIV — odds are, they would have found out on their own.

By trying to control the story, Marine officials delayed informing the public about the case — and Lee's partners and victims about potential health risks.

By trying to control the story and dampen the coverage, Marine officials delayed informing the public about the case — and Lee's partners and victims about potential health risks. The officials knew that aim was important: They were willing to reduce the fairness of the sentence to achieve it.

Had the Corps released this public information to the media, it would have bought Lee's victims more than a month to seek treatment, since the charges relating to his HIV status were preferred Nov. 1. It might not sound like much, but ask the victims whether they would like that time back. More important, ask anyone who's had sex with the victims since then.

Unlike the civilian courts, the military does not offer a publicly accessible docket of pending cases. As a result, military commanders release that information at will, giving them unmatched control over information that should be out in the open.

Justice done in the dark is no justice at all.

Dec. 17, 2007, p. 9

Military among settings in which assault

By Andrew Tilghman
atilghman@militarytimes.com

Incidents of male sexual assault are often underreported and may be more prevalent in the military than in other parts of society, experts say.

"The most dangerous settings are the ones where there are militarily males, where you have a strict hierarchy and a fairly rigid and narrow definition of masculinity," said Mic Hunter, a psychologist and author of "Honor Betrayed: Sexual Abuse in America's Military."

"The military, boarding schools, sports teams and prison — those are ... the settings where a male is most likely to be assaulted," Hunter said.

The court-martial of Lt. Cmdr. John Thomas Matthew Lee, an HIV-positive Navy chaplain convicted of aggravated assault, offered a glimpse of how young men can be sexually assaulted in an environment where military rank and a fear of public ridicule can facilitate a sexual predator.

"I was trying to pretend the whole thing never happened," a young Navy ensign testified during Lee's trial Dec. 6, referring to the 2004 incident in which the chaplain forced him to receive oral sex. "I felt like I'd done something wrong to make him think I was a homosexual."

The ensign, who was a midshipman at the Naval Academy in 2004, never reported the assault. He was contacted years later, after a Marine corporal reported Lee's conduct to authorities.

Studies suggest sexual assault among military men is most prevalent among junior enlisted ranks. An estimated 3 percent of junior enlisted men reported incidents of sexual coercion during a 12-month period, and about 1 percent reported sexual assaults during the previous year, according to the Armed Forces 2002 Sexual Harassment Survey conducted by the Defense Department.

mostly women but some men.

In the general population, as many as one in seven men may be sexually assaulted during their lifetimes, Hunter said.

The few studies conducted about military men don't reveal numbers that high, but Hunter said there are elements of military culture that make it uniquely likely to ignore or underreport the problem.

Among troops seeking benefits from the Department of Veterans Affairs, the numbers are significantly higher. In a study published in 2004, researchers from the VA office in Minneapolis found that, among men applying for VA benefits, 6.5 percent of combat veterans and 16.5 percent of non-combat veterans reported in-service or post-service sexual assault, a much higher rate than the general population.

VA acknowledged the problem, launching a Military Sexual Trauma Program, which treats

"When someone comes forward and says, 'Hey, this happened to me,' it looks bad for the base and the commander. ... There is the idea that, well, things happen, but we have to look at the big picture, especially at a time of war." □

Newslines The Navy

Navy Times

'most likely'

Navy Chaplain Pleads Guilty; HIV-Positive Priest Is Sentenced in Sex Case

The Washington Post - Washington, D.C.
Author: Ernesto Londono - Washington Post Staff Writer
Date: Dec 7, 2007
Start Page: B.1
Section: METRO
Text Word Count: 1107

-- Talk to the chaplain.

The words have long been a mantra for those in distress. But prosecutors say the authority the phrase suggests allowed Navy Lt. Cmdr. John Thomas Matthew Lee to prey on vulnerable lower-ranking male troops, some of whom he exposed to HIV.

"His selfishness was so strong he was willing to destroy the lives of others to make himself happy," Maj. Derek Brostek, the prosecutor, said yesterday, as Lee pleaded guilty at a court-martial to forcible sodomy, aggravated assault and other crimes and was sentenced to 12 years of confinement, all but two of them suspended.

Since 2004, Lee has used his position as a Catholic priest and his rank to obtain sexual gratification from at least three servicemen, according to the findings of the Marine Corps investigation outlined yesterday during the court-martial.

In 2004, at the U.S. Naval Academy in Annapolis, a midshipman struggling with academic and personal problems sought counsel from Lee. The two had dinner one night, and Lee invited the 20-year-old to his apartment. As they drank scotch and beer on the balcony, Lee began masturbating, the young man testified.

The young man, now an ensign, said he attempted to ignore it, until Lee initiated a sex act on him.

"I said I didn't want it," the ensign said. Lee continued, the ensign testified, telling him: "It's all right, it's all right."

The ensign said he didn't report the incident partly because he feared Lee's word might trump his. "After the event happened, I felt guilty," he said. "I thought that I must have done something wrong that led up to that."

The encounter was the basis of the forcible sodomy count, the most serious of the charges. No physical force was alleged, but the act was considered forcible because of Lee's superior rank.

The Washington Post generally does not identify victims of sexual assault.

Lee learned in April 2005 that he had HIV, he said in court.

The aggravated assault charge stems from an encounter between Lee and a U.S. Air Force lieutenant colonel last December. Lee said yesterday that he found the man on the Internet site craigslist, which has a section where men can post queries and photos of themselves to solicit sexual encounters.

The lieutenant colonel asked Lee, 42, whether he had any health problems before they had sex, Lee said.

"I said everything was okay," Lee said, indicating that he neglected to tell the man he had HIV, fearing that the man would lose interest. They used a condom, Lee said.

None of the men involved has tested positive for HIV, said Lee's civilian attorney, David P. Sheldon. But military officials requested as part of the plea agreement that Lee disclose the names and contact information of all the men he has had sex with since testing positive for the virus. The names will be shared with health authorities, who will notify the men about their exposure, Sheldon said. Lee said he would provide information about "all encounters I remember."

Officials began looking into Lee's behavior in June after a former Marine corporal reported concerns about the chaplain. The former corporal said yesterday that he went to Lee for advice when he was in the process of leaving the Marines. He said Lee asked him one day while the two were in the chaplain's office whether the young man would take pictures of Lee in various states of undress. Lee said he wanted the pictures so he could send them to a woman he had been corresponding with over the Internet, the former corporal said.

The corporal said he reluctantly agreed because he "felt trapped" and because "my judgment was clouded."

During a later encounter, Lee reportedly asked the Marine to touch his bare leg. The Marine said he put his finger on the priest's thigh but yanked it away when Lee tried to get him to do more.

Prosecutors said Lee also victimized an ensign he had persuaded to enroll in the Naval Academy. Lee met the ensign when the young man lived with his parents in Silver Spring. The two had sex on multiple occasions, prosecutors said, and the ensign at one point lived at Lee's apartment in Burke. That ensign and the Air Force official who had consensual sex with Lee remain in the armed forces, said Maj. Tim Keefe, a Marine Corps spokesman. Keefe said he knew of no enlisted men being dismissed as part of the investigation into Lee's conduct.

Lee e-mailed photographs of himself having sex with soldiers and other men to friends and service members, attorneys on both sides said. He sent some of these images from his military e-mail account and stored pornographic images on his computer at work.

In one photo obtained by the Post, Lee is sitting nude on a sofa in his office flanked by an image of the Virgin Mary and a framed photo of Gen. Peter Pace, the former chairman of the Joint Chiefs of Staff. Pace came under fire during the end of his two-year term as chairman for comments he made about homosexuality and the military's "don't ask, don't tell" policy, equating homosexual acts to adultery and calling them immoral.

Lee was ordained as a priest in 1993 and served as associate pastor at St. Jerome parish in Hyattsville for three years. He became a commissioned officer in November 1988. He was most recently stationed at the Marine Corps Base in Quantico. Past postings include the Naval Academy from September 2003 until October 2006; the Sixth Fleet of the U.S. Naval Forces Europe, in Gaeta, Italy, between April 2001 and September 2003; and aboard the USS Port Royal, between December 1998 and March 2001.

The Archdiocese of Washington and the Archdiocese for the Military Services removed his credentials in June after Lee told church officials that he was the target of a sexual misconduct investigation, said Susan Gibbs, a spokeswoman for the Washington Archdiocese.

Lee said yesterday that he was "deeply sorry" for his actions. After the hearing, Lee, wearing a blue Navy uniform with a cross stitched on one of the sleeves, took tiny steps with his shackled legs as he was guided toward a green van. He covered his face and handcuffed hands with a green jacket.

The case comes amid a string of sexual misconduct allegations at the Naval Academy. Last month, a Navy physician was sentenced to four years in prison for using a hidden camera at his home to tape midshipmen having sex.

Staff writers Josh White and Michelle Boorstein and staff researcher Meg Smith contributed to this report.

Credit: Washington Post Staff Writer

Newsweek

Questionable Conduct

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Chaplains, sexual abuse and what the military knows.

By Dan Ephron
NEWSWEEK
Updated: 3:14 PM ET Dec 15, 2007

Ensign P. recalls struggling during his third year at the U.S. Naval Academy in Annapolis, Md. His mother was dying of an illness back home, and his grades dropped so low in 2004 he was put on academic probation. Raised a Roman Catholic, the 20-year-old cadet started counseling with a military chaplain, Navy Lt. Cmdr. John Thomas Mathew Lee. When Lee invited him to dinner off campus, Ensign P. thought it was an honor—officers don't usually socialize with Academy students. In fact, it was an ambush. Lee took the cadet to his apartment after dinner, poured him rounds of beer and Scotch, then began undoing the man's pants. Testifying softly in a military court earlier this month, Ensign P. said the chaplain engaged him in oral sex. Though he asked Lee to stop, for a few dreadful moments he felt too stunned to move: "This is a guy who knows all my darkest secrets."

More than 2,700 military chaplains minister to U.S. servicemen and cadets on bases around the world. Like that between psychologists and their patients, the dynamic between chaplains and the men and women they counsel tends to be marked by an imbalance of power. Chaplains often outrank the people who go to them for help and exert a spiritual authority that, as in Lee's case, can be exploited. During 11 years in the military, Lee sexually abused at least three men, according to his own admission (all three were identified in court only by their ranks and an initial). A judge at Marine Base Quantico in Virginia this month sentenced him to 12 years in prison and discharge without pay or benefits (under a plea agreement, he will serve only two years). In a disturbing twist, Lee is HIV-positive and admits to withholding that information even from men with whom he had consensual sex.

But while the vast majority of chaplains minister dutifully, Lee isn't the only sinner. According to court filings and an archive recently published by the group Bishop Accountability, up to 60 military chaplains have been convicted or at least are strongly suspected of committing sexual abuse over the past four decades, sometimes against the kids of military personnel. Their cases are a side act to the broader scandal of sex-abusing priests in the Catholic Church. But there may be a correlation. In a number of the cases reviewed by NEWSWEEK involving Catholic chaplains, complaints of sexual abuse were made to their churches well before they joined the military, but were never brought to the military's attention. "I've seen many instances where men were encouraged or allowed to go into the military and their own bishop did not disclose that they had something suspicious in their past," says Thomas Doyle, a Dominican priest and former Air Force chaplain.

Doyle might be the country's most knowledgeable source on the priest sex scandals. In the mid-1980s, he coauthored an internal report for the church on its molestation problem, and has since served as an expert witness in dozens of cases, including that of Michael Miglini of Dallas. Miglini describes being raped when he was just 14 by a military chaplain who had previously served as the pastor in his church and remained friends with the family. After getting therapy in college, Miglini brought a civil suit that was ultimately settled against the Dallas Diocese, the Military Vicariate and the chaplain. In the process, his lawyer uncovered complaints made against the chaplain by other church members that the military says it never saw.

For some victims, it can take years to realize they were exploited. Susan Loomans was a troubled cadet at the Air Force Academy in Colorado when she sought help from a Catholic chaplain. In their first session in 1985, he had her sit on his lap. (Loomans and Miglini are among only a few victims who talk publicly about their ordeals; most aren't named in court filings.) Within weeks, she says, he'd compelled her to engage in a sexual relationship that lasted nearly two years. Most of the time, Loomans thought what they were having was an illicit relationship. It wasn't until she returned to the Academy as faculty, and saw how vulnerable first-year cadets are, that she realized he'd manipulated the power differential.

So far, there's no suggestion that Lee, 42, engaged in sexual abuse before going on active duty in 1996. Susan Gibbs, a spokeswoman for the Archdiocese of Washington, D.C., where he served as an associate pastor, says no church would knowingly refer sexual abusers to the military. "Under the policies of virtually every diocese, they would have to attest that someone is in good standing and can serve as a priest," Gibbs tells NEWSWEEK. In court, Lee said little about his past but explained why one of his victims, Cpl. M., succumbed to his advances. "He felt intimidated by my rank and position," the chaplain said. But Cpl. M. also felt mad. Within weeks, he reported the incident to officers at Quantico, who carted Lee to jail.

URL: http://www.newsweek.com/id/78159

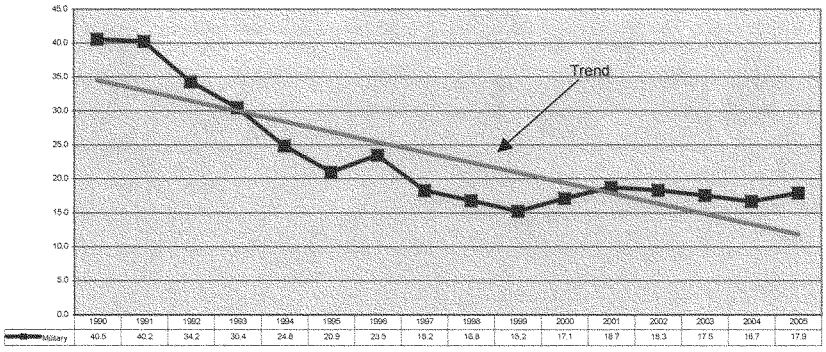
Invalid National Security Arguments for Homosexuals in the Military

Higher Non-Deployability Rates Due to Increased HIV Infection

Under federal law, servicemembers who become HIV-positive are retained in the military, but cannot be deployed overseas or on ships. (National Defense Authorization Act for FY 1987 (P.L. 99-661, Section 705(c)) DoD policy denies enlistment to persons having serologic evidence of HIV, and mandates periodic screenings for HIV infection. The DoD further mandates medical care for HIV-positive personnel, and protections against adverse personnel actions or violations of privacy. Affected personnel are discharged when they are determined to be unfit for further duty. (DoD Instruction 6485.01, Oct. 17, 2006)

According to Commander Wayne L. Johnson, JAGC, Navy (Ret.), who has researched this issue as an instructor at the Naval Justice School, the special status accorded to HIV-positive personnel can continue for many years--sometimes for decades. The deployment exemption is demoralizing because of the heavier burden it imposes on other personnel who are subject to deployment.

Proportional rates of HIV infection were generally higher in all the services in 1990, but dropped after passage of the 1993 law that codified the Defense Department's regulations banning homosexuals from the military. The graph below illustrates a steady trend line decline in the number of military personnel who are non-deployable due to HIV-positive status:



Rates of HIV Infection per 100,000 Servicemembers Tested

This graph measures the infection rate among all service members in the Marine Corps, Navy, Army and Air Force between 1990 and 2005. Source: Navy Environmental Health Center, available at ***http://www-nehc.med.navy.mil/downloads/hp/hivtable_DoD_wchart.pdf***

A number of variable factors may account for the decline. Still, before Congress repeals the 1993 law and forces the military to assume greater risks, members should consider Center for Disease Control (CDC) statistics regarding male-on-male sexual activity and AIDS infection. ***http://www.cdc.gov/hiv/topics/surveillance/basic.htm#exposure***. It is reasonable to expect that greater numbers of gays in the military would increase concomitant rates of non-deployable HIV-positive personnel. Comprehensive medical benefits, without the obligation to deploy, could serve as an economic incentive for homosexual enlistees, which would compound this problem. Such a consequence would be harmful to readiness, morale, and national security.

Website: www.lgbt.mod.uk

LGBT News

LGBT News
The news letter of the MoD Lesbian, Gay, Bisexual and Transgender Forum

Issue 6

May 2008

Inside this issue:

A FEW WORDS FROM OUR DIVERSITY CHAMPION

Richard Hatfield
MOD LGBT Champion

LGBT is the diversity strand which most people overlook. They shouldn't. For me, it is a litmus test of whether we have fully embraced diversity in our culture. First, the LGBT community is in itself truly diverse, in terms of gender, ethnic background, and religion; it contains people who are disabled and people who are not. It even contains middle aged white males. The second reason why I think LGBT is such a good test of how far our culture has changed is that most of the issues that arise are basically about attitudes – and prejudices.

The Defence Diversity Vision, encompassing both civilian and military components, is of a department that "welcomes respects and values the unique contribution of every individual". My experience as LGBT champion has shown me that we still have some way to go to make this a reality. Some people do not get that "every individual" means just that. Some people do not get that when Bill Jeffrey and Sir Jock Stirrup write that all diversity strands are of equal importance, they mean all. One person who hadn't quite got it was the individual who wrote in to say that he found it offensive that we were wasting taxpayers' money on the LGBT forum. Interestingly he also said that this was discriminating against "heterosexual males" although as he wrote that he was a "happily married man with children" he seemed to have overlooked that our diversity policies also fund things like paternity leave and childcare.

