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AFA
Air Force Association
1501 Lee Highway, Arlington, Virginia 22209-1198 (703) 247-5800
An Independent Non Profit Aerospace Organization

MONROE W. HATCH, JR.
Executive Director

May 18, 1993

Lt. Gen. Robert M. Alexander
Deputy Assistant Secretary of Defense
Military Manpower and Personnel Policy (O&EPM)
4000 Defense Pentagon
Washington DC 20301-4000

Dear General Alexander:

The Air Force Association welcomes this opportunity to provide its views to the working group on sexual orientation. Enclosed are two documents, our March 1993 position paper, "Homosexuals in the Armed Forces," and a letter from AFA's national president, James M. McCoy, to Senator Nunn commenting further on the subject.

In a resolution adopted unanimously by the Board of Directors February 7, the Air Force Association declared its opposition to the lifting of the ban on homosexuals in the military. The enclosed documents explain the reasons.

We believe that there are two areas that deserve particular attention by your group. While much has been said on both issues by partisans and private citizens and widely in the news media, we have not heard much from government officials.

1. The proposal to lift the ban is widely advertised as a matter of allowing homosexuals to declare themselves and nothing else. As our position paper says, this limitation does not sound feasible--even if it were desirable. We believe it is important for the government to decide and announce in detail what would and would not be allowed under the Administration's proposal and what measures would be taken to ensure that.

2. What are the implications for the military health care system? We have heard considerably about the risks of tainted blood transfusions, but have seen very little authoritative, official information about the difficulty and cost of caring for large numbers of individuals who are particularly vulnerable to AIDS.

While we believe that there are major unanswered questions in these two areas, we have numerous other questions and concerns. If you wish further information on these, beyond that in the position paper and President McCoy's letter to Senator Nunn, we are ready to provide it.

Sincerely,

Monroe W. Hatch, Jr.
General, USAF (Ret.)

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Air Force Association
1501 Lee Highway, Arlington, Virginia 22209-1198 (703) 247-5800
An Independent Non Profit Aerospace Organization

James M. McCoy
President

April 2, 1993

The Hon. Sam Nunn
Chairman, Committee on Armed Services
United States Senate
Washington DC 20510-6050

Dear Mr. Chairman:

I appreciate this opportunity to provide you the views of our association on homosexuals in the armed forces. Never in the past forty years have our members reacted in such volume or strength to any issue. They overwhelmingly feel that the proposal to abolish the ban and permit homosexuals to serve openly is wrong.

We believe that the questions you asked January 27 are the right ones. We are also convinced that readiness, morale, discipline, recruiting, and retention would all be affected by removal of the ban, and that the harm would be both severe and long-lasting. We explain the basis for our conclusion in our March 1993 position paper, "Homosexuals in the Armed Forces," enclosed, which we ask be made a part of our statement for the record.

AFA's position concentrates on the direct impact on the armed forces should the ban be lifted. There are obviously moral dimensions to the question, but we left that for others to address and stuck to those aspects where our knowledge and experience are relevant and, we hope, useful.

First, we agree with your observation that there is a difference between military service and a civilian job. We think it noteworthy that people who have actually served in uniform--military leaders, veterans, and the troops themselves--are strongest in their belief that the ban must be retained.

Furthermore, our analysis of opinion polls indicates that the more people understand the consequences in a military context, the less they agree with the proposal to lift the ban. Those most inclined to accept easy answers about the problems associated with open admission of homosexuals tend to be people whose knowledge of the military lifestyle is shallow and second hand.

We concluded that one reason some people are inclined to try the experiment is that they believe there is no longer an important mission to occupy the military, and that readiness does not matter. They do not appear to understand that the armed forces are heavily engaged right now in three high-tempo operations abroad, and that a number of crises currently smoldering could send US forces into combat again in the near future.

The persons most in favor of lifting the ban are gay activists. We spent considerable time studying their arguments, positions, and literature before setting forth our own position in detail in March. We concluded that the real reason gay activists are attacking the military ban is to advance their broader social and political campaign--not to establish their right to bear arms in the nation's defense. We were frankly surprised to see how clearly this stands out when their arguments are examined.

Statements and literature from the gay movement reveal a contempt for the military. If the armed forces are damaged in the furtherance of their social campaign, that is of no consequence to them. Their strategy is to put before the public "picture-perfect straight arrow over-achievers who look like the boys and girls next door" to conceal their real agenda. They label concerns of groups like ours about "spousal" and other benefits and the exercise of the full homosexual lifestyle a "smoke screen." Literature and other communications circulating within the gay community, however, show these "smoke screen" concerns to be mainstream objectives of the movement.

President Clinton chooses to define the issue as a narrow one--whether military members should be able to say they are homosexual if they do nothing--but we do not believe it could ever be so easily constrained. Our study of the gay agenda convinces us that demands for more concessions would follow rapidly, benefits for homosexual partners being high on the list. If the rationale for lifting the ban is a presumed civil right, comparable to the rights of racial and ethnic minorities, then it is not realistic to believe military homosexuals would settle for the simple freedom to declare themselves.

The present exclusion of homosexuals from the military is based on the voluntary public disclosure and/or other public exercise of a single behavioral characteristic--specifically a characteristic that is disruptive to order and discipline. This is not sufficient basis on which to claim a civil right so powerful that it supersedes military requirements related to morale and unit integrity.

In his March 23 press conference, President Clinton cited the possibility of exclusionary provisions in assignment policy for military homosexuals. In so doing, he recognized himself that there is a basis--and perhaps a need--for some exclusions in the armed forces because of sexual orientation. It is little wonder that the President's statement aroused a firestorm of objection from the gay community. Their case, up to that point, was that no such exclusions were valid.

My own knowledge of the armed forces covers 42 years--30 of them in active service with the US Air Force and the past 12 in regular contact with the military in various capacities with the Air Force Association. My final active duty tour was as Chief Master Sergeant of the Air Force, which involved constant travel to listen to and talk with members of the force

worldwide. Like my fellow retired Chief Master Sergeants of the Air Force, I continued to travel and speak with military people in the United States and overseas. It is within this context that I say, I have almost never seen the troops react as strongly to an issue as they do to this one.

I believe you will find in your field hearings that our young men and women in uniform are deeply concerned on this issue, and they are concerned that the President does not understand their perspective or care about their views. One of the most important things your hearings will accomplish is to demonstrate a willingness in Washington to listen to the troops and pay attention to their concerns.

Our position paper does not address AIDS-related health concerns--not because we do not believe they are important, but because we had no new data or special expertise to contribute on this subject. We think it is important, however, for your Committee to examine the health issue in detail. There is reason for concern, not only because of the direct effects on readiness and the fear that would be generated in the ranks but also because of what this would add to the cost of a defense budget that has already been cut so harshly.

In deliberations leading up to the position expressed in our paper, we studied the homosexual issue as fully and as carefully as we could. We reviewed, for example, reports on the experience of other nations and the policies for their armed forces. In this review, we found the differences in their military requirements, the underlying social engineering agenda in the United States, and other factors to be such that these models are of no practical use in determining what our nation should do.

We are at some disadvantage in this controversy. The President's commitment to the gay agenda is clear. His position is amplified by partisans within the Administration and supported by the news media, which are generally sympathetic to the homosexual cause. For these reasons, your hearings are critically important. They are the lone national forum in which the full consequences of this issue are likely to be explored.

We must continue to provide the American people full information regarding this subject. As the President said, "As long as I am your President, our men and women in uniform will continue to be the best trained, the best prepared, the best equipped fighting force in the world." We already have the best trained, prepared and equipped forces in the world today. We need to keep it a fighting force, not a divided force.

Sincerely,

James M. McCoy

Homosexuals in the Armed Forces

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Position Paper

March 1993

The Air Force Association
1501 Lee Highway
Arlington, Virginia 22209-1198
(703) 247-5800

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Homosexuals in the Armed Forces

The Air Force Association strongly disagrees with the announced intention of the Clinton Administration to abolish the ban on service by homosexuals in the armed forces of the United States.

We hope that President Clinton is sincere in his promise to study the issue and its implications between now and July 15, but we are concerned by his public statement, made on January 29, that "I haven't given up on my real goals," indicating that his position is unchanged.[1]

We are encouraged by responsible initiatives of many in Congress to avoid precipitous action without careful study. Foremost in this regard has been Sen. Sam Nunn, Chairman of the Senate Armed Services Committee, who points to dozens of unanswered questions about the effect on military readiness, morale, discipline, recruiting, and retention.[2] AFA will continue to work with those members of the Senate and House who believe, as we do, that the Clinton program would do great harm to our military.

In a resolution adopted unanimously February 7, the AFA Board of Directors declared that:

> "The Air Force Association strongly opposes the Clinton Administration's intention to lift the ban on homosexuals in the military. This will have a devastating effect on the morale, discipline, and cohesiveness of our nation's armed forces. AFA applauds the action of the Chairman and the members of the Joint Chiefs of Staff for their strong stand on the issue. AFA's Board of Directors urges all AFA members to work with community leaders and the media at the grass roots level, and it further urges AFA members and all Americans to work with the Administration and Congress in an effort to reverse this disastrous course of action." [3]

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[1]President Bill Clinton, Announcement on Proposed Policy Regarding Homosexuals in the Military, Jan. 29, 1993.

[2]Sen Sam Nunn (D-Ga.), speech to the Senate, Jan. 27, 1993.

[3]Air Force Association Board of Directors, resolution adopted at winter meeting, Orlando, Fla., Feb. 7, 1993.

The Air Force Association, consisting of almost 200,000 Americans who have actually served in the armed forces, explains in this paper why it believes as it does.

Differences in Military and Civilian Life

To a degree that non-veterans may not comprehend, military life is far different from a civilian job. Once military people take the oath, they surrender various rights that civilians have. They join for specified lengths of time, usually four years. Once in the armed forces, they can't change their minds, demand civilian rights back, and go home. They also lack the ultimate option of civilian life: to quit and leave.

In the civilian world, job is separated from home, social, and private life. In the military, however, the government can — and often does control where you go, where you reside, and whom you are in close contact with. For instance, for those living in barracks or in field conditions, the government assigns a specific bunk and also determines who is assigned to the adjacent bunk. The military also places controls on behavior, including the freedom to complain.

The realities of military service often mean close contact with others under primitive conditions that allow little or no privacy. Virtually no one — not even extreme activist groups — would expect men and women (in the military or elsewhere) to share common sleeping and bathroom accommodations. Common sense recognizes the need for (and the right to) sexual privacy.

Gays define themselves *totally* in terms of their sexuality. For many military people, this would create intense problems if privacy is lacking. This basic privacy issue is magnified by cultural, religious, and moral beliefs about homosexuality, leading to apprehension, discomfort, or repulsion.

In an independent poll of 2,300 enlisted military members conducted by the *Los Angeles Times*, opposition to sharing facilities and quarters with homosexuals was the top reason cited by 63 percent of those who opposed lifting the ban. A significant number also saw homosexuality as immoral or in conflict with their religious views. Another of the top five reasons cited was the possibility that homosexuals would contribute to the spread of AIDS.[4]

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[4]Melissa Healy, "The Times Poll; 74% of Military Enlistees Oppose Lifting the Ban," *Los Angeles Times*, February 28, 1993.

Members of the armed forces have *voluntarily* accepted limitations on their personal freedom because:

- They implicitly agree that the unique demands of military service make it necessary;

- Conditions of service are still within social and cultural bounds that they regard as acceptable;

- The government does not demand that they endure circumstances they find morally or personally intolerable.

The rights of those who serve in the U.S. armed forces should count at least as much as those of a group that defines itself purely in terms of its sexuality.

What the Public Believes

Not everyone shares President Clinton's ready acceptance of homosexuality. An extraordinary number of Americans disagree with him. A large majority of the members of the armed forces are emphatically opposed to his position on gays in the military.

The *Los Angeles Times* poll, cited above, found that 74 percent of enlisted members of the armed forces disapprove of the Clinton administration's plan to lift the ban on homosexuals in the military, while only 18 percent favor lifting the ban. The poll, done without the cooperation of the Pentagon, surveyed 2,300 enlisted members, ranging from privates to the top enlisted ranks. It was conducted from February 11-16 in commercial areas and residential housing near 38 military installations across the country.

According to another *Los Angeles Times* poll, sentiment among the American public at large has gradually shifted from a roughly 50-50 split between those on each side of the issue to a point now where 53 percent oppose lifting the ban and 40 percent favor lifting it.

When we looked at a sampling of polls dating back to 1985, the results often depended on how the question was framed. For instance, when service in the armed forces was listed as just another occupation in a question like, "Do you think homosexuals should or should not be hired for each of the following occupations?" the results are fairly consistent, with about a 57-37 split in favor of

homosexuals serving in the military.[5]

By contrast, in polls dealing specifically with the issue of homosexuals in the military, from just after the election until just after President Clinton's January 29 announcement, the American public was either split down the middle or opposed by margins ranging from 49-46 percent[6] to 50-41 percent.[7] Also of note, by November 20, 1992, in responses to questions phrased about homosexuals serving in various occupations, those saying they favored homosexual service in the armed forces had narrowed from a spread of 57-37 percent in favor to just 48-44 percent in favor.[8]

Another significant finding from the survey data we examined was included in a post-election poll that asked this question: **"Do you think President-elect Bill Clinton should delay his promise to lift restrictions on gays in the military if there are strong arguments that this action will produce serious morale and readiness problems?" The response: 61 percent said *delay* while only 29 percent said *proceed.***[9]

Finally, there is a perception that the President has succumbed to pressure from politically motivated gay rights groups. In a January 31 poll, 52 percent of those surveyed said that President Clinton was sticking to his position "because he is responding to pressure from liberal and gay organizations." Only 39 percent attributed the president's motives to "principle."[10]

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[5]See Gallup Poll, November 18, 1985, 55-38 percent in favor of "hiring" homosexuals in military; Gallup Poll, March 18, 1987, 55-37 percent in favor; Gallup Poll, October 12, 1989, 60-29 percent in favor; Gallup Poll, June 4, 1992, 57-37 percent in favor.

[6]NBC/Wall Street Journal Poll, December 12, 1992.

[7]NBC/Wall Street Journal Poll, January 23, 1993. Other polls include a CBS/New York Times Poll, 48-42 percent opposed to lifting the ban, January 12, 1993; Los Angeles Times, 47-45 percent opposed, January 14, 1993; Time/CNN Poll, 48-43 percent opposed, January 25, 1993; ABC News/Washington Post Poll, 47-47 percent split, January 26, 1993; Gallup Poll, 50-43 percent opposed, January 29, 1993.

[8]Newsweek Poll, November 20, 1992.

[9]Gallup/Newsweek Poll, November 20, 1992.

[10]Gallup Poll, January 31, 1993.

(One gay activist, Gregory King of the Human Rights Campaign Fund, said, "Bill Clinton is the Abraham Lincoln of the lesbian and gay community."[11] His group contributed $2.5 million to the Clinton campaign, a fraction of what gay rights groups contributed overall.)

The armed forces have been prohibited by the White House from releasing their own polling data, but a leak to the *Los Angeles Times* in early February revealed that 75 percent of the Air Force and Army personnel polled by independent organizations were opposed to any change in the policy. That figure tracks with the *Times's* own poll a few weeks later.

Overall, military people are overwhelmingly opposed to a change in policy, and the general public is growing more opposed as it learns more about the effect lifting the ban would have on military morale, cohesion and readiness.

Morale and Cohesion

An effective military force is not simply an accumulation of weapons and people in uniform. No one seriously disputes the importance of morale, *esprit de corps*, and the group dynamics that make a military unit operate as a team.[12] Individual achievement and heroism are certainly important aspects of military service, but military operations are conducted basically by units, not by individuals. Teamwork and identification are especially significant in the primary units in which the military member serves and fights.

Sociologists confirm that what holds a unit together in combat is the feeling and loyalty the troops have for each other. A classic research study after World War II found the reason why German soldiers fought so stubbornly to the end was the allegiance of soldiers to comrades in their squads and sections. Unit integrity — not idealistic conviction or regard for a defunct regime kept combat forces

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[11]Bob Dart, "Homosexuals see 1990s as decade to push equality; Gay leaders believe Clinton pivotal figure in movement," *Houston Chronicle*, February 21, 1993.

[12]Clausewitz stated that "this corporate spirit forms, so to speak, the bond of union between the natural forces which are active in what we have called military virtue." See also Peter Paret, "Napoleon and the Revolution in War," in *Makers of Modern Strategy: From Machiavelli to the Nuclear Age*, ed. Peter Paret (Princeton: Princeton University Press, 1986); Walter Pinter, "Russian Military Thought: The Western Model and the Shadow of Suvorov," in Paret; and Michael Howard, "Men Against Fire: The Doctrine of the Offensive in 1914," in Paret.

from disintegrating under extreme conditions.[13]

In his 1985 book, *Cohesion: The Human Element in Combat*, Wm. Darryl Henderson concludes that "common attitudes, values, and beliefs among members of a unit promote cohesion; in fact, some observers contend that similarity of attitudes contributes to group cohesion more than any other single factor."[14]

Henderson included American, North Vietnamese, Soviet and Israeli militaries in his study. Like Shils and Janowitz, he states unequivocally that "the only force on the battlefield strong enough to make a soldier advance under fire is his loyalty to a small group and the group's expectation that he will advance. This behavior is the consequence of strong personal or moral commitment. It represents the internalization of strong group values and norms."

Those who have served in the military know this:

- *Senior military leaders* are virtually unanimous in warning Mr. Clinton that removal of the ban on homosexuals will do great damage to troop morale and unit integrity.

- *Veterans groups* (including the Air Force Association), representing millions of people with personal knowledge of military service, have repeated that warning.[15]

- All indications including data from opinion polls suggest unmistakably that *the troops* themselves believe removal of the ban will harm morale and unit integrity.

The opposing view is primarily from gay rights activists and advocates, most of whom know little — and care less about the armed forces. They claim the concerns are unfounded, but this does not square either with the historical or contemporary military record. Once the damage is done, it could be impossible to repair. As a Congressional Research Service report said, "Should presumed problems of discipline and morale prove to be true, it may be politically

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[13]Edward A. Shils and Morris Janowitz," Cohesion and Disintegration in the Wehrmacht in World War II," *Public Opinion Quarterly,* Summer 1948.

[14]Wm. Darryl Henderson, *Cohesion: the Human Element in Combat* (Washington, D.C.: National Defense University Press, 1985).

[15]For example, see Military Coalition, Letter to President-Elect Bill Clinton, Dec. 3, 1992, and "AFA President Speaks Out Against Lifting Ban on Homosexuals in the Military," Air Force Association, Jan. 29, 1993.

impossible to reinstate the current policy." [16]

The military is a unique institution, bonded by mutual commitment and confidence. It is an institution in which soldiers, sailors, airmen, and Marines respond to the call of duty with courage and selflessness. Is there truly some imperative that compels us to undermine these qualities for the sake of a greater good?

The Real Agenda

In announcing January 29 what he declared to be a "compromise" action (telling recruiters to stop asking questions about homosexuality, seeking continuances in legal cases in progress, agreeing to study the "practical problems" over a period of six months, and proceeding to develop a draft executive order by July 15) President Clinton stressed the narrow limits of his proposal.

The president made clear what he called the only point of disagreement: "Should someone be able to serve their country in uniform if they *say* they are homosexual but *do* nothing which violates the code of conduct or undermines unit cohesion or morale apart from that statement?"

In the first place, we believe that permitting homosexuals in the military to openly declare themselves will, in itself, significantly disrupt morale and good order, for all the reasons cited above.

More important, we do not find the President's position either credible or realistic. We do not believe that activists will simply settle for the freedom of military gays to declare themselves, nor do we believe that this is all the President has in mind. He said as much on January 29: "This compromise is not everything I would have hoped for, or everything that I have stood for," and that "I haven't given up on my real goals." That clearly indicates an intention to press for further changes. Mr. Clinton's position, as declared, is also internally inconsistent.

- ☐ He says discrimination against homosexuals violates a basic, undeniable right, perhaps a constitutional right.

- ☐ Concurrently, he suggests the exercise of that right could be constrained, almost summarily, allowing military homosexuals no more than the freedom to declare themselves.

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[16] "Homosexuals and US Military Personnel Policy," CRS Report for Congress, Congressional Research Service, Jan. 14, 1993.

If the right is truly basic and fundamental, then how can it be abridged so neatly? Conversely, if the limits are that simple to impose, how fundamental can the right really be?

Rep. Barney Frank (D-Mass.), who acknowledged in 1987 that he is gay, says that "gay men and women in the military are not going to act any different" once the policy is changed, and that "there are not going to be gay pride parades on bases."[17] How does he know?

Contrary to such assurances, the adoption of the Administration's plan would almost certainly open the floodgates to further demands and more concessions. What would preclude Gay Rights parades on bases? Cultural observances of various kinds are permitted now. If homosexuals are a constitutionally-protected minority, how could commanders deny them permission to celebrate their heritage?

Would homosexuals be allowed the same kinds of public displays of affection permitted for heterosexuals? If not, what would be the legal basis for prohibition? In a February 1993 paper, The National Gay & Lesbian Task Force dismissed this question by saying that "The military already has regulations prohibiting open displays of affection while in uniform."[18]

Members of the armed forces do adhere to special standards of bearing and behavior, but military life is not nearly so formalistic as the gay activists contend. Anyone who has ever attended a military promotion or retirement ceremony, for example, knows that public displays of affection do occur. Anyone who watched on television as families met troops coming home from the Gulf War saw intensive public displays of affection by people in uniform.

When the Task Force assures us that "gay and lesbian members would be required to follow the same policies as heterosexuals," they are not making the question about public displays of affection go away. They are proving that the question is valid.

If homosexual partnerships have legal standing — and in some jurisdictions they do — is there an entitlement to family housing? Medical care for the partner? Survivor benefits? What would the costs be? The February 1993 paper from the

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[17]Christine C. Lawrence, "Ban on Homosexuals to End in Two Steps, Frank Says," *Congressional Quarterly Weekly Report,* Jan. 23, 1993.

[18]"Countering Military Arguments Against Gay and Lesbian Service Members," National Gay & Lesbian Task Force, February 1993.

Gay & Lesbian Task Force declares concern about "spousal" benefits to be a "smoke screen" that obscures the real issues at stake. In truth, a mainstream effort of the gay rights movement is to secure such rights and entitlements.

In the Task Force's recruiting literature a major objective cited is "legal recognition and protection of gay families, domestic partnerships, and lesbian/gay parenting."[19] Our survey of recent issues of *The Washington Blade*, which bills itself as "The Gay Weekly of the Nation's Capital," finds entitlements and benefits for the partners of employed homosexuals to be a major and continuous goal.[20]

Organizers of the 1993 March on Washington go still further, introducing a whole new category of persons for whom rights and entitlements are claimed. "We demand legislation to prevent discrimination against Lesbians, Gays, Bisexuals, and *Transgendered* people in the areas of family diversity, custody, adoption and foster care and that the definition of family includes the full diversity of all family structures," a promotional folder declares.[21] (*Emphasis added*)

No more than a tiny fraction of the American public would support such policies in the armed forces. In fact, the public is divided over many of the issues surrounding homosexuality. Half of those surveyed in a recent poll object to having a homosexual doctor. Fifty-five percent object to having a homosexual as a child's elementary school teacher. Only 36 percent say homosexuality should be considered an acceptable alternative lifestyle. And 55 percent say homosexual relations between adults are morally wrong.[22]

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[19]"Join the Forces of Freedom," National Gay & Lesbian Task Force, 1991.

[20]See, for example, "Benefits at U. of Iowa," Nov. 27, 1992; "Fla. Disney Workers Unite," Feb. 12, 1993; "Clinton Transition Aide Shares Insights With Federal Workers," Jan. 15, 1993; "Family Bill Leaves Spousal Definition Open," Jan. 15, 1993; "New Yorkers Gain Some Partner Benefits," Jan. 15, 1993; "Lesbian Librarians Win First Round for Benefits," December 4, 1993; "Librarians Lead Fight for Benefits," Jan. 8, 1993; "Canada Introduces Rights Bill for Gay Government Workers," Jan. 8, 1993; "Co-Op Decision Favors Gays," Jan. 8, 1993; "Vt. City Gives Benefits," Jan. 29, 1993.

[21]"It's a Simple Matter of Justice," registration folder, 1993 March on Washington for Lesbian, Gay & Bi Equal Rights and Liberation.

[22]Jeffrey Schmalz, "Poll Finds an Even Split on Homosexuality's Cause," *New York Times*, March 5, 1993.

It disturbs us greatly that the interests of a group representing a mere one to four percent of the American public, according to recent studies,[23] would compel the President to take actions that threaten U.S. military effectiveness.

The real reason gay activists are attacking the military ban is to advance their broader campaign, not to establish their right to bear arms in the nation's defense. There are certainly individual gays with a genuine interest in military service, but that is in no way indicative of the movement as a whole or of the activists who are currently leading the charge on the armed forces.

Their statements and literature reveal, if anything, a contempt for the military and leave no doubt about their objectives. That does not, however, diminish their willingness to use the issue of national service if it is to their advantage.

The Windy City Times, a gay newspaper in Chicago, urged readers to "bring on the patriots" and get media exposure for military homosexuals who are "picture-perfect, straight arrow over-achievers who look like the boys and girls next door."[24] The only cause that matters to the activists is declared by the national co-chair of the 1993 March on Washington, who says that, "When we march .... our voices and presence will focus on the real enemies: any law or any one who stands in the way of us achieving our rights."[25]

The armed forces are not — and must not be allowed to become a social laboratory or a staging base for radical causes.

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[23]See, for example, Jeff Lyon, "Keeping Score: A University of Chicago research team is exploring sexual America," *Chicago Tribune*, November 29, 1992; Bradley Johnson, "What's Behind the Numbers," *Advertising Age*, January 18, 1993; Patrick Rogers, "Numbers games: size of gay population is greatly exaggerated," *The Gazette* (Montreal), February 13, 1993; Jack Thomas, "A new report on sex finds everyone doing it — but love is the key," *Boston Globe*, February 23, 1993.

[24]Dan Perreten, "Go on the Offensive, Now!" reprinted in *The Washington Blade,* Jan. 29, 1993.

[25]Derek Charles Livingston, "A Look Beyond the Inaugural," *The Washington Blade,* January 15, 1993.

The "Right" to Serve

Admission to the armed forces is not a "right" granted automatically to all citizens. The most obvious factor restricting admission is the size of the force. Even at the peak of the Vietnam War, the armed forces could not use all qualified men of military age. This led to inequities in conscription and was a factor in the change to an all-volunteer force.

In the 1980s, when the military was significantly larger than it is today, the Air Force was accepting only 32 of every 100 serious applicants for enlistment.[26] In so doing, the Air Force, like the other services, applied a set of criteria or "conditions which make applicants ineligible." In its regulations, the Air Force lists 44 such conditions, including drug use, receiving a presidential pardon for draft evasion, being intoxicated during processing, being a conscientious objector, being single with dependents incapable of self-care, and having physical impairments, among which are "excessive or detracting tattoos."[27] People can also be disqualified for a history of antisocial behavior.

Good Stuff

The courts have backed such exclusion policies based on the military interests of good order, discipline and morale. An opinion from a 1989 homosexuality case, *Ben-Shalom v. Marsh*, sums up the reasoning:

> "[T]he military establishment is very different from civilian life. When necessary, the military must be able to protect and defend the United States. That is a most important government mission, a difficult, demanding and complex one. It requires a trained professional force of reliable, loyal, and responsive soldiers of high morale, with respect for duty and discipline, soldiers who can work together as a team to accomplish whatever missions they may be given by their commanders."[28]

Beyond the exclusion policies, gay rights groups have put forth the argument that the armed forces are violating a legitimate, undeniable civil right when gays are not allowed to serve. They cite a direct parallel with the struggle of blacks to gain civil rights.

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[26]John T. Correll, "Front Door to the Force," AIR FORCE Magazine, December 1988.

[27]See Air Training Command Regulation ATCR 33-2, November 4, 1991.

[28]Cited by Melissa Wells-Petry in *Exclusion: Homosexuals and the Right to Serve*, Regnery Gateway, 1993.

Among those disagreeing is the Chairman of the Joint Chiefs of Staff, Gen. Colin Powell, who says emphatically: "I need no reminders concerning the history of African-Americans in the defense of their Nation and the tribulations they faced. I am a 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."[29]

One court made this point: "The Constitution has provisions that create specific rights. These protect, among others, racial, ethnic, and religious minorities. If a court refused to create a new constitutional right to protect homosexual conduct, the court does not thereby destroy established constitutional rights that are solidly based in constitutional text and history."[30]

We do not pretend to be experts about the causes of homosexuality, its prevalence in the population, or the various physiological and psychological theories regarding it. It is obvious to us, however, that homosexuality is a single-dimension phenomenon. It is a matter of sexual orientation and nothing else.

So long as homosexuals keep their personal affairs private, they encounter no discrimination. The services no longer ask questions about sexual orientation. Aside from illicit actions, then, exclusion of homosexuals is on the basis of voluntary public disclosure and/or other public exercise of a single *behavioral* characteristic — specifically a characteristic that is disruptive to order and discipline. That is not a sufficient basis on which to claim a civil right so powerful that it supersedes military requirements related to morale and unit integrity.

The Nation's Interest

There may be a public perception, reinforced by those who call for ever-deeper cuts in defense, that with the end of the Cold War, military effectiveness and readiness are less important today than they were in the past. As 1993 began, however, US armed forces were engaged simultaneously in high tempo operations in three regional contingencies (in Somalia, in the Balkans, and in Iraq). The probability is very high that US forces will be committed to armed conflict of some sort in next few years.

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[29]Gen. Colin Powell, Letter to Rep. Patricia Schroeder (D-Colo.), May 8, 1992.

[30]Cited by Melissa Wells-Petry.

Because of constant defense cuts — with still more to come the force we field in such conflicts will be much smaller, with markedly reduced resources. The force that won the Gulf War no longer exists.

All serious defense analysts agree that the smaller force must be of the highest caliber, superbly trained, prepared, and motivated. Morale has been affected already by the continuous reductions and the personnel turbulence that results. A year ago, the Air Force Deputy Chief of Staff for Personnel reported to Congress that "the anxiety factor for our people is almost off the chart."[31]

In the *Los Angeles Times* poll, 60 percent of military members surveyed said they were concerned about the effect of force reductions on their careers. Their second biggest concern: 48 percent cited the president's proposal to lift the ban on homosexuals serving in the military. Abolishing the ban would destabilize and disrupt a force that is already struggling to adjust to massive reductions and changing requirements.

As Senator Nunn said in his speech January 27, "When the interests of some individuals bear upon the cohesion and effectiveness of an institution on which our national security depends, we must move very cautiously."

The Air Force Association urges President Clinton to use the time remaining before his July 15 deadline for the draft executive order to reconsider and reflect on the course of action he has proposed. We believe that such reflection will confirm the validity of what we have said in this paper and support a decision to retain the present policy on homosexuals in the military. Such a decision is justified primarily — and more than sufficiently by military requirements in the national interest, but there is another consideration that must not be overlooked.

The forgotten people in this debate so far have been the men and women serving today in the armed forces. We owe them a great deal, not only for what they have given the nation in the past but also for what they may be called upon to give in the future. Their opinions — and their rights should count, and it is abundantly clear what they think in this matter.

We see little evidence that homosexual activists have any interest in the military except as a staging base to further their social campaign. It seems to be of little concern to them if the armed forces would be damaged in the process. We find it incomprehensible that the nation would allow the armed forces that protect

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[31]John T. Correll, "The Troop Losses Mount, AIR FORCE Magazine, May 1992.

its security to be so used to promote the behavioral orientation of the homosexual minority.

In his State of the Union message, President Clinton pledged that "as long as I am president, I will do everything I can to make sure that the men and women who serve under the American flag will remain the best trained, the best prepared, the best equipped fighting force in the world . . . "[32]

Open admission of homosexuals to the armed forces is not consistent with that pledge.

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[32]State of the Union address, Feb. 17, 1993.

FILE
2

AMERICAN
PSYCHOLOGICAL
ASSOCIATION

National Organizations Responding to Discrimination by

Sexual Orientation in the U.S. Military

(NORDSOM)

Recommendations for Hearings

in the

U.S. Senate Committee on Armed Services

on the topic of the

Department of Defense Policy that

Homosexuality is Incompatible with Military Service

March 25, 1993

For additional information, contact Clinton Anderson, Public Interest Directorate, American Psychological Association, 750 First Street, N.E., Washington, D.C. 20002-4242, (202) 336-6041.

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In a series of discussions among the members of National Organizations Responding to Discrimination by Sexual Orientation in the Military (NORDSOM), we have considered in depth the content of Congressional hearings on the Department of Defense policy that homosexuality is incompatible with military service.

One important aspect of the discussions has been the statement of Senator Nunn in which he lists a number of questions that he considers must be asked and answered in hearings. From NORDSOM's analysis of the Senator's questions and the information provided by Senate Armed Services staff, it is our understanding that the hearings of the Senate Committee on Armed Services will focus most substantially on the issue of within-sex sexual conduct and whether laws and regulations should treat such conduct differently than between-sex sexual conduct. Other areas of investigation indicated include the history of the policy and its relationship to current social trends, the likely impact of rescission of the policy on recruiting, retention, promotion, and leadership, and various issues related to implementation of a rescission.

NORDSOM, as a group of health, mental health, educational, and scientific organizations, strongly recommends that the hearings include an empirical analysis of the various issues. There are four lines of investigation related to our expertise that are central to the consideration of rescinding the ban on military service by lesbians, gay men, and bisexual persons. In the following, we have provided a brief discussion of the defining issues for each area, listed the key questions, and indicated the NORDSOM members that have a particular expertise in these areas and can provide testimony.

I. What is the evidence on the suitability for military service of lesbians, gay men, and bisexual persons from the perspectives of health, mental health, and sexual conduct?

Health. Since some forms of male-male sexual behavior are modes of transmission of HIV, and some communities of gay and bisexual men have high rates of sexually transmitted diseases, issues related to infectious diseases need to be addressed in hearings, particularly issues of AIDS and HIV policy and procedures within the military.

1. What is known about the health of lesbians, gay men, or bisexual persons compared to the population as a whole?

2. What effect is a rescission of the ban on gays and lesbians in the military likely to have on rates of infectious diseases and health care costs?

3. Are the military's current policies and procedures with regard to HIV and other infectious, sexually transmitted diseases adequate?

Resources: American Public Health Association.

Mental Health. Since homosexuality was classified as a mental disorder prior to 1973, issues of the mental health of lesbians and gay men need to be addressed in hearings, including issues of judgement, stability, reliability, or general social and vocational capabilities.

1. What are the positions of the mental health professions on homosexuality? What is the scientific and professional basis for these positions?

2. What evidence is there on rates of suicide, substance abuse, or depression across people of different sexual orientations?

3. What evidence is there about the suitability of lesbians and gay men for employment generally? Is there any evidence about military suitability of lesbians and gay men?

Resources: American Counseling Association, American Psychiatric Association, American Psychological Association, National Association of Social Workers.

Sexuality and Sexual Conduct. Since the sexual conduct of gay men and lesbians has been portrayed as predatory and abusive of positions of authority, testimony about sexuality and sexual behavior -- heterosexual, bisexual, and homosexual -- is important for the Committee to be able to evaluate how the sexual orientation and sexual behavior of gay men, lesbians, bisexual persons, and heterosexual persons may affect the military currently or after the ban is lifted.

1. What is sexual orientation? How does sexual orientation fit into human sexuality as a whole? How does sexual orientation develop?

2. Is there any association between homosexual orientation and sexual pathologies, e.g., pedophilia, child molestation, or paraphilias?

3. What is the relationship between sexual orientation and sexual conduct?

4. What evidence is there on rates of fraternization, abuse of position, or sexual harassment across people of different sexual orientations?

Resources: American Counseling Association, American Psychiatric Association, American Psychological Association, American Sociological Association, Sex Information and Education Council of the United States.

II. What is the nature of negative attitudes toward lesbians, gay men, and bisexual persons, how will those attitudes affect behavior, and what is the likely course of those attitudes over time if the policy were rescinded?

Reports published in various media indicate that a substantial segment of the population holds negative attitudes toward lesbians and gay men and negative opinions toward rescinding the ban. The exact numbers vary considerably from sample to sample and across different specific questions. The Committee needs to hear testimony on the

nature of negative attitudes and opinions, on attitude and opinion measurement as a means of predicting behavior, particularly behaviors within small groups that may have an effect on morale and cohesion, and on the dynamics of attitude and behavior change under conditions of contact between groups with negative attitudes toward one another.

1. What are the nature and functions of attitudes of heterosexual persons toward lesbians, gay men, and bisexual persons, particularly attitudes toward close contact and small group cohesion? What are the sources of such attitudes?

2. What is the current knowledge of public and military opinion on such issues as employment of lesbian and gay people in the military and what changes or trends have there been in the results of opinion surveys over the years since such questions have been asked in public opinion polls?

3. What is the relationship among attitudes, opinions, and behaviors? How well do attitudes and opinions predict behavior?

4. How does contact with persons about whom negative attitudes are held affect those attitudes? What would be the likely course of attitudes about privacy and attitudinal barriers to cohesion if the policy were rescinded?

5. How could one assess the costs to combat effectiveness of negative attitudes? Are there available cost/benefit frameworks for assessing the national security implications of the policy change?

Resources: American Psychological Association, American Sociological Association, Sex Information and Education Council of the United States, Society for the Psychological Study of Social Issues.

III. What lessons can be learned from other armed forces' integration of lesbians, gay men, and bisexual persons, from the integration of gay and bisexual people into similar institutions in the United States, e.g., law enforcement, and from the U.S. military's integration of racial minorities and women?

In DoD's response to the General Accounting Office, it was argued that fundamental differences between the U.S. military and other armed forces or civilian law enforcement institutions make the latter's experience with regard to integrating lesbian and gay people irrelevant. Further, DoD has argued that sexual orientation and race are not analogous and therefore the U.S. military experience with racial integration and race relations is not applicable to the case of integrating lesbian and gay people. Others have argued that the U.S. military's integration of African-Americans and women, as well as the integration of lesbians and gay men into other armed forces and civilian law enforcement agencies, are important models for the U.S. military in implementing a rescission of the ban. These issues and models should be investigated by the Committee.

1. What has been the experience of foreign armed forces' with regard to lesbian and gay people? What has been their experience with the reactions of others' to serving with lesbian and gay people? What

are the arguments on both sides for drawing on the experience of foreign armed forces' as a guide for the U.S. military?

2. What has been the U.S. military's experience in racial integration? What are the arguments for and against using that experience as a model for the decision to rescind the ban on gay people's service in the U.S. military and for the process of implementation of a rescission?

3. What has been the experience of integrating women into the U.S. military? What are the arguments pro and con for that experience as a model for integration of lesbian and gay people?

4. What has been the experience of integrating lesbian and gay people into law enforcement agencies, fire departments, and other organizations in which issues of privacy and cohesion are important? What are the arguments for and against applying those experiences as a guide for the U.S. military?

5. What have been the experiences of other organizations and institutions in American society? Is that experience a useful or appropriate guide to the U.S. military?

Resources: American Counseling Association, American Psychological Association, American Sociological Association, Society for the Psychological Study of Social Issues.

IV. How does the military exclusion of lesbians, gay men, and bisexual persons relate to the values of key American institutions?

It is clear from the strong public and media attention that rescinding the ban on gay people in the U.S. military touches strong values among the American people. The Committee should hear testimony from a broad range of institutions and organizations that can articulate the various values implicated and indicate the range of positions and the strength of those positions among the various institutions within American society.

1. What values of the military itself are implicated by the rescission of the policy? What is the range of opinion on the issue within the military?

2. What values of American society with regard to the military are implicated by the rescission of the policy? What is the range of opinion on the issue?

3. What religious values are implicated by the proposed rescission? What is the range of religious opinion on the issue?

4. What family values are implicated by the proposed rescission? What is the range of family opinion on the issue?

5. What legal and constitutional values are implicated by the proposed rescission? What is the range of legal and constitutional opinion on the issue?

6. What educational values are implicated by the proposed rescission? What is the range of opinion within the field of education?

7. Which organizations and institutions in American society support and which oppose the change in policy? What is the basis of support and opposition?

Resources: American Council on Education, American Counseling Association, American Nurses Association, American Psychological Association, American Public Health Association, American Sociological Association, National Association of Social Workers, National Education Association, Sex Information and Education Council of the United States.

FILE
3

Memorandum from...

COL James D. Blundell, USA Ret.
Director of Programs
Institute of Land Warfare

28 May 93

Major Zodlo—

Thank you for the opportunity to provide our materials regarding the DOD homosexual exclusion policy.

If we can assist in any manner, let me know — to include the review/comment on proposed policies, providing additional materials, etc.

I can be reached at (703) 841-4300, ext 320.

Jim Blundell

Encl
- 2 Viewpoints
- 2 Issue Papers

VIEWPOINT

The following represents the personal opinions of the author and not necessarily the position of the Association of The United State Army or its members.

April 1993

The Army and Homosexuals

by

Lieutenant General Richard G. Trefry, USA Ret.

Over the past few years, the issue of homosexuals serving in the military has received increased publicity. Individual homosexuals, organized homosexuals, activists of all persuasions and others have created an ever-increasing crescendo of protest concerning the exclusion of homosexuals from the services. Particularly vocal have been homosexuals and their supporters with their demands for the withdrawal of ROTC from college campuses until the Department of Defense (DoD) exclusion policy is reversed. The high point of the 1992 presidential campaign was then-Governor Bill Clinton's declaration that he intended to remove the exclusion ban on homosexuals in the services after his election. Since Clinton's election, more publicity has been directed toward the issue and the president's decision to follow through on that campaign promise.

As in all issues that are volatile, the more controversial the issue, the more emotional the argument. Perhaps the time has come for a more rational discussion, and hopefully the decisions made will not create the opposite of the results desired.

How did we reach this point and what can be done to resolve it?

Before we address the concerns of the Army (and this paper will address primarily the problems of the Army), it should be noted that while there are similarities and parallels among the services, there are also differences which will not be discussed here.

Homosexuals consider themselves an oppressed minority. Just how many of them there are probably no one knows, as one of the penalties of being a homosexual has been the opprobrium associated by society with homosexual conduct. Perhaps there are more than we imagine, but not as many as homosexuals as a group would have us believe.

Historically there has been a stigma attached to homosexuality, and the stigma was exacerbated in the 1950s when communism and "McCarthyism" were rampant. Homosexuals were considered susceptible to blackmail in matters of national security because of their alleged vulnerability to

exposure. This is a doubtful proposition. A recent study sponsored by the Defense Personnel Security Research and Education Center (PERSEREC) indicates that of 117 cases involving U.S. citizens and espionage, it cannot be proved that homosexual conduct was the catalyst. (In every case, the principal causes were greed and/or revenge.) The conclusion was that homosexuals, as a group, probably are just as loyal as anyone else.[1]

When the question becomes one of acceptability, homosexuals believe that sexual conduct between consenting adults of the same (or opposite) sex is a private matter and should not be considered an unlawful act ranging from a misdemeanor to a felony. This is not the place to discuss their argument, but it should be obvious that what homosexuals are seeking is social acceptance for themselves and for practices between members of the same sex that have long been considered unacceptable in morality, values, behavior and religion and so codified in law. They find it difficult to accept the fact that society accepts heterosexual intimacy but forbids or frowns on homosexual intimacy.

It is obvious in reading accounts of and by homosexuals who have disclosed their practice that they realize that their conduct is not considered "normal" and that their desire for acceptance of themselves and their behavior is exceedingly strong.

Before we address the concerns of the military, a brief comparison or classification of heterosexual/homosexual activities would be helpful. Basically, we might consider four general classes of sexual activity for both heterosexuals and homosexuals (see chart on page 3). It is understood that type classifying, or sorting, of people into groups is a common practice. (Generally such groupings are also immediately challenged and it is accepted that this will be no exception! All that is intended is a frame of reference for both heterosexual and homosexual behavior.)

Within these four general categories there are many gradations, but the point is that both heterosexual and homosexual conduct may range from the totally acceptable to the totally unacceptable.