I will also know that we have succeeded when I no longer hear reports of the sort of intolerant and offensive "jokes" and comments about gay people which would be regarded as utterly unacceptable if they were made about, say, someone of a different ethnic background or religious belief. Mind you, I am not against real jokes which respect the feelings of all those who may be listening – one of the pleasures of being LGBT Champion is attending the meetings of the Steering Committee which despite the disciplinarian tendencies of the Chair (or possibly because of them) manage both to whip through the business and be consistently funny. I wish I could say as much about all the MOD groups I attend.

Richard Hatfield

Personnel Director

Constructing the Co-Ed Military
By Elaine Donnelly

Duke University Journal of Gender Law & Policy

The following are excerpts of an article published in an edition of the *Duke Journal of Gender Law & Policy, 803 (May 2007)*, titled "Gender, Sexuality and the Military." The pages reproduced here address the issue of homosexuals in the military, and the Appendix includes the actual text of the law passed by Congress in 1993 (Section 654, Title 10). This law is very different from the administrative policy described by the catch-phrase "Don't Ask, Don't Tell." The administration of then-President Bill Clinton imposed that policy on the armed forces in the form of enforcement regulations that are inconsistent with the law. This was done administratively in December 1993, even though Congress had considered but rejected Bill Clinton's "Don't Ask, Don't Tell" proposal as unworkable. The statute that Congress actually passed was approved with bipartisan, veto-proof majorities in both houses, and it has been upheld as constitutional by federal courts several times.

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http://www.law.duke.edu/journals/cite.php?14+Duke+J.+Gender+L.+&+Pol%2527y+815

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C. The 1993 Law Regarding Homosexual Conduct

A common thread in the debates about social policy in the military center on the institution's unique character, culture, and mission. The armed forces exist to defend the republic—a purpose that sets the military apart from all other institutions in the civilian world.

Advocates of allowing homosexuals to serve in the military almost always discuss the issue in terms of civil rights. But participation in the military is sometimes a duty; it is never a right. Title VII of the Civil Rights Act of 1964 does not apply to the military.[399]

The issue was discussed in a comprehensive law review article by Professor William A. Woodruff of the Norman Adrian Wiggins School of Law at Campbell University:

> The armed forces are unique. In a government based upon the consent of the governed, the military is autocratic. In a society that treasures individual freedom, the soldier must conform and sacrifice individual freedom for mission accomplishment. In a country where the right to speak one's mind is paramount, the soldier is called upon to defend that right while not enjoying its full extent. To some, it is paradoxical that the defenders of freedom must forfeit their own freedom. Consider the mission of the military, however, and the paradox vanishes. The mission of the United Armed Forces is to fight and win our nation's wars. It takes an army to do that, not a debating society . . . .

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personal comments and comments that standards had been lowered for women."), *available at* http://archive.gao.gov/t2pbat4/150664.pdf.

398. Center for Military Readiness, *supra* note 382.

399. *See* PRESIDENTIAL COMMISSION REPORT, *supra* note 5, at C-40 (Finding 1.32).

> Title VII has not been legally applied to the military in recognition of the fact that its provision could impose constraints on the United States by which potential military opponents, not operating under the same constraints, might derive an advantage. Warfare is a supranational survival contest in which opposing sides vie for any advantage; unilateral policies adopted to promote principles other than military necessity may place the adopting party at increased risk of defeat.

Id.

> Wars are won not by individuals, but by units functioning under extremely difficult circumstances . . . . In the final analysis, all military rules, regulations, policies, traditions, and customs are related to, and in some manner support, the ultimate goal of combat effectiveness.[400]

As famously articulated by the Supreme Court in *Goldman v. Weinberger*,

> we have repeatedly held that the military is, by necessity, a specialized society separate from civilian society. The military must insist upon a respect for duty and a discipline without counterpart in civilian life, in order to prepare for and perform its vital role. . . . The essence of the military service is the subordination of the desires and interests of the individual to the needs of the service.[401]

The military guards individual rights, but it must be guided by different rules. This principle should inform all discussions about social policies, including the question of homosexuals in the military.

1. *Congressional Oversight*

a. *Clinton Vows to Repeal Department of Defense Regulations*

The contemporary public debate about homosexuals in the military began in 1992, when former Arkansas Governor Bill Clinton challenged President George H.W. Bush for re-election. President Bush did not raise the issue much during the campaign, but homosexual activist groups contributed heavily to the campaign of Bill Clinton and Al Gore and expected Clinton to deliver on his promise to "lift the ban" on homosexuals in the military.[402]

Shortly after the election, on Veterans Day, President-elect Clinton vowed to deliver on his campaign promise and announced his intention to change policies that excluded homosexuals from the military.[403] At the time, the ban was not inscribed in law, but in Department of Defense directives that were adopted in 1981.[404] On January 29, 1993, the newly inaugurated president ordered the

400. William A. Woodruff, *Homosexuality and Military Service*, 64 UMKC L. REV. 121, 123–24 (Fall 1995). Prior to retiring from active duty in the Judge Advocate General's Corps, Professor Woodruff served as Chief of the Litigation Division in the Office of the Judge Advocate General, where he was responsible for defending the Army's interests in civil litigation, including litigation challenges to the homosexual exclusion policy. *Id.*

401. 475 U.S. 503, 506–07 (1986) (alteration added; quotations, citations, and alteration omitted).

402. *See* J. Jennings Moss, *Clinton to Allow Gays in Military*, WASH. TIMES, Nov. 12, 1992, at A1; J. Jennings Moss, *Gays See Clinton Backing Agenda*, WASH. TIMES, Jan. 20, 1993, at A8.

403. *See* Bill Gertz, *Nunn Defies Clinton on Gays in Military*, WASH. TIMES, Nov. 16, 1992, at A1; Bill Gertz, *Clinton to Move Fast for Gays in the Military*, WASH. TIMES, Jan. 22, 1993, at A4; Chandler Burr, *Friendly Fire: How Politics Shaped Policy on Gays in the Military*, CAL. LAW., June 1994, at 54–55. In this article, Burr reported that about an hour after his swearing-in, President Clinton saw Rep. Gerry Studds (D-Mass.), one of two openly gay members of the House, in the Capitol rotunda. "[S]haking his hand, [President Clinton] said with deep conviction, 'I'm going to do this, Gerry.' 'This' was Clinton's campaign promise to lift the ban on gay and lesbian soldiers in the military." *Id.* (alteration added). A few weeks later, Clinton intimate Paul Begala was present at the inception of the Campaign for Military Service, an *ad hoc* coalition of the American Civil Liberties Union, People for the American Way, the National Organization for Women, and other groups that joined together to do the lobbying, public relations, and vote counting.

404. *See* Dep't of Defense Directive No. 1332.14, *Enlisted Administrative Separations* (Jan. 15, 1981); Dep't of Defense Directive No. 1332.30, *Separation of Regular Commissioned Officers*, at encl. 2 (Jan. 15,

Department of Defense to cease asking "the question" about homosexuality, which used to appear on military induction papers.[405] This change was described as an "interim policy," pending further review by Congress and the Defense Department.[406]

A storm of spontaneous opposition ensued. Many congressional offices needed extra staff to answer thousands of phone calls and letters protesting the president's move, and it quickly became apparent that even a Congress controlled by the president's own party would not permit the Administration to repeal the ban on homosexuals in the military arbitrarily.[407] Then-Secretary of Defense Les Aspin formed an internal Military Working Group and charged the panel to come up with a suitable plan for accommodating homosexuals in the military by July 15, 1993.[408] The Joint Chiefs and military experts argued for continuation of the status quo, but task force members were under pressure from the White House and activist groups to devise a plan to accommodate gays in the military.

Feeling political backlash, in March 1993, President Clinton said at a news conference that he might consider a plan that would allow homosexuals in the military but restrict them from certain assignments. Self-identified homosexual Bob Hattoy, Associate Director of Presidential Personnel and an advisor to Clinton on the issue, flatly rejected that option.[409] The internal and public debate

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1981); Woodruff, *supra* note 400, at 131-32 nn.56 & 60, *reprinted in* 32 C.F.R. pt. 41, app. A, ¶ (H). Both directives were republished in 1982. *See also* Memorandum from Deputy Secretary of Defense to Military Departments (Jan. 16, 1981) ("I am promulgating today a change to DoD Directive 1332.14 (Enlisted Administrative Separations), including a completely new Enclosure 8 on Homosexuality. The revision contains no change in policy. It reaffirms that homosexuality is incompatible with military service."). Although these changes were put into place under the Carter administration, the directive on Enlisted Administrative Separation was again revised in 1982. *See* Dep't of Defense Directive No. 1332.14, Enlisted Administrative Separations (Jan. 28, 1982), *available at* http://dont.stanford.edu/regulations/regulation41.pdf. The 1982 revision did not affect the policy on homosexuality. Nevertheless, the 1982 date has caused some to erroneously attribute this language to the Reagan administration.

405. Memorandum from President Clinton to the Secretary of Defense, Ending Discrimination on the Basis of Sexual Orientation in the Armed Forces (Jan. 29, 1993), *available at* http://dont.stanford.edu/regulations/pres1-29-93.pdf.

406. *See id.*

407. *See* Michael Hedges, *Support for Gay Ban Seen as Spontaneous*, WASH. TIMES, Feb. 2, 1993, at A1; Rowan Scarborough & Ronald A. Taylor, *Clinton Seeks a Deal to Avoid Battle on Ban*, WASH. TIMES, Jan. 28, 1993, at A1. Veterans, conservative, and pro-family groups were relatively unprepared for the controversy because it had not been widely debated during the 1992 presidential race. Following extensive hearings, members of Congress and staff eventually formulated a legislative strategy.

408. Memorandum from the Military Working Group to the Secretary of Defense, Recommended DoD Homosexual Policy Outline (June 8, 1993). *See also* Peter Copeland, *Gay-Sex Video Set for Battle*, WASH. TIMES, Mar. 15, 1993, at A1; Rowan Scarborough, *Study Urges Ban on Overt Gays: Pentagon Report to Seek Compromise*, WASH. TIMES, May 21, 1993, at A1; Eric Schmitt, *Pentagon Speeds Plan to Lift Gay Ban*, N.Y. TIMES, Apr. 15, 1993, at A20; Rowan Scarborough, *Gay-Ban Supporters Seek Equal Time with Pentagon*, WASH. TIMES, May 25, 1993, at A3; Rowan Scarborough, *Aspin Policy Follows "Don't Ask, Don't Tell,"* WASH. TIMES, June 22, 1993, at A1. The Military Working Group did not meet with opponents of President Clinton's plan until June 8, 1993—the date they submitted their policy outline to Secretary Aspin.

409. Richard H.P. Sia, *Top Military Officers Favor Gays Staying in Closet*, BALT. SUN, FEB. 23, 1993, *available at* http://www.cs.cmu.edu/afs/cs.cmu.edu/user/scotts/bulgarians/joint-chiefs-ban.html; Joyce Price, *Clinton Aide Rips Deal on Gay Ban*, WASH. TIMES, Mar. 25, 1993, at A1; Paul Bedard,

intensified when a coalition called the Gay, Lesbian, and Bisexual Military Freedom Project drew up a list of "recommendations" that left no doubt that activists would not be satisfied with the option of homosexuals serving in the military discreetly. The wish list included, *inter alia*: (1) an Executive Order to ban discrimination based on homosexual or bisexual orientation or conduct in the armed forces; (2) an end to all discharge procedures for homosexual orientation or conduct; (3) training programs on the acceptance of homosexual or bisexual personnel into the military, on the same basis as racial and gender issues; and (4) an official Defense Department committee, similar to the Defense Advisory Committee on Women in the Services (DACOWITS), to advise the Secretary on matters relating to homosexuals and bisexuals in the armed forces.[410] Some items on the wish list were partially granted by the Clinton Administration in 1994.[411]

Homosexual activist groups staged a large (though not as large as planned) rally in Washington, D.C., on April 25, 1993. Organizers promoted the march as what would be "the largest civil rights demonstration in [U.S.] history" and were disappointed when President Clinton did not promise to be there in person.[412] The event included bizzarre elements that were aired on C-SPAN, including some provocatively dressed marchers and a group holding up posters depicting President Clinton with a "Pinnochio" nose.[413] President Clinton did not show up at the rally, but he met in the Oval Office with a large group of organizers, who consulted frequently with officials from the Deparments of

Clinton Softens Gay Plan, WASH. TIMES, Mar. 24, 1993, at A1; Rowan Scarborough, *Senator Questions [Bernard] Nussbaum's Role in Gay-Ban Case*, WASH. TIMES, Apr. 7, 1994, at A4.

410. *See* Rowan Scarborough, *Gay Rights Groups Ready Wish List for Military in Case Ban is Lifted*, WASH. TIMES, Feb. 10, 1993, at A1. The Gay, Lesbian, and Bisexual Military Freedom Project was a coalition of nine human rights and gay activist organizations, including: Gay, Lesbian, Bisexual Veterans of America; American Civil Liberties Union; American Psychological Association; the Human Rights Campaign Fund; National Gay and Lesbian Task Force; Military Law Task Force; National Lawyer's Guild; Lambda Legal Defense and Educational Fund; and Queer Nation. *See id.*

411. On September 8, 1994, the Department of Defense co-sponsored a day long "Diversity Day Training Event" in Arlington's Crystal City near the Pentagon with eighteen other government agencies. The program featured lectures, panel discussions, exhibits, workshops, and video presentations, including a video titled "On Being Gay." *Id.*; *see also* Rowan Scarborough, *Navy Officers Balk at Pro-Gay Seminar*, WASH. TIMES, Sept. 8, 1994, at A1; Dep't of the Navy, Memorandum for All Hands from the Cmdr. G.R. Stermer, Naval Sea Systems, Subj.: *Diversity Day 1994 Training Event*, Aug. 26, 1994. *See also* Elaine Donnelly, Heritage Foundation Lecture No. 522, Social Experimentation in the Military (Apr. 3, 1995) (transcript available at http://www.heritage.org/Research/NationalSecurity/HL522.cfm).

412. Gary Lee & Linda Wheeler, *Gay-Rights March Organizers Say 1 Million May Participate*, WASH. POST, Mar. 19, 1993, at A41 (alteration added); Joyce Price, *Possible Clinton No-Show Angers Gay March Leaders*, WASH. TIMES, Apr. 15, 1993, at A4; Joyce Price, *Clinton Plans Hookup to Gay-Rights Rally: Meets Leaders in Oval Office*, WASH. TIMES, Apr. 17, 1993, at A1; Cindy Loose, *Gay Activists Summon Their Hopes, Resolve*, WASH. POST, Apr. 18, 1993, at A1.

413. Michael Hedges & J. Jennings Moss, *"The Queer '90s": 300,000 March to Celebrate Rites with Demand for Rights*, WASH. TIMES, Apr. 26, 1993, at A1; Ruth Fremson, Photo (Apr. 25, 1993) (showing estimated 300,000 marchers); Kenneth Lambert, Photo (Apr. 25, 1993) (showing Pinocchio signs); Michael Hedges, *Emotions Bared, Among Other Things*, WASH. TIMES, Apr. 26, 1993, at A1; Michael Hedges, *Were Marchers Just Too Far "Out"?*, WASH. TIMES, Apr. 27, 1993, at A1.

Defense and Justice on legislative and legal strategies to advance the cause of homosexuals in the military.[414]

Members of the Joint Chiefs of Staff were in an awkward situation, but they did their best to resist the president's original, radical plan without challenging his authority as Commander-in-Chief.[415] Following pressure from Secretary of Defense Les Aspin, all of the chiefs of staff were lined up behind President Clinton for a media event at Fort McNair, Washington, D.C., when President Clinton announced his "Don't Ask, Don't Tell" proposal on July 19, 1993.[416] Departing significantly from DoD directives in effect since 1981, President Clinton's July 19 policy maintained that "Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry or continued service unless manifested by homosexual conduct."[417]

b. *Congress Exercises Oversight Responsibilities*

Enactment of Clinton's proposal appeared possible at first, but in response to political pressure, members of Congress became engaged. They exercised effective oversight by asking a lot of questions. For example, in May 1993, Senate Armed Services Committee Chairman Sam Nunn (D-Ga.) and Ranking Member John Warner (R-Va.) visited several ships and submarines at Naval Station Norfolk, Virginia. An Associated Press photo of that visit showed the senators crouched down to solicit the opinions of three men occupying cramped sleeping spaces in the torpedo room of the nuclear attack submarine USS *Montpelier*.[418] One gay activist leader called Nunn's tour an "inflammatory spectacle," while another denounced Sen. Nunn as a "bigot" for having any hearings at all.[419]

Various drafts of a "Don't Ask, Don't Tell" type proposal started to emerge and fire from both sides.[420] Proponents of gays in the military saw them as a betrayal of

414. *See* Burr, *supra* note 403, at 57–61, 98–100.

415. *See* Sia, *supra* note 409; Detroit News Wire Services, *Top Brass: Rethink Gay Ban Lift*, DETROIT NEWS, Jan. 25, 1993, at A1.

416. *See* Grant Willis, *Don't Ask, Don't Tell, Don't Pursue: Despite Compromise on Gay Ban, Congress Will Get the Last Word*, ARMY TIMES, Aug. 2, 1993, at 12.

417. *See* Dep't of Defense Directive No. 1332.14, Enlisted Administrative Separations, at encl. 3 ¶ E3.A1.1.8.1.1 (1994), *available at* http://www.dtic.mil/whs/directives/ corres/pdf/133214p.pdf; *cf.* Dep't of Defense Instr. 5505.8, Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations, at §§ 4, 6, & encl. 2 (2005), *available at* http://www.dtic.mil/whs/ directives/corres/pdf/i55058_012405/i55058p.pdf. The "Don't Ask, Don't Tell" concept announced by Clinton on July 19, 1993, formed the basis for congressional testimony by Defense Department officials, and for enforcement regulations announced on December 22, 1993, with DoD News Release No. 605-93, available at http://www.sldn.org/binary-data/SLDN_ARTICLES/pdf_file/1100.pdf.

418. Steve Helber, Photo, ASSOCIATED PRESS, May 11, 1993.

419. Richard A. Ryan, *Senators Take Gay Battle to Sea*, DETROIT NEWS, May 11, 1993, at 1A.; Rowan Scarborough, *Witnesses Detail Risks of Lifting Ban*, WASH. TIMES, Mar. 30, 1993, at A1.

420. *See* Rowan Scarborough, *Furor Grows Over Gay-Ban Policy*, WASH. TIMES, June 23, 1993, at A1; Burr, *supra* note 403, at 56–57. Burr described the concerns of activist lawyer Chai Feldblum, who tried to achieve a significant (though limited) step in favor of gays in the military by going along with the original "compromise" reportedly agreed to by President Clinton and Sen. Sam Nunn. Under what Burr described as the "Clinton-Nunn political deal," "service members who stated they were gay would be placed on inactive reserve, stripped of pay and benefits—essentially given a

their justified expectations, while opponents criticized such proposals as incremental steps in the wrong direction. During this time both Houses held a total of twelve legislative hearings, which heard from diverse panels of experts and advocates on all sides of the issue.[421]

Immediately following President Clinton's announcement on July 19, 1993, the House and Senate Armed Services Committees heard testimony from several prominent officials, including Secretary of Defense Les Aspin, DoD General Counsel Jamie Gorelick, Joint Chiefs Chairman Gen. Colin Powell, the Chief of Staff of each of the services, and key members of the Pentagon's Military Working Group. Under close questioning, all gave candid answers that revealed serious flaws in the July 19 "Don't Ask, Don't Tell" concept; in both Houses of Congress, members started to question and doubt the wisdom of "Don't Ask, Don't Tell."[422] Then-Rep. James Talent (R-Mo.) commented,

> when I listened to the Chiefs and the Secretary yesterday, what I basically heard them saying was that they had resolved this debate in favor of essentially keeping the old policy, . . . [but] [w]hen I read the policy as a totality . . . [it] doesn't seem consistent with what I understood the Secretary and the Chiefs have been saying about the policy.[423]

The sticking point was an inherent inconsistency that could be easily exploited by activist lawyers challenging the policy in court: If homosexuality is not a disqualifying characteristic, how can the armed forces justify dismissal

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suspended discharge. (Those found to have had sex were still expelled under the new terms, which, in Clinton's formulation, separated homosexual 'status' from homosexual 'conduct.')" *Id.* But attorney Chai Feldblum, an activist with the Campaign for Military Service Coalition, became "increasingly concerned" about Clinton's "'status versus conduct' distinction, which the president repeated whenever he was asked about his forthcoming policy." She and fellow activist Tom Stoddard, who headed the Campaign for Military Service and met with Clinton at the White House on April 16, 1993, maintained that the distinction should be "status versus *mis*conduct." They recognized that Clinton's "status versus conduct" concept was an "artificial distinction as unworkable as accepting left-handed soldiers while forbidding them from shooting left-handed." *See* Burr, *supra* note 403, at 56–57. Those opposed to gays in the military recognized the same anomaly.

421. *See* Woodruff, *supra* note 400, at 144. The Senate Armed Service Committee conducted hearings on the policy generally on March 29, 31, April 29, May 7, 10, and 11, 1993. *Id.* at 144 n.137 (citing *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the S. Comm. on Armed Servs.*, 103d Cong., 1st Sess. 255–56 (1993)). Oversight hearings on the Administration's July 19, 1993, policy were held on July 20, 21, and 22, 1993. Woodruff, *supra* note 400, at 144 n.137 (citing *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the S. Comm. on Armed Servs.*, 103d Cong., 1st Sess. 255–56 (1993)). Oversight hearings in the House were held July 21, 22, and 23, 1993. Woodruff, *supra* note 400, at 144 n.137 (citing *Assessment of the Plan to lift the Ban on Homosexuality in the Military: Hearings Before the Mil. Forces & Personnel Subcomm. of the S. Comm. on Armed Servs.*, 103d Cong., 1st Sess. (1993)).

422. *See* Woodruff, *supra* note 400, at 149–50 (citing *Policy Concerning Homosexuality in the Armed Forces: Hearings Before the S. Comm. on Armed Servs.*, 103d Cong., 1st Sess. 255–56 (1993); *Assessment of the Plan to lift the Ban on Homosexuality in the Military: Hearings Before the Mil. Forces & Personnel Subcomm. of the S. Comm. on Armed Servs.*, 103d Cong., 1st Sess. (1993)). Senators on both sides of the aisle, including SASC Chairman Sam Nunn (D-Ga.) and Dan Coats (R-Ind.), expressed concern that the courts would "find inconsistencies in the policies as written," and interpret them in a way that would hinder the goal of maintaining military effectiveness and unit cohesion. *Id.* at 150.

423. *Id.* (quoting *Assessment of the Plan to lift the Ban on Homosexuality in the Military: Hearings Before the Mil. Forces & Personnel Subcomm. of the S. Comm. on Armed Servs.*, 103d Cong., 1st Sess. (1993)) (alteration added).

of a person who merely reveals the presence of such a characteristic? Members of Congress recognized that such a policy would be unenforceable, unworkable, and indefensible in court.

With the exception of Clinton administration insiders trying to finesse what had become a hot-potato issue, and a few gay leaders who were willing to accept compromise in order to avoid codification of the ban on gays in the military,[424] there were no significant constituencies advocating passage of "Don't Ask, Don't Tell" by Congress. Following extensive floor debate in both Houses, Congress rejected President Clinton's "Don't Ask, Don't Tell" proposal with overwhelming, veto-proof bipartisan majorities.[425] Instead, Congress passed a law that continued the pre-Clinton (1981) policy of excluding homosexuals from the military.[426] In so doing, members wisely chose language almost identical to the 1981 DoD Directives regarding homosexuality, which had already been challenged and upheld as constitutional by the federal courts.[427] Congress allowed President Clinton's "interim policy" of not asking questions of inductees regarding homosexuality to stand with the provision that a future Secretary of Defense can restore such questions, without additional legislation, if the needs of the service require it.[428]

Legislation dealing with intensely controversial issues does not become law by accident. In this case, Congress codified the policy in place long before Clinton took office. Contrary to frequent misstatements of the law then and now, there is no way that bipartisan, veto-proof majorities

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424. Jim Abrams, Associated Press, *Nunn, Frank Trade Jabs Over Gays*, DETROIT NEWS, May 31, 1993, at 1A; Rick Maze, *Frank Talk About Compromise: Gay Congressman Backs "Don't Ask, Don't Tell" To Avert Gay-Ban Law*, ARMY TIMES, May 31, 1993, at 8 [hereinafter Maze, *Frank Talk About Compromise*]. These articles reported on a version of "Don't Ask, Don't Tell," proposed by Rep. Barney Frank (D-Mass.), which would have drawn a line between "on-base" and "off-base" behavior. The proposal was seen as a way to provide "political cover" to Clinton, but gay activists rejected it. Marvin Liebman of the radical group Queer Nation, for example, said in response, "We will not accept compromise. We will not tolerate appeasement." *See* Maze, *Frank Talk About Compromise*, *supra*.

425. On Sept. 9, 1993, the Senate approved language in the FY 1994 Defense Authorization bill that codified the homosexual ban, using language almost identical to that in the Defense Department directive that had been in place since 1981. *See supra* note 404 and accompanying text. An amendment offered by Sen. Barbara Boxer (D-Cal.), which would have allowed the president to decide policy regarding gays in the military, was defeated on Sept. 9, 1993, on a bipartisan sixty-three to thirty-three vote. S. amend. 783 to S. 1298, 103d Cong. (1993). On Sept. 28, the House rejected a similar amendment, sponsored by Rep. Martin Meehan (D-Mass.) and Rep. Patricia Schroeder (D-Colo.), which would have stricken the Senate-approved language and expressed the sense that the issue should be decided by the President and his advisors. H. amend. 315 to H.R. 2401, 103d Cong. (1993). The Meehan/Schroeder amendment was defeated on a bipartisan roll-call vote, 264 to 169. *Id.*; *see also* Rowan Scarborough, *Schroeder, Meehan Hope to Alter Compromise on Gays in Military*, WASH. TIMES, Sept. 8, 1993, at A4; Rowan Scarborough, *Gay-Ban Deal Nearer to Becoming Law*, WASH. TIMES, Sept. 29, 1993, at A4; Rowan Scarborough, *Senators Reaffirm Gay Ban: Boxer's challenge rejected by 63-33*, WASH. TIMES, Sept. 10, 1993, at A1.

426. *See* National Defense Authorization Act for Fiscal Year 1994, Pub. L. No 103-160, § 571, 107 Stat. 1547, 1670 (1993) (codified at 10 U.S.C. § 654 (2000)) (reprinted *infra* Appendix A).

427. *See* Dronenberg v. Zech, 741 F.2d 1388 (D.C. Cir. 1984); Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989); *see also* Scarborough, *Senators Reaffirm Gay Ban*, *supra* note 425.

428. *See* Pub. L. No. 103-160, § 571(d), 107 Stat. at 1673 (reprinted *infra* Appendix A).

would have passed a law making it "easier" for homosexuals to serve. Rep. Steve Buyer (R-Ind.), then-Chairman of the HASC Personnel Subcommittee, underscored the point in a December 16, 1999, memorandum to his colleagues:

> Although some would assert that section 654 of Title 10, US Code . . . embodied the compromise now referred to as "Don't Ask, Don't Tell," there is no evidence to suggest that the Congress believed the new law to be anything other than a continuation of a firm prohibition against military service for homosexuals that had been the historical policy.
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> The law, as well as accompanying legislative findings and explanatory report language, makes absolutely clear that known homosexuals, identified based on acts or self admission, must be separated from the military. After extensive testimony and debate, the Congress made a calculated judgment to confirm the continued bar to the service of homosexuals in the military. The case supporting the Congressional position is well documented and compelling.
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> . . . .
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> Those that claim that the Don't Ask, Don't Tell policy has failed simply do not understand the underlying law. The prospect of a homosexual openly serving in the military was never contemplated by the Congress and any policy that suggests that the military should be receptive to the service of homosexuals is in direct violation of the law.[429]

c. *Conditional Compromise*

In the course of debate, Congress considered whether the armed forces should be required to assume the risk that homosexuals would remain celibate. The Senate Report addressed the issue directly:

> It would be irrational . . . to develop military personnel policies on the basis that all gays and lesbians will remain celibate. . . . [W]hen a person indicates that he or she has a propensity or intent to engage in homosexual acts, the armed forces are not required to wait until the person engages in that act before taking personnel action.[430]

The House Report also discussed the possibility of accommodating homosexuals, provided that they refrain from homosexual acts:

> [A]ny effort to create as a matter of policy a sanctuary in the military where homosexuals could serve discreetly and still be subject to separation for proscribed conduct would be a policy inimical to unit cohesion . . . and discipline, unenforceable in the field, and open to legal challenge.[431]

Instead of codifying the legally questionable "Don't Ask, Don't Tell" concept, Congress chose to adopt unambiguous statements that were understandable, enforceable, consistent with the unique requirements of the

429. Memorandum from Rep. Steve Buyer to Members of the Republican Conference (Dec. 16, 1999), *available at* www.cmrlink.org/cmrnotes/buyer121699.pdf.

430. S. REP. NO. 103-112, at 284 (1993) (maintaining that it would be "irrational . . . to develop military personnel policies on the basis that all gays and lesbians will remain celibate").

431. H.R.REP. NO. 103-200, at 288 (1993).

military, and devoid of the First Amendment conundrums that were obvious in President Clinton's July 19 proposal.

The only concession made during this process in 1993 was ommision of "the question" about homosexuality, which President Clinton had eliminated with his January 29, 1993, "interim policy."[432] Congress nevertheless authorized restoration of routine inquiries about homosexuality by a future Secretary of Defense,[433] who can (and should) restore "the question" without additional legislation. This concession did not nullify the language of the law itself, but it allowed the Congress, which was controlled by the Democrats at the time, to give political cover to President Clinton by calling the plan a "compromise" and referring to it as "Don't Ask, Don't Tell." The politically expedient strategy has caused problems ever since.

Widespread misunderstandings about the rationale and meaning of the law have continued for four major reasons. First, in 1993, major media inaccurately reported that Congress had passed Clinton's "compromise" plan to accommodate homosexuals in the military, known as "Don't Ask, Don't Tell." Reports did not note that the statute actually said something quite different: "The prohibition against homosexual conduct is a long-standing element of military law that continues to be necessary in the unique circumstances of military service."[434] Second, President Clinton had an interest in *appearing* to deliver on his campaign promise to lift the ban on gays in the military, even though he had not done so. Disregarding the legal mandate to provide documents and briefings that "set forth" the provisions of the law, in December 1993, Clinton issued enforcement regulations that implement his original proposal, "Don't Ask, Don't Tell" even though Congress had rejected that concept as unworkable.[435] Third, the law passed by Congress is widely misunderstood because no one gave it a distinctive and appropriate name. Absent a name of its own, the law that Congress passed was frequently misidentified with the catchphrase "Don't Ask, Don't Tell," which is easier to remember than the utilitarian "Public Law 103-160" or "Title 10, United States Code, Section 654." And fourth, there was no individual author or descriptive "short title" for the legislation because the statutory language came directly from Defense Department regulations, which were promulgated in 1981.[436]

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432. *See* Memorandum from President Clinton to the Secretary of Defense, *supra* note 405.

433. *See supra* note 425 and accompanying text.

434. 10 U.S.C. § 654(a)(13) (1993). *See supra* note 425. *The New York Times* and *The Washington Post* stayed uncharacteristically silent on the historic House vote that occurred on September 28, 1993. A thorough search of contemporaneous news accounts reveals only two reports on the House vote for Senate-passed legislation codifying long-standing Defense Department regulations banning homosexuals from the military. *See* Michael Ross, *House Backs Modified Ban on Gays in Armed Forces*, L.A. TIMES, Sept. 29, 1993, at A11; Rowan Scarborough, *Gay-Ban Deal Nearer to Becoming Law*, WASH. TIMES, Sept. 29, 1993, at A4. Neither of these reports quoted key legislative language making it clear that the statute does not authorize accommodation of homosexuals in accordance with Clinton's controversial "Don't Ask, Don't Tell" proposal. The only "compromise" involved was administrative, not substantive, since the law authorizes a reinstatement of the induction form "question" regarding homosexuality at any time.

435. *See supra* note 429.

436. *See* 10 U.S.C. § 654 (1993); S. REP. NO. 103-112, at 263-97 (1993); H.R. REP. NO. 103-200, at 287-90 (1993).

To clarify the difference between the law regarding homosexual conduct and President Clinton's "Don't Ask Don't Tell" enforcement policy, this Article hereinafter will refer to P.L. 103-160, Section 654, Title 10 as the 1993 law regarding homosexual conduct in the military, or "The Military Personnel Eligibility Act of 1993."

d. *The Purpose of the "Military Personnel Eligibility Act of 1993."*

Referring to 10 U.S.C. § 654 as the "Military Personnel Eligibility Act of 1993" is appropriate because the language of the law that Congress actually passed makes it clear that homosexuals are *not eligible* for service in the armed forces. It restates the rationale of the 1981 DoD Directives almost word for word,[437] and sets forth fifteen points in support of the principle that homosexuality is incompatible with military service.[438]

Prof. Woodruff explained the rationale behind the 1981 DoD Directives, which was carried over into the statute passed by Congress in 1993:

> The [1981] policy was an exclusion policy premised upon the policy determination that "homosexuality is incompatible with military service." . . . The policy operated on the logical conclusion that as a class, homosexuals engaged in or were likely to engage in homosexual activity. In order to reduce, if not eliminate, the instances of homosexual activity in military units, the policy excluded from service the category most closely associated with homosexual activity: homosexuals.[439]

The law states, "there is no constitutional right to serve in the armed forces," and affirms that military life is fundamentally different from civilian life.[440] Military society "is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior that would not be acceptable in civilian society."[441] Military standards of conduct "apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty."[442]

The law also distinguishes itself from the July 19 "Don't Ask, Don't Tell" policy by affirming "[t]he prohibition against homosexual conduct is a long-standing element of military law that continues to be necessary in the unique circumstances of military service."[443]

The 1981 policy required separation of persons found to be engaging in homosexual acts, but also those who disclosed by their own statements that they were homosexuals within the meaning of the DoD Directives.[444] The statute does the same.[445] Prof. Woodruff explained:

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437. *See supra* note 404 and accompanying text.
438. Woodruff, *supra* note 400, at 135-42.
439. *Id.* at 132-33 (citation omitted; alteration added).
440. 10 U.S.C. § 654(a)(2), (a)(8) (reprinted *infra* Appendix A).
441. *Id.* § 654(a)(8)(B) (reprinted *infra* Appendix A).
442. *Id.* § 654(a)(10) (reprinted *infra* Appendix A).
443. *Id.* § 654(a)(13) (reprinted *infra* Appendix A) (alteration added).
444. *See supra* note 404 and accompanying text.
445. *See* 10 U.S.C. § 654(b)(2) (reprinted *infra* Appendix A).