No one has any problems with the first category. The second category for heterosexuals might be described as the normal procreative life for a large segment of the population. The second category for homosexuals, by current laws, practice and customs, is difficult to describe. Is there such a category as "normal" homosexual or is this the essence of the problem? Practicing homosexuals who hide their practice, or are at least discreet with consensual partners, would fall in this category. Whether or not this is an acceptable lifestyle is one of the social, religious, legal, moral and values issues of our time. The third category for heterosexuals probably is tolerated by a larger portion of the population, although it may not be as great a population as is commonly portrayed in print and film. On the other hand, the conduct of the third category of homosexuals is not tolerated to the same degree as the parallel conduct of the heterosexual. The fourth category of both heterosexual and homosexual conduct is not acceptable; in fact, it is criminal.

HETEROSEXUAL	PERSONALITY	HOMOSEXUAL
	Passive (Dominated)	
1. Celibate (no activity)	↓	1. Celibate (no activity)
	Active	
2. Normal and acceptable (monogamous, family oriented, morally and behaviorally acceptable). Disciplined.	↓	2. "Normal," that is monogamous, loyal to a partner, discreet but moral and behavioral nonacceptance by society in general. Usually relationships are not known beyond a very restricted circle, to include exclusion of knowledge by immediate family. Disciplined.
	Aggressive (Dominant)	
3. Accepts state of marriage and family, but seeks extra-marital relationships perhaps up to promiscuity. Philanderism, brags of conquests and infidelity. Exhibitionist. Sexual harasser. Undisciplined.	↓	3. Does not limit partners. Seeks multiple partners to the extent of promiscuity. Brags of conquests. Exhibitionist. Sexual harasser. Undisciplined.
	Exceedingly Aggressive (Dominant) and Criminal	
4. Deviant sexual behavior. Sexual criminal. Rape, incest, sodomy, sexual assault. Predator.	↓	4. Deviant Sexual Behavior Sexual Criminal. Rape, incest, sodomy, sexual assault, etc. Predator.
	TRAITS	
	Bestiality Fetishism Exhibitionism Necrophilia Nymphomania Satyriasis Masochism Sadism Pederasty/Pedophilia Transvestism Voyeurism	

It is understood that this model or classification has many gradations, but it may help in addressing the problem. In the PERSEREC study referred to above, the following statement is made:

> The concepts *homosexuality* and *heterosexuality* are too broad to be worthwhile. When subjected to statistical reduction, the data yielded five types. The typology is not too different from one that could be constructed for heterosexuals. The five types are labeled: Close-coupleds, Open-coupleds, Functionals, Dysfunctionals, and Asexuals. The Close-coupleds were similar to what might be called happily married among heterosexuals. Partners of this type look to each other for their interpersonal and sexual satisfactions. They are not conflicted about being members of a minority group. They would fit the usual criteria of social maturity. The Open-coupleds preferred a stable couple relationship, but one of the partners sought sexual gratification outside of the couple relationship. In most cases, Open-coupleds accepted their homosexual identity, but had qualms about seeking other outlets. In terms of their general adjustment, they were not unlike most homosexuals or most heterosexuals. The Functionals are more like the stereotype of the swinging singles. Their lives are oriented around sex. They are promiscuous and open, frequenting gay bars and bathhouses, and have been arrested for violating "homosexual" ordinances. They are self-centered and give the impression of being happy and exuberant. The Dysfunctionals fit the stereotype of the tormented homosexual. They have difficulties in many spheres, social, occupational, sexual. This type displayed the poorest adjustment. Among the males, there were more instances of criminal activity such as robbery, assault, and extortion. The Asexuals are characterized by lack of involvement with others. They are loners and describe themselves as lonely. They lead quiet, withdrawn, apathetic lives.[2]

Without commenting on those particular descriptions and conclusions, obviously there are many ways to classify the problem. It is doubtful that anyone knows just how many homosexuals there are. Dr. Judith A. Reisman and Edward W. Eichel state that sexologist Alfred C. Kinsey's results are not valid. In his 1948 study, *Sexual Behavior in the Human Male* (Philadelphia: W. B. Saunders), Kinsey stated that ten percent of white American males are more or less exclusively homosexual for at least three years between the ages of 16 and 55; eight percent are exclusively homosexual for the same period, and four percent are exclusively homosexual throughout their lives. This Kinsey data, Reisman and Eichel state, should be understood in the context that the methods and statistical base of Kinsey, derived 40 to 50 years ago are of questionable scientific validity.[3] The General Accounting Office's recent study, *Defense Force Management: DoD's Policy on Homosexuals in the Military,* states, "The limited data currently available (largely Kinsey Institute studies) suggest that the primary sexual orientation of between five and ten percent of the general U.S. population is homosexual."[4] Reisman and Eichel quote a 1989 University of Chicago study to the effect that less that one percent of the study population has been exclusively homosexual. (The study population was a full probability sample of the adult population of the United States.)[5]

One of the most vociferous claims of the homosexual community is that there are more homosexuals than are suspected. That is a vague estimate. The GAO report made no projections as far as numbers are concerned, except to state that other studies estimate there are more in the military services than those caught and discharged. Undoubtedly, some do enter and never disclose either their orientation or their practice.[6]

It is pertinent to ask just what is a homosexual and what do homosexuals do that is so provocative. The DoD definition of a homosexual is "a person, regardless of sex, who engages in ... or intends to engage in a homosexual act." A homosexual act is further defined as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires."

Two individuals of the same sex, particularly female, are not considered homosexual if they display simple affection toward each other by hand-holding or an embrace of affection. Nor are comparable acts by males, but such actions are not considered appropriate manners. But if society in general believes that this is what homosexual conduct is all about, we begin to approach the problem. Homosexual bodily contact usually consists of (but is not limited to) anal sex and/or oral sex. Most Americans sincerely believe that homosexuals are hand-holders who share the deep personal feelings that most heterosexuals hold for each other. The facts speak otherwise.

In a thoroughly documented research paper prepared by Lieutenant Colonel Robert L. Maginnis of the Office of the Inspector General of the Army, the following data evolve:[7]

- Only three percent of homosexuals had fewer than 10 lifetime sexual partners (heterosexuals average about 7.15 percent lifetime partners, 8.67 percent for those who never marry).[8]

- 79 percent of homosexuals said that more than half their partners were strangers; 70 percent said that more than half their sexual partners were men with whom they had sex only once.[9]

- In a reputable study of homosexual men, the number of annual sexual partners was nearly 100 for those participating in the study.[10]

- 38 percent of lesbians surveyed had from 11 to more than 300 lifetime sexual partners. Another paper on lesbians reported that 41 percent of white lesbians admitted to having between 10 and 500 sexual partners.[11]

- Homosexuals account for 80 percent of the nation's most serious sexually transmitted diseases (STDs).[12]

- Homosexual youth are 23 times more likely to contract an STD than heterosexual youth.[13]

- Male homosexuals are more likely to contract HIV than heterosexuals by orders of magnitude.[14]

- Male homosexuals are 14 times more likely to have had syphilis than heterosexuals.[15]

- 66 percent of all AIDS cases in the United States are attributable to homosexual conduct.[16]

- Lesbians are 19 times more likely to have had syphilis.[17]

- At least 33 percent of all child molestations involve homosexual activity.[18]

- 73 percent of homosexuals surveyed in one study had had sex with boys 16-19 years of age or younger.[19]

- Homosexuals are statistically about 18 times more likely to engage in sexual practices with minors than are heterosexuals.[20]

- Homosexuals are six times more likely to commit suicide than heterosexuals.[21]

- Another study states that 25-33 percent of homosexuals are alcoholics.[22]

- One third of homosexuals and one eighth of lesbians admit to practicing sadomasochism (hurting or being hurt as a part of achieving sexual pleasure). This is a rate 600 percent greater than for heterosexual males and 400 percent greater than for heterosexual females.[23]

While it is not the purpose of this paper to pursue descriptions of homosexual practices or the environments in which they are conducted, there are two books available that are informative on the subject:

- Randy Shilts, *And the Band Played On — Politics, People and the AIDS Explosion*, New York: St. Martin Press, 1987, 630 pp.

- Stephen C. Joseph, M.D., *Dragon Within The Gates—The Once and Future AIDS Epidemic*, New York: Carrol and Graf, 1992, 272 pp.

In a recent article in the *Philadelphia Inquirer* of November 17, 1992, syndicated columnist Ellen Goodman had a column entitled "Conduct, Not Orientation, the Real Gay Military Issue." She concludes her column, which favors ending the exclusion policy, with the sentence, "The military should worry about how its people make war, not love."[24] That is exactly what the military is worried about.

While members of some professional psychiatric, psychological, legal, academic and sociological organizations do not agree with the DoD policy, neither do they possess any identifiable military expertise concerning the military profession.

The distinguishing characteristics of a profession as a special type of vocation, according to Samuel Huntington's *The Soldier and the State — The Theory and Politics of Civil-Military Relations*, are the following: Expertise, Responsibility and Corporateness. Anthony E. Hartle, in his *Moral Issues in Military Decision Making*, has further defined them, as portrayed in the following matrix:

Huntington[25]	Hartle[26]
Expertise	The satisfaction of a significant social need.
Responsibility	The expertise is one deemed critical, or at least necessary in some sense, by society. The professional, in return, is expected to recognize a special expertise so that commitment to the role entails a profession of obligation to society.
Corporateness	The profession generates and adheres to its own criterion of competence and controls admission to its ranks. The authority to police its own ranks is one of the distinctive characteristics of a profession.

Most other definitions of a profession generally agree with the above. When these three principles are eroded or vitiated, the profession becomes a vocation. On the other hand, a professional ethic, or ethos, is a code which consists of a set of rules and standards governing the conduct of the members of a professional group. Over the past few decades, there has been an erosion of both knowledge and understanding of the military ethos and ethic. Academicians, auditors, accountants, lawyers, entertainers, writers, commentators, celebrities, politicians and pundits would have us believe they understand the professional role of the military. This is understandable, but when the fighting starts, things military become esoteric. The explosion in communications, the temptations of situational ethics, the changing mores and the acceleration of change have imposed great demands on the military leader in achieving the demands of military discipline.

Armies have always been used as instruments of social engineering. The role of the U.S. armed forces in the integration of blacks (a racial problem) and the integration of women (a gender problem) in our society could not have been accomplished by any other organization, either foreign or domestic. The military is now being considered the obvious social lever to achieve acceptability of homosexuals. This is a profoundly different proposition than the changes achieved in matters of race and gender. Why?

Joint Chiefs of Staff chairman General Colin Powell expressed his views in this manner on the differences in an exchange of letters with a member of Congress who advocates the acceptance of homosexuals:

> 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.[27]

Syndicated columnist George Will, referring to an article by E.L. Pattulo in a recent issue of *Commentary*, states that "race and gender are genetically determined, not the result of choices. But most postnatal events, including choices, influence sexuality."[28]

Liberty without law is license. Freedom without discipline is anarchy. Behavior in our society is controlled by both law and discipline. The discipline of our society as a whole is the authority of our laws. Self-discipline is a combination of law, the desire for social acceptability, codes of conduct, group dynamics, morality, religious constraints and the like. Military organizations operate on the basis of organizational discipline that includes, but transcends, societal discipline in that we not only must abide by civil laws of city, county, state and the national government, but also by the Uniform Code of Military Justice as well as professional self-discipline. Altogether these restraints are more stringent than those found in most, if not all, areas of civilian life.

Homosexuals believe that homosexuality is a "civil right." They also maintain that homosexual behavior is not the same as "sexual orientation." To quote from a recent memorandum submitted to a review board involving personal security practices in a federal agency:

> The terminology used to refer to sexuality in particular varies widely in the authorities exercised. ... At times the language is clear and specific, and other times oblique. For purposes of this review, unless quoting directly from particular sources, the term "social orientation" will be used to refer generally to sexuality, e.g., heterosexuality and homosexuality. Sexual orientation is the proper term to use for several reasons. First, this is the term used by the definitive study on "Homosexuality and Personal Security" in September of 1991. Second, it is the only term given legal validity in virtually every civil rights statute or ordinance nationwide protecting gay men and lesbians from discrimination, e.g., the District of Columbia Human Rights Act, the California Civil Code, the San Francisco Municipal Code and the proposed Federal Civil Rights Act. Third, as the PERSEREC study highlights, and as recent widely reported medical studies appear to establish, an individual's heterosexuality or homosexuality does not result from simple "preference." Rather, adult sexual orientation has clear biological and sociological origins, and it cannot be changed by mere preference or whims.[29]

Each of the premises promulgated in the above quote is subject to challenge, but the pattern of evolution of terms by homosexuals from "sodomy" to "homosexual" to "gay" to "orientation" to "civil rights" (and there are other terms in between) is abundantly clear. Homosexual orientation may be celibate, but is celibacy confined only to the work place — and is what happens after hours the business of anyone but consenting partners? To define the limits of the work place in the military is an impossible task. This is especially true during an entire enlistment or a tour of service, and absolutely over a career. Part of the opposition of the military to the admission of homosexuals is because "orientation" is such a vague concept, but behavior is finite. Homosexual behavior (the practicing of homosexual acts) is absolutely unacceptable in the Army for reasons of good order and military discipline, (that is, personal and organizational discipline) the maintenance of health, and the maintenance of readiness.

In the matter of medical readiness, Army expertise in public health is without peer — and for obvious reasons. The United States Army, up to World War II, suffered more casualties from disease

than from battle deaths and injuries in all its wars. It is the United States Army that has led the fight and provided the epidemiological solution to diseases such as yellow fever and cholera. It is in the forefront of Acquired Immunodeficiency Syndrome (AIDS) research. Medical statistics for homosexuals provide evidence that they are extremely poor risks for their own future health. The potential risks involving Human Immunodeficiency Virus (HIV) and AIDS are enormous.

In a January 9, 1993, article the *Washington Post* noted that San Francisco commemorated the 10,000th death in the city from AIDS.[30] Ten thousand people is the strength of a light infantry division. The article further states that 28,000 people — four percent of the population of the city, or the equivalent of nearly three light infantry divisions or 60 percent of an Army corps — have HIV. There should be no doubt about the effect of those numbers on readiness.

Particular concerns are not from AIDS itself but from other diseases that are contagious and acquired from AIDS victims, such as tuberculosis. There is evidence that a resurgence of AIDS-related tuberculosis is a current serious threat to public health,[31] and this poses a definitive threat to the Army.

Armies always attract avaricious civilian entrepreneurs near Army posts who exist by preying on soldiers. If the Army is required to accept homosexuals, there will be a growth of businesses that cater to the homosexual element, such as pornographic theaters. Consider the description of pornographic theaters in New York City in 1988 as portrayed by Dr. Stephen C. Joseph in his *Dragon Within the Gates*:[32]

> Conditions were horrendous. The movie houses showed pornographic films to an almost entirely male clientele. Inside, theater seats, hallways, restrooms, and lounges were used for a wide variety of sexual acts, most between anonymous partners who cruised the theater. ... Often a single person would take on multiple anonymous partners. In short the conditions were similar to those that led to the closing of the bathhouses.

Any Army officer who has been involved with adjacent communities while serving as an installation or garrison commander or staff member has experienced the difficulties of controlling these types of activity. It should be obvious that such establishments do not and would not contribute to the readiness of the Army. The Army cannot tolerate homosexual behavior.

The Army is often accused of being homophobic. The purpose of the exclusion of homosexuals in the Army is not solely for the maintenance of health and discipline of the Army; it is also for the protection of the homosexuals themselves. The comment is often made that there are homosexuals already in the Army. Without a doubt there are. But those who maintain celibacy and self-discipline are not pursued. Those who engage in consensual homosexual acts, as long as they are not accompanied by other brutal criminal acts, are generally separated, quietly and without stigma. The price of pursuit, as well as administrative and legal proceedings, time and money, is not worth the cost of what could be perceived as "institutional vengeance."

People have been denied admission if they admitted to homosexual orientation or behavior because the circumstances of military life are such that the chances of the exposure of homosexual orientation or behavior is much more likely to occur than in civilian life. Barracks, extended field duty

or isolated tours have few parallels compared to the circumstances of privacy and the environment in civilian life. The requirements for self-discipline in the military are more stringent than in civilian life. And with disclosure comes expulsion or punishment, depending on the act.

The nightmare of the chain of command is that with exposure might come vigilante justice in the form of attacks on homosexuals. The Army will not tolerate such behavior, but does anyone doubt the problems inherent in these situations involving morale, discipline, military justice, readiness and cohesion? It is an even more complex problem because of how little we do know about homosexuality.

Do we as a society really know what causes homosexual conduct? (Most people are generally unaware of what are actual homosexual behavioral acts.)

- Is it a medical or clinical problem?
- Is it a psychological problem?
- Is it a genetic problem?
- Is it just a matter of choice (i.e., behavior)?

Perhaps it is all of the above. All that is known is that it is not well understood. It certainly is more than "sexual orientation" or "sexual preference." If we do not understand the problem any better than we do, we had best exercise caution before it is imposed by fiat on an organization that operates on the requirement of implacable organization and discipline.

The military is the only profession that is required by society on a recurring basis to take life to protect our society as a whole. All other professions are for the development and fulfillment of life. Yet no other profession has contributed as much to the protection and development of society as has the military. As such, it has been granted permission by society to live by and within certain rules that are not allowed others. One could argue that civil rights for soldiers are not quite the same as they are for civilians. Unfortunately, the military has not been very articulate in explaining its disapprobation of homosexual inclination or behavior. Some military spokesmen that have appeared in print or on camera are so inarticulate that they appear to be caricatures of the homophobic stereotype. What is not understood is that homosexual behavior is such an anathema to these professional soldiers that it almost appears they have been particularly selected to make the case for the proponents of homosexuality. Most of these men have had to deal with cases of homosexual aggrandizement during their careers. If simple sexual harassment is not acceptable in civilian life, homosexual acts are the epitome of repulsive conduct in the Army (notwithstanding recent events in the military).

To categorize, and all categorizations as well as generalizations are admittedly false, male homosexuals are usually considered sensitive, artistic, creative, gentle and effeminate. Conversely, this is not the "warrior" image one associates with noncommissioned and commissioned officers of the line. Probably few homosexuals are found in line units. Those who are found there are the aggressive, dominating personalities who seek sexual gratification and/or fulfillment by employing rank and position. The military life and population provide opportunity for these people. Most leaders

of any experience have had to deal with these individuals over a career, and it may help to explain their revulsion to homosexual acts compared to a more tolerant attitude involving the sexual mores of society as a whole.

There is no question that we live in a period of unprecedented and unparalleled change, be it technological, sociological, organizational, economic, geopolitical or personal. The only constant in the military is guaranteed change. Life in the military, particularly over the past half-century, has been to experience change beyond that of any other profession. The Army is now in the throes of even more change (e.g., "You must reduce strength — but go to Somalia. We wanted you for a career, but now we must let you go to reduce strength.") The list is endless and the system may, in fact, be approaching overload.

Senator Sam Nunn is quoted as saying:

> We've got to consider not only the rights of homosexuals but also the rights of those who are not homosexuals and who give up a great deal of their privacy when they go in the military. ... What we don't want to do is overload the system. We're undergoing a lot of budget cuts now. We're struggling with the whole question of women in combat and how far to go in that direction. We're trying to do everything we can to cut sexual harassment in the military, which is a problem.[33]

The Army will adapt to change for any rational reason, but the senior military and political leadership should be careful not to employ the straw that will send the camel to the osteopath.

One hears talk of mass resignations or selective resignations by ranking officers if homosexual exclusions are removed. That is a very doubtful assumption, but it creates great journalistic excitement and anticipation. The personalities are too diverse for any such action, both in the micro and macro sense. There may be a few individuals who believe so strongly in the exclusion policy that they would leave, but rational thought and action will prevail.

The most publicly quoted information from the June 1992 GAO report is the fact that $27 million is lost annually by eliminating homosexuals from the services.[34] These costs include only recruiting and initial entry training. (One newspaper article attributed the cost to "immunizations.") What about the military medical costs expended for treatment of sexually transmitted disease (STD) and Human Immunodeficiency Virus (HIV)? What about the military money used for HIV testing (which, incidentally, homosexuals want to eliminate)?[35] What about the military money for HIV research? STDs are behavioral diseases, and associated with the loss of STD-and HIV-afflicted personnel are the inclusive military medical, operational and training costs. The price of sexually transmitted disease in the Army is extremely high and not just in dollars.

One of the most important considerations for continuing the exclusion concerns the senior-subordinate relationship that exists in the military. Unlike civilian life, life in the military is a 24-hour-a-day existence. One reads of the disgust concerning homosexual harassment, such as ogling in showers and in foxholes. Perhaps, but that is exaggerated reasoning in an attempt to discuss the problem. However, the essence of discipline in the Army and on the battlefield are the senior-

subordinate relationships that are developed and practiced over a professional lifetime. When gender is introduced into military organizations, inevitably there are people who are sexually attracted to each other. Unfortunately, love is not rational and corporals do not fall in love with corporals, nor do colonels fall in love with colonels (all with the same date of rank). Nothing is more corrosive or divisive than the perception — not the reality, just the perception — that someone possesses an advantage over another because of a sexual relationship. It is extremely difficult in heterosexual situations, but it is devastating in homosexual relationships. To introduce the problem of these homosexual relationships for solution by the chain of command in Army units, particularly when it is not necessary, is to manifest an expression of callousness that borders on contempt.

Homosexuals claim they are different. So are soldiers. Perhaps Charles de Gaulle said it best in *The Edge of the Sword*:

> Men who adopt the profession of arms submit of their own free will to a law of perpetual constraint. Of their own accord, they reject the right to live where they choose, to say what they think, to dress as they like. From the time they become soldiers, it needs but an order to settle them in this place, to move them to that, to separate them from their families and dislocate their normal lives. On the word of command they rise, march, run, endure bad weather, go without sleep or food, be isolated in some distant post, work until they drop. They have ceased to be masters of their fate. If they drop in their tracks, if their ashes are scattered to the four winds, that is part and parcel of their job.
>
> Since the beginning of time armies have found in this life of drudgery, this vocation of sacrifice their meaning and their joy. Unaided they plow a field and sow a crop which others will reap. But how is it possible to live in a world apart, to serve an ideal which is unlike that of other men, without feeling differently, without thinking differently from those who belong to an almost alien community without having a special scale of values and relationships? The existence of an Armed Force within the nation is inconceivable without the corollary of a separate code of behavior which holds it together and gives it life. But this code, this spirit, while isolating the soldier from his civilian fellows, contributes to his prestige. The mass of mankind shows that respect for him which the manifest example of great moral strength almost inevitably arouses. Military discipline and military solidarity have never failed to strike and hold the imagination. The debt owed to it by literature, the theater, music, architecture and the dance is incalculable so greatly have they been inspired by the sufferings and the triumph of men trained for battle — to say nothing of the recorded events of history, legends, songs and pictures that alone bear witness to the effect upon our forbearers of the splendor of armed might. Even today we find ample evidence for this in children's games, in the crowds that gather around the coffin of a Marshal of France — in the electrifying effect of a regiment marching by.[36]

Why does the Army adamantly oppose the proposal to remove the exclusion of homosexuals?