> The admission of homosexuality placed the soldier in an excluded class; a class defined by conduct or the propensity to engage in conduct the military determined was inimical to good order, morale, unit cohesion, and ultimately, combat effectiveness. Because the definition of homosexual was tied to sexual conduct rather than to amorphous concepts of sexual tendencies, preferences, or orientation, the policy presumed that one who claimed to be a homosexual has, will, or was likely to engage in the conduct that defines the class.[446]

As was the case with the 1981 Directives, the 1993 homosexual conduct law allows a military person to "rebut the presumption" of homosexual conduct, but only under narrow circumstances—i.e., a service member says or does something entirely out of character while intoxicated, or to escape military service. In general, however:

> Discharging soldiers based solely upon their self-identification as a homosexual without additional evidence of homosexual conduct avoided the necessity for intrusive investigations and inquiries into the soldiers' sexual practices. Furthermore, because it is reasonable to believe homosexuals will engage in the conduct that defines the class, discharging those who claim to be homosexuals served the goal of preventing the disruption and adverse impact upon unit readiness, morale, and discipline that homosexual conduct within the military environment causes.[447]

The "Military Personnel Eligibility Act" recognized the need for military people to be always ready for possible deployment worldwide to a combat environment. The statute also respects the power of sexuality and the desire of human beings for sexual modesty, even when they must accept living conditions offering little or no privacy.

In gender-neutral terms, the law states that *persons* living in conditions of "forced intimacy" should not have to expose themselves to *persons* who might be sexually attracted to them.[448] To the greatest extent possible, the same principle applies to the housing of men and women in the military.

Prof. Woodruff noted that the statute's findings reveal several important principles that remain unchanged and support the statute's legitimacy:

> First, Congress was acting pursuant to a clear grant of constitutional power to establish the qualifications and conditions of service in the military. Second, American society demands unique rules that may not be the same as those found in other countries or in civilian society. Third, Congress made clear the statutory policy was aimed at creating and preserving military effectiveness and cohesion. Noticeably absent from the findings section is any indication that military readiness was being balanced against the individual interests of homosexuals who wished to serve. In other words, combat effectiveness, not accommodation of homosexuals, either individually or as a class, was the purpose of the statute. Fourth, Congress set out the factual predicate for the long-standing professional military judgment that homosexuality is incompatible with military service and carried that principle forward into the new law. Both the House and Senate reports specifically note that the statute

446. Woodruff, *supra* note 400, at 134.

447. 10 U.S.C. § 654(b)(1)(A)-(D).

448. *Id.* at § 654(a)(11), (12).

> recognizes and adopts the principle that homosexuality is incompatible with military service.[449]

The "Military Personnel Eligibility Act" defines homosexual conduct but avoids using the vague phrase "sexual orientation." As explained by Professor Woodruff:

> Significantly, Congress did not say that "sexual orientation" was a private matter or that it was a benign, non-disqualifying factor. The law did not define "sexual orientation" or try to artificially separate homosexual orientation from homosexual conduct. . . . Equally as important, Congress made no mention of passing a law to accommodate homosexuals or creating a situation where they could serve under color of law like the July 19, [1993,] policy contemplated.[450]

It is unfortunate that constant, inaccurate references to the law as "Don't Ask, Don't Tell" have perpetuated confusion about its meaning. As a result of this mislabeling, many young people who are homosexual are being misled about their eligibility to serve.

2. *Enforcement Regulations Inconsistent with the Law*

a. *The "Don't Ask, Don't Tell" Policy/Enforcement Regulations*

President Clinton signed the "Military Personnel Eligibility Act" on November 30, 1993, as part of the National Defense Authorization Act for Fiscal Year 1994.[451] Two months later, he released enforcement regulations, known as the "Don't Ask, Don't Tell" policy, which are inconsistent with the law.[452] It is significant to note that the DoD news release announcing regulations to enforce 10 U.S.C. § 654 made reference to the "Don't Ask, Don't Tell" policy announced by President Clinton on July 19, 1993. The release and accompanying documents claimed that the enforcement regulations were "consistent" with the law, but they were actually written to implement Clinton's "Don't Ask, Don't Tell" proposal, which was not "consistent" with the law at all.[453] Few members of the media noticed (or chose to write about) the glaring discrepancy, which has been the source of confusion and controversy ever since.[454]

Prof. Charles Moskos, the respected military sociologist who proposed the "Don't Ask, Don't Tell" idea in 1993, noted in a *Wall Street Journal* article that "[t]he Pentagon policies are, in fact, somewhat more lenient than the language of the statute."[455] Indeed, the key passage in the Clinton Administration's

449. Woodruff, *supra* note 400, at 153 (citations omitted).

450. *Id.* at. 154–55 (citations omitted; alteration added).

451. Pub. L. 103-160, § 571, 107 Stat. 1670 (1993) (codified at 10 U.S.C. § 654 (2000) (reprinted *infra* Appendix A)).

452. *See infra* note 417 and accompanying text.

453. *See* DoD News Release No. 605-93, *supra* note 417 (announcing regulations to "implement the policy that was announced by President Clinton in July"; claiming that the new directives were "fully consistent with the National Defense Authorization Act for Fiscal Year 1994").

454. Rowan Scarborough, *Joint Chiefs Were Muzzled on Gay Policy*, WASH. TIMES, Jan. 3, 1994, at A1.

455. Charles Moskos, *Don't Knock "Don't Ask, Don't Tell,"* WALL ST. J., Dec. 16, 1999, at A22 (alteration added).

inconsistent interpretation of the law, as stated in this regulatory language, was an attempt to redefine its meaning to fit Clinton's July 19, 1993, proposal: "Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry or continued service unless manifested by homosexual conduct."[456]

The December 22, 1993, news release, an overview, and a memorandum from Defense Secretary Les Aspin to the Service Secretaries directing them to implement the new policy, which referred to "the policy as announced by President Clinton on July 19, 1993,"[457] simply overlooked the fact that Congress had forseen problems with that concept and rejected it. The plain language of the statute is not based on the vague phrase "sexual orientation." It is based on conduct.[458]

In effect, the DoD attempted to help Clinton deliver on his campaign promise to gay activists by simply redefining the law and calling it "Don't Ask, Don't Tell." The Pentagon also failed to comply with the legal requirement that entering servicemembers should be informed of the law, 10 U.S.C. § 654, which excludes homosexuals from the military. A subsequent amendment to the DoD Directives changed the wording of the quoted sentence slightly but still used the phrase "sexual orientation," which Congress pointedly had not used in the statutory language because it was so vague. The Clinton administration's regulatory interpretation reads: "A person's sexual orientation is considered a personal and private matter, and is not a bar to service entry or continued service unless manifested by homosexual conduct in the manner described in paragraph B.8.b., below."[459] Current briefing materials and training manuals still do not include the actual text of the law, or accurate summaries of its meaning. Instead, instructional materials keep repeating the "Don't Ask, Don't Tell" mantra: "Sexual orientation is considered a personal matter and is not a bar to military service unless manifested by homosexual conduct."[460]

b. *The United States Court of Appeals for the Fourth Circuit*

In 1996, the United States Court of Appeals for the Fourth Circuit looked beyond the "Don't Ask, Don't Tell" catch-phrase and recognized the difference between Clinton's policy and the law.[461] In a nine-to-four decision that denied the appeal of Navy Lt. Paul G. Thomasson, a professed homosexual who wanted to stay in the Navy, U.S. Circuit Judge Michael Luttig wrote about the exclusion law: "Like the pre-1993 [policy] it codifies, [the statute] unambiguously

456. *See* Dep't of Defense Directive No. 1332.14, *supra* note 417, at encl. 3 ¶ E3.A1.1.8.1.1.

457. *See* DoD News Release No. 605-93, *supra* note 417.

458. Woodruff, *supra* note 400, at 168 n.255.

459. *See* Dep't of Defense Directive No. 1332.14, *supra* note 417, at encl. 3 ¶ E3.A1.1.8.1.1.

460. *See, e.g.*, Center for Military Readiness, Army Comic Book Misrepresents Law on Gays in the Military (Jan. 14, 2002), http://www.cmrlink.org/Hmilitary.asp?docID=112 (describing an Army comic book titled "Dignity and Respect: A Training Guide on Homosexual Conduct Policy"); Joel P. Engardio, *The Adventures of Capt. CayMan*, S.F. NEWS WEEKLY, Aug. 22, 2001, *available at* http://www.sfweekly.com/2001-08-22/news/the-adventures-of-capt-gayman/print; Office of the Chief of Public Affairs, U.S. Army, *Questions and Answers About Army's Policy on Homosexual Conduct*, HOT TOPICS, Winter 2000, at 6, *available at* http://www.army.mil/soldiers/HotTopics/winter00.pdf.

461. Thomasson v. Perry, 80 F.3d 915 (4th Cir. 1996).

prohibits all known homosexuals from serving in the military . . . ."[462] Judge Luttig added that the Clinton Administration "fully understands" that the law and DoD enforcement regulations are inconsistent and has engaged in "repeated mischaracterization of the statute itself . . . ."[463]

Actually overruling the DoD enforcement regulations was not within the purview of the Court. Still, the Fourth Circuit's decision in *Thomasson*, affirming the constitutionality of the law, should have prodded the Administration to correct inconsistencies in its administrative policy. But this was the Clinton Administration, which was fully committed to accommodating homosexuals in the military, one way or another.

c. *Confusion Caused by "Don't Ask, Don't Tell"*

The difference between what should be called the "Military Personnel Eligibility Act" and the Clinton enforcement policy explains why factions on both sides of the issue are critical of "Don't Ask, Don't Tell." Even though Congress rejected, with good reason, the "Don't Ask, Don't Tell" concept in 1993, the Clinton Administration inscribed it in enforcement regulations that remain in effect today.

Activists keep complaining that "Don't Ask, Don't Tell" does not work. The most relevant question is, "work to do what?" If the goal is to allow homosexuals to serve, Clinton's permissive "Don't Ask, Don't Tell" regulations do not go far enough. But if the goal is to preserve military morale, discipline, and readiness for combat (and it is), then the Clinton policy goes too far—in the wrong direction.

Describing the law as "Don't Ask, Don't Tell" effectively slanders the statute. The result is widespread confusion and inconsistent enforcement. Whether intended or not, the unnecessary confusion gives an advantage to activists who want to repeal both the policy and law, in order to achieve the goal of open homosexuality in the military.

When President George W. Bush took his oath of office in 2001, he assumed the obligation to enforce all laws, including the 1993 law regarding homosexual conduct. President Bush is not obligated to retain the enforcement regulations of his predecessor. Because the "Don't Ask, Don't Tell" regulations are inconsistent with the law, President Bush should have directed the Secretary of Defense, early in his administration, to eliminate and replace them with enforcement regulations that include the language and truly reflect the intent of the statute.

The Department of Justice has successfully defended the constitutionality of the law in several cases, but the Bush Administration has done little to improve understanding and enforcement of the law. Unnecessary confusion has continued since December 1994, even though the "Military Personnel Eligibility Act of 1993" mandates "Entry Standards and Documents" and "Required Briefings" that accurately describe the language and meaning of the statute.[464]

462. *Id.* at 937 (Luttig, J., concurring).

463. *Id.* at 939.

464. *See* 10 U.S.C. § 654 (c)-(d) (2000) (reprinted *infra* Appendix A).

That mandate could be fulfilled by simply providing to potential enlistees and military personnel the actual text of the law and its legislative history, as set forth concisely in the House and Senate Reports issued in support of the 1993 legislation. This would help to clear up widespread confusion about potential enlistees' eligibility to serve, and be a significant improvement over the convoluted instructional materials prepared by the Department of Defense to explain Bill Clinton's inexplicable "Don't Ask, Don't Tell" Policy. Activist groups and the Department of Defense should stop misleading young people about their eligibility to serve in the military. Practicing homosexuals are among many groups of people who may serve their country in many ways but who remain ineligible to serve in uniform.[465]

3. *Campaign to Repeal the Law*

a. *Legal Efforts Post*-Lawrence v. Texas

On June 26, 2003, in the controversial *Lawrence v. Texas* decision,[466] the Supreme Court overturned *Bowers v. Hardwick*[467] and invalidated a Texas law regarding private, consensual sodomy.[468] The decision excited homosexual activist groups because several members of the Court quoted foreign court rulings that had been cited in an *amicus* brief filed by the United Nations' High Commissioner for Human Rights, Mary Robinson.[469]

The Robinson *amicus* brief cited one such ruling, handed down by the European Court of Human Rights in Strasbourg, France, which upheld gay rights in Ireland. In 1996, the same European Court quoted by Justice Kennedy in the *Lawrence* decision ordered Britain to repeal all restrictions on homosexuals in the military.[470] In a January 2003 treatise posted on the website of Human Rights Watch,[471] the $14 million international activist group signaled its intent to use both European Court decisions and international law as battering rams to bring down all restrictions on open homosexual service in the military.[472]

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465. Henry Levins, *Military Bans Go Far Beyond Gays*, ST. LOUIS POST-DISPATCH, Feb. 8, 1993.

466. 539 U.S. 558 (2003).

467. 478 U.S. 186 (1986).

468. *Lawrence*, 539 U.S. at 578 ("*Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers v. Hardwick* should be and now is overruled.").

469. *See id.* at 573; Brief of Mary Robinson, Amnesty International U.S.A., Human Rights Watch, Interights, the Lawyers Committee for Human Rights, and Minnesota Advocates for Human Rights as Amici Curiae Supporting Petitioners at 10, Lawrence v. Texas, 539 U.S. 558 (2004) (No. 02-102), 2003 WL 164151.

470. *See* Lustig-Prean and Beckett v. United Kingdom, 29 Euro. Ct. H.R. 548, 587 (1999) (finding that plaintiffs were wrongly discharged "on the grounds of their homosexuality"); Smith & Grady v. United Kingdom, 29 Eur. H.R. Rep. 493, 523 (1999) (finding that the applicants were denied "respect for their private lives" when dismissed from military service on the grounds of their homosexuality).

471. *Human Rights Watch: Defending Human Rights Worldwide*, http://www.hrw.org. *See also* Lawrence v. Texas: *Constitutional Right to Privacy of Gays and Lesbians in the United States*, July 2, 2003, *available at* http://www.hrw.org/press/2003/07/hrw-amicusbrief.htm.

472. *See* Human Rights Watch, Human Rights News, U.S. Military's "Don't Ask, Don't Tell" Policy Panders to Prejudice (Jan. 23, 2003) [hereinafter Human Rights Watch News Release], *available at* http://www.hrw.org/press/2003/01/us012303.htm; HUMAN RIGHTS WATCH, UNIFORM DISCRIMINATION: THE "DON'T ASK, DON'T TELL" POLICY OF THE U.S. MILITARY 38-45 (Jan. 2003)

The Bush Administration vigorously and successfully defended the law, resulting in three legal victories in 2006. *Cook v. Rumsfeld*, filed by the Servicemembers Legal Defense Network on behalf of twelve former servicemembers, was dismissed by U.S. District Judge George A. O'Toole, Jr., on April 24, 2006.[473] Also, in April 2006, U.S. District Judge George Schiavelli dismissed a lawsuit brought by the Log Cabin Republicans on behalf of anonymous past and present servicemembers, due to a lack of names in the complaint.[474] And on July 26, 2006, U.S. District Judge Ronald B. Leighton dismissed a challenge filed in Washington by an Air Force Reserve nurse and lesbian, Maj. Margaret Witt.[475]

All courts are unpredictable, but the 1993 homosexual conduct law should continue to withstand constitutional challenge for four basic reasons: (1) the federal courts have historically ruled with "deference to the military" in such matters; (2) unlike the circumstances of *Lawrence*, there is no such thing as "privacy" in the military; (3) the validity of the statute regarding homosexual conduct does not hinge on the overturned *Bowers* precedent; and (4) the 1993 exclusion law and the Uniform Code of Military Justice (UCMJ) ban on sodomy applies to men and women in precisely the same way, so "equal protection" is not a valid issue.

Opening the military to professed homosexuals remains a key goal of a determined activist movement, which has worked relentlessly to repeal the homosexual conduct law since 1993. For purposes of clarity in future cases, it would help to administratively repeal the "Don't Ask, Don't Tell" regulations, while faithfully enforcing the 1993 homosexual conduct law.[476]

[hereinafter HUMAN RIGHTS WATCH: UNIFORM DISCRIMINATION], *available at* http://www.hrw.org/reports/2003/usa0103/USA0103.pdf.

473. *See* 429 F. Supp. 2d 385 (D. Mass. 2006) (granting government's motion to dismiss), *reh'g denied*, 2006 WL 2559766, No. 04-12546-GAO, slip op. at *1 (D. Mass. Sept. 5, 2006), *appeal argued sub nom.*, Cook v. Gates, No. 06-2313 (1st Cir. argued Mar. 7, 2007). *See also* Denise LaVoie, *Judge Tosses "Don't Ask, Don't Tell" Suit*, ASSOCIATED PRESS, Apr. 12, 2006, *available at* http://abcnews.go.com/US/print?id=1885164; Shelly Murphy, *"Don't Ask, Don't Tell" Suit Dismissed*, BOSTON GLOBE, Apr. 25, 2006, at B1; Associated Press, *Gay Veterans Challenge "Don't Ask,"* AIR FORCE TIMES, Nov. 14, 2006, *available at* http://www.airforcetimes.com/print.php?f=1-292925-2356305.php.

474. Log Cabin Republicans v. United States, No. 04-08425 (C.D. Cal. Mar. 2006) (dismissing complaint for lack of standing), *refiled sub nom.* Nicholson v. United States, No. 04-08425 (C.D. Cal. May 2, 2006). *See also* Bob Egelko, *Suit Challenging "Don't Ask" Dismissed for Lack of Names*, S.F. CHRON., Apr. 5, 2006, at B2.

475. Witt v. U.S. Air Force, 444 F. Supp. 2d 1138 (W.D. Wash. 2006), *appeal docketed*, No. 06-35644 (9th Cir.). *See also* Gene Johnson, Associated Press, *ACLU Plans to Appeal Ruling on 19-Year AF Veteran*, SEATTLE POST-INTELLIGENCER (online ed.), July 27, 2006, http://seattlepi.nwsource.com/local/278980_suit27.html.

476. In *Able v. United States*, U.S. District Judge Eugene H. Nickerson struck down both the law and the "Don't Ask, Don't Tell" policy because Justice Department lawyers failed to justify numerous anomalies in the policy/enforcement regulations. *See* Able v. United States, 968 F. Supp. 850, 858–61 (E.D.N.Y. 1997), *rev'd*, 155 F.3d 628 (2d Cir. 1998). For example, the lawyers could not explain why the military could say that a certain characteristic (homosexuality) is unacceptable, but persons may join or stay in the military as long as they do not *say* they are homosexual. *See* 968 F. Supp at 858–61. The Second Circuit Court of Appeals later upheld the law, *see* 155 F.3d at 628, but such an outcome is by no means assured in the future. To reduce that risk, the Clinton Administration's "Don't Ask, Don't Tell" regulations, announced on December 22, 1993, should be administratively dropped.

b. *Legislative Strategy*

Rep. Marty Meehan (D-Mass.), whose amendment to strike the law regarding homosexual conduct was defeated overwhelmingly in 1993,[477] introduced legislation to repeal the statute in March 2005[478] and again in March 2007.[479] When first introduced, the bill gained a total of 122 co-sponsors, but did not make it past the House Armed Services Committee.[480] Meehan is now Chairman of the House Armed Services Oversight and Investigations Subcommittee. The number of co-sponsors has increased on Meehan's bill, but many of the members signing on seem primarily critical of "Don't Ask, Don't Tell," the Clinton administration's policy and regulations that are inconsistent with the 1993 law.[481]

There is no need for legislation to repeal the problematic enforcement regulations known by the catch-phrase "Don't Ask, Don't Tell." President Bush or the Secretary of Defense can eliminate that Clinton-era policy with a stroke of the pen. The statute is another matter, requiring an act of Congress to change the "Military Personnel Eligibility Act" that a Democratic Congress passed in 1993 with a veto-proof majority. Nothing has changed that would justify the turmoil that would occur in and outside of Congress if Meehan's legislation were seriously considered or passed.

c. *Public Relations Campaign*

The only thing that has changed since 1993 is an illusion of momentum for repeal of the law created by a skilled and persistent public relations campaign that began in 2003, the tenth anniversary of passage of the law. The campaign was energized by the Supreme Court's decision in the *Lawrence v. Texas*,[482] which the Servicemembers Legal Defense Network predicted would help them to win the *Cook* case.[483]

Every four to six weeks, homosexual activist groups have generated some sort of "news" event, which usually gets national coverage when it appears (almost always) in the Associated Press and major papers such as the *New York Times* and the *Washington Post*. These stories, which rarely describe the law accurately, usually focus on "celebrity" (military) endorsers or human-interest stories, such as homosexuals who used to be in the military or gay students trying to enlist in the military.[484] Other student groups have protested the

477. H. amend. 316 to H.R. 2401, 103d Cong. (1993) (voting record available at http://clerk.house.gov/evs/1993/roll460.xml).

478. *See* H.R. 1059, 109th Cong., 1st Sess. (Mar. 2, 2005). *See also* Deborah Funk, *Lawmaker Pitches Bill to Let Gays Openly Serve*, AIR FORCE TIMES, Mar. 21, 2005.

479. H.R. 1246, 110th Cong., 1st Sess. (Feb. 28, 2007). *See also* Ted McKenna, *"Don't Ask Don't Tell" Repeal Faces Long Odds*, PR WEEK USA, Mar. 2, 2007, at 2.

480. H.R. 1059, 109th Cong., 1st Sess. (Mar. 2, 2005) (co-sponsors and status available at http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.01059:).

481. *See* McKenna, *supra* note 479.

482. 539 U.S. 558 (2003).

483. *See* Human Rights Watch News Release, *supra* note 471.

484. *See, e.g.*, Joseph A. Slobodzian, *Walk-In Test Confirms Military's Gay Ban*, PHILA. INQUIRER, Aug. 2, 2006, *available at* http://calbears.findarticles.com/p/articles/mi_kmtpi/is_200608/ai_n16603720. The "Right to Serve" campaign of Soulforce, located in Lynchburg, Virginia, has

homosexual conduct law by trying to keep recruiters or ROTC units off of high school and college campuses—sometimes with anti-military demonstrations.[485]

Activist groups also have visited the military service academies[486] and publicized an award given by the U.S. Military Academy's Department of English to a cadet writing a paper advocating the inclusion of gays in the military.[487] In 2004 and 2005, a San Francisco-based group of Naval Academy graduates calling itself "USNA Out" (later changed to the "Castro Chapter") unsuccessfully demanded official recognition for a group of homosexual alumni.[488]

The public relations campaign has been advanced most often by periodic releases of various "studies," reports, or polls produced, sponsored, or influenced by the University of California, Berkeley-based Center for the Study of Sexual Minorities in the Military (CSSMM), now called the Michael D. Palmer Center, and like-minded groups.[489] A closer look at materials produced by the activist groups usually reveals questionable methodology and unsupported conclusions.

d. *Surveys and Polls*

In January 2007, retired Army Gen. John M. Shalikashvili, Chairman of the Joint Chiefs of Staff from 1993 to 1997, became a "celebrity endorser" for the

organized visits to recruiting stations by homosexual men or women who say they want to enlist. *See* Soulforce, Right to Serve, http://www.soulforce.org/righttoserve (last visited Apr. 14, 2007). Camera crews and reporters are invited to witness the contrived events, which consume the time of recruiters and usually portray them in a negative light.

485. *See* Joe Chenelly, *Frontline, Recruiters Stay Away: Protest Prompts Office Closing*, ARMY TIMES, May 30, 2005, at 3; Campus Antiwar Network, Open Letter from to SFSU President Corrigan (Apr. 19, 2006), http://www.traprockpeace.org/campus_antiwar_network/index.php/2006/04/ ("On Friday, April 14, [2006,] ten SFSU students protested military recruitment at the university's career fair. . . . You should be proud of students who will not condone hate against their peers by a homophobic and sexist military." (alteration added)).

486. *See Gay Riders to Challenge "Don't Ask, Don't Tell" at West Point*, ASSOCIATED PRESS, Apr. 26, 2006; Kristen Wyatt, *Protesters Object to Naval Academy Policy on Gays*, ASSOCIATED PRESS, Oct. 21, 2005.

487. Center for the Study of Sexual Minorities in the Military, West Pointer Wins First-Ever Military Award for Challenging Gay Ban (Aug. 9, 2006), http://www.gaymilitary.ucsb.edu/PressCenter/press_rel_2006_0808.htm; *Thesis Challenges Gay Policy*, ASSOCIATED PRESS, Aug. 9, 2006; Roger Brigham, *West Point Grad Takes Aim at DADT*, BAY AREA REPORTER (S.F.) (online ed.), Aug. 24, 2006, http://ebar.com/news/article.php?sec=news&article=1108. The Center for Military Readiness raised questions about the suitability of this award. Then-Cadet Raggio had every right to express his opinions, but the paper was thinly sourced and did not even cite or accurately describe the text of the 1993 law. *See* CMR Issues Analysis (Oct. 2006), *available at* http://cmrlink.org/cmrnotes/analysisraggiothesis.pdf.

488. *See* Gretchen Parker, *Gay Academy Alums to Apply Again for Official Recognition*, ASSOCIATED PRESS, Nov. 12, 2004; Molly Knight, *OK For Gay Group Sought: Naval Academy Alumni Resume Efforts for Chapter*, BALT. SUN, Nov. 12, 2004, at 1B; Jamie Stiehm, *Gay Academy Alumni Seek Anti-Bias Policy: Graduate Association Board Insists No Such Action Is Needed*, BALT. SUN, Nov. 29, 2005, at 5B; *see also* Gretchen Parker, *Naval Alumni Association Rejects Gay Group*, ASSOCIATED PRESS, Dec. 2, 2004. Recognition was not granted because affiliate groups are organized geographically, not by affiliations of gender, race, service community, or other factors. An affiliated chapter for alumni who live in recreational vehicles is the exception that proves the rule.

489. *See infra* notes 510–512 and accompanying text.

gays-in-the-military cause by writing an op-ed for publication in *The New York Times*, a newspaper that has been in the forefront of efforts to repeal the 1993 homosexual conduct law.[490] The General's article drew attention to a December 2006 poll of 545 service members conducted by Zogby International, indicating that seventy-three percent of the respondents said they were "comfortable interacting with gay people."[491]

The only surprising thing about this innocuous question was that the favorable percentage was not closer to one hundred percent. The Zogby poll asked another, more important question that was not even mentioned in the news release announcing the poll's results: "Do you agree or disagree with allowing gays and lesbians to serve openly in the military?" On that question, twenty-six percent of those surveyed "Agreed," but thirty-seven percent "Disagreed." The Zogby poll also found that thirty-two percent of respondents were "Neutral" and only five percent were "Not sure."[492]

If this poll were considered representative of military personnel, the twenty-six percent of respondents who wanted the law repealed could not compete with the combined sixty-nine percent of people who were opposed to or neutral on repeal. This minority opinion was hardly a mandate for radical change.

Polling organizations recognize that respondents who believe a policy is already in place are more likely to favor that policy, while those who know otherwise are less likely.[493] Incorrect assertions that "homosexuals can serve in the military provided that they do not say they are gay" are probably skewing polls of civilians, who mistakenly believe that homosexuals are already eligible to serve, due to the "Don't Ask, Don't Tell" policy.

People in the military, however, are more likely to understand what the law is.[494] In the most recent poll announced by the *Military Times* newspapers, in

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490. John M. Shalikashvili, Op-Ed, *Second Thoughts on Gays in the Military*, N.Y. TIMES, Jan. 2, 2007, at 17.

491. ZOGBY INTERNATIONAL, OPINIONS OF MILITARY PERSONNEL ON GAYS IN THE MILITARY, DEC. 2006, SUBMITTED TO AARON BELKIN, DIRECTOR, MICHAEL D. PALM CENTER [hereinafter ZOGBY POLL], *available at* http://www.zogby.com/news/ReadNews.dbm?ID=1222.

492. *See id.* at 14–15. Responses to this question revealed additional findings that received little notice:

> Within military subgroups, the highest agreement rates [supporting gays in the military] were found among Veterans (thirty-five percent) and those having served less than four years (thirty-seven percent). The lowest acceptance rates were among Active Duty Personnel (twenty-three percent), officers (twenty-three percent), those serving between ten and fourteen years (twenty-two percent) and those serving more than twenty (nineteen percent). Active Duty Personnel were also among those with the highest disapproval rates (thirty-nine percent), as were those serving between fifteen and nineteen years (forty percent), those serving more than twenty (forty-nine percent), and officers (forty-seven percent).

Id. at 6 (alteration added).

493. PRESIDENTIAL COMMISSION REPORT, *supra* note 5, at C-135 (Commissioner Generated Finding 14) (citing ROPER ORGANIZATION, INC., ATTITUDES REGARDING THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES: THE PUBLIC PERSPECTIVE (Sept. 1992)).

494. *See* Robert Hodierne, *We Asked What You Think. You Told Us*, NAVY TIMES, Jan. 3, 2005, at 14–15 (citing the section on Race, Gender, Gay, Question 6), *available at* http://www.militarycity.com/polls/2004_chart3.php. Annual *Military Times* surveys are done by mailing questionnaires randomly

response to the question "Do you think openly homosexual people should be allowed to serve in the military?" thirty percent answered "Yes," but fifty-nine percent answered "No," and ten percent answered "No Opinion."[495] The same percentage—fifty-nine percent in opposition—was reported by the *Military Times* survey in the previous year.[496]

A closer look at the Zogby poll reveals more interesting details that should have been recognized by news media people reporting on it.[497] First, the Zogby poll news release clearly states that it was designed in conjunction with Aaron Belkin, Director of the Michael D. Palm Center, formerly the Center for Sexual Minorities in the Military.[498] This is an activist group promoting homosexuals in the military.[499] Second, the poll claims to be of 545 people "who have served in Iraq and Afghanistan (or in combat support roles directly supporting those operations), from a purchased list of U.S. Military Personnel."[500] However, the U.S. military does not sell or provide access to personnel lists. Due to security rules that were tightened in the aftermath of 9/11, personal details and even general information about the location of individual personnel is highly restricted.[501] Third, the apparent absence of random access undermines the credibility of the poll, which inflates the claim that, "The panel used for this survey is composed of over 1 million members and correlates closely with the U.S. population on all key profiles."[502] Fourth, activists frequently claim that the

to subscribers to the affiliated newspapers *Air Force Times*, *Army Times*, *Navy Times*, and *Marine Corps Times*. The polls tabulate only responses from active-duty personnel. Results are published in all four affiliated newspapers.

495. *See* Robert Hodierne, *Down on the War*, ARMY TIMES, Dec. 29, 2006, at 12-14. The *Military Times* survey was done by mailing questionnaires randomly to subscribers of affiliated newspapers, but the poll only tabulated responses (954) from active-duty personnel. Results were published in all four affiliated newspapers.

496. *See id.* (presenting bar graphs of polling results).

497. *See* ZOGBY POLL, *supra* note 491.

498. *See id.* The cover page and news release were titled "Zogby Poll: 'Don't Ask, Don't Tell' Not Working."

499. *See* The Michael D. Palm Center, About Us, http://www.palmcenter.org/about (last visited May 10, 2007).

500. *See* ZOGBY POLL, *supra* note 491, at 2.

501. Memorandum from Deputy Secretary of Defense Paul Wolfowitz to Secretaries of the Military Departments et al. (Oct. 18, 2001) (addressing "Operations Security Throughout the Department of Defense") (on file with author); Memorandum from Office of the Secretary of Defense, Administration and Management Director D.O. Cooke to DoD FOIA Offices (Nov. 9, 2001) (addressing "Withholding of Personally Identifying Information Under the Freedom of Information Act (FOIA)") (on file with author). Zogby International did not respond to a telephone request from this author for more information on its selection of survey participants.

502. *See* ZOGBY POLL, *supra* note 491, at 2. Zogby's polling sample is somewhat questionable, but "internal" data in the poll reveals interesting insights on the question of whether opinions among younger people might make it more acceptable to accommodate gays in the military. The Zogby poll seems to indicate that opinions on this issue have more to do with military occupation than they do with age. Active duty people in the younger and older ranks are more favorable to the idea, but the ones in the middle age and experience group, who are more likely to be involved in close combat situations, are more strongly opposed. It is possible that an objective poll of identified military personnel similar to the official survey done by the Roper Organization for the 1992 Presidential Commission on the Assignment of Women in the Armed Forces would show similar results. *See* ZOGBY POLL, *supra* note 491, at 14-15; *see also supra* note 492.

greater comfort of younger people with homosexuals is evidence enough to justify changing the law; however, if that were the case, all referenda banning same-sex marriage would have been soundly defeated. On the contrary, the voters of several states have approved twenty-six of twenty-seven such referenda, often with comfortable majorities.[503]

e. *The National Security Argument: Too Many Discharges of Homosexuals*

Supporters of legislation to repeal the 1993 homosexual conduct law have tried to reframe their argument in terms of military necessity, rather than equal opportunity. The "national security" argument for gays in the military usually centers on the number of discharges of homosexual servicemen and women that have occurred and suggests that recruiting problems and shortages could be solved if only the military were open to professed homosexuals.[504]

A report done by the Government Accountability Office (GAO) early in 2005 provided statistical data on the number of "unprogrammed separations."[505] The GAO report essentially estimated the "replacement costs" of discharging and replacing homosexual service members from FY 1994 through FY 2003 to be approximately $190.5 million.[506]

Dr. David Chu, Under Secretary of Defense for Personnel and Readiness, responded to the GAO report with a two-page memorandum.[507] Figures cited by Dr. Chu indicated that discharges due to the homosexual exclusion policy between 1994 and 2003 amounted to only 0.37% of discharges for all reasons (about five percent of unplanned separations) during that period.[508] There were, for example, 26,446 discharges for pregnancy; 36,513 for violations of weight standards; 38,178 for "serious offenses;" 20,527 for parenthood, 59,098 for "drug offenses/use"; and 9501 for homosexuality.[509]

The Berkeley based Center for the Study of Sexual Minorities in the Military (CSSMM) was not satisfied with the $190 million dollar estimate.

503. *See* Human Rights Campaign, State Prohibitions on Marriage for Same Sex Couples 1 (Nov. 2006), http://www.hrc.org/TemplateRedirect.cfm?Template=/ContentManagement/ContentDisplay.cfm&ContentID=28225 (listing twenty-six states that have a voter-approved constitutional amendment prohibiting same-sex marriage and nineteen states that have a law prohibiting same-sex marriage). To date, Arizona is the only state in which voters have repudiated an attempt to amend a state constitution to ban same-sex civil marriage. *See* CNN.com, America Votes 2006, Key Ballot Measures, http://www.cnn.com/ ELECTION/2006/pages/results/ballot.measures/ (reporting on the failure of Arizona Proposition 107 on November 7, 2006).

504. John Henren, *Ban on Gays in Military Assailed*, L.A. TIMES, Feb. 25, 2005, at A24; Josh White, *"Don't Ask" Costs More Than Expected*, WASH. POST, Feb. 14, 2006, at A04; John Files, *Military's Discharges for Being Gay Rose in '05*, N.Y. TIMES, Aug. 15, 2006, at A17.