The policy of excluding homosexuals is to ensure that the military discipline, health and readiness of the United States Army are not compromised. Any policy that compromises those considerations is not merely objectionable, it is unacceptable. This is not a matter of civil rights, or

of sexual orientation. The heart of the matter is that it is a matter of institutional and personal discipline necessary for the security of the nation.

Huntington, in *The Soldier and the State*, ends his book with a question and a statement:

> Yet is it possible to deny that the military values — loyalty, duty, restraint, dedication — are the ones America needs today? ... Upon the soldiers, the defenders of order, rests a heavy responsibility. The greatest service they can render is to remain true to themselves, to serve with silence and courage in the military way. If they abjure the military spirit, they destroy themselves first and the nation ultimately. If the civilians permit the soldier to adhere to the military standard, the nations themselves may eventually find redemption and security in making that standard their own.[37]

If homosexuals desire to join the Army, let them do so under the Army's rules for behavior. If they want to join the Army to change the rules and to ensure their "civil rights," the Army does not want them. And if the rules of behavior are changed for whatever political gain or minority satisfaction, the nation will be the loser. Over two hundred years ago Edmund Burke said, "The only thing necessary for the triumph of evil is for good men to do nothing."

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4. United States General Accounting Office Report, *Defense Force Management: DoD's Policy on Homosexuals in the Military*, Washington, DC: U.S. Government Printing Office, p. 10.

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6. USGAO, *Defense Force Management,* pp. 16, 37, 44.

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17. *Ibid.*, p. 2.

18. *Ibid.*, p. 3.

19. *Ibid.*, p. 3.

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31. Carlton R. Bryant, "TB's Resurgence Causes Ethics Dilemma," *Washington Times*, December 1, 1992, pp. A-1, A-8.

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VIEWPOINT

The following represents the personal opinions of the author and not necessarily the position of the Association of The United State Army or its members.

May 1993

HOMOSEXUALS AND UNIT COHESION

by

Robert Lee Maginnis

Senator Sam Nunn hosted hearings during the last week of March 1993 concerning the contentious issue of homosexuals in the military. His committee heard from cohesion experts.[1] These experts outlined cohesion's importance for combat readiness.

They indicated the military's business is to fight and win. It accomplishes this task by fielding well-trained and cohesive units. They opined that the introduction of openly serving homosexual soldiers will undermine the development and sustainment of cohesive units.[2]

This paper will examine the probable impact of openly serving homosexuals for unit cohesion. Before examining the specific detrimental impact, the paper addresses the significance of cohesion for combat units; how cohesion is developed; and how it is sustained.

First, cohesion is critical to combat effectiveness. Military experts from Clauswitz and Napoleon to Schwarzkopf have recognized the importance of cohesion. It causes soldiers to willingly expose themselves consistently to enemy fire and to fight to victory or death.

Cohesion is the invisible power behind the combat unit. French military theorist Ardant du Picq explains the concept: "Four brave men who do not know each other will not dare to attack a lion. Four less brave, but knowing each other well, sure of their reliability and consequently of mutual aid, will attack resolutely."[3]

Army historian S.L.A. Marshall further illustrated the significance of cohesion. He said, "I hold it to be one of the simplest truths of war that the thing which enables an infantry soldier to keep going with his weapon is the near presence or the presumed presence of a comrade."[4]

Individual bravery does not decide the battle, rather unit bravery (or cohesion) does. Cohesion is related to the confidence each man places in his leaders and comrades. It is the unity of effort in a fighting team.

According to British historian Lord Moran, "The secret of the awful power of the German Army (of World War II) is ... in a certain attitude of her manhood."[5] During that war the German army, on the average, inflicted three casualties on the allies for every two they incurred.[6] This success is attributed to small-unit cohesion, mutual trust and confidence in leaders and comrades. It is a critical combat multiplier.

The high level of cohesion in the Israeli Army is a reflection of its society. That society has a common language, religion and strong sense of nationalism. Its army is able to defend itself through the use of highly cohesive units.

Israeli battle experience showed that soldiers who lacked cohesive bonds with leaders and comrades were more vulnerable to battle shock. Cohesive units were better able to endure the shock of combat and maintain effectiveness than noncohesive units.[7]

U.S. ground units in the Vietnam War did not have the same level of cohesion as North Vietnamese units, especially after the Tet offensive in 1968. The U.S. Army lacked vertical bonding —the need for soldiers to believe in their leaders and the purpose of their mission—and the horizontal bonding needed for soldiers to feel comfortable in a unit. This resulted in a total breakdown of cohesion on the unit level.[8]

Although the Argentines outnumbered the British during the Falkland War, and although their weapons and supplies were more than adequate, it became apparent that the Argentines lacked the will to prevail which is characteristic of cohesive, well-led units. This became even more apparent when, during negotiations for surrender, a main Argentine condition was that their officers be allowed to retain their side arms for protection against their own men. Argentine soldiers and officers did not have mutual trust.[9]

The U.S. Army studied the impact of cohesion for units involved in Operations Desert Shield and Desert Storm. Units of six brigades were studied. Cohesion was found to be a critical variable affecting soldier handling of stress in combat.

Military history demonstrates time and again that a cohesive unit is more effective in combat than an equal force with less cohesion. There are examples of highly cohesive small forces destroying much larger forces with low cohesion.

Cohesion makes the difference on the battlefield. It saves lives. It is not just something nice to have. It is essential at all levels of the military organization!

Second, cohesive units are made from soldiers willing to subscribe to Army values and standards. The Army resocializes recruits who have generally congruent values, interests, attitudes and fundamental beliefs to accept the values and standards critical to becoming a soldier.

The recruit must hold the Army's values and demonstrate them in performance of duties.[10] A recruit must also accept standards which dictate the behavior that will or will not be tolerated.[11]

Acceptance of common, explicit Army values and standards by soldiers reduces conflicts, decreases obstacles to communication, and improves unit competence. Commonly held values and standards among leaders and soldiers also make units less susceptible to disruption by external forces and contribute in large measure to unit cohesion.

Ideally, the military attracts only recruits with the following cohesion-building values: a willingness to sacrifice personal welfare for unit welfare; a desire to become part of a disciplined group; a sense of community obligation; and respect for authority. These elements form the basis for building cohesive units.

If recruits with incongruent values must be accepted, the socialization process will be more difficult and will require constant attention until military values have been internalized, not merely given superficial compliance. When not internalized, conflict results.

Another aspect of resocializing the recruit is the creation of a new identity. The recruit must discard his personal identity in favor of the group (unit) identity. He must willingly focus on the unit's activities and goals and not his own. The neophyte soldier becomes totally dependent on his fellow soldiers for completion of unit missions and for survival. This mutual dependence fosters mutual trust.

Resocializing recruits also includes the removal of the unsuitable. In the Army, a recruit is unsuitable who cannot obey orders — any orders — or who fails to inculcate Army values and standards, or who cannot withstand immense and searing mental and physical pressure. These people will not enjoy the confidence of their peers.

Nonconformity with the cohesion-building unit also includes membership in an informal interest group. Many times informal interest groups have a strong influence upon the soldier's commitment to unit goals, values and standards. Such informal groups were evident during the Vietnam War.

Such groups included "heads" (drug users) who contended with "juicers" (alcohol users); "hawks" with "doves"; "lifers" (career soldiers) with "U.S.s"(draftees); and African-Americans who contended with whites. Membership in one or more of these interest groups often degraded a soldier's loyalty to his unit. Serious problems arose when such groups acted contrary to unit objectives. These groups undermined morale and unit cohesion.

Other significant factors which affect soldier socialization and unit cohesion include wide divergences among soldiers in terms of age, cultural background, religious preference and sexual composition. These factors need to be resolved in favor of the unit. After all, the unit's effectiveness demands complete compliance and subordination of personal preferences.

In summary, soldiers who accept the Army's values and standards and subordinate personal interests to those of the unit become the building blocks that make cohesive units. Over time and through frequent contact, interpersonal relationships develop among soldiers and between them and their leaders. Eventually, these relationships become more important and more intense. These intense, personal relationships are the basic elements of unit cohesion. They explain the maturing trust, discipline, morale and confidence that are key underpinnings of cohesive units.

Third, cohesive units are sustained in peacetime by maintaining a high frequency of association among unit members by reinforcing unit boundaries through design of barracks, mess halls and day rooms. Units also provide other opportunities, such as clubs and athletic facilities, for soldiers to come together socially. Unit leaders encourage bonding and cohesion by creating a healthy "we-they" view through traditions, ceremonies and distinctive insignia.

Leaders support cohesion by actively discouraging soldiers from belonging to autonomous interest groups with possibly deviant norms. Such groups tend to polarize soldiers and therefore undermine cohesion.

Training plays a key role in the development of cohesive units. During peacetime the process of military training is designed as much to inculcate group cohesion and solidarity upon which fighting spirit depends as it is to produce an adequate level of technical or tactical expertise.

Soldiers best bond (and therefore become cohesive units) when their differences are minimized and common expectations and experiences are shared. They develop strong rules of behavior and expectations (group norms) about individual conduct on the basis of face-to-face relationships which become the immediate determinant of the soldier's behavior.

The bonding of soldier and leader is also critical to the development and sustainment of cohesion. Soldiers bond with leaders they trust, especially leaders who deal effectively with dangerous situations. These leaders ensure this vertical bonding by demonstrating that they care about the soldiers' personal lives, by evidencing professional competence and a degree of leader predictability, by ensuring effective leader-soldier communication, and by evidencing an ability to effectively train soldiers.[12] These factors relieve the soldier of anxiety, resulting in greater leader influence and control, and encourage the development and sustainment of vertical cohesion.

Another factor that contributes to cohesion is the role played by the supportive military family. Nearly half the Army is married. The importance of the morale and confidence among Army spouses and family members must be considered. The family can directly influence retention and support the cohesion-building process.

The sustainment of soldier bonds and unit cohesion requires careful nurturing. Soldier-to-soldier and soldier-to-leader relationships cannot be neglected. Unnecessary interruptions to these relationships potentially defeat unit cohesion. The introduction of circumstances or people with contrary aims undermines cohesion building.

In summary, cohesion must be developed and sustained during peacetime. It is constructed from groups of soldiers who inculcate Army values and standards. It is sustained by very personal and daily contacts with comrades and leaders. This process must be jealously guarded.

Against this background, then, it would appear that cohesion in Army units would be jeopardized by the introduction of homosexuals. The integration of openly homosexual soldiers will result in distorted bonding phenomena: bonds among homosexuals, bonds among homosexuals and heterosexuals, and bonds among heterosexual soldiers. This multiplicity of bonding defeats the

Army's need to foster cohesion in small units. The introduction of homosexuals will polarize small units — the cornerstone of combat effectiveness.

The recipe for the exact characteristics needed in individuals who, when put together, can achieve high levels of small unit cohesion is not totally validated. However, the experience of combat-seasoned military professionals indicates that people with certain behavior patterns will not contribute positively to unit cohesion.

The behavior patterns which most military personnel consider detrimental to the development and sustainment of cohesive units must be considered. The following scientifically-documented homosexual behavior patterns can undermine the development and sustainment of cohesive units.

First, homosexuals define themselves by behavior which many soldiers find repugnant. Their sexual behavior (sodomy) is also a violation of the Uniform Code of Military Justice (UCMJ). Heterosexual leaders and soldiers who subscribe to the intent of the law will in large numbers reject the forced integration of homosexual soldiers. The forced integration of homosexuals will undermine the trust and confidence among unit leaders and their comrades. It will also jeopardize leader trust in the integrity of the civilian leaders who placed the military in a dilemma between the commander-in-chief and the law-giving Congress.

The typical heterosexual soldier possesses a value system from middle America which says that homosexual behavior is abnormal. These soldiers do not want to associate with homosexuals. Forced association with homosexuals will damage the soldier's confidence in the Army and unit leaders and foster greater distrust of homosexuals.

Second, homosexuals are by definition sexually attracted to people of the same sex. The potential for sexual competition among homosexuals in a unit may destroy mutual trust and engender suspicions among heterosexual soldiers.

People involved sexually with one another may be less than effective. Relationships that involve intimate activities can stifle individual objectivity by participants in the relationship. For this reason, married couples do not serve in the same units. Homosexual soldiers in the same unit who are openly or secretly involved sexually will lack the objectivity required in cohesive units.

Third, self-disciplined soldiers are an essential building block of cohesive units. Considerable scientific research suggests homosexuals are very promiscuous when compared to heterosexuals. This documented behavior pattern will raise suspicion about their personal discipline and their willingness to inculcate the discipline demanded by the profession of arms.

Fourth, homosexual men have trouble establishing male relationships characterized by mutuality and equality. This is attributed to an underlying feeling of masculine inferiority which becomes the basis of envy and resentment toward heterosexual men. Consequently, the homosexual has difficulty relating to other men as equals, due to this resentment and because of the heterosexual's sexual and romantic significance to the homosexual. Additionally, heterosexual men who possess power and authority over the homosexual become particular symbols of masculinity, which only

intensifies the homosexual's same-sex desire. These factors will inevitably affect the important asexual bonding among peer soldiers and among leaders and homosexual soldiers. There is also a significant potential for increased incidents of fraternization among homosexual leaders and subordinate soldiers. This can be more devastating than relationships among peers. The critical vertical and horizontal bonding characteristic of cohesive units will likely be compromised by the introduction of homosexuals.[13]

Fifth, there are potential and psychological consequences for heterosexual soldiers serving with homosexuals. The homosexual has a far greater probability of contracting sexually transmitted disease (STD) due to a promiscuous life-style. The heterosexual will be sensitive to this probability and the increased chance that a homosexual soldier may contract the deadly HIV. The Centers for Disease Control (CDC) indicates that two-thirds of all HIV cases are in the homosexual community.[14] This information alone will have psychological consequences for heterosexual soldiers. They will constantly be aware that contact with a homosexual's body fluids could result in exposure to the HIV. Soldier bonding will suffer.

Sixth, homosexuals recruit sex partners, by necessity, from the heterosexual community. Young heterosexual soldiers who have not yet fully developed their own sexual identity will be threatened by the presence of homosexuals. Additionally, older soldiers with children at home will be especially hesitant when dealing with homosexuals in family housing areas.

SUMMARY

Cohesion cannot survive in an environment racked by a lack of discipline, poor morale and distrust. Scientific studies indicate that homosexuals as a category of people evidence behavior patterns that will potentially undermine the social ingredients that contribute to the developement and sustainment of cohesive units. Their presence may well polarize units.

The Army must maintain a hard and illiberal view of life and the world. It must prepare for the battlefield. It must stand ready, if need be, to die. It is, in essence, a national resource to be used by society. This resource is most ready when it has well-trained and highly cohesive units. Openly serving homosexual soldiers will undermine the development and sustainment of this now well-honed force.

ENDNOTES

1. The committee heard testimony on March 31, 1993 from COL William Darryl Henderson, USA Ret., Dr. David H. Marlowe (Chief, Department of Military Psychiatry, Walter Reed Army Institute of Research), and Dr. Lawrence J. Korb.

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8. William Darryl Henderson, *Cohesion: The Human Element in Combat* (Washington, D.C.: National Defense University Press, 1985).

9. Testimony by COL Darryl Henderson before the Presidential Commission on the Assignment of Women in the Armed Forces.

10. U.S. Department of the Army Field Manual (FM) 100-1, *The Army*, outlines four critical values: integrity, loyalty, duty and selfless service. It also outlines four soldierly qualities: commitment, competence, candor and courage.

11. Army standards of performance as outlined in Army regulations. Interpersonal relationships are outlined in Command Policy (AR 600-20), Standards of Ethical Conduct (Executive Order 12674), FM 22-100, *Military Leadership*, and more.

12. This is cited from testimony by Dr. David H. Marlowe, Chief, Department of Military Psychiatry, Walter Reed Army Institute of Research, to the Committee on Armed Services, United States Senate, on 31 March 1993.

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AUSA ISSUES

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THE ISSUE: The Department of Defense Homosexual Exclusion Policy

The Association of the United States Army stands firmly in support of the ban against homosexuality in the Armed Forces for the following reasons:

The admission of open homosexuals is potentially divisive within an organization whose strength is unity and teamwork.

• Inclusion of homosexuals could diminish the shared values that are essential to bonding through which soldiers live, train and fight together. Such divisiveness would degrade unit readiness and impair the combat effectiveness of the team.

• An openly homosexual officer would not engender the trust and confidence needed from subordinates who find his or her life-style morally objectionable.

• Heterosexual animosity toward known homosexuals can cause hostility resulting in degradation of team or unit esprit.

• Homosexuals are at greater risk of contracting AIDS and other sexually transmitted diseases that would affect their deployability and long-term service.

Lifting the ban would immediately create complex administrative problems in the accommodation of homosexuals in the Armed Forces.

• Privacy is a real issue. Integration of homosexuals leads to a host of privacy issues such as the sharing of showers, latrines and barracks.

• Many soldiers can be expected to object to sharing rooms, tents or bunkers with known homosexuals.

• Integration of homosexuals could be highly disruptive to Army family and community comity.

• The rules and regulations governing fraternization, relationships between the ranks and conduct of members of the Armed Forces would have to be carefully crafted. The dilemma for the Army will be to redefine what behavior is acceptable and what is unacceptable within the institution.

The legal and regulatory complications are staggering.

• Homosexual behavior (sodomy) is in violation of military law, i.e., the Uniform Code of Military Justice, which can be changed only by act of Congress. This raises the issue of whether one can actually separate the "status" — being a homosexual — from the "behavior" — that is, doing what homosexuals do.

-more-

• How would regulations relating to spouses and dependents (e.g., eligibility for military housing, medical benefits, preferential hiring practices) apply to declared partners of homosexuals?

• There will be the full range of court challenges with demands based on either civil rights or equity. Some will involve differentiation in assignments, promotions and schooling.

• Could the enlistment contracts of those in the service when the ban is lifted be legally broken under these circumstances?

Military health care problems would be magnified.

• The promiscuous life-style of many homosexuals makes them more susceptible to sexually transmitted diseases, including the AIDS virus, hepatitis-A, hepatitis-B, syphilis, gonorrhea and a variety of lesser known venereal diseases.

• Soldiers testing positive for the HIV virus are not deployable. Additionally, all soldiers are expected to be available for blood transfusions in combat (the walking blood bank).

Homosexual behavior is contrary to the moral convictions of the vast majority of Americans.

• Homosexual preference or practice is not widely ingrained in American society. The assertion that 10 percent or more of the population is homosexual is based on a discredited 1948 study which polled large numbers of convicts and male prostitutes. A National Center for Health Statistics study suggests the real figure is less than two percent.

• American societal standards are clear from the statutes which make sodomy a crime. The religious/moral dimension is clear from the long-established teachings of numerous denominations on the subject.

• This change in policy could easily discourage young people from entering service and cause widespread recruiting and retention problems. Similarly, parents are likely to discourage their sons and daughters from entering military service.

Before proceeding to inflict such a drastic social change on the Armed Forces, it is imperative that we gain a thorough public understanding of its impacts. It is vitally important that we listen to and heed the concerns of the people who would be most directly affected by this major policy change — the men and women in uniform and their families. Today they are universally concerned and deeply troubled by this whole matter.

It is vitally important that this question be thoroughly reviewed by Congress. Public hearings should be held and all facts considered. Public support or lack of support should be scrupulously evaluated. Before implementing such a wrenching social change, we must carefully consider its impact on one of our nation's most important institutions, the Armed Forces of the United States of America.

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AUSA ISSUES

ASSOCIATION OF THE UNITED STATES ARMY
2425 WILSON BOULEVARD, ARLINGTON, VIRGINIA 22201-3385

THE ISSUE: The Department of Defense Homosexual Exclusion Policy

Introduction

America's Army is unique. It is an institution designed and trained to fight America's wars. It operates under a strict code of discipline and law. Its primary focus is on the mission.

The whole system is directed toward getting and keeping the people who best meet the Army's mission requirements. Policies are not intended as career opportunities for all who desire to serve. In fact, the standards differentiate so as to select those best adapted to leadership and skill requirements as well as to the military environment, and have excluded persons for a number of reasons, to include physical condition, academic credentials, and mental or physical limitations. It is not a determination of individual worth but rather a selection to best fit Army needs. To reiterate, this is not a matter of "discrimination," the term most often used, but it is a matter of differentiating those people who can best serve the military.

The homosexual issue has been cited by many as identical to the integration of blacks and women into the military forces. It is acknowledged that the Army has accomplished this exceptionally well. Homosexuals, however, pose a far more complex question. They are not defined by either race or specific gender but rather by sexual orientation and sexual practices. This can and will conflict with certain standards of society and the deeply held moral convictions of many individuals.

As pointed out by General Colin Powell, Chairman of the Joint Chiefs of Staff, race is nonbehavioral while homosexuality is behavioral and the same considerations are not applicable to military service. The issues relating to gender are likewise not synonymous with those of homosexual integration. Recognizing the privacy requirements for men and women, separate housing, bathing and toilet facilities have been provided. Introduction of homosexuals into the units and barracks vastly complicates the problem, as discussed later in this paper.

The military is not only tightly organized and disciplined but also needs to maintain a strong sense of community. Individuals must live and work in close, often intimate, associations over long periods of time. The entry of publicly avowed homosexuals into the military requires both an understanding and acceptance which do not now exist. It could create a serious and divisive culture clash.

While we do not in this paper attempt to make final judgments on the profound decisions involved, we do feel an obligation to point out key issues to be considered in coming to these decisions.

It is important that a broader knowledge of the basic issues be clearly understood by the White House, by the Congress and by the body politic before a premature decision becomes the vehicle for the erosion of the finest Armed Force this nation has ever fielded.

The Association of the United States Army stands firmly in support of the ban against homosexuality in the Armed Forces. The following presents some of the principal reasons why we take this position. It also outlines some of the issues raised over recent months which require serious appraisal.