505. *See generally* GOV'T ACCOUNTABILITY OFFICE, MILITARY PERSONNEL: FINANCIAL COSTS AND LOSS OF CRITICAL SKILLS DUE TO DOD'S HOMOSEXUAL CONDUCT POLICY CANNOT BE COMPLETELY ESTIMATED (Feb. 2005) [hereinafter GAO, FINANCIAL COSTS CANNOT BE ESTIMATED], *available at* http://www.gao.gov/new.items/d05299.pdf.

506. *Id.* at 3.

507. Memorandum from Dr. David Chu, Under Secretary of Defense for Personnel & Readiness, to Derek Stewart, Director of Defense Capabilities and Management at the GAO (Feb. 7, 2005), *reprinted in* GAO, FINANCIAL COSTS CANNOT BE ESTIMATED, *supra* note 505, at 42-43.

508. Chu, *supra* note 507.

509. GAO, FINANCIAL COSTS CANNOT BE ESTIMATED, *supra* note 505, at 42.

CSSMM Executive Director Aaron Belkin organized a "Blue Ribbon Commission," which he chairs.[510] This non-governmental "Blue Ribbon Commission" claimed in a February 2006 report that the GAO estimate of "replacement costs" was too low.[511] The CSSMM argued that a more accurate estimate of the costs of discharges for homosexuality would be $363 million approximately $173.3 million, or ninety-one percent higher, than the GAO estimate.[512]

The Comptroller General responded by addressing a letter to Sen. Edward Kennedy (D-Mass.) on July 13, 2006, which "stood by" the original GAO estimate.[513] The entire debate about numbers generated publicity, but it missed the point. The cost of personnel losses related to the homosexual conduct law, whatever it is, could be reduced to near-zero if all potential recruits were fully and accurately notified that the 1993 law means that homosexuals are not eligible to serve. It is bad policy to enforce a regulatory policy such as "Don't Ask, Don't Tell," which misinforms potential recruits about the conditions of eligibility and encourages people to be less than honest about their homosexuality—only to be subject to discharge later.

The GAO document provided useful information, but you do not get the right answers if you do not ask the right questions. The issue is not "replacement cost." It is the cost of recruiting and training individuals who are not eligible to serve in the military because they are homosexual.

f. *Contradiction: Too Few Discharges Due to the War*

Many of the same people who claim that the military is losing too many homosexual personnel simultaneously make a contradictory claim: Dismissals have declined because gays are needed to fight in the war.[514] A Congressional Research Service Report to Congress discussed this argument:

> Some have claimed that discharges decline during time of war, suggesting that the military ignores homosexuality when soldiers are most needed, only to "kick them out" once the crisis has passed. It is notable that during wartime, the military services can, and have, instituted actions "to suspend certain laws relating to . . . separation" that can limit administrative discharges. These actions, know [sic] as "stop-loss," allow the services to minimize the disruptive effects of personnel turnover during a crisis. However, administrative discharges for homosexual conduct are *not* affected by stop-loss. It can be

510. FRANK J. BARRETT ET AL., THE PALM CENTER, FINANCIAL ANALYSIS OF "DON'T ASK, DON'T TELL": HOW MUCH DOES THE GAY BAN COST?, at 1, 3 (Feb. 2006), *available at* http://www.palmcenter.org/files/active/0/2006-FebBlueRibbonFinalRpt.pdf. In addition to Prof. Belkin, this non-governmentally authorized, private group includes Lawrence Korb, Adm. John D. Hutson, USN (Ret.), and other activists supporting repeal of the law regarding homosexual conduct in the military. The report also acknowledges receiving help from the offices of Rep. Marty Meehan (D-Mass.) and Sen. Frank Lautenberg (D-N.J.), sponsors of legislation to repeal the 1993 law.

511. *Id.* at 2.

512. *Id.* at 3.

513. Letter from David M. Walker, Comptroller General of the United States, to Sen. Edward Kennedy (July 13, 2006), *available at* http://www.gao.gov/htext/d06909r.html.

514. Associated Press, *"Don't Ask" Dismissals Drop in Wartime*, WASH. POST, Mar. 24, 2004, at A22; Evelyn Nieves & Ann Scott Tyson, *Fewer Gays Being Discharged Since 9/11*, WASH. POST, Feb. 12, 2005, at A01.

> speculated that a claim of homosexuality during a crisis may be viewed skeptically and under the policy would require an investigation. . . . [but if] such a claim were found to be in violation of the law on homosexual conduct, the services could not use "stop-loss" to delay an administrative discharge.[515]

Two news releases from the Center for the Study of Sexual Minorities in the Military in September 2005 claimed to have evidence that homosexual service members were being retained to serve the needs of war, despite the homosexual conduct law.[516] But a spokesman at the Forces Command Army base at Fort McPherson, Georgia, where this evidence allegedly was found, has countered that argument with a clarification. According to the spokesman, if a soldier declares himself to be homosexual just prior to a deployment, an investigation ensues, lasting eight to ten weeks, which may not be completed prior to deployment. If the investigation does find that a person is homosexual and therefore not eligible to serve, an honorable discharge is ordered, even if the person is deployed.[517]

Anecdotes about homosexuals being allowed to remain in the military demonstrate the need for accurate information on what the "Military Personnel Eligibility Act" actually says. Commanders who do not understand or enforce the law should be given accurate information and support when taking steps to comply with it. Officials who choose to disregard this law should be held accountable in the same way that they would be for other failures to comply with duly enacted law.

g. *Linguists and the Defense Language Institute*

The "Don't Ask, Don't Tell" policy/regulations have caused widespread confusion and costly errors, such as the admittance of twelve homosexual language trainees to the Army's Defense Language Institute (DLI) in Monterey,

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515. CONGRESSIONAL RESEARCH SERVICE, HOMOSEXUALS AND U.S. MILITARY POLICY: CURRENT ISSUES 9-10 (May 27, 2005) (citations omitted; alteration added), *available at* http://www.fas.org/sgp/crs/natsec/RL30113.pdf.

516. The Michael D. Palm Center, Researchers Locate Army Document Ordering Commanders Not to Fire Gays (Sept. 13, 2005), *available at* http://www.palmcenter.org/press/dadt/releases/researchers_locate_army_document_ordering_commanders_not_to_fire_gays; The Michael D. Palm Center, Pentagon Acknowledges Sending Openly Gay Service Members to War (Sept. 23, 2005), *available at* http://www.palmcenter.org/press/dadt/releases/pentagon_acknowledges_sending_openly_gay_service_members_to_war_acknowledgement_follows_discovery_of_regulat.

517. E-mail correspondence from Major Nate Flegler, Chief, Media Division, FORSCOM Public Affairs, to author (Nov. 15, 2005) (on file with author).

> When a Guard or Reserve unit is mobilized to active duty, Forces Command Regulation 500-3-3 . . . identifies 35 different criteria that may prevent a Soldier from deploying with his or her unit. Examples include being overweight, facing criminal prosecution, or medical problems. . . . Should a Soldier declare him or herself homosexual, a process defined not by FORMDEPS but by other regulations is begun to determine the veracity of the assertion and whether the assertion constitutes grounds to discharge the Soldier from military service. This process can last eight to ten weeks. . . . While our spokesman may have been accurately quoted as saying, "they still have to go to war and the homosexual issue is postponed until they return to the U.S. and the unit is demobilized," we wish to clarify that the Soldier's case is not postponed until the unit returns. The review process continues while the unit is deployed and there is no delay in resolving the matter or discharging the Soldier if that is the resolution.

Id.

California. Two of the students were found in bed together, and the others voluntarily admitted their homosexuality.[518]

All were honorably discharged.[519] Gay activist groups decried the dismissals as a loss for national security. The true loss occurred, however, when twelve students who were not eligible to serve occupied the spaces of other language trainees who could be participating in the current war. This wasted time and money was a direct result of President Clinton's calculated action to accommodate homosexuals in the military, despite prohibitions in the law.

Military specialty schools such as the DLI should not be misusing scarce resources to train linguists who are not eligible to serve in the military. The problem here is not the 1993 homosexual conduct law, but "Don't Ask, Don't Tell," a set of inconsistent enforcement regulations that ought to be administratively eliminated.[520]

h. *Alleged Shortages in Critical Specialties*

In July 1994, the Center for the Study of Sexual Minorities in the Military (CSSMM) claimed the military was discharging valuable personnel in important military specialties. These included, for example, "49 nuclear, biological, and chemical warfare specialists; 212 medical-care workers; 90 nuclear power engineers; 52 missile guidance and control operators; 10 rocket, missile and other artillery specialists; 340 infantrymen; 88 linguists; and 163 law-enforcement specialists."[521] The story was based on data that the CSSMM obtained from the Defense Manpower Data Center (DMDC) by means of a Freedom of Information Request.[522]

A closer look at the same data, obtained from the DMDC, reveals several disparities with those quoted in the "study" released by the CSSMM. For example, according to the official who provided the same DMDC data to this author, the category of persons in the "nuclear power" field does not necessarily mean that all the people in question were "nuclear power engineers."[523] As for

518. *See* Nathaniel Frank, *"Don't Ask, Don't Tell" v. the War on Terrorism*, NEW REPUBLIC, Nov. 18, 2002, at 18; Op-Ed, Alistair Gamble, *A Military at War Needs Its Gay Soldiers*, N.Y. TIMES, Nov. 29, 2002.

519. *See* Frank, *supra* note 518.

520. On December 11, 2002, the Center for Military Readiness filed a formal Request for Assistance with the Army Inspector General, asking for an investigation of this waste of educational resources by authorities at DLI. No response was received. A subsequent Freedom of Information (FOIA) request, which did not ask for individual information, was addressed in a letter to the DoD Inspector General on November 17, 2003. The FOIA request was initially denied and later "answered" with largely blank pages marked with FOIA exemption code "(b)(7)(c)." That code is used when government officials refuse to confirm or deny that disciplinary proceedings have taken place.

521. Vince Crawley, *Hundreds of Discharged Gays Served in Critical Specialties*, AIR FORCE TIMES, June 12, 2004, *available at* http://docs.newsbank.com/openurl?ctx_ver=z39.88-2004&rft_id=info:sid/iw.newsbank.com:AFNB:AFTB&rft_val_format=info:ofi/fmt:kev:mtx:ctx&rft_dat=103F530765572C3E&svc_dat=InfoWeb:aggregated4&req_dat=0F56A02D68496F45 *See also* Kim Curtis, *Report: Number of Gay Linguists Discharged Higher than Thought*, ASSOCIATED PRESS, Jan. 13, 2005.

522. Defense Manpower Data Center, tables titled "Separations Due to Homosexual Conduct, FY 1998-2003," and "Duty Base Facility Identifier, (FY 1998-2003)" (on file with author).

523. *See id.*

the eighty-eight discharged linguists, the list of "Primary DoD Occupation Code" titles includes, at number 241, "Language interrogation," an occupation from which a total of fifteen persons were separated due to homosexuality. But that is seventy-three persons short of the number of discharged "linguists" cited. How to account for the discrepancy? A Duty Base Facility Identifier Table, also provided by the DMDC, indicates that a total of seventy-three persons were separated from the Presidio of Monterey, where the Defense Language Institute is located.[524] It is not clear how the CSSMM came up with the the claim that "eighty-eight linguists" were discharged due to the "Don't Ask, Don't Tell" policy. Fifteen plus seventy-three, coincidentally, equals eighty-eight. There is no "linguist" category listed among the DMDC categories of occupations.[525]

Another round of news reports and hand-wringing commentaries centered on the loss of "fifty-four Arabic linguists" trained for military service.[526] This number is in a column of personnel losses noted by the General Accountability Office (GAO) in 2005.[527] The referenced number is broken down, however, by type and level of proficiency of the language trainees, which varied considerably. Again, the number of language trainees lost after any time in training could be reduced to near zero if the "Military Personnel Eligibility Act" were accurately explained and enforced by the Department of Defense.

i. *The Urban Institute*

In September 2004, the Urban Institute, a nonpartisan social policy and research organization, issued a report estimating that approximately 65,000 gay personnel are now serving in the U.S. military, and another one million gays and lesbians are veterans.[528] Activists frequently cite this report when advocating repeal of the 1993 homosexual conduct law[529]—sometimes touting the data as if it is brand new and "solid."[530]

The document, however, reveals questionable methodology, based on presumptions about the percentage of homosexuals in the general population

524. *See id.*

525. *Id.*

526. *See, e.g.*, Mackubin Thomas Owens, *Ask, Tell, Whatever?: Gays-in-the-Military Comes Up Again*, NAT'L REV., Apr. 16, 2007; Debra Saunders, *Don't Ask,Don't Tell for the Devout*, WASH. TIMES, Mar. 17, 2007, at A13.

527. GAO, FINANCIAL COSTS CANNOT BE ESTIMATED, *supra* note 505, at 21.

528. GARY J. GATES, THE URBAN INSTITUTE, GAY MEN AND LESBIANS IN THE U.S. MILITARY: ESTIMATES FROM CENSUS 2000, at iii (2004), *available at* http://www.urban.org/UploadedPDF/411069_GayLesbianMilitary.pdf.

529. *See* Joanne Kimberlin, *Study Finds 65,000 Gay Men, Women in the Military*, VIRGINIAN-PILOT, Oct. 21, 2004, at A10; Denise M. Bonilla, *Don't Ask, Don't Tell: A Policy Under Fire*, NEWSDAY, Aug. 6, 2006, at G05.

530. *See* Deb Price, *UCLA Researcher Mines Data to Make Gays Visible*, DETROIT NEWS, Apr. 2, 2007, at 13A. In this article, self-identified gay columnist Deb Price praises Gary J. Gates, now affiliated with the progressive Williams Institute at the University of California at Los Angeles, for producing "solid numbers" that will help persuade Congress to lift the ban on homosexuals in the military. The public relations strategy at work here may be a reflection of what is known about surveys of public opinion. People are more likely to favor a policy if they think it is already in place. *See supra* note 493.

and about the sexuality of persons interviewed by the census.[531] The speculative claim that three percent of women and four percent of men are homosexual was applied to 2000 census data on the number of persons of the same sex living in the same household—one of whom is a "veteran."[532] Citing mathematical computations, the study speculated that household-mates of the same sex are homosexual.[533] Next came the leaping conclusion that sixty-five thousand gay men and lesbians are serving or used to be in the military. This number is frequently trumpeted by gay activists and like-minded journalists, who overlook or fail to mention the fact that the census does not ask questions about sexual orientation or behavior. All estimates are based on sheer speculation, dressed up with a public relations spin.

The Urban Institute report, which was prepared in consultation with the activist Center for the Study of Sexual Minorities in the Military and the Servicemembers Legal Defense Network, is more like an urban legend than a serious piece of scholarship.

j. *Harassment of Homosexuals*

Contrary to exaggerated claims by activist groups, more than eighty percent of homosexual service members discharged since the law was enacted left the service not because of witch hunts rooting them out but because of voluntary statements admitting homosexuality. According to a 1998 DoD Task Force report, there were only four cases of anti-homosexual harassment reported since 1994.[534] Two of those cases involved anonymous letters that could not be traced.[535]

In 1999, homosexual activists crafted a polemic campaign that focused on the brutal murder of Army Pfc. Barry Winchell, an alleged homosexual, at Fort Campbell, Kentucky, in July of that year.[536] The savage killing of Pfc. Barry Winchell has been cited as evidence that more must be done to end "hate crimes" and harassment of homosexuals.[537]

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531. GAO, FINANCIAL COSTS CANNOT BE ESTIMATED, *supra* note 505, at 1-4. The report, which includes many caveats, concedes that "the census does not ask any questions about sexual orientation, sexual behavior, or sexual attraction (three common ways used to identify gay men and lesbians in surveys)." *Id.* at 1.

532. *Id.* at 3.

533. *Id.* at 1-4.

534. OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS, REPORT TO THE SECRETARY OF DEFENSE, REVIEW OF THE EFFECTIVENESS OF THE APPLICATION AND ENFORCEMENT OF THE DEPARTMENT'S POLICY ON HOMOSEXUAL CONDUCT IN THE MILITARY 6 (Apr. 1998) [hereinafter DoD TASK FORCE REPORT 1998, *available at* http://dont.stanford.edu/casestudy/appendixG_short.pdf; Dep't of Defense News Release, No. 158-98 (Apr. 7, 1998).

535. DoD TASK FORCE REPORT 1998, *supra* note 534.

536. Jane McHugh, *Murder in the Barracks*, ARMY TIMES, Aug. 23, 1999, at 12; Jane McHugh, *Second Soldier Implicated in Possible Hate Crime*, ARMY TIMES, Aug. 2, 1999, at 8.

537. *See* Dep't of Defense News Release No. 432-00, Department of Defense Issues Anti-Harassment Guidelines (July 21, 2000); Tom Ricks, *Pentagon Vows to Enforce "Don't Ask, Don't Tell,"* WASH. POST, July 22, 2000, at 1A (quoting Carol Battiste, head of a Pentagon panel set up to review the seven year-old "Don't Ask, Don't Tell" policy in 2000). Battiste said that military leaders face a "dilemma" when they try to counter discrimination against homosexuals, who cannot identify themselves. *Id.* Ricks added, "One reason the military establishment continues to be uncomfortable

The confessed killer, Pvt. Calvin Glover, assaulted Winchell in the barracks with a baseball bat on July 4, 1999, several hours after Winchell had beaten him in a drunken brawl.[538] Evidence of Glover's hostile attitude toward Winchell, who was involved with a transgender male nightclub entertainer who appeared to be a woman, was a factor in his trial and sentencing to life in prison.[539] An Army Inspector General investigation cleared Fort Campbell commanders, but noted poor morale and a tolerance of underage drinking and anti-gay language by the senior sergeant in the battalion. The report also noted the reluctance of battalion commanders to ask questions about matters involving alleged homosexuality.[540] Military discipline requires constant awareness of what is happening in military units, throughout the chain of command. A policy such as "Don't Ask, Don't Tell" that discourages the asking of legitimate questions interferes with sound leadership. In this tragic case, a failure to ask questions apparently was a factor in the creation of a volatile situation that exploded with violence. Perpetrators of this crime have been rightly punished, but there is no need for additional legislation to stop harassment or murderous assaults—of anyone—in the barracks.

Some recent cases of harassment involving persons of the same sex deserve closer scrutiny and objective analysis of whether the "Don't Ask, Don't Tell" policy created conditions conducive to abuse. For example, the Associated Press reported that a drill sergeant at Fort Eustis, Virginia, faced molestation charges for forcing a trainee to dress as Superman and submit to sexual acts. A Fort Eustis spokeswoman, Karla Gonzalez, confirmed that Army Staff Sgt. Edmundo F. Estrada, thirty-five-years-old, was accused of indecent assault, having an inappropriate relationship with a trainee, and cruelty and maltreatment of subordinates.[541]

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with 'Don't Ask, Don't Tell' is that it is a policy that is purposely ambiguous, while military culture tends to value clarity." *Id.* Actually, a policy that encourages deception is not workable in any institution. This is one of the reasons why members of Congress did not vote for the proposal known as "Don't Ask, Don't Tell." Instead of wringing their hands about "ambiguity" and "dilemmas," Pentagon officials should scrap the "Don't Ask, Don't Tell" regulations and issue informational materials that reflect the clarity of the law.

538. *Id.*

539. *See* David France, *An Inconvenient Woman*, N.Y. TIMES MAG., May 28, 2000, *available at* http://www1.nytimes.com/library/magazine/home/index.html; Brian Dunn, *Private Confessed to "Gay Bash" Slaying, Inmate Says*, ARMY TIMES, Sept. 13, 1999, at 16.

540. Jane McHugh, *1st Sgt. Faulted in report on Gay Beating Death*, ARMY TIMES, July 31, 2000, at 8. This article reported on the Army Inspector General's Investigation of the July 1999 beating death of Army Pfc. Barry Winchell. The report found that the command environment at Fort Campbell, Kentucky, was generally positive, but the unit in which the killing occurred suffered from poor morale and a tolerance for underage drinking—a major factor in the case. According to *The Army Times*, the report also found that commanders were frustrated and confused by the "Don't Ask, Don't Tell" policy. *Id.*

> [Some were] afraid to violate military law by retaining soldiers who admit homosexuality. But they are also afraid that some of these soldiers might be saying they are gay just to get out of the Army. Either way, commanders are reluctant to investigate. They fear that looking into the matter would only hurt unit and soldier morale.

Id. (alteration added).

541. *Fort Eustis Drill Sergeant Faces Charges of Molesting Trainees*, ASSOCIATED PRESS, Mar. 4, 2007. Sgt. Estrada pleaded guilty to the charges at his court-martial on April 23, 2007, to three counts of

Air Force Captain Devery L. Taylor was convicted and sentenced to twenty-eight to fifty years in prison for raping four men, allegedly with date-rape drugs. According to a report in *Air Force Times*, an investigator interrogating Taylor, now a convicted serial rapist, said that he would not ask any questions about the man's sexual practices because such questions are not allowed. This statement demonstrated how misunderstandings about the 1993 homosexual conduct law help to create volatile conditions that undermine good order and discipline.[542] Sexual assault of any kind is wrong and especially demoralizing in a military setting, where people live in conditions of "forced intimacy" and are not free to change jobs if someone threatens them. Such misconduct should not be considered "off limits" to questioning just because it happens to occur between persons of the same sex.

k. *Foreign Militaries*

The Center for the Study of Sexual Minorities in the Military and other activist groups frequently point to the experiences of other countries, such as Great Britain, Canada, Australia, the Netherlands, and Israel, which have no restrictions on professed homosexuals in their militaries.[543]

The United Kingdom was ordered by the European Court of Human Rights to open its ranks to homosexuals in September 1999.[544] There was some controversy in the Parliament, but instead of appealing or challenging the ruling, ultimately the nation complied—something the United States would be unlikely to do. Contrary to the notion that all has gone well, European newspapers have reported recruiting and disciplinary problems in the British military.[545]

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mistreating soldiers, as well as to violating regulations not to develop relationships with subordinates. Associated Press, *Sgt. Pleads Guilty to Sexually Harassing Trainees*, ARMY TIMES, May 7, 2007, at 45. He faces six months in prison, a bad-conduct discharge and reduction in rank. *Id.*

542. *See Captain Sentenced to 50 Years for Raping 4 Men*, AIR FORCE TIMES, Mar. 12, 2007, at 15; *Officer Accused of Rape Says He Rejected Alleged Victim*, AIR FORCE TIMES, Mar. 5, 2007, *available at* http://buzztracker.org/2005//01/19/cache/441692.html. The March 5 article, reported from Eglin Air Force Base, Florida, reported that in a video of an interview with Taylor, shown during his February 22 court-martial, an Air Force Office of Special Investigations investigator told Taylor, "[It] doesn't concern me if it (the sexual encounter) was consensual . . . I'm not allowed to talk about your preferences. That has nothing to do with your military career as far as the people who do my job are concerned." *Id.* (alteration added). This was an astonishing statement for the investigator to have made, particularly in view of Capt. Taylor's convictions for raping four men.

543. *See* Aaron Belkin, *Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity?*, PARAMETERS (U.S. Army War Coll. Q.), Summer 2003, at 108–19.

544. *See* Lustig-Prean and Beckett v. United Kingdom, 29 Euro. Ct. H.R. 548, 587 (1999); HUMAN RIGHTS WATCH: UNIFORM DISCRIMINATION, *supra* note 472, at 38; *Delight and Despair at Gay Ban Ruling*, BBC NEWS, Sept. 27, 1999, http://news.bbc.co.uk/2/hi/uk_news/458842.stm (reporting that the ruling of the European Court of Human Rights was "not binding on the UK Government").

545. *See, e.g.*, BBC News, *Deepcut Army Sex Attacker Jailed*, Oct. 22, 2004, http://news.bbc.co.uk/1/hi/england/southern_counties/3634474.stm; Nicholas Hellen, *Navy Signals for Help to Recruit Gay Sailors*, TIMESONLINE (London), Feb. 20, 2005, http://www.timesonline.co.uk/tol/news/uk/article516647.ece; Tony Czuczka, Associated Press, *British Soldier Admits to Assault on Captive*, WASH. TIMES, Jan. 19, 2005, *available at* http://www.buzztracker.org/2005//01/19/cache/441692.html; Michael Evans, *War Blamed as 6,000 Quit Territorial Army*, TIMES (London), Oct. 30, 2005, at 2; Michael Evans, *Iraq Factor Takes Toll on the TA*, TIMES (London), Oct. 31, 2005, at 8. The reported abuse of male

Canada, Australia, and the Netherlands have cultures quite different from the United States[546] and live under the protection of the American military. Prof. Charles Moskos has noted that nations without official restrictions on gays in the military are also very restrictive in actual practice. Germany, for example, dropped criminal sanctions against homosexual activities in 1969, but also imposed many restrictions on open homosexual behavior and imposed career penalties such as denial of promotions and access to classified information.[547] Israel's situation differs from the United States because all able-bodied citizens, including women, are compelled to serve in the military. Israeli soldiers usually do not reveal their homosexuality and are barred from elite combat positions if they do.[548]

The CSSMM frequently claims that no problems have been experienced in all of the countries listed above and is critical of those who support the ban, demanding that opponents provide "empirical" evidence to support their case. The irony is that the CSSMM and other activist groups base most of their arguments on anecdotal information and opinion, largely gathered from like-minded sources.

In a letter to *Parameters* responding to a Summer 2003 article by Aaron Belkin, Maj. Joseph A. Craft, USMC, pointed out that the CSSMM Executive Director had based his case on interviews with only 104 "experts" in four countries—all of whom were advocates of gays in the military.[549] Wrote Craft,

> One of Belkin's key arguments is that Don't Ask, Don't Tell (DADT) is based on anecdotes and misleading surveys instead of quantitative evidence. . . . Yet Belkin's article is entirely anecdotal. It is nothing more than selected quotes from supposed experts who claim that homosexual integration has had no impact on unit cohesion or military readiness. A quick review of the author's endnotes, cross-checked with an internet search, reveals the questionable credentials and political leanings of most of these experts. At one point, Belkin refers to a 1995 Canadian government report, which supposedly indicates that lifting the ban on gays in the military had "no effect." However, his endnote does not cite the report but a "personal communication with Karol Wenek."[550]

The issue of homosexuals in the military is a major political question that has been dealt with through the political system, as established by the U.S. Constitution. Major decisions such as this should not be decided by

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Iraqi soldiers with a forklift involved forced sexual acts, but details are not known because of court-ordered gag orders.

546. *See, e.g.*, Kate Monaghan, *Dutch Political Party Wants to Normalize Pedophilia*, CNSNEWS.COM, July 26, 2006, http://www.cnsnews.com/ViewSpecialReports.asp?Page=/SpecialReports/archive/200607/SPE20060726a.html.

547. *See, e.g.*, Otto Kreisher, *Few Armies Accept Homosexuals*, SACRAMENTO UNION, June 7, 1993, at A5.

548. *See* Tom Philpott, *In Israel: The Hard Reality—Gays Are Allowed to Serve in the Military but They Are Not Fully Accepted*, ARMY TIMES, Jan. 11, 1993, at 11; Tom Philpott, *Gay Israelis Avoid Ridicule, Get Ahead by Staying in Closet*, ARMY TIMES, Jan. 11, 1993, at 13; Charles Moskos, *Services Will Suffer If Used for Social Experiments*, RICHMOND-TIMES DISPATCH, Feb. 28, 1993, at F1.

549. Joseph A. Craft, Letter to the Editor, *Legitimate Debate or Gay Propaganda?*, PARAMETERS (U.S. Army War Coll. Q.), June 22, 2004, at 132.

550. *Id.*

international courts, federal courts in the United States, or by politicians who are misinformed about the nature of the 1993 law and the rationale behind it.

1. *Religious Bias*

Finally, advocates of gays in the military have attempted to fire up their cause by criticizing Marine Gen. Peter Pace, Chairman of the Joint Chiefs of Staff, who expressed his personal views regarding gays in the military and personal morality during an interview on March 11, 2007.[551] A wave of name calling and demands for an apology ensued, but Gen. Pace had no reason to apologize for a law duly enacted by Congress. The statute reflects the views of people who see the issue in moral terms, but it uses secular language emphasizing military discipline. Duly enacted laws—including prohibitions against lying, stealing, and murder—should not be repealed just because they coincide with religious principles and moral codes such as the Ten Commandments.

IV. CONCLUSION

A. The Military/Civilian Connection

Today's military is not a conservative institution. It is on the cutting edge of liberal cultural change. Many times in our history the military has advanced positive social change, especially in the area of civil rights. The armed forces were very much ahead of the civilian world in overcoming prejudice against minorities and promoting women to leadership positions at rates equal to or faster than men.[552]

Since 9/11, cultural change in the all-volunteer force has accelerated. We are accustomed to seeing female soldiers in fatigues, boots, and helmets, piloting aircraft, navigating ships, carrying weapons, and driving humvees in support of combat operations. We always knew that women were courageous, but never in our history have we seen so much evidence of bravery among servicewomen who are choosing to live—and in unprecedented numbers, die in a man's very dangerous world. Women are in our military to stay, and no one is seriously suggesting otherwise.

Given the prominence of gender issues in today's military, it is wise to consider the cultural implications of the current course. Pentagon officials, feminist activists, politicians, media, and bureaucratic forces are uniting to push for elimination of all of women's exemptions from direct ground combat. Many of the same people expect officially mandated acceptance of professed

551. *See, e.g.*, Aamer Madhani, *Top General Calls Homosexuality "Immoral,"* CHI. TRIB., Mar. 12, 2007, at 1; *Group Wants Gen. Pace Apology for Calling Gays "Immoral,"* ASSOCIATED PRESS, Mar. 13, 2007; Editorial, *Old Prejudice Dishonors New Military Generation*, USA TODAY, Mar. 14, 2007, at 10A; Elaine Donnelly, *Gen. Pace vs. PC Police*, WASH. TIMES, Mar. 18, 2007, at B3.

552. PRESIDENTIAL COMMISSION REPORT, *supra* note 5, at C-131 (Finding 4.24); Army, Navy, Marine Corps, and Air Force Responses to DACOWITS (Spring 2001) (on file with author). *See also* Defense Data Manpower Center and Service's Human Resource Staffs and Commands, Annual Report on Status of Female Members of the Armed Forces of the United States, FY 2002-2005, *available at* http://www.dtic.mil/dacowits/docs/feb2006/statusofwomenfinal_05.doc (last visited Apr. 21, 2007).

homosexuals in the armed forces, with career penalties for anyone who dares to object or show resistance.

Some advocates attempt to wrap their agenda in the flag of military necessity, but the two social movements share the same hierarchy of values. Both movements assign higher priority to "equal opportunity" considerations than they do to the needs of the military. The advocates of these movements are asking the armed forces to pay any price, and carry any burden, in order to advance acceptance of their viewpoints and the career opportunities of a few.

If this paramount standard of review is adopted and applied consistently, the consequences inevitably will be felt not only in the military, but in the civilian world as well. In the matter of gays in the military, that is the underlying objective. It is reasonable to ask, where is this powerful and respected institution taking us now?

★ ★ ★ ★ ★

More . . .

B. Constructing a Stronger Military

1. *Recommendations for the Secretary of Defense*

When former Defense Secretary Donald Rumsfeld gave his farewell address at the Pentagon in December 2006, he said that the single worst day of his time in office occurred when he learned of the Abu Ghraib prisoner scandal in Iraq.[594] This was not a military defeat, but it put the American forces on the defensive and diverted untold thousands of man-hours for intense damage control.

An internationally scandalous breakdown in discipline as serious as Abu Ghraib is likely to happen again. One way to guarantee that result is to allow social engineers to continue volatile social experiments with servicemen and women, conducted without accountability or objective evaluation. Unlike the mechanical engineers of NASA, social engineers do not even try to learn from their mistakes. And when something bad happens, they blame men (not women) who "don't get it," instead of accepting responsibility for their own policies.

The social engineering blueprint for an ungendered military incorporates elitist assumptions, Amazon myths, double standards, social fiction, high-level dissembling, and arrogance held together with a fragile web of carefully spun public relations. It is a shaky structure, not stable enough for what must be the strongest military in the world.

To reinforce the social infrastructure of our military, the Secretary of Defense should:

- Be vigilant.
- Take these issues seriously.
- Set forth sound priorities, putting the needs of the military first.
- Mandate complete candor about the consequences of cultural change in the military, forbidding retribution or career penalties for anyone expressing inconvenient truth.

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f. *Enforce the 1993 Homosexual Conduct Law*

Activists who want to repeal the law banning homosexuals from the military are determined to impose their agenda on the military. This would include the full range of benefits and "sensitivity training" programs designed to promote acceptance of the homosexual lifestyle and conduct.[615] For the sake of civilian institutions as well as the military, they should not be allowed to succeed.[616]

President George W. Bush is obligated by the U.S. Constitution to enforce all laws, but he is not required to retain administrative regulations written by his predecessor, including the policy known by the catch phrase "Don't Ask, Don't Tell." Whether intended or not, inconsistencies between Clinton's policy and the 1993 homosexual conduct law create an advantage for activists who want to repeal both.

In doing this, the Department of Defense should not apologize or be intimidated by civil rights analogies and pejorative accusations. Gen. Colin Powell, who was Chairman of the Joint Chief of Staff early in the Clinton Administration, wrote a classic letter addressing the subject to then-Rep. Patricia Schroeder (D-Colo.) in 1993. Dismissing Schroeder's argument that his position reminded her of arguments used in the 1950s against desegregating the military, Gen. Powell replied:

> I know you are a history major but I can assure you I need no reminders concerning the history of African-Americans in the defense of their nation and the tribulations they faced. I am part of that history. . . . Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.[617]

Columnist Charles Krauthammer agreed:

> Powell's case does not just rest on tradition or fear. It rests on the distinction between behavioral and non-behavioral characteristics. Skin color is a non-behavioral trait. Homosexuality, like gender, is not. Consider the behavioral implications of gender differences: Men and women are sexually attracted to each other and sexual attraction engenders feelings not just of desire but shame and a wish for privacy. . . .
>
> That is why if a white person refuses association with blacks, the military tells him that the refusal is irrational and will not be respected. But the military does

615. *See supra* note 411.

616. Closing scenes in the 1947 film *Miracle on 34th Street* suggest a strategy for the movement to gain legitimacy. The classic Christmas film ends happily when a kindly gentleman named Kris Kringle is recognized as Santa Claus by the U.S. Postal Service, which forwards thousands of children's letters to him. If another respected government agency, the U.S. military, bestows legitimacy on the campaign for homosexual rights, recognition would soon be extended to other federal, state, and local agencies, and even private institutions that receive public support.

617. Elmo R. Zumwalt & J.G. Zumwalt, *Schroeder Ignores Wise Advice from Powell*, HUM. EVENTS, June 1, 1992.

> respect the difference between men and women. Because the cramped and intimate quarters of the military afford no privacy, the military sensibly and non-controversially does not force man and women to share barracks.[618]

In recent years, advocates of gays in the military have been promoting the idea that sexual modesty does not matter, since modern military facilities provide more privacy than older ones. Even if people are exposed to others in the field, they say, younger people are used to it, and this is not a big deal.[619] This is an elitist argument, which is contradicted in numerous ways that usually escape notice.