The military services exist for the purpose of defending the nation and protecting national interests with minimum loss of life. The admission of open homosexuals is potentially divisive within an organization whose strength is unity and teamwork.

• Units are a special segment of the military environment. They live, train and fight together. Bonding is important. Shared values are essential in their bonds, and inclusion of homosexuals could serve to diminish these values. It would be difficult for a publicly avowed homosexual to bond with and be fully accepted by the group. In the professional judgment of military commanders, such divisiveness would degrade unit readiness and impair the combat effectiveness of the team.

• Senior-subordinate relationships may be adversely affected. Military organizations operate in a disciplined and structured way and are hierarchial in nature, with clearly established channels for command and control. In such a framework, everyone knows who is in charge, but the system demands mutual senior-subordinate trust and respect in order to be effective. It is difficult to perceive an openly homosexual officer in a leadership role demanding and receiving the kind of trust and confidence needed from subordinates who find his or her life-style morally objectionable. This situation could not help but be erosive to effective control and discipline.

• Heterosexual animosity toward known homosexuals can cause latent or even overt hostility, resulting in degradation of team or unit esprit. While this animosity is unfortunate, it is a fact of society at large and cannot be changed by the military.

• Significant evidence exists that homosexuals, for whatever reasons, are at greater risk of contracting diseases (including AIDS and other sexually transmitted diseases) that would affect their deployability and long-term service. (While this may only reflect past behavior and is not an intrinsic aspect of homosexuality, it is nontheless of current and real concern to the military.) This becomes a unit readiness problem whenever an individual is physically unable to carry out his or her duties at full capacity or is not eligible for deployment overseas due to HIV or other infections.

Lifting the ban would immediately create complex administrative problems in the accommodation of homosexuals in the Armed Forces.

• Privacy is a real issue. Service requirements place many service members in close association, often in a status of prolonged forced intimacy (in barracks, aboard ships and in the field). Integration of homosexuals leads to a host of privacy issues such as the sharing of showers, latrines and barracks assignments.

• Added to the privacy issue is the question of accommodating homosexuals in military living arrangements —either troop billets or family housing. In the former, heterosexuals can be expected to object to sharing rooms, tents or bunkers with known homosexuals, thus confronting commanders with the challenge of either forcing cohabitation of heterosexuals with homosexuals or facilitating cohabitation of two homosexuals. This also raises the issue of violation of cohabitation laws.

• The military is a unique community. Most Army families, not unlike most other American families, would not find the homosexual life-style and behavior patterns acceptable for their family environment. Large segments of the military population live in close communities, either on military installations or in closely associated enclaves. Integration of homosexuals could be highly disruptive to family and community comity.

• Today issues such as fraternization, relationships between the ranks and conduct unbecoming members of the Armed Forces are all subject to definition and regulation for both homosexuals and heterosexuals. With homosexuals openly accepted, the problem is significantly compounded with a possible combination of male/

female, male/male, and female/female relationships. Rules, regulations and codes of conduct would have to be carefully crafted to cover these situations; the dilemma for the Army will be to redefine what behavior is acceptable and what is unacceptable within the institution.

The legal and regulatory complications are staggering.

• Homosexual behavior (sodomy) is in violation of the law in most jurisdictions. Military law, i.e., the Uniform Code of Military Justice, specifically prohibits sodomy and can be changed only by act of Congress. This raises the issue of whether one can actually separate (as President Clinton and others are attempting to do) the "status" — being a homosexual — from the "behavior" — that is, doing what homosexuals do. It seems most difficult to seriously draw that distinction since — when it comes to human sexuality — the act, not the attitude, is the defining reality.

• The status of homosexual marriages must be defined. Would they be accepted and would military chaplains be required to perform them? Military law generally adheres to state law where located. Some cities, including San Francisco and Washington, D.C., recognize such partnerships, but most jurisdictions do not. This clearly requires a national referendum.

• Determination would have to be made on how regulations relating to spouses and dependents (e.g., eligibility for military housing, dependent benefits, medical care, preferential hiring practices) would apply to declared partners of homosexuals in the military.

• If the current ban is lifted, the government must be prepared to cope with a number of lawsuits for either reinstatement or restitution of lost wages on behalf of homosexuals who were previously given administrative discharges.

• Lifting the ban would expose the Armed Forces to the full range of of potential challenges with demands based on either civil rights or equity. Some of these will involve differentiation in assignments, promotions and schooling. The issue of quotas will surely surface.

• A challenge from heterosexuals can be anticipated relating to the rules for enlistment terms. Some will not want to continue in service after homosexuals are admitted and will request relief from service. The question to be answered is whether the enlistment contracts of those already in the service when the ban is lifted can be broken legally under these circumstances. Informal feedback suggests that a significant number would seek this option. It could also denigrate the great effort that has been made to attract a top quality all-volunteer force.

Military health care problems would be magnified.

• The promiscuous life-style of many homosexuals makes them more susceptible to sexually transmitted diseases, including the AIDS virus, hepatitis-A, hepatitis-B, syphilis, gonorrhea and a variety of lesser known venereal diseases. An increase in the number of homosexuals in the military service may well increase the medical costs.

• HIV testing is required of active and reserve members no less than every two years, or within six months of deployments or overseas assignments. This applies to all categories. Soldiers testing positive are not deployable, mainly because HIV positive soldiers may be unable to respond to a vaccine and are more susceptible to infections (readiness criteria). Additionally, all soldiers are expected to be available for blood transfusions in combat (the walking blood bank). This is of particular importance with respect to homosexuals because, as stated earlier, they have a higher incidence of infection. However, the HIV testing program is currently under attack by homosexual advocacy groups.

Homosexual behavior is contrary to the moral convictions of the vast majority of Americans, including Armed Forces personnel.

- The claim for minority status is predicated on the claim that 10 percent or more of the population (and of the military) is homosexual. This assertion is based on a discredited 1948 study by Alfred Kinsey, who polled large numbers of convicts and male prostitutes in his sample. A recent study by the National Center for Health Statistics suggests the real figure is less than two percent, the point being that homosexual preference or practice is not widely ingrained in American society.
- The moral dimensions of the issue cannot be ignored — American societal standards are clear from the statutes (Uniform Code of Military Justice and about half the state codes) which make sodomy a crime. The religious/moral dimension is clear from the long-established teachings of numerous denominations on the subject.
- The Armed Forces of the United States reflect the mores of our society. Altering military policy will not only affect the military community but, at the same time, have far-reaching consequences on society in general. It would seem that many would say lifting the ban is permissible as long as it does not involve them but would not accept it for their sons and daughters. Parents are likely to discourage their children from entering military service as well. Therefore, acceptance of homosexuals into the Armed Forces could discourage young people from entering service and cause widespread recruiting and retention problems.

Most nations either bar homosexuals from serving or place restrictions on those who are allowed to serve.

- Abuse and fear of recrimination seem to be subtle, but there are reports of ongoing problems in every nation which allows homosexuals to serve in the military. The Dutch did a study in 1990 after 20 years of permitting homosexuals to serve in the military and found it extremely difficult to have anyone come forward to admit that he/she was homosexual.
- Israel is cited by homosexual advocates as a place where homosexuals are satisfactorily integrated into the Armed Forces. In the Israeli Defense Forces, homosexuals are not allowed to stay in the barracks with the other service members; they are sent home each night. This is totally impractical for U.S. forces. Israeli homosexuals are also prohibited from joining elite combat units and in most cases simply are not accepted.
- The Germans readily admit that known homosexuals have little, if any, chance of advancement because of the deep-seated prejudice against their behavior.
- The performance standards expected almost exclusively of our Army (to deploy world-wide and to accomplish varied and complex missions quickly and efficiently) makes comparisons with other nations' forces of limited value.

Before proceeding to inflict such a drastic social change upon the Armed Forces of the United States, we need to get a thorough educated public sensing of the impacts of lifting the ban. We need to hear and understand the concerns of the people who would be most directly affected by this major policy change — the men and women who wear the uniform of this country and their families. Today they are universally concerned and deeply troubled by this whole matter.

It is vitally important that this question be thoroughly reviewed by Congress. Public hearings should be held and all facts considered. Public support or lack of support should be scrupulously evaluated. If implemented, this will be a wrenching social change and we are dealing with one of our nation's largest and most important institutions, the Armed Forces of the United States of America.

FILE
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Enough is Enough !
P.O. Box 1417
Clinton, MD 20735

A Report on Homosexuality and the Issue of Allowing Openly Homosexual Persons to Serve in the U.S. Military

by
Dr. Gerald L. Atkinson
31 March 1993

Introduction

President Clinton, after the inauguration, announced his intention to lift the ban on homosexuals in the military. The announcement raised a storm of opposition by ordinary citizens. The switchboards of the White House and congress were clogged with calls opposing this move. The Senate sergeant-at-arms' office reported[1] that the lawmakers received 434,104 incoming calls (five times normal) on 27 January. Nearly all of them, according to various senators and representatives, were against[2] lifting the ban. The Retired Officers Association (TROA) Gallup poll[3] of its members conducted between 27 November and 1 December 1993 showed that eighty-three (83) percent oppose lifting the ban. A USA TODAY/CNN/Gallup poll conducted 29-31 January 1993 shows that 50 percent of the populace at large disapprove lifting the ban (43 percent approve with 7 percent having no opinion). More than half, 52%, say that Clinton's actions to lift the ban are a response to pressure from liberal special interest and homosexual activist groups rather than a principled stand[4]. More importantly, the poll reveals that only two major demographic groups, women and college graduates, support lifting the ban (51%). It is clear that these two groups, women and college graduates, hold the key to the success or failure of the President's

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1 Inside Washington, "Washington Switchboards Swamped with Opposing Calls," Human Events, pp. 4, 6 February 1993.

2 Ibid.

3 Leigh, Julia, H., "TROA Members Nix Homosexuals in Service," The Retired Officer Magazine, pp. 21, January 1993.

4 Gays in the Military: More favor keeping the ban in place, USA TODAY, pp.8a, 3 February 1993.

initiative. Nearly all of them have had no military experience. Many of these people, especially women, have no strong conviction on the matter but still remain to be convinced one way or the other. They will make up their minds in the next few months, either by listening to the urgings of the activist homosexual organizations and the mass news media which almost uniformly follow those urgings or by listening to those of us who believe that lifting the ban is wrong. We are not in the minority but we have little organized voice for reaching that audience. We will succeed in convincing them only if we start with some understanding of the condition of homosexuality and how it can adversely affect military efficiency and preparedness. To be successful, we must reach those groups of citizens through our individual family units, church groups, and civic organizations. We must convince them by using materials from all possible sources. It is clear from White House replies to letters sent in opposition to the President's proposed lifting of the ban that they intend to stiff-arm the opposition as they have in the past on controversial matters. This tactic was observed during the past election and is presently being carried out for other agendas. The absence of a single formal White House press conference to answer questions of a probing national press until two months after the inauguration is one example of this tactic. We must not let this tactic succeed for this important issue concerning our future national security.

This report is written for those citizens who are opposed to lifting the ban on homosexuals in the military, whether based on common sense, religious, or other grounds, and who wish to actively participate in convincing others, including the President and members of congress. It is meant to be an objective summary research document that you can use to make presentations to your family unit, church group, or civic organization. It provides footnotes which identify resource material, much of which in turn contains other more detailed references. This document provides the basis for convincing others of our viewpoint.

Most heterosexuals are not motivated to learn about homosexuals and their behavior. It is not a favorite topic of conversation and many times leads to uncomfortable or strained discourse among heterosexuals. This is especially true of the major target group, women. Unfortunately,

we must force ourselves to obtain sufficient knowledge if we are to be credible. This report attempts to provide that background knowledge. In addition, it is quite likely that members of the target group may know or have heard of a homosexual or a homosexual pair who appear to be nice ordinary people in all respects, except for their sexual behavior which they quite properly keep to themselves. To the target group, there doesn't appear to be anything wrong with accepting these people in the military. After all, they are accepted in the local community of the target group. There is an important distinction between these apparently benign homosexual citizens and the homosexual activists who have their own agenda. The former group is generally content to be left alone. It is the latter that we are resisting. It must be stated directly and emphatically here that it is not the purpose of this report to support an antagonistic attitude that might lead someone to physically harm homosexuals or discriminate against them in ways that we, as citizens, are protected from by the constitution. The sole purpose of this report is to provide knowledge that allows you as a citizen to <u>responsibly oppose the agenda of activist homosexual organizations</u> from lifting the ban on homosexuals in the military.

This report is organized in nine (9) major sections. It is probably too long to be included in a single document. You would not have time to read it at one sitting. Consequently, it will be sent via the "Enough is Enough!" mailing network a few sections at a time. If for some reason you do not receive a section in which you have an interest, please write to the address on the letterhead. The missing section(s) will be sent to you. The sections that follow are:

- What is the Activist Homosexual Agenda?
- Is Homosexuality a Psychotic Behavior?
- Does Homosexuality Have a Genetic Explanation?
- Does Homosexuality Have a Hormonal Explanation?
- Does Homosexuality Have a Prenatal Explanation?
- Does Homosexuality Have a Neurobiological Explanation?
- Does Homosexuality Have an Environmental Explanation?
- Aids and the Activist Homosexual Agenda
- Special Considerations for Whether or Not to Allow Openly Homosexual Persons to Serve in the U.S. Military

What is the Activist Homosexual Agenda?

There is an activist homosexual agenda. The mass media recognizes individuals who speak for and lead such organizations as the National Gay and Lesbian Task Force, the Human Rights Campaign Fund, the Lambda Legal Defense Fund, Queer Nation, the Gay and Lesbian Victory Fund, the AIDS Coalition to Unleash Power (ACT-UP), etc. Leaders of these organizations are quoted in leading newspapers and appear on national television. A network of homosexual, religious, and civil rights groups called the National March on Washington for Lesbian, Gay and Bisexual Equal Rights and Liberation recently announced[5] plans to march on Washington, D.C. to demand an end to "discrimination" against homosexuals, especially in the military. They expect to attract more than 500,000 marchers. Barney Frank, a Representative in congress from Massachusetts and an avowed homosexual, has spoken on national television to assuage the concerns of heterosexuals by stating that "allowing openly homosexual persons in the military would pose no problems for heterosexuals". He states that homosexuals would not threaten the privacy of heterosexuals and would "behave themselves." Another activist homosexual, Mike Petrelis of Queer Nation, has appeared on national television[6] stating that "homosexuals in the military would play a positive role for heterosexuals and others on long and extended deployments in remote areas by relieving their sexual pressures." Incidentally, two avowed pederasts appeared on the same television show and were allowed to openly and actively advertise and solicit for their organization. It is quite clear that the public is being manipulated by seemingly benign argumentation for supporting the lifting of the ban while, in fact, the real objective is being articulated by the radical activists. The "high ground" argument is aimed at convincing the uncommitted that lifting the ban on homosexuals in the military is wholly non-threatening to privacy, would have no serious consequences, and is a "civil rights" issue. The real agenda of the activists is to gain acquiescence, then condonation, and then celebration of and recruitment for their sexual orientation and practices. It is an issue

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5 Bryant, Carlton R., "Gays Plan Massive March on District," The Washington Times, pp. A1-6, 26 February 1993.

6 Petrelis, Mike, The Jerry Springer Show, NBC Television, 16 November 1992.

that may start with lifting the ban on homosexuals in the military but it will, if successful, be actively and forcefully pursued in every avenue of our lives; our schools, our workplaces, and additional pressure on our churches.

The activist homosexual organizations listed above comprise a loose federation of activist groups which have individual differences in tactical approach but with a common agenda. These groups are complemented by an international organization, based in Amsterdam, The Netherlands, called the International Lesbian and Gay Association (ILGA). This activist organization develops liaisons with churches internationally and concentrates on[7] "lesbians and gays in the military." This organization has doubled in size in the past several years, and today consists of a network of over two hundred groups in more than forty (40) countries. A chapter was formed in the United States (San Francisco, CA) in 1990. The ILGA claims that lesbians in the U.S. have a lot to offer the international activist homosexual movement by their experience in the[8] "American tradition of civil disobedience." It clear that this "tradition" is not what we want in the midst of the institution that protects our national security interests -- the military. In fact, some critics of this tradition[9] blame it in part for the slaying of an abortion doctor recently in Florida by a right-wing extremist operating on the fringe of acceptance of "civil disobedience." These critics trace this breakdown of society's rules (guardrails) to street fighters of the anti-Vietnam war movement at the August 1968 Democratic National Convention and the nations intellectuals -- university professors, politicians, and journalists -- who maintained that the acts committed by the protesters were justified and explainable. It is clear that domestic and international activist homosexual organizations as well as domestic activist organizations have an agenda for fomenting this kind of civil

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7 Anderson, Shelley, "The International Lesbian and Gay Association (ILGA)," Out In The World: International Lesbian Organizing, Firebrand Sparks #4, Firebrand Books, pp. 10, 1991.

8 Ibid, pp. 7.

9 Editorial, "No Guardrails," Review & Outlook, The Wall Street Journal, pp. 14, 18 March 1993.

disobedience within our military organizations. The introduction of this kind of "civil disobedience" in the U.S. military would destroy the fabric of good order and discipline. It would undermine the very essence of unit cohesion and the ability of the military to carry out its mission, the defense of the nation.

One might wonder about the amount of support that activist homosexuals enjoy. What is the number of homosexuals in the U.S. population? Leaders of the homosexual organizations have long claimed that homosexuals constitute ten (10) percent[10] of the U.S. population. They cited the Kinsey Report on human sexuality in the 1940s and 1950s. Experts say that Kinsey's sampling was weighted toward institutional populations like schools, prisons, and hospitals and cannot[11] be extrapolated to the general population. Nevertheless, activists seized on the 10 percent figure to strengthen their argument that tens of millions of U.S. citizens are excluded from the mainstream by anti-homosexual discrimination. Current activists are proud of proclaiming that they provided the margin of victory for President Clinton in the last election, 15 percent[12] of his total. Exit polls show[13] that they voted 70 to 90 percent for Clinton over Bush and contributed $3.5 million[14] to Clinton's election campaign.

But what do the scientific data show? Between 1989 and 1992, the National Opinion Research Center (NORC) at the University of Chicago added two sex questions to its annual General Social Survey. The results have been consistent[15]. Among men, 2.8 percent reported exclusively homosexual behavior; women registered 2.5 percent. The 3,000 person sexual behavior study conducted by NORC during 1992 is compatible with these figures. Other researchers and authors claim that homosexuals constitute as little as 1 percent[16], 1.5 percent[17], 3

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10 NEWSWEEK, "How Many Gays Are There?", pp. 46, 15 February 1993.

11 Ibid.

12 Harwood, Richard, "Strangers In Our Midst," The Washington Post, pp. A23, 26 February 1993.

13 Barry, John and Glick, Daniel, "Crossing the Gay Minefield: Clinton Grapples with a Promise to Homosexuals," NEWSWEEK, pp.16, 23 November 1993.

14 NEWSWEEK, "How Many Gays Are There?", pp. 46, 15 February 1993.

15 Ibid.

16 Reisman, Judith, "Kinsey, Sex and Fraud," 1990.

percent[18] of the general population. The first nationwide poll that asked persons leaving voting places (in the last Presidential election) if they were homosexual or bisexual found only 2.4 percent of voters to be homosexual[19]. These figures show the homosexual population to be a very small minority. Estimates of the percentage of homosexuals who are actively involved in promoting their lifestyle are not available. If these percentages are the same as those for women who are members of activist feminist organizations, it would be less than 1 percent. If this figure were accurate, this would mean that only about 0.025 percent of the general population is homosexual and actively promoting the homosexual political agenda. This would calculate to approximately 60,000 homosexual activists in this country. This group, although negligibly small, is stridently vocal, politically astute, and economically advantaged.

So, what is the homosexual agenda for the military? A partial answer is found in public proclamations by homosexual activists in the daily press. Sam Gallegos[20], a former National Guard sergeant who is helping organize a Denver chapter of gay, lesbian and bisexual veterans says that "repealing the executive ban on gays in the military would be a huge first step for homosexuals, but only the first of many actions that gays in the service need." He further states that "military officials must also consider decriminalizing sodomy, reinstating gays already dismissed for homosexuality, and extending marriage and other benefits to homosexuals." The Gay, Lesbian, and Bisexual Military Freedom Project has been identified[21] as having the same agenda which also includes "retroactive measures aimed at reviewing service members previously discharged for homosexuality." Such reviews will try to grant discharged personnel veterans', retirement, and educational

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17 National Center for Health Statistics, Wattenberg, Ben, "An Issue Larger Than Military Life," The Washington Times, 13 February 1993.

18 Coloradans for Family Values, NEWSWEEK, "How Many Gays Are There?", pp. 46, 15 February 1993.

19 Farah, Joseph, "What You Don't Read: One of the most covered-up stories of 1992," Director of the Western Journalism Center, The Washington Times, pp.A6, 26 February 1993.

20 Booth, Micheal, "Soldiers in the Closet: Lifting Ban Just 1st Step, Gay Activists Say," The Denver Post, pp. 14A, 24 January 1993.

21 Francis, Samuel, "Lifestyle Plotting," The Washington Times, pp. F1-4, 19 February 1993.

benefits and separation pay, remove homosexuality from discharge papers and permit re-enlistment and reinstatement. The premise of such reversals is that penalization for homosexuality was morally wrong and that those who suffered it are owed compensation by the taxpayer, whose morals will have to be reprogrammed along with his patriotism. The kicker of the Project's agenda is its blatant endorsement of "training programs" to achieve this end. The plan[22] urges instituting "training" for all personnel on the acceptance of homosexual or bisexual personnel into the military. Training shall include didactic and experimental opportunities addressing prejudice, stigma, and discrimination with regard to sexual orientation and be based on experience gained dealing with racial and gender issues." The author explains that "didactic" means teaching, which in this case really means brainwashing." It is not clear what "experimental opportunities" for learning about homosexuality involve, and maybe we don't want to know. The "training programs" will be inflicted on the "individual, unit, service schools, and academies" and work through "chaplains and the medical corps," "law enforcement and investigative agencies" and "sexual orientation with regards to sexual harassment and equal opportunity." What the Project plans, in other words, is massive propagandizing of the armed forces to root out moral, social, religious, and professional objections to homosexuals in the military, no doubt with plenty of punishment for those who continue to commit wrong-think.

Activist homosexual organizations are ready to insist on implementing homosexual affirmative action plans for the service academies and other officer candidate schools, once the President's executive order goes into effect. It is clear that once the foot is in the door, there will be further activism to achieve more and more "rights." Recent boycotts carried out by activist homosexual organizations against the state of Colorado in retaliation for those voters who passed a referendum that prohibits "special rights" for homosexuals is an example[23] of such activism. An activist homosexual organization, the New York chapter of Boycott Colorado, recently tried

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22 Ibid.

23 Hamblin, Ken, "Blackmail Isn't a Useful Tactic," The Denver Post, 9 February 1993.

to pressure the owner of Celestial Seasonings, a herbal tea company in Colorado, to "donate" $100,000 to the New York organization or else they would organize a boycott nationwide of the company's products. The citizens of Colorado were so outraged over this obvious blackmail measure that even the local activists, including Representative Patricia Schroeder[24], have backed the tea company. The New York organization believes that the net value of this local setback is positive because it "draws attention to the issue." If the ban on homosexuals in the military is lifted, these same tactics will be invoked against our military services as these organizations use the issue of "homosexual rights" in the military to "draw attention" to their advanced agenda. Such tactics will obviously consume a great deal of attention and effort by our military leadership which will severely degrade the efficiency and effectiveness of our armed forces.

The Chancellor of the New York City school system, Joseph A. Fernandez, was fired on 10 February 1993 as a result of his attempts to incorporate homosexuality into lessons for the city's 32 school districts. He tried to implement a new "Children of the Rainbow" curriculum. This curriculum, under the guise of teaching tolerance, told children that at least 10 percent of them would grow up to be homosexuals[25,26]. The family was defined as "two or more people who share love, care and responsibilities." Teachers were encouraged to give little boys dolls to play with, to challenge "sexist myths from the first day of class." The curriculum states[27] "Teachers of first graders have an opportunity to give children a healthy sense of identity at an early age. Classes should include references to lesbians/gay people <u>in all curricular areas</u> and should avoid exclusionary practices by presuming a person's sexual orientation, reinforcing stereotypes, or speaking of lesbians/gays as 'they' or 'other.'" Another controversial paragraph, appearing in a section titled "Fostering Positive Attitudes

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24 Simpson, Kevin, "After Soggy Celestial Melodrama, Who's Holding the Bag?," The Denver Post, 9 February 1993.

25 Weymouth, Lally, "Mrs. Cummins's Triumph," The Washington Post, 18 January 1993.

26 Feder, Don, "Score One Win for Parents," The Washington Times, 18 February 1993.

27 Gutmann, Stephanie, "The Curriculum That Ate New York," Insight Magazine, The Washington Times, 28 February 1993.

Toward Sexuality," maintains that if "teachers do not discuss lesbian/gay issues, [those issues] are not likely to come up. Children need actual experiences via creative play, books, visitors, etc. in order for them to view lesbians/gays as real people to be respected and appreciated." The curriculum recommended the book "Daddy's Roommate" which depicts the life of a child whose father, once divorced from his mother, now lives with his homosexual lover. The book shows the father and his lover in bed. This book was recommended for children as young as the first grade (six years old). The curriculum also recommended the book "Heather has Two Mommies" to promote lesbianism to 1st graders. This book describes the process of artificial insemination to the children. Other such books recommended in the curriculum are "Jennifer Has Two Daddies," "Gloria Goes to Gay Pride," and "Jenny Lives with Eric and Martin." The curriculum also advised that[28] "Classes should include references to lesbians/gay people in all curricular areas." Thus math, music, and all other classes would be required to incorporate the homosexual indoctrination as well as classes specifically designed for this purpose.

Prior to attempting to impose the Children of the Rainbow curriculum on the city school system, Fernandez began authorizing the distribution of condoms[29] to the city's 250,000 high school students, without parental consent. Fourth and fifth-graders were instructed in the mechanics of anal and oral intercourse. Fourth-grade students were given guidance from representatives of ACT-UP and the Gay Men's Health Crisis.

Mary Cummins, a 61-year-old grandmother and president of the board of School district 24 in Middle Village, Queens, led the opposition to the implementation of the Children of the Rainbow curriculum. With the help of the Family Defense Council, she sent a letter to some 22,000 parents opposing the curriculum. Later on, Irish, Italian, Black, and Hispanic parents in more than half of the city's school boards formally rejected part or all of the teaching guide. This led to the firing of Fernandez.

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28 Ibid.

29 Ibid, Feder, Don.

The effort in New York City by activist homosexual organizations to push indoctrination material into the curriculum of grade school children is not the only effort being made nationwide. At last count, 35 states had mandatory AIDS education, which has widespread support. However, the implementation of that education has brought on a corresponding promotion of the activist homosexual agenda. In Fairfax County, Virginia, students are subjected to the 29-minute film "What If I'm Gay?" In Atlanta, teachers are ordered to defy "heterosexist assumptions" by referring to married couples as "partners," instead of husband and wife. Children are told[30] that only 4.6 percent of the population is "exclusively heterosexual or exclusively homosexual." The rest of us are presumably bisexual. A nation of Madonnas. In Newton, MA, junior high school students are urged to reject "negative heterosexual and religious programming." "Learning About Sex," a curriculum used across the country, advises "Sadomasochism may be very acceptable and safe for sexual partners who know each others' needs." New York Assemblywoman Deborah Glick, a militant lesbian, sets forth the agenda: "Parents themselves have tremendous prejudice and bigotry that have been passed on for generations. . . . We must provide a counterbalance to what kids are learning at home."

It is clear that the activist homosexual agenda has been and is being promoted at all levels of our society. The activists, while not numerous, are intelligent, politically connected, and economically powerful. A majority of Americans are willing to let the homosexuals have their lifestyle choices as long as they keep it to themselves. It appears, however, that tolerance is not enough. The activist homosexual agenda mandates that we not only tolerate their lifestyle but that we must accept it as normal and must allow them to indoctrinate and recruit our children and grandchildren. In order that we intelligently and responsibly resist their agenda, we must have knowledge of some fundamental aspects of homosexuality. An attempt is made below to present this knowledge.

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30 Ibid.

Is Homosexuality a Psychotic Behavior?

Homosexuals have consistently over the past three decades resisted societal pressures to conform to standards of normalcy based on heterosexual behavior. This resistance strongly manifests itself in the entertainment industry and the national mass media (TV and newsprint). It appears even in accepted word usage. In the past decade, homosexuals have been successful in cleverly manipulating the English language words which describe them. All mass media commentators now use the word "gay" to describe homosexuals. They never use the word "homosexual." This is a result of relentless pressure from activist homosexual groups that they be described as "gay." Presumably the word "homosexual" used in the free press is a display of discrimination, intolerance, and homophobia. The word "gay" is derived from the French word "gai" which is defined[31] as "merry, jolly, cheerful, lively, bright." The French precursor has no sexual preference connotation. Modern English dictionaries define[32] "gay" as 1) showing or characterized by exuberance or mirthful excitement; merry; cheerful; jolly, 2) bright or lively, especially in color, 3) full of or given to social or other pleasures, 4) dissolute; licentious, 5) homosexual. The word "dissolute" in this same dictionary is defined as "lacking in moral restraint; abandoned; debauched." The word "licentious" is defined as 1) lacking moral discipline or sexual restraint, 2) having no regard for accepted rules or standards. It is clear that the activist homosexual organizations and the mass media would have us be so tolerant of their agenda that we acquiesce in the use of a word to define homosexuals that is clearly promotional in a public relations sense, rather than a realistic definition. Activist homosexual organizations have been successful in manipulating definitions in other aspects of our society. A case in point is psychiatry.

Homosexuals have long maintained that sexual orientation, far from being a personal choice or lifestyle (as it is often called), is something neither chosen nor changeable. They have exerted pressure to

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31 Larousse's French-English Dictionary, Washington Square Press Inc., 1955.

32 New College Edition, The American Heritage Dictionary of the English Language, Houghton Mifflin Co., 1979.

change the previously used term "sexual preference" which was the polite term used to describe their condition before the 1980s to "sexual orientation." This alteration cleverly diverts attention from the behavioral aspects of the activities which define them to a more benign definition that somehow conforms to the hypothesis that they do not chose to be homosexual. They would have us believe that they are homosexual by virtue of their "sexual orientation" rather than their chosen behavior. The history of the impact of activist homosexuals on the definition of their condition in the area of psychiatry is informative.

The psychiatric profession has conscientiously attempted to bring order to their discipline by classifying behaviors or information about behaviors. Emil Kraepelin proposed a formal classification system[33] for behavioral disorders in 1883. The goal of having such a system for abnormal behaviors is to provide distinct categories, indicators, and nomenclature for different patterns of behavior, thought processes, and emotional disturbances. Classification was based on the patient's symptoms, as in medicine. It was hoped that disorders (similar groups of symptoms) would have a common etiology (cause or origin). A derivative of this system is used today by practicing psychiatrists.

The Diagnostic and Statistical Manual of Mental Disorders (DSM-I) was published in 1952 by the American Psychiatric Association. It was based on Kraepelin's system. The expectations for this system were not realized in DSM-I and it was revised in 1968 (DSM-II), 1980 (DSM-III), and 1987 (DSM-III-R). Each of these four documents has attempted to answer the question "Is homosexuality a mental disorder?" The answer the American Psychiatric Association gives to this question depends on which version of the DSM series one consults. DSM-I and DSM-II classified homosexuality as <u>sexually deviant</u>[34] because sexual behavior was considered normal only if it occurred between two consenting adults of the opposite sex. This criterion, adopted by the psychiatrists, conformed to the norms of society at the time. During the early 1970s,

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33 Sue, David, et al, "Classification of Abnormal Behavior," Understanding Abnormal Behavior, Third Edition, pp. 92, Houghton Mifflin Co., 1990.

34 Ibid, pp. 316.

many homosexual people argued that they are mentally healthy and that their sexual preference reflects a normal variant of sexual expression. This attitude was consistent with the trend toward complete "sexual freedom" of the 1960s and exploitation of that freedom by individuals in the entertainment industry during the 1970s. Many of these people sparked a surge of business for the psychiatrists during this era. Consequently, many clinicians came to believe that heterosexuality should not be the standard to judge other sexual behaviors. The patients appeared to be treating the professionals! Nevertheless, some clinicians believed[35] that homosexuality was the result of unhealthy early family relationships. This controversy was aired at a special session[36] of the American Psychiatric Association, held to determine whether the classification of homosexuality as a mental disorder should be retained in the then-current DSM-II.

At that meeting, two well-known psychiatrists, Irving Bieber and Charles Socarides, supported the traditional view of homosexuality as a psychosexual disorder[37] resulting from disturbed relationships between parents and their children. They felt this view was supported by studies of homosexuals in treatment and recommended retaining the classification in DSM-II. When that proposal encountered opposition, Bieber suggested that homosexual behavior be reclassified as a category of sexual dysfunction, because "most homosexuals (especially those who are exclusively homosexual) cannot function heterosexually[38]." Many practitioners and clinicians considered this suggestion inappropriate, for several reasons. First, many homosexuals <u>can</u> engage in sexual intercourse with members of the opposite sex. Second, heterosexual coitus was still held as the standard on which to judge other sexual behaviors. Third, the issue was considered to be one of <u>sexual preference</u> rather than function. Consequently, Stoller and his colleagues supported the removal of homosexuality from the DSM-II

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35 Ibid, pp. 316.

36 Stoller, R.J., Marmor, J., Bieber, I., Gold, R., Socarides, C.W., Green, R., & Spitzer, R.I., "A Symposium: Should homosexuality be in the APA nomenclature?," American Journal of Psychiatry, 130, pp. 1207-1216, 1973.

37 Ibid, Sue, David, et al, pp. 316.

38 Ibid, Stoller, R. J., et al, 1973.

nomenclature, preferring to consider it a normal variant of human sexual behavior[39]. Thus, the psychiatrists had been convinced by their patients that homosexuality was normal behavior. This concept of "normality" was not shared by the general population at the time (1973) nor is it now. Public distaste for the idea of homosexuality remains as high as ever -- at more than 80 percent[40] -- and may even be increasing slightly. Nevertheless, other studies conducted by various researchers, including Evelyn Hooker[41], revealed that eminent psychologists could not tell homosexuals from heterosexuals by examining the results of their Rorschach ink-blot tests. This kind of personality test is designed[42] to get a multifaceted view of the total functioning person, rather than a view of a single facet or dimension of personality. Both groups of individuals presumably had the same distribution of personality disorders. Despite the fact that this type of research does not directly address the question of "normalcy" of homosexuality in terms of psychiatric problems that homosexuals appear to have, it was used as additional pressure for accepting the "normalcy" of homosexual behavior. Indeed, later studies[43] revealed that boys with gender identity disorders exhibit general personality problems in addition to their adoption of opposite gender attitudes and behaviors. Other studies[44] have revealed that many of these troubled male children become homosexuals. Presumably, we are led to believe that these children somehow outgrow their general personality problems as they mature to adulthood with ingrained homosexual behavioral habits. After considering the issues, the trustees of the American Psychiatric Association voted, on December 15, 1973, to remove homosexuality from DSM-II (the vote was 13 to 0 with two abstentions). A new category,

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39 Ibid, Sue, David, et al, pp. 317.

40 Harwood, Richard, "Strangers in Our Midst," Quote from a study by university scholars Benjamin Page at Northwestern University and Robert Shapiro at Columbia University, The Washington Post, 26 February 1993.

41 Burr, Chandler, "Homosexuality and Biology," The Atlantic Monthly, pp. 49, March 1993.

42 Ibid, Sue, Davie, et al, pp. 106.

43 Bates, J.E., Bentler, P.N., & Thompson, S.K., "Gender-deviant boys compared with normal and clinical control boys," Journal of Abnormal Child Psychology, 7, pp. 243-259, 1979.

44 Zuger, B., "Childhood cross-gender behavior and adult homosexuality," Archives of Sexual Behavior, 16, pp. 85-87, 1987.

sexual orientation disturbance, was created and applied only to those people who wanted to change from a homosexual to a heterosexual orientation. Consequently, the pressure of activist homosexuals and the fair-minded community of psychiatrists who simply did not know how to approach homosexuality resulted in a victory for the homosexual community. They were now considered "normal" in the eyes of a professional community that should know.

But that victory was not enough for the activist homosexuals. The new category of sexual orientation disturbance allowed psychiatrists to treat homosexuals who wanted to change sexual orientation. Activists in the homosexual community objected to this category. It meant that some homosexuals may be viewed as "sick." This was not acceptable to the activists even though homosexuals were still showing up in the offices of psychiatrists' for treatment. Consequently, DSM-III retained this compromise category, but renamed it ego-dystonic homosexuality -- that is -- homosexuality that is unacceptable to the ego and is thus a source of distress. The American Psychiatric Association was willing to do anything in the definition of homosexuality to get the activist homosexual organizations off their back, even to define it in terms that no one could understand. Although DSM-III states explicitly that[45] "homosexuality itself is not considered a mental disorder," it adds that "factors that predispose an individual to ego-dystonic homosexuality are those negative societal attitudes towards homosexuality that have been internalized." Thus, the psychiatrists were pressured by the patients to declare society sick, not them.

Even this concession was not enough for the activist homosexual organizations. Their major criticism of using ego-dystonic homosexuality as a diagnostic category was the underlying acceptance of heterosexual functioning as the norm. The psychiatrists accepted this criticism in spite of the fact that[46] "there is not a single case in the scientific literature that describes an individual with a sustained pattern of heterosexual arousal who was distressed by being heterosexually aroused and wished to acquire homosexual arousal to

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45 Ibid, Sue, David, et al, pp. 317.

46 Spitzer, R.L., "Nonmedical myths and the DSM-III," APA Monitor, 12(3), 33, 1981.

initiate or to maintain homosexual relationships." In spite of this finding, psychiatrists can't seem to figure out who is sick when a homosexual visits, the patient or society at large. It is clear that homosexuals visit the psychiatrist because of their homosexuality but heterosexuals never visit the psychiatrist because they want to be homosexual. Such cases simply do not exist. That is, in the larger society it is possible to make the case that not one single heterosexual couple has ever said "I don't care if our child is male or female, but I sure hope it is homosexual." In spite of this common-sense logic, the psychiatric community has allowed the activist homosexual community to impose the idea on their professional discourse that the above finding[47] "doesn't take into consideration the tremendous amount of prejudice and discrimination that homosexuals face." This is another way of saying that if society attempts to impose societal pressures that oppose the open and active promotion of homosexual behavior, then society is deviant; not the homosexual behavior. But appropriate behavior is just what societal pressure is designed to produce. This pressure is presumably what keeps us and the psychiatrists outside the institutions and those with behavioral disorders inside. Societal pressure is the engine that induces homosexuals to visit the psychiatrist and not the other way around. Nevertheless, the American Psychiatric Association acquiesced and the category of ego-dystonic homosexuality was eliminated from DSM-IIIR.

While the activist homosexuals would have you believe that all reference to homosexuality as a mental disorder has been officially removed as a classification, it has not. It has just been renamed. A clinician can still put a patient who would have been diagnosed with ego-dystonic homosexuality according to DSM-III into a general category, "<u>sexual disorders not otherwise specified.</u>" This means that homosexuals still go to the psychiatrist for problems associated with their homosexuality, as they did before. The difference is that the psychiatrist now calls the disorder something else, "<u>sexual disorders not otherwise specified.</u>" Thus, the disorder has a different name but the treatment is the same.

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47 Ibid, Sue, David, et al, pp. 318.

The fact is that homosexuals still go to psychiatrists for treatment. The meaningless psychiatric classification definition for homosexuality does not seem to stem the tide of office visits. Those homosexuals who regret their homosexuality cite as major problems, the lack of acceptance by society, not being able to have children, and loneliness[48]. Homosexual men were more likely than heterosexual men to report feelings of loneliness, depression, and low self-esteem. A recent study of[49] 6,211 obituaries from 16 U.S. homosexual journals over the past 12 years were compared to a large sample of obituaries from regular newspapers. Whereas married males had a median lifespan of 75 years and 80 percent lived past 65 years, homosexual men died much earlier. Homosexual males (not including those who died of AIDS) had a median lifespan of only 42 years and only 9 percent lived past 65 years. This is clear evidence that the choice of becoming homosexual carries with it a huge risk of dying early. This knowledge, whether explicit or implicit within the homosexual community, obviously must invade the mind of those who choose such a lifestyle. This knowledge can lead such persons to consult their psychiatrist. After all, we are the only species which has a brain that allows contemplation of our own death[50]. The same study revealed that a large percentage (2.7%) of homosexuals died violently. Homosexuals were 100 times more apt to be murdered; 25 times more apt to commit suicide; and had a traffic-accident death-rate 19 times the rate of comparably aged white males. Twenty-one percent of lesbians died of murder, suicide, or accident -- a rate 534 times higher than that of white females aged 25-44. Physical violence committed on homosexuals by other homosexuals (primarily their partners) is a major source of often unreported abuse. Recent accounts of this phenomenon are appearing in literature for and by homosexuals[51]. A reading of this literature reveals beyond a doubt that homosexuals suffer from disorders

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48 Ibid, Sue, David, et al, pp. 319.

49 Cameron, Paul, et al, "The lifespan of homosexuals," Family Research Report, Family Research Institute, Inc., 1991.

50 Donahue, Phil, "Too Much of a Good Thing?," Dr. Stephen Gould, The Human Animal, Simon & Schuster, pp. 51-52, 1985.

51 Island, David & Letellier, Patrick, "Why is it so Hard to Find Out How Many Gay Men are Battered by Their Mates?," Men Who Beat the Men Who Love Them: Battered Gay Men and Domestic Violence, Harrington Park Press, pp. 9, 1991.

that have very little to do with societal pressures. It has everything to do with their own behavior and mental states.

A great deal of controversy still surrounds the treatment of homosexuality. It appears to be up to the individual clinician as to what constitutes proper treatment. Some clinicians feel that a homosexual's request for treatment merely reflects societal pressure. When homosexuals present themselves for treatment, therapists must decide what the appropriate approach should be. The client[52] must first specify whether he or she wants the treatment to focus on eliminating the distress associated with the homosexuality, or on eliminating the homosexual behavior. What a strange discipline wherein the patient gets to choose the treatment! A homosexual patient seeking to be rid of the ego-dystonicity (the distress) would probably receive either supportive counseling, insight-oriented psychotherapy, cognitive-behavioral therapy (examining the irrational beliefs that foster distress), or relaxation training. No wonder there are so many militantly activist homosexuals with violently strident tones scolding the heterosexual society for "our" disease of intolerance, discrimination, and homophobia. Their psychiatrists are telling them that we are the enemy. If the person seeks to change sexual orientation, the therapist must decide whether or not to consider homosexuality a pathological state. For goodness sakes! We are right back to DSM-II in 1973! But now it is the individual clinician who must make the determination. The American Psychiatric Association has bailed out on them and they are now stuck with the ball. The problem has been swept under the rug. The definitions in the classification guide are meaningless but the disorders that homosexuals report are the same as they always were. The only thing that has not changed since the 1973 edict that homosexuality is not a pathology is that homosexuals are still going to clinicians for treatment of some kind of disorder.

Lawrence Hartman, a past president of the American Psychiatric Association has stated[53] at a recent Harvard University symposium that,

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52 Ibid, Sue, David, et al, pp. 319.

53 Daly, Christopher B., "Study of Twins Suggests Lesbianism Has a Genetic Component," Science: Sexuality, The Washington Post, pp. A3, 15 March 1993.

"the search for the origins of homosexuality is one 'drenched in politics' and steeped in ambiguity." He should know, having gone through the process of politicizing the issue of whether or not homosexual behavior is psychotic behavior. The politically active homosexual organizations have pounded the American Psychiatric Association into submission. This success has not been lost on other activist organizations. The International Lesbian and Gay Association (ILGA) has presssured[54] the World Health Organization to remove homosexuality from its list of diseases. The activist homosexual organization's success in the U.S. is feeding pressures on health organizations worldwide.

Nevertheless, homosexuals in thee U.S. visit psychiatrists for treatment for some kind of disorder. Is it possible that these mental disorders result from the very behavior that defines the homosexual? This behavior is so abominable that most of us do not want to know what it is. We are bound, however, in the name of intellectual integrity to at least discuss some general features of this behavior. Major surveys have been reported in the literature[55] on homosexual behavior. Two aspects stand out: 1) homosexuals behave similarly world-over, and 2) modest changes in behavior have accompanied the AIDS epidemic. One study[56] of over 5,000 male homosexuals in San Francisco (before the AIDS explosion) revealed that impersonal anonymous and rampant promiscuous sex was the norm for the male homosexual population. Only 9% had less than 25 different partners in their lives; 22% had between 100 and 500 different partners; 43% reported over 500 different sexual partners; 70% normally confined their sex to impersonal one-night affairs with strangers. Other studies found that since many contacts occur between strangers (70% of homosexuals estimated that they had had sex only once with over half of their partners[57]) and homosexuals average somewhere

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54 Anderson, Shelley, "The International Lesbian and Gay Association (ILGA)," Out In The World: International Lesbian Organizing, Firebrand Sparks #4, Firebrand Books, pp. 10, 1991.

55 Cameron, Paul, "Medical Consequences of What Homosexuals Do," Family Research Institute, 1992.

56 Bell, A. & Weinberg, M., Homosexualities, Simon & Schuster, 1978.

57 Beral, V., et al, "Risk of Kaposi's sarcoma and sexual practices associated with faecal contact in homosexual or bisexual men with AIDS," Lancet, 1992: 339: pp. 632-635, 28.

between 10[58] and 110[59] different partners per year, the potential for sexually transmitted diseases is considerable. Homosexual men engage in sex acts which result in the ingestion of body fluids which may contain[60] many of the germs carried in the blood. Because of this, many homosexuals verge on consuming raw human blood with all its medical risks. These risks are gonorrhea and hepatitis A (and possibly even HIV, and hepatitis B & C). During certain sex acts, ingestion of human waste is the major route of contracting hepatitis A and the enteric parasites collectively called the Gay Bowel Syndrome[61].

Surveys indicate that about 90% of homosexuals have engaged in rectal intercourse, and about two-thirds do it regularly. In a 6-month long daily sexual diary study[62], homosexuals averaged 110 sex partners and 68 rectal encounters per year. Rectal intercourse is probably the most sexually efficient way to spread hepatitis B & C, HIV, syphilis, and a host of other blood-borne diseases. "Fisting" was apparently so rare in Kinsey's time that he didn't think to ask about it. By 1977 well over a third of homosexuals admitted to it. The rectum was not designed to accommodate a fist. The likelihood of permanent physical damage is high. Despite these dangers, subsequent surveys[63] performed during the 1980s found that approximately 40% of homosexual men had engaged in fisting their partner and about 15% admitted to having had their partner's hand inserted into their rectum. Only about 15% did not at all engage in fisting or receptive anal intercourse.

About 80% of homosexuals admit to carrying out sexual practices that result in ingesting medically significant amounts of feces. In the diary study[64], 70% of the homosexuals had engaged in this activity --

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58 Cameron, Paul, et al, "Sexual orientation and sexually transmitted disease," Nebraska Medical Journal, 1985: 70: pp. 292-299.

59 Corey, L., & Holmes, K.K., "Sexual transmission of Hepatitis A in homosexual men," New England Journal of Medicine, 1980: 302: pp. 435-438.

60 Ibid.

61 Cameron, Paul, see footnote 21.

62 Ibid, Corey, L., & Holmes, K.K.

63 Root-Bernstein, Robert, "Why AIDS is Epidemic Now," Rethinking AIDS: The Tragic Cost of Premature Consensus, The Free Press, pp. 285, 1993.

64 Ibid, Corey L., & Holmes, K.K.

half regularly -- over 6 months. The result was an annual incidence of hepatitis A in homosexual men of 22%.

About 10% of Kinsey's homosexuals reported having engaged in "golden showers" (drinking or being splashed with urine). In the largest random survey of gays ever conducted[65], 29% reported urine-sex. Of 655 homosexuals[66], only 24% claimed to have been monogamous in the past year. Of these monogamous homosexuals, 5% drank urine, 7% practiced "fisting", 33% ingested feces via anal/oral contact, 53% swallowed semen, and 59% received semen in their rectum in the previous month.

A large minority[67] of homosexuals (37%) engage in torture for sexual fun. Twenty-five (25) percent of white homosexual men admitted to sex with boys 16 or younger as adults. Ninety (90) percent[68] of homosexuals in one study admitted that they used illegal drugs. Death and disease accompany promiscuous and unsanitary sexual activity. Seventy[69] (70) percent to seventy-eight[70] (78) percent of homosexuals reported having had a sexually transmitted disease. When the rate of syphilis among white males in the U.S. increased by 351 percent between 1967 and 1979, it was found[71] to be due in very large part to increased homosexual activity. Whereas the incidence of syphilis a few decades ago was almost exactly equal between men and women, it is now found mainly in homosexual men[72]. Cases of gonorrhea increased from 259,000 in 1960 to over 1,000,000 in 1980. Health officials attributed this growth in large part to increased homosexual behavior[73]. The proportion of male homosexuals with intestinal parasites (worms, flukes, amoeba)

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65 Jay, K., & Young, A., "The gay report," New York, Summit, 1979.

66 McKusick, L., et al, "AIDS and sexual behaviors reported by gay men in San Francisco," American Journal of Public Health," 1985: 75, pp. 493-496.

67 Ibid, Cameron, Paul, 1992.

68 Jaffee, H., et al, "National case-control study of Kaposi's sarcoma," Annals of Internal Medicine, 1983: 99, pp. 145-151.

69 Schechter, M.T., et al, "changes in sexual behavior and fear of AIDS," Lancet, 1984:1: 1293.

70 Ibid, Jay, K., & Young, A.

71 Ibid, Root-Bernstein, Robert, pp. 288.

72 Ibid, Root-Bernstein, Robert, pp. 282.

73 Ibid, Root-Bernstein, Robert, pp. 288.

ranged from twenty-five[74] (25) percent to thirty-nine[75] (39) percent, to fifty-nine[76] (59) percent. As of 1992, eighty-three[77] (83) percent of U.S. AIDS in whites had occurred in male homosexuals.

Given this general survey of medical problems associated with the behavior that defines homosexuals, it is not surprising that they continue to consult psychiatrists for a solution to their problems. At this point in time it would appear that the psychiatric definition of homosexuality is superfluous. If it were not for the activist homosexual agenda of normalizing homosexuality across every spectrum of our lives; our schools, our workplaces, and our churches, it would not have much importance. It is clear that they have coopted the psychiatric community. Their agenda now calls for neutralizing opposition to their behavior by looking for support for their view of "normalcy" in other areas of discourse. They are looking for genetic, hormonal, prenatal, and neurobiological explanations to provide evidence that their behavior is not chosen but is naturally ordained. We look at the evidence for those explanations in the sections which follow.

Does Homosexuality Have a Genetic Explanation?

Homosexuals have long claimed that their sexual orientation or sexual preference is not a matter of choice but is a result of natural causes. They argue that "you did not choose to be heterosexual did you?" While such debating tactics appear to be quite effective in a public relations sense, they do not address the issue of whether or not homosexuality is natural or normal. Many activist homosexuals carry the argument even farther by claiming that, "they can no more control their sexual preference than they can control the color of their skin." It is obvious that these arguments are directed at removing the societal pressure that exists today, primarily carried out by heterosexual parents, to lead and direct the attitudes and behavior of their children

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74 Ibid, Jaffee, H. et al.

75 Quin, T.C., et al, "The polymicrobial origin of intestinal infection in homosexual men," New England Journal of Medicine, 1983: 309: pp. 576-582.

76 Biggar, R.J., "Low T-lymphocyte ratios in homosexual men," Journal of the American Medical Association, 1984: 251, pp. 1441-1446.

77 Center for Disease Control, HIV/AIDS Surveillance, April 1992.

toward normal heterosexual behavior. This societal pressure leads to a stigmatization of homosexual behavior. This pressure leads to a sense of guilt and alienation on the part of homosexuals. In many cases, this guilt is shared by a parent or parents who have raised a child who chooses in early or late adulthood a homosexual lifestyle. It is clear that this sense of guilt, wherever it appears, can be assuaged if homosexuality is determined to come from natural causes outside the control of the individual or his/her parents.

Homosexual activist commentators have carried this argument further by suggesting that scientific evidence exists which supports the hypothesis that homosexuality has a genetic basis. In a recent article in a popular magazine, an avowed homosexual[78] reviews a current psychiatric study of a small sample (56) of male genetic twins and concludes that, "--- the model suggests a shaded continuum of sexual orientations, and of origins and causes, more complex and subtle than a simple either-or model can accommodate, and closer to what may be the quirks and ambiguities of our real lives." These views have been presented sufficiently often in the mass media[79,80] (TV and newsprint) that some ordinary citizens repeat the assertions in everyday conversation.

What is the connection between behavior and genetics? The study of genetics has a rich and exciting history. From the units of heredity discovered by the Austrian monk, Gregor Mendel, in 1865 to the extraction of deoxyribonucleic acid (DNA) in 1944 and the discovery of the double-helix geometric structure of the DNA molecule[81] in 1952, genetics has won a firm and lasting place in the science of evolutionary processes. Nevertheless, several cautions must be stated about genetic research conducted at the level of behavioral studies. First, science (including genetics) has a history of being used by certain groups to promote their social policies. For example, the investigation of racial

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78 Burr, Chandler, "Homosexuality and Biology," The Atlantic Monthly, pp. 65, March 1993.

79 Lunden, Joan, "Homosexuality," Good Morning America, ABC network, with Chandler Burr, Journalist & Frances Kunreuther, Executive Director of Hetrick-Martin Institute, 23 March 1993.

80 Ibid, Burr, Chandler.

81 Darnell, James, et. al., "The History of Molecular Cell Biology," Molecular Cell Biology, Scientific American Books, pp. 12, 1986.

differences has been linked with white supremacist notions. deGobineau's "Essay on the Inequality of the Human Races" (1915) and Darwin's "On The Origin of the Species by Means of Natural Selection" (1859) were used[82] to support the genetic intellectual superiority of whites and the genetic inferiority of the "lower races." This genetic deficiency model can be seen in the writing of several scientists[83,84,85]. Shockley, for example, has expressed fears that the accumulation of genes for weak or low intelligence in the black population will seriously affect overall intelligence in the general population. Thus, he has advocated that people with low IQs should not be allowed to bear children; they should be sterilized. Justifiably, such ideas have generated considerable anger and controversy. Consequently, the suggestion of a genetic component in the results of behavioral studies to further social agendas has cast a shadow on such research. It is too easy to make generalizations based on suggestions stemming from behavioral research in which a genetic causal relationship does not exist. It is easy and sometimes intellectually stimulating to ask "What if -- ?" The fact that the supposition is not borne out by the research results is oftentimes lost in the novelty of the idea. Consequently, the idea sometimes finds itself in the set of commonly accepted beliefs of a society. This misrepresentation of scienctific research is occurring today in support of normalcy of homosexuality.

The second caution concerning behavioral studies is that the methods used in behavioral studies that imply a genetic causal mechanism are fraught with difficulties, whether the subject is the measurement of IQ, handedness, or homosexuality in humans. For example, every responsible study that has been reported (for any population of defects) using twins has been accompanied by a caution in interpreting the results. In almost all cases, it is possible to provide alternative

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82 Sue, David, et al, "Historical Research: Minorities and Pathology," Understanding Abnormal Behavior, Third Edition, pp. 134, Houghton Mifflin Company, 1990.

83 Shuey, A., "The testing of Negro intelligence," Social Science, New York, 1966.

84 Jensen, A., "How much can we boost IQ and school achievements?" Harvard Educational Review, 39, pp. 1-39, 1969.

85 Shockley, W., Journal of Criminal Law and Criminology, 7, pp. 530-543, 1972.

explanations for the results. It is appropriate to review the scientific objections to some of these methods.

Studies of twins are a prime staple of behavioral research. Approximately 1 of every 85 births yields twins. Identical twins (those who develop from the same fertilized egg) have exactly the same genetic composition. Fraternal twins develop from two different eggs. Their genetic makeup is no more similar than that of any two children who have the same parents; on average, 50 percent of the genes of fraternal twins are the same. The behavior of identical twins are often compared to the behavior of fraternal twins to see if the more genetic similarity is accompanied by corresponding behavioral similarity. Several problems are encountered in studies of twins. In the first place, these studies typically have such small sample sizes that the statistical confidence in the results is very low. It takes sample sizes of around 1000 to obtain a 95% confidence level in the results of any such sampling. Sample sizes in twin studies are typically around 50 sets of twins. Secondly, the sets of twins studied are not obtained randomly. They usually come to the attention of the researchers because of the notoriety associated with the twins with similar behavior. Those sets of twins are usually more easily identified and are volunteered for the study. Statistically valid results require that the study objects be randomly selected from the population of all possible twins. Thirdly, environmental factors are never wholly eliminated from the sample. That is, it is possible that an alternative explanation of the results of similar behavior of maternal twins can be explained by the fact that they are treated by the parents more similarly than are fraternal twins. This type of parental behavior is well documented. Since identical twins look more alike, parents and others may expect them to act more alike. Such expectations may influence how people behave toward the children and, as a result, may affect how the children themselves behave[86]. A method that avoids these problems involves twins who are separated early in life and raised in different adoptive homes. This has never been accomplished in any behavioral study of the concurrence

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86 Ibid, Sue, David, et al, 1990.

of homosexuality in sets of maternal and fraternal twins, since so few such twins are ever raised apart.

Family studies are often conducted to determine the genetic contribution to behavior. These studies capitalize on the degree of genetic relation among different sorts of relatives. Parent and child, for example, have on average 50 percent of their genes in common. Two siblings also share an average of 50 percent of their genes. For grandparent and grandchild, the average genetic overlap is 25 percent. In general, if we know the type of relation between two people, we know their degree of genetic similarity. We can then see whether similarity in behavior relates to the similarity in genes. The problem in interpreting family studies, of course, is that genetic similarity is not the only possible explanation for the similarity in behavior. An alternative explanation can be found in environmental factors. Siblings, after all, usually share similar experiences. Parents are typically an important part of their children's environments.

The study of genetics has shed a great deal of light on our understanding of traits or characteristics that are inherited by humans. There is a spectrum of certainty from absolute certainty to complete uncertainty as to the genetic cause of interesting phenomenon, depending upon the nature of the trait or behavior being studied. For example, scientists have identified that a specific chromosome set[87], the 21st, has an extra chromosome (three vice two) in humans suffering Down's syndrome. The cause and effect of this genetic explanation is certain. Genetic studies applied to other disorders are much less certain. For example, researchers[88] have found that about 2 percent of siblings of autistic children are also autistic -- 50 times greater than in the general population. Twin-studies also support the hypothesis of a genetic connection for autism. The studies that have been conducted, however, are methodologically flawed[89]. These flaws in the genetic studies tend to inflate concordance figures. The disorder is so rare

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87 Vasta, R., et al, "Genetic Influences," Child Psychology: The Modern Science, pp. 99, John Wiley & Sons, 1992.

88 Gottesman, I.I., & Shields, J., "Schizophrenia: The epigenetic puzzle," Cambridge University Press, New York, 1982.

89 Ibid, Sue, David, et al, pp. 453, 1990.

that few family or twin situations exist with autism as a common factor. In addition, a sample selection factor was probably in operation since more identical twins than fraternal twins were studied. Twin pairs in which both twins have the disorder are more likely to be reported than twins who are discordant. Other traits, such as intelligence (measured by IQ tests) are even less clear as to a genetic connection. Studies abound in the literature using family studies, twin-studies, longitudinal studies (testing the same person over time). While all of these studies show some evidence that connects IQ to genetic factors, these same studies indicate the importance of the environment. A responsible summary of the evidence suggests that 50 to 60 percent of the variation in IQ among people is genetic[90] in origin. If scientists have difficulty finding a cause and effect relationship between a factor as ordinary as IQ and genetics, one might ask about the evidence for the genetic connection to handedness in humans. This characteristic is observed by all of us, not just scientists. Irrespective of culture, about 90 percent[91] of human beings use their right hand for writing and difficult manual tasks. This preference was already present in prehistoric man. The "negative" handprints outlined on the walls of caves formerly inhabited by Cro-Magnon man are left hands in 80 percent of the cases. Thus, the people who outlined them must have used their right hands to apply the color. Families of left-handers do exist, but there are right-handers in left-handed families and left-handers in right-handed families. Statistics derived from a large sample of families show the following proportions for right-handed children: 92 percent when both parents are right-handed, 80 percent when one parent is right-handed and the other left-handed, 45 percent when both parents are left-handed[92]. A single gene explanation for these results is not possible. A strictly genetic model predicts a much greater concordance between identical twins, than twins developed from different eggs. Yet, as far as handedness is concerned, no major difference can be observed[93]

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90 Ibid, Vasta, R., et al, pp. 537, 1992.

91 Changeux, Jean-Pierre, "Epigenesis," Neuronal Man: The Biology of Mind, Pantheon Books, pp. 236, 1985.

92 Ibid, pp. 237.

93 Ibid, pp. 240.

between identical and nonidentical twins. Even more surprising is the fact that twice as many left-handers are found among twins, identical or not, than among nontwins[94]. Could the intrauterine experience reverse the effect of the genes? That is not yet known, but we do know that neurological disorders are more frequent in twins of either sort than in the general population. Perhaps crowding in the uterus provokes minor trauma which could explain the results of handedness for twins. Thus, scientists have no genetic explanation for handedness. Given this full range of phenomenon for which genetics provides a spectrum of explanation, from a full explanation (Down's syndrome) to those for which genetics does not appear to play a part (handedness), how much confidence can we place in the possibility of a genetic explanation for homosexual behavior? This question is addressed below.

What is the basis for the argument that homosexuality has a genetic explanation? Genetically we are either male or female[95]. There is no genetic continuum of sexual states between male and female. Currently, methods exist for identifying the genetic sex of any person on the basis of the DNA in any cell of that person. Human body cells contain 46 chromosomes, which carry the genetic material that defines us as members of the human species. These chromosomes consist of 22 matched pairs plus an additional pair of sex chromosomes. In the female, both sex chromosomes are called Xs; in the male, one chromosome is called X and the other Y. The chromosomes of the human female thus are designated 46,XX; and those of the male, 46,XY. Human sex cells, however, contain only half as many chromosomes as the body cells. In females, the ovum contains 22 chromosomes plus an X chromosome; in males, each sperm contains 22 chromosomes plus either an X or a Y. During fertilization, then, the mother contributes 22 chromosomes and an X, and the father contributes 22 chromosomes and either an X or a Y. Thus, at the moment of conception, the child becomes genetically male or female, and it is the father who determines the sex of the baby. At this stage, there is absolutely no evidence of any possibility of

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94 Ibid, pp. 240.

95 Vasta, R., et al, "Genetic Influences," Child Psychology: The Modern Science, pp. 527, John Wiley & Sons, 1992.

"mutation" or altering of the genetic process of sex determination -- we are all genetically either male or female. There is no genetic state in between which contains a possible explanation for homosexuality.

This does not mean that the process always works perfectly. There are situations in which chromosomal abnormalities occur. None of these, however, are in any way related to homosexuality. Turner's syndrome can occur when an ovum is fertilized by a sperm that carries no sex chromosome at all or when the sperm provides an X and the ovum has no sex chromosome. In either case, the resulting embryo has only an X and is designated 45,XO. Most of these embryos fail to develop in the uterus and are aborted by the mother's body. But in the few cases in which the fetus develops completely, the baby is female in appearance, but the ovaries have already disappeared and do not produce the hormones necessary for the sex differentiation process to continue. As a result, women with Turner's syndrome do not develop breasts or menstruate unless they are given hormone therapy. They have been described[96] as having "ultrafeminine" personalities. Another chromosomal problem occurs when an egg carrying two X chromosomes is fertilized by a sperm carrying a Y. In this case, a 47,XXY child is produced, with characteristics referred to as Klinefelter's syndrome. The presence of the Y chromosome causes the child to have a male appearance, but is somewhat feminized, because his male hormone levels are low. Men with Klinefelter's syndrome have long arms, very little body hair, an underdeveloped penis, and sometimes overdeveloped breasts. They are somewhat timid and unassertive in their interpersonal interactions but are not homosexual. A third chromosomal abnormality occurs when the sperm provides two, rather than one, Y chromosome. The 47,XYY males produced when this occurs are perhaps the opposite of the 45,XO females in that they have large body builds and very masculine personality characteristics. Data indicate that these males are found in unexpectedly large proportions in prisons and psychiatric institutions and that they are more impulsive and less tolerant of frustration than other men. But it is not clear that the genetic abnormality leads directly to the antisocial behavior; more

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96 Ibid, pp. 528.

likely, social factors are responsible for the observed problems[97]. About seventy genetic traits are sex-linked. Most of them are either dangerous (e.g. muscular dystrophy, hemophilia, some forms of diabetes) or troublesome (e.g. poor night vision, color-blindness). These sex-linked traits are associated with X-linked genes because they always occur on the X chromosome. They are not, however, associated in any way with homosexual behavior.

At conception, the process of reproductive sex differentiation has only just begun[98]. The X chromosome contains many genes that direct growth and functioning. The Y chromosome has much less genetic material. The sex chromosomes have no influence at all on the fertilized zygote for about 6 weeks. At that point, if the embryo is genetically male (XY), the Y chromosome causes a portion of the embryo to become the male gonadal structure -- the testes. Once this is accomplished, the Y chromosome does not appear to play any further role in the process of reproductive sex differentiation. If the embryo is genetically female (XX), the sex chromosomes produce no change at 6 weeks. At 10-12 weeks, however, one X chromosome causes a portion of the embryo to become female gonads -- the ovaries. From this point on, reproductive sex differentiation is guided primarily by the hormones produced by the testes and ovaries. This differentiation is based mainly on certain physical characteristics related in one way or another to the reproductive processes. In humans the principal difference is in the genitalia -- the sex organs. But there are also differences in the secondary sexual characteristics which appear at puberty -- breast size, facial hair, voice level, and fat distribution. The role of these hormones in developing both the appropriate genitalia and external features is addressed in another section of this report.

So, what is the basis of the argument that homosexuality has a genetic origin? In "A Genetic Study of Male Sexual Orientation," two university psychologists[99] compared fifty-six (56) identical male twins, fifty-four (54) fraternal twins and fifty-seven (57) genetically

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97 Ibid, pp. 529.
98 Ibid, pp. 527.
99 Ibid, Barr, Chandler, pp. 64.

unrelated adopted brothers. They reported a homosexual-homosexual correlation rate of 52 percent for the identical twins, 22 percent for fraternal twins, and 11 percent for the adoptive brothers. Based on this study, activist homosexuals are claiming that homosexually is "highly attributable" to genetics[100]. These findings suffer from all of the weaknesses that were discussed above for twin studies. The results are further highly suspect due to the fact that even the 11 percent finding is a factor of four higher than the incidence of homosexuality (2.5 percent) in the general U.S. population[101]. This renders the results highly susceptible to the effects of environmental factors, both in the selection of the samples and in the analysis of the results. The authors of the report claim a "heritability" factor of 70 percent for the results. This factor is a statistical measure of the degree to which environmental factors affect the data (0 if the effect is due to the environment alone) and the degree to which genetic factors affect the data (100 if the effect is due to genetics alone). If true, this high rate (70) of heritability would suggest that genetics plays a large role in homosexual behavior. The fact is, however, that the "heritability" measure suffers from severe limitations[102]. First, it can be calculated in different ways, and the value obtained may vary depending on the method used and on the particular data that the researcher decides to emphasize. Published heritability estimates for IQ, a trait for which genetics offers a much more plausible explanation than for homosexuality, in fact, range from as high as 80[103] to as low as 0[104,105]. How can one have much faith in a measure that shows zero heritability for IQ in twin-studies when most all behavioral research shows that genetics plays at least some role for IQ? How can one have

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100 Ibid.

101 NEWSWEEK, "How Many Gays Are There?", National Opinion Research Center (NORC) at University of Chicago General Social Survey of 1989-1992, pp. 46, 15 February 1993.

102 Vasta, R., et al, "Genetic Influences," Child Psychology: The Modern Science, pp. 336, John Wiley & Sons, 1992.

103 Burt, C., "Inheritance of general intelligence," American Psychologist, 27, pp. 175-190, 1972.

104 Kamin, L., "The science and politics of IQ," Erlbaum, Hillsdale, NJ, 1974.

105 Kamin, L., Commentary in S. Scarr (Ed.) "Race, social class, and individual differences in IQ," Erlbaum, Hillsdale, NJ, 1981.

much faith in a measure that shows such a large range (zero to 80) for IQ? Secondly, whatever the heritability may be, the value is specific to the sample studied and cannot be generalized to other samples. The value is specific to the sample studied because it depends on two factors: the range of environmental differences in the sample and the range of genetic differences in the sample.

A recent twins-study by the same authors[106] presented results for lesbians. The study found that "lesbians more often share the sexuality of their twins than that of their adopted sisters." The study found that 34 of 71 (48 percent) pairs of identical twins were lesbians, 6 of 37 (16 percent) pairs of fraternal twins were lesbians, and 2 of 35 (6 percent) sets of adoptive sisters were lesbians. This study is fraught with the same deficiencies discussed above for twin studies. The sample sizes were too small to be statistically significant. There was no attempt to eliminate environmental factors by obtaining twin sets that had been raised apart. A more damning criticism is that the authors of the report recruited the twin sets by advertising in lesbian-oriented publications across the country. This violates the basic tenet of sampling; the samples must be drawn randomly from the twin set population at large. The authors introduced a huge bias in their results toward homosexual concordance by the recruiting mechanism. The authors concede that recruiting volunteers rather than using systematic sampling or twin registries could lead to misleading results. They defend their methods, however, by again relying on the heritability measure for the results. Of course this measure has no more credibility in this study than in the male homosexual twin-study.

The literature does not appear to contain accounts of family-studies attempting to discover a genetic connection to homosexual behavior. Such studies would have great difficulty separating environmental from genetic influences. However, one of the authors of both of the twin-studies mentioned above, is a self-declared

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106 Coia, David A., "Lesbianism may have a genetic link," Summary of a report in the Archives of General Psychiatry by J. M. Bailey, M.C. Neale, & R.C. Pillard, The Washington Times, 12 March 1993.

homosexual[107] who has joked that "he is uniquely equipped to investigate whether homosexuality has a [genetic] basis: he, his brother, and his sister are gay, and [he] believes that his father may have been gay. One of his three daughters is bisexual." Of course this concordance of homosexual behavior in a family line is quite likely to have a strong environmental explanation. It is of interest to note that a great deal of the behavioral research on homosexuality is being conducted by homosexuals who are aggressively pursuing an activist homosexual agenda. There appears to be a strong correlation between inflated claims in the popular press regarding progress toward showing "normalcy" of homosexual behavior and the homosexuality of one or more of the authors.

Scientific studies of mutant male fruit flies which "mimic" bisexual behavior toward other fruit flies have been used in the popular press[108] to suggest that a single gene or set of genes may exist in humans that will someday explain homosexuality. Even when the scientists who publish such studies warn that "it is very unlikely that the genetics of homosexuality [if such a thing even exists] will ever devolve to a single factor in humans with such major effects as it has in the fruit fly," the activist homosexuals promote the idea that there is a genetic explanation of homosexuality in humans. Responsible scientists[109], however, will claim that "the genetics of behavior of the fruit fly to that in man is quite a leap, one that may elicit cold silence or even violent opposition. The severity of those reactions is easy to understand for many reasons, including ideological ones. Political exploitation of genetics has led to racism and thereby discredited the objectives of this discipline." These same scientists are in agreement that[110] "a gene for madness, language, or intelligence does not exist." It goes without saying that there is no evidence for a gene that causes homosexuality.

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107 Burr, Chandler, "Homosexuality and Biology," Richard Pillard, a psychiatrist at the Boston University School of Medicine, as reported by Mr. Burr, The Atlantic Monthly, pp. 60, March 1993.

108 Ibid, pp. 63-64.

109 Changeux, Jean-Pierre, "The Power of the Genes," Neuronal Man: The Biology of Mind, Pantheon Books, pp. 178, 1985.

110 Ibid, pp. 203.

Flawed twin-studies such as that discussed above for male homosexuals and lesbians are being used in the popular press to spread the message that "homosexuality, both male and female, may be influenced by genetic factors." The results of these studies, presented without the cautionary caveats by responsible scientists on the dangers of misinterpreting the results, are leading ordinary citizens to believe that homosexual behavior has a solid genetic explanation. These citizens are led to believe by the unquestioning popular press that this genetic explanation is somehow solid enough to believe the argument that "homosexual behavior is a natural alternative to heterosexual behavior." Consequently, an unsuspecting public is being persuaded by quasi-scientific arguments based on highly questionable research that homosexuality is normal and that homosexuals have no choice in their sexual preferences.

While the scientists who deal in the kind of research described above are undoubtedly aware of the limitations of their methods and will publicly admit to such limitations, the activist homosexuals who use the results of the research to persuade public opinion of their agenda have no interest in articulating prudent scientific restraint. They are using the mass media and the unsuspecting and scientific-illiterate reporting elements of that media to propagandize the populace. This propagandization is evident in the national television media which produce an abundance of programs[111,112,113] pitting well-rehearsed activist homosexuals against relatively unprepared opponents. The ratio of activist homosexuals to their opponents is always many-to-one, one-to-none, or one-to-one, rather than a ratio in proportion to the number of homosexuals in the general population (2 or 3 in 100). These tactics, along with the "in-your-face" attitude of the activists, are used to intimidate the opposition. These tactics will not succeed if

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111 Springer, Jerry, "Homosexuals Use AIDS to Promote Sexually Explicit Literature in Schools," NBC, The Jerry Springer Show, 10 March 1993.

112 Donahue, Phil, "Homosexual Priest With AIDS," NBC, The Phil Donahue Show, 12 March 1993.

113 Lunden, Joan, "Homosexuality," Good Morning America, ABC network, with Chandler Burr, Journalist & Frances Kunreuther, Executive Director of Hetrick-Martin Institute, 23 March 1993.

the populace is made aware of the facts concerning homosexual behavior. The facts are simply that, although some behavioral studies show some positive correlation between homosexuality and genetic factors, this at most only implies the possibility of a relationship between the two. There are alternative explanations for the results of all such studies. These studies do not show a cause and effect relationship that explains homosexuality in terms of genetics. The strongest implication that most responsible scientists would draw from this research is that "there may possibly be a genetic predisposition" for homosexual behavior. This is another way of saying that "if there is a genetic relationship, it is obviously not strong enough to explain homosexual behavior." Thus, the "predisposition" may act in concert with environmental factors to explain homosexual behavior. The fact is that scientific research has not found a single gene or set of genes that can be used to explain homosexual behavior.

Does Homosexuality Have a Hormonal Explanation?

Apart from the fact that we are each genetically either male or female -- there is no in-between state -- we are ordinarily differentiated into one or the other of these two groups by certain external physical characteristics. The principal difference is in the genitalia, the reproductive organs. In almost all instances, this primary physical differentiation is consistent with the genetic sex of an individual. There are also differences in the secondary sexual characteristics such as breast size, facial hair, voice level, and fat distribution. In most animals, sexual behavior has a specific function: to perpetuate the species. Humans are the exception. They engage in sexual behavior for its own sake, as well as to reproduce. Yet sex is in no way as essential to individual survival as eating or drinking behavior. Sexual deprivation does not jeopardize the life process. Why is an activity that is not essential to individual survival almost as central to the human experience as eating and drinking? The answer is found in the basic biological function of sex. It is the means by which species -- as opposed to individuals -- survive. If a species is to

last beyond a single generation, life-sustaining capacities must be passed on from generation to generation.

The growing body of sexual literature indicates clearly the existence of men and women whose sexual behavior falls far from the accepted norms of society, even in a time when the norms themselves are becoming increasingly broad. Certain sights, sounds, thoughts, fantasies, smells -- all these stimuli can function as external cues to trigger human sexual activity. But external cues, whether in lower animals or humans, do not work alone. What goes on inside the body -- hormonal and neural activity -- is every bit as important to sexual activity as what goes on outside the body. The role of hormones is discussed in this section of the report.

Sex hormones can be roughly divided into two groups: androgens, the most prominent of which is testosterone, and estrogens, the most prominent of which is estradiol. Each group of hormones is present in both males and females. But androgens predominate in males, where they are produced chiefly in the testicles. Estrogens predominate in females, where they are produced in the ovaries. Androgens and estrogens are also produced by the adrenal gland in both males and females. The actual power that hormones command over sexual activity varies among animals, increasing at the lower levels of the phylogenetic scale[114]. In lower animals, hormonal activity is indispensable to sexual activity. In higher animals, especially in humans, hormones, though important, are not indispensable. It appears that sex hormones excite sexual behavior but do not determine the type of behavior[115]. This observation is confirmed in both lower animals and humans. Treating an adult guinea pig of one sex with hormones appropriate to the opposite sex does not alter the animal's behavior appreciably. This has been shown in studies in which injections of the female hormone, estrogen, into an adult male do not alter the male behavior[116] but, on the contrary, activate it. Researchers suspect that once the neural circuit

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114 Schneider, Allen M., & Tarshis, Barry, "Hormones and Sexual Behavior," An Introduction to Physiological Psychology, Second Edition, Random House, pp. 337, 1980.

115 Ibid, pp. 341.

116 Fisher, A.E., "Maternal and sexual behavior induced by intracranial chemical stimulation," Science, 124, pp. 228-229, 1956.

determining the type of sexual behavior is formed, injections of a sex hormone serve to activate that circuit, regardless of which hormone is being used.

Studies like these have helped to suggest studies about sex hormones in humans. It was once thought, for instance, that homosexual behavior could be reversed through administration of hormones. The thinking was that a male homosexual, given additional testosterone, would lose interest in males and seek female sex partners. Estrogen would have similar effects on female homosexuals. That is not the case. Male homosexuals who have received testosterone injections do not adopt heterosexual behavioral patterns. If anything, they show increases in homosexual behavior[117]. Furthermore, when heterosexual women are given testosterone, they do not develop a "male" interest in women but, in fact, become even more sexually interested in men. In 1984, Heino Meyer-Bahlbur, a neurobiologist at Columbia University, analyzed the results of twenty-seven studies[118] undertaken to test the "adult hormonal theory of sexual orientation." A score of these studies in fact showed no difference between the testosterone or estrogen levels of homosexual and heterosexual men. Three studies did show that homosexuals had significantly lower levels of testosterone, but Meyer-Bahlburg believed that two of them were methodologically unsound and that the third was tainted by psychotropic drug use on the part of its subjects. Two studies actually reported higher levels of testosterone in homosexual men than in heterosexual men, and one even showed the levels to be higher in bisexuals than in either heterosexuals or homosexuals. Thus it is widely accepted by scientists that adult sex hormone levels do not explain homosexuality.

Studies have been conducted on rats which indicate that hormones can radically affect their sexual behavior[119]. Female rats injected with testosterone have been observed to aggressively "mount" other female rats. Male rats which have been perinatally castrated and, upon reaching adulthood, injected with estrogen have been observed to respond

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117 Money, J., & Ehrhardt, A.A., "Man and woman, boy and girl," Johns Hopkins, Baltimore, 1972.

118 Burr, Chandler, "Homosexuality and Biology," The Atlantic Monthly, pp. 58, March 1993.

119 Ibid, pp. 58.

as would a female rat to the advances of unaltered male rats. Such research in lower animals has led to hypotheses that sex hormones are, in some way, a cause of homosexuality in human beings. The fact that the research described in preceding paragraphs completely disproves such hypotheses does not deter researchers and activist homosexuals from continually raising the possibility of a hormonal explanation of homosexual behavior. It will be shown in a later section that the additional complexity of the neocortex of the human brain is the basis for the fact that there is a definite trend away from dependence on hormones and toward dependence on the nervous system in the explanation of sexual behavior. That is, on the phylogenetic scale from rat to human, internal control of sexual behavior shifts from hormonal to neural explanations in higher animals. Hormones apparently activate sexual behavior in humans but play no role[120] in determining the type of sexual behavior. This fact explains why human homosexuals injected with testosterone do not become heterosexuals but, instead, show more active homosexual behavior.

It is clear that adult hormonal activity does not provide an explanation for homosexuality and the homosexual behavior that defines it.

Does Homosexuality Have a Prenatal Explanation?

The genetic sex of a child, either male (XY) or female (XX), is determined at the moment of conception. Up until about the third month, the internal reproductive sex organs can become either male or female. During this early time, both male and female duct systems (the female Mullerian and the male Wolffian), which are the precursors for the internal sex organs, develop. The female duct system has the potential to develop into a uterus for a female. The male duct system consists of the vas deferens and the seminal vesicles in the male. When a Y chromosome causes testes to develop in the embryo, these glands secrete hormones (androgens) that cause the the male internal reproductive organs to grow from their Wolffian precursors. These chemical substances travel in the bloodstream, affecting the development

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120 Schneider, Allen M., & Tarshis, Barry, "Hormones and Sexual Behavior," An Introduction to Physiological Psychology, Second Edition, Random House, pp. 351, 1980.

and functioning of various parts of the fetus[121]. Until this differentiation, the fetus has the potential for developing either reproductive system. The reproductive system that develops is determined by the presence or absence of the male androgen hormone. During differentiation, if androgen is released, the male internal reproductive organs grow[122] and the female system degenerates (the testes also secrete a chemical that causes the female organs to shrink). If androgen is not present, the female internal reproductive system develops and the male system degenerates. In other words, the fetus will be a female unless male hormones are present during differentiation. At about five months, if androgens are present, the external sex organs also develop as male, producing a penis and scrotal sac. If androgens are not present at three months, the internal sex organs (uterus and ovaries), and later the external sex organs (vagina and clitoris), develop as female. No special hormone is needed for this to occur. The hormones produced mainly by the ovaries are estrogen and progesterone, but they do not play their principal role in sex differentiation until puberty. Again, release of androgen determines that the male internal and external sex organs will develop, and the absence of androgen determines that female internal and external sex organs will develop. Thus nature provides that the default state for all humans is the development of female internal and external reproductive sex organs.

As with chromosomes, hormonal processes in the fetus sometimes go awry. Two such hormonal abnormalities are adrenogenital syndrome (AGS) in which too much androgen is produced during pregnancy, and androgen insensitivity, in which the fetus cannot respond to the presence of the masculinizing hormone.

AGS usually results from an inherited enzyme deficiency that causes the adrenal glands to produce androgens in the fetus, regardless of whether testes are present[123]. This problem typically begins after

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121 Moore, C.L., "Another psychobiological view of sexual differentiation," Developmental Review, 5, pp. 18-55, 1985.

122 Vasta, R., et al, "Hormonal Influences," Child Psychology: The Modern Science, John Wiley & Sons, pp. 529, 1992.

123 Ibid, pp. 530.

the internal sex organs have been formed but before the external sex organs appear. If the fetus is genetically female (XX), she will have ovaries and normal internal sex organs, but the excessive androgen will cause the external organs to develop in a masculine direction. Often the clitoris will be very large, resembling a penis, and sometimes a scrotal sac will develop (but it will be empty, because there are no testes). In many cases, such females have been mistaken at birth for males and raised as boys[124]. In earlier periods (before 1970), some of these pseudohermaphrodites were raised in accordance with their external reproductive sex features[125], that is, as boys. In one famous study, however, Money and his colleagues[126] were able to locate female (XX) pseudohermaphrodites who were reared as females, despite the presence of male external organs. Of the twenty-five cases Money and his colleagues studied, twenty-three had assumed the sex role consistent with their "female" upbringing (and their genetic female sex) and not with the appearance of their external male genitalia. This is a strong indication of the impact of environmental factors over hormonal factors in the determination of sexual identity and behavior. More recently, however, most of these cases are discovered at birth, and are "corrected" by surgically changing the external sex organs and by administering drugs to reduce the high levels of androgens. While these procedures return the girls to biological normality, the early androgen exposure appears to have some long-term effects. Many of these girls become "tomboys," preferring rough outdoor play and active sports and having little interest in dolls, jewelry, make-up, or activities typical of young females. They also show less interest in marriage and motherhood. There is no evidence that these individuals are any more inclined towards homosexuality than otherwise biologically normal individuals.

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[124]Money, J., & Annecillo, C., "Crucial period effect in psychendocrinology:Two syndromes, abuse dwarfism and female (CVAH) hermaphroditism," In M. H. Bornstein (Ed.), Sensitive periods in development: Interdisciplinary perspectives, Erlbaum, 1987.

[125] Schneider, Allen M., & Tarshis, Barry, "Hormones and Sexual Behavior," An Introduction to Physiological Psychology, Second Edition, Random House, pp. 345, 1980.

[126] Money, J., & Ehrhardt, A.A., "Man and woman, boy and girl," Johns Hopkins University, 1972.

Androgen insensitivity is a genetic defect in males that causes the body cells not to respond to androgens[127]. The testes of a male (XY) fetus will produce the androgen hormones, but neither internal nor external male sex organs will develop. The substance that usually shrinks the potential female internal sex organs will be effective, however, leaving the fetus with neither a uterus nor an internal male system. Internally, the fetus is neither male nor female. But the external organs will develop as female. Thus, a genetic male (XY) will have all of the outward appearances of a female, including genitals, relatively large breasts, and other secondary external features that develop during puberty. A picture[128] of one of these naked genetic male (XY) pseudohermaphrodites would convince one beyond a doubt that it is indeed a female, based on all outward appearances. There is a tendency for sexual behavior to fall in line with external appearances of such people, but this may be the result of learning and cultural conditioning rather than hormones[129]. Studies have shown that androgen-insensitive individuals are generally feminine in appearance, preferences, and abilities[130,131]. Nevertheless, scientific studies do not exist which link androgen insensitivity to homosexuality.

A developmental geneticist suggested recently[132] that there are five or more sexes in the human species. The idea is that the persons described in the preceding paragraphs can be classified as an intersex group comprised of three major subgroups; true hermaphrodites (herms), male pseudohermaphrodites (merms), and female pseudohermaphrodites (ferms). Within these subgroups, a complete spectrum of internal and external reproductive systems have been found in almost all possible combinations. There is evidence of a substantial body of case histories compiled between 1930 and 1960 (before surgical intervention at an early

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127 Ibid, Vasta, R., et al, pp. 530.

128 Ibid, Schneider, Allen M., & Tarshis, Barry, pp. 346, 1980.

129 Ibid, pp. 345.

130 Ehrhardt, A.A., & Meyer-Bahlburg, H.F.L., "Effects of prenatal sex hormones on gender-related behavior," Science, 211, pp. 1312-1318, 1981.

131 Money, J.C., & Ehrhardt, A.A., "Man & woman, boy & girl," John Hopkins University Press, 1972.

132 Fausto-Sterling, Anne, "The Five Sexes: Why Male and Female Are Not Enough," The Sciences, pp. 20-25, March/April 1993.

age became normal practice) in which, almost without exception, the children grew up knowing they were intersexual (though they did not advertise it) and adjusted to their unusual status. There is not a psychotic or suicide in the lot. Those people adjusted to their special sexual circumstances without incident (i.e. most avoided gym-class showering, etc.). There is no direct accounting in the literature whether or not any of those intersexuals procreated children. At any rate there is no evidence that this group gravitated toward homosexuality in greater or less proportion than persons with normal reproductive systems.

The scientific evidence is best described by the following quote from a current textbook[133] in child psychology, "Taken together, evidence from animals and humans suggests that fetal sex hormones play an important part in producing differences between males and females. But we must be very careful about drawing broad conclusions. Hormonal processes are quite complex, and scientists still do not understand exactly how they affect the brain or how they interact with socialization processes."

Does Homosexuality Have a Neurobiological Explanation?

The human brain is one of the most complex structures known. Its formation within the fetus is a marvel of creation. Already at the sixth week of human embryonic life, the most forward vesicle of the neural tube divides into two compartments, each of which will form a cerebral hemisphere. Initially, the neural tube is made up of a single layer of contiguous cells[134]. They divide very actively and in a few months produce several tens of billions of neural cells. At times they produce up to 250,000 cells per minute. Sixteen to twenty weeks after fertilization, nerve cell division stops. Thus, the maximum number of cortical neurons is attained well before birth. We are born with a brain in which the number of neurons can only diminish. The human infant is born with a brain weighing about 300 grams, 20 percent of the weight of the adult brain. One of the major features in the

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133 Ibid, Vasta, R., et al, pp. 530.

134 Changeux, Jean-Pierre, "The Power of the Genes," Neuronal Man: The Biology of Mind, Pantheon Books, pp. 196, 1985.

development[135] of the human brain, then, is that it continues well after birth, for about fifteen years (compared with a gestation period of only nine months). The increase in brain weight does not contradict the fact that the neurons of the cerebral cortex have stopped