A midwestern family-oriented recreation center, for example, has separate locker rooms for men and women, next to the community pool. Inside the entrance of the women's locker room is a sign clearly stating that boys of any age are not permitted. A similar sign, regarding girls, is posted in the men's locker room. The signs are there not as an affront to young boys (or girls). They are there because the community respects the desire for sexual modesty in conditions of forced intimacy. This is the case even though people who use the recreation center do not live and sleep there for months at a time.

Servicemen and women in the military deserve the same consideration, and much more. As columnist Thomas Sowell wrote, "Military morale is an intangible, but it is one of those intangibles without which the tangibles do not work."[620] Military people depend on policymakers to remember basic realities and to guard their best interests. Considerations such as this strengthen vertical cohesion—the indispensable bond of trust between military leaders and the troops they lead.

To ensure that the intent of Congress is carried out with regard to homosexuals in the military, the Secretary of Defense should:

- Improve understanding and enforcement of the law by eliminating the Clinton Administration's enforcement regulations, known as "Don't Ask, Don't Tell," which are inconsistent with the 1993 law that Congress actually passed, and (better yet) restore "the question" about homosexuality that used to be on induction forms prior to January 1993.
- Oppose any legislative attempt to repeal the 1993 homosexual conduct law in Congress.
- Ensure that the 1993 statute is vigorously defended every time it is challenged in the federal courts.
- Prepare and distribute accurate instructional materials for potential recruits, recruiters, and all military personnel that include the text and legislative history of the 1993 law.
- Remind the media that everyone can serve their country in some way, but not everyone is eligible to be in the military.

618. Charles Krauthammer, Op-Ed, *Powell Needs No Lectures*, WASH. POST, Jan. 29, 1993, at A23.

619. Aaron Belkin & Melissa Sheridan Embser-Herbert, *A Modest Proposal*, 27 INT'L SEC. 178 (Fall 2002).

620. Thomas Sowell, *The Anointed and Those Who Aren't*, WASH. TIMES, Feb. 8, 1993, at E3.

2. *The Only Military We Have*

Many institutions in civilian life have been affected negatively by unsuccessful social experimentation. The baby boomer and "Gen-X" generations, for example, have been subjected to "look-say" reading, "new math," and "civics" courses that fail to teach students fundamentals about history and the U.S. Constitution. In matters of urban policy, whole cities have been threatened by unrestrained crime, ruinous taxes, and crumbling neighborhoods.

Parents who are dissatisfied with the public schools can choose private ones or teach their children at home. If residents do not like the way their city is being managed, they can run for local office or move to another city. Some states gain population while others lose. Consumers constantly choose favored products over less desirable ones. This is a free country, and limitless choices are always available.

When it comes to national defense, however, there are no options from which to choose. Today's volunteer force is the only military we have. All of our freedoms are guaranteed by a strong national defense, which cannot be taken for granted in a dangerous world.

Our national security depends on the men and women of the military. For our own sake as well as theirs, the co-ed military must be constructed on foundations that are sound. We have to get this right; it is the only military we have. Ours is the strongest military in the world, and we have an obligation to keep it that way.

DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 110th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: ELAINE DONNELLY

Capacity in which appearing: (check one)

___Individual

✓Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: PRESIDENT, CENTER for MILITARY READINESS

FISCAL YEAR 2008

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
—	—	—	—

FISCAL YEAR 2007

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
—	—	—	—

FISCAL YEAR 2006

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
—	—	—	—

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2008): —;
Fiscal year 2007: —;
Fiscal year 2006: —.

Federal agencies with which federal contracts are held:

Current fiscal year (2008): —;
Fiscal year 2007: —;
Fiscal year 2006: —.

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2008): —;
Fiscal year 2007: —;
Fiscal year 2006: —.

Aggregate dollar value of federal contracts held:

Current fiscal year (2008): —;
Fiscal year 2007: —;
Fiscal year 2006: —.

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2008): —;
Fiscal year 2007: —;
Fiscal year 2006: —.

Federal agencies with which federal grants are held:

Current fiscal year (2008): —;
Fiscal year 2007: —;
Fiscal year 2006: —.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2008): —;
Fiscal year 2007: —;
Fiscal year 2006: —.

Aggregate dollar value of federal grants held:

Current fiscal year (2008): —;
Fiscal year 2007: —;
Fiscal year 2006: —.

STATEMENT OF BRIAN JONES

SERGEANT MAJOR USA (RET)

CEO, ADVENTURE TRAINING CONCEPTS

HOUSE ARMED SERVICES COMMITTEE

SUBCOMMITTEE ON PERSONNEL

In Support of Section 654, Title 10, the 1993 Law Stating that

Homosexuals are not Eligible to Serve in the Military

2118 Rayburn House Office Building, Washington, D.C.

July 23, 2008

I am a retired Sergeant Major, US Army. I am a Ranger first and always. The most common attribute that I see on Military evaluation reports is "selfless service". I chose a career path that placed me in a Ranger Battalion, Delta Force, and as a Detachment Sergeant Major at the Ranger Regiment.

Selfless service is what makes a good team great within the US Military. You won't find that, in truth, in the corporate world. Selfless Service is what an individual will do for the good of the team; self-service is doing what is in a personal self interest, at the expense of the team. Recently, a US Navy Seal received the Congressional Medal of Honor by throwing himself on a grenade to protect his team. That is selfless service. While deployed to Somalia in 1993, commonly referred to as "Blackhawk Down", two of our unit members received the Medal of Honor for asking to be inserted into a crash site to protect a pilot, knowing what their fate would be. That is selfless service, and combat effectiveness depends on it. It does not happen by accident—it must be taught with concentrated training—no distractions. Selfless service is reinforced with discipline, and encouraged by the example of combat leaders.

The Ranger way of life trained me for what I do now as the CEO of a company I started three years ago, Adventure Training Concepts. The concept of ATC is to use the US Army training model to teach the value of teamwork during Corporate Team Building and Leadership Development Training. Many large Corporations recruit successful leaders from our military because of their value system, ability to plan and to execute complex operations.

Our clients are diverse—men and women, adventure seekers of all ages and, I suspect, some who are homosexual. All of them enjoy and benefit professionally from the lessons in teamwork taught by ATC programs. There is a notable difference, however, between the ATC environment and military units such as the infantry, special operations forces, and submarines. On my facility, people learn about teamwork and leadership for 6 hours over a couple of days, but they do not share close, intimate living conditions comparable to those in the military. The difference is critically important and disregarded at great risk.

In the civilian business world, decisions frequently are based on bonuses and job security. In the military environment, team cohesion, morale, and esprit decor is a matter of life and death. Bonus and job security come second to the reality of writing the hard letter to a loved one, or holding the hand of a team mate who is fighting for his or her life.

In my 21 years of service in the US Army, I sought, and performed in as many leadership positions that I could. As a leader, my first obligation was to the Nation. It meant keeping our soldiers ready for any situation for which our country called upon them. It meant taking care of each Soldier I had the honor of leading. It meant being fair and impartial to every Soldier. It also meant keeping the Soldiers under my charge as safe, secure, trained, equipped, and informed as I possibly could.

On their behalf, I would respectfully like to say that in this time of war, I find it surprising that we are here today to talk about this issue of repealing the 1993 law. Our Soldiers are over-tasked with deploying, fighting, redeploying, refitting, and deploying again. These brave men and women have achieved what many Americans thought impossible. With all of the important issues that require

attention, it is difficult to understand why a minority faction is demanding that their concerns be given priority over more important issues.

One of the greatest challenges a leader faces in the Military is dealing with inappropriate relationships and sexual harassment. There are a lot of grey areas, and it takes a lot of attention and time away from other, critical duties the leader has.

As a US Army Ranger, I performed long range patrols in severe cold weather conditions, in teams of 10, with only mission essential items on our backs. No comfort items. The only way to keep from freezing at night was to get as close as possible for body heat–which means skin to skin. Navy SEALS are required to do the same thing for purposes of survival. On several occasions, in the close quarters that a team lives, any attraction to same sex teammates, real or perceived, would be known and would be a problem. The presence of openly gay men in these situations would elevate tensions and disrupt unit cohesion and morale. This would be the case even if there is no attraction involved.

During my deployment to Somalia in 1993, Task Force Ranger, we spent several months in very close quarters together. There were close to 300 men sleeping side by side, and showering together. Introduction of homosexual men under these conditions would create unnecessary tension and potential for disruption that would be disastrous in terms of increased risk to individual soldier's lives as well as mission-accomplishment.

Several times during my career, I witnessed an incident of severe homosexual bullying, threatening, and groping of heterosexual women by lesbian soldiers. On this occasion Captain Michelle Jones, who happens to be my wife, had to put a stop to exactly that conduct. To be specific, at Ft. Eustis VA in 2003, Capt. Michelle Jones took Command weeks before deploying to Iraq. I was proud of her leadership in command of a Truck Company. Her job became more difficult when it became apparent that Senior NCOs in the Company formed a band of lesbians that harassed new females. They controlled the sleeping arrangements, which meant assigning roommates. She had to take action to end that behavior and deploy with what she was given. While deployed in Iraq, her Company came under heavy fire several times. She was able to identify the sporadic incidents by watching for traumatic changes in soldiers' behavior. The homosexual acts of sexual harassment are very difficult to prosecute; the victims are terrified of the outcome if they should make a formal complaint.

While I was stationed in Bamberg, Germany, 1999, I was ordered to sit on a Court Martial trying a male Sergeant who would target new females in the unit. He would place them on guard duty all night with no equipment to keep them warm. He would park nearby with a cot in the back, with the idea that when she was cold enough, she could sleep in his cot with him. In the case involving the male soldier abusing women, it was easy to prosecute. We threw the book at him. But in the situation that Capt. Michelle Jones faced in Iraq, prosecution was not a realistic option. Victims being abused by lesbians were far more fearful that a complaint would only make the situation worse. Situations like this will increase and worsen if the military attempts to give "civil rights" status to homosexuals, calling into question the motives of anyone who might disagree.

Young men and women that I have talked to for the last 20+ years, including those that I spoke with constantly while working with the Department of Defense in Iraq in 2004 ,have a common reason for why they join the service. They desire the US Military way of life, the discipline, the Leadership, and the strong code of conduct. America has the strongest Army in the World. When the world thought we failed in Iraq, our Military showed what it is capable of. That is the kind of action that draws our young men and women to the Military, not lowering the standards, but by raising them. They want the challenge. Allowing homosexuality in the military would cause unnecessary sexual tension and disruption to good order, morale, discipline and unit cohesion. This would erode the very qualities of military service that presently appeal to potential recruits.

I have served along side many foreign militaries. None of them compares to the US Military. In every case, they would give anything to be like ours. Lack of discipline, morale, and values top the list of reasons why. Between 1997 and 2001 I worked with Armies from Poland, Italy, England, and France. The discipline, training, and core values are quite different. Here are two specific examples:

- Operation Deep Strike, 1999, 1st deployment exercise into Poland. I personally had to take charge of a Logistical Transfer point inside Poland when I stopped there (as a SGM) and was horrified at what was going on at this Polish Infantry base. The Captain (US) in charge displayed incompetence and poor judgment when, he placed the females in the Polish infantry barracks. The post was centered around a bar where drinking was encouraged. The females were absolutely traumatized. They were surrounded by Polish Infantry in the shower, heckled and harassed constantly. I had to control my outrage while giving this Captain a lecture on "common Sense". My point is that the culture of the Polish military force was very different from the high standards in ours. As for the American Captain, I don't know what he was thinking. Maybe he was acting on illusions that are common in the so-called "Will and Grace" and "Starship Trooper" worlds.

- 2004, Tallil Iraq. Similar to the Polish Army, the Itallian Army occupied a compound at Tallil, Iraq. Again, drinking during deployment is the norm for them. The Italians would lay in wait at the PX, and target females, inviting them to their "bunker" on the Itallian compound. There were so many incidents of rape, harassment, and sexual misconduct reported, that the Itallian compound had to be placed "OFF LIMITS". This did not stop further incidents; the Italians always seemed to be one step ahead. Again, the culture, discipline, and leadership of the Italian military are different from ours. I am not a diplomat, and I hope you do not mind my saying this. My concern is our military—the men and women who courageously volunteer to serve.

As an American Soldier, can't imagine comparing our Military to that of a foreign nation to justify a change in policy. We should be very proud of the fact that they would rather be like us. Let's keep it that way.

Repealing the 1993 law will not help us win this war on terrorism or any conflict that our military is called upon to fight and win in the future. Too much time is being spent on how we can hinder our great men and women in the Military, let's do what we can to lift their morale, give them more resolve, and motivate them to continue the absolutely great job that they are doing. I hope that this Congress

will not make their jobs more difficult and dangerous than they already are by repealing a solid law that continues to support the morale, discipline, and readiness of our troops.

The Ranger Creed

R ecognizing that I volunteered as a Ranger, fully knowing the hazards of my chosen profession, I will always endeavor to uphold the prestige, honor, and high esprit de corps of the Rangers.

A cknowledging the fact that a Ranger is a more elite soldier who arrives at the cutting edge of battle by land, sea, or air, I accept the fact that as a Ranger my country expects me to move further, faster, and fight harder than any other soldier.

N ever shall I fail my comrades I will always keep myself mentally alert, physically strong, and morally straight and I will shoulder more than my share of the task whatever it may be, one hundred percent and then some.

G allantly will I show the world that I am a specially selected and well trained soldier. My courtesy to superior officers, neatness of dress, and care of equipment shall set the example for others to follow.

E nergetically will I meet the enemies of my country. I shall defeat them on the field of battle for I am better trained and will fight with all my might. Surrender is not a Ranger word. I will never leave fallen comrade to fall into the hands of the enemy and under no circumstances will I ever embarrass my country.

R eadily will I display the intestinal fortitude required to fight on to the Ranger objective and complete the mission, though I be the lone survivor.

DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 110th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: Sergeant Major Brian Jones, USA, (Ret.)

Capacity in which appearing: (check one)

✓ Individual

___ Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: N/A

FISCAL YEAR 2008

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
NONE			
"			

FISCAL YEAR 2007

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
NONE			
"			

FISCAL YEAR 2006

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			
"			

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2008): none;
Fiscal year 2007: "
Fiscal year 2006: .

Federal agencies with which federal contracts are held:

Current fiscal year (2008): none;
Fiscal year 2007: ;
Fiscal year 2006: "

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2008): none;
Fiscal year 2007: "
Fiscal year 2006: .

Aggregate dollar value of federal contracts held:

Current fiscal year (2008): none;
Fiscal year 2007: ;
Fiscal year 2006: "

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2008): none;
Fiscal year 2007: 11;
Fiscal year 2006: _____.

Federal agencies with which federal grants are held:

Current fiscal year (2008): none;
Fiscal year 2007: 11;
Fiscal year 2006: _____.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2008): none;
Fiscal year 2007: 11;
Fiscal year 2006: _____.

Aggregate dollar value of federal grants held:

Current fiscal year (2008): none;
Fiscal year 2007: 4;
Fiscal year 2006: _____.

DOCUMENTS SUBMITTED FOR THE RECORD

JULY 23, 2008

DoD Statement Regarding Section 654, Title 10 U.S. Code

"Section 654 of title 10, United States Code, requires the Department of Defense to separate from the Armed Forces members who engage in, attempt to engage in, or solicit another person to engage in homosexual acts; state that they are homosexual or bisexual; or marry or attempt to marry a person of the same biological sex. There is no ban on gay and lesbian service members. A service member's sexual orientation is viewed as a personal matter and is not a bar to continued service unless manifested by homosexual conduct. The law establishes the basis for separation from the armed forces as conduct, not sexual orientation. DoD policy reflects that law.

The number of discharges under this law is small -- 0.3% of total discharges in FY2006 and 2007. In addition, executing a change in law at this time would be problematic, given the intense engagement of our leaders and our forces in prosecuting the Global War on Terror. DoD actions, of course, are determined by whatever statutory direction Congress provides, but DoD does not advocate for a change in Section 654 at this time."

DEPARTMENT OF DEFENSE STATEMENT REGARDING "DON'T ASK, DON'T TELL"

May 16, 2007

Cynthia O. Smith
OASD-PA Defense Press Office
1400 Defense Pentagon (2E365)
Washington DC 20301-1400
703.697.5135

The Department of Defense's Homosexual Conduct Policy implements Title 10 United States Code, Section 654. This provision requires the Department of Defense to separate from the armed forces members who engage in or attempt to engage in homosexual acts; state they are homosexual or bisexual; or marry or attempt to marry a person of the same biological sex.

These separated members have the opportunity to continue to serve their nation and national security by putting their abilities to use by way of civilian employment with other Federal agencies, the Department of Defense, or in the private sector, such as with a government contractor.

Don't Ask, Don't Tell

*The department of defense must ensure that the standards for enlistment and appointment of members of the armed forces reflect the policies set forth by Congress.

*The Department of Defense policy on homosexual conduct in the military implements a Federal law that addresses the "Policy Concerning Homosexuality in the Armed Forces," which can be found at Section 654 of Title 10, United States Code.

*Under this policy, a person who has stated that they are a homosexual or bisexual can not be allowed entry into the military services based upon the applicable laws and regulations governing sexual conduct by members of the armed forces.

Gays in the military

*We expect all service members to be treated with dignity and respect ... ALL the time.

*We conduct extensive, recurring training to eliminate harassment of all types.

*Leaders at all levels are expected to take preventative and corrective action against hostility to any of our service personnel.

*Behavior not meeting this standard -- and harassment of ANY type – is unacceptable and will not be tolerated.

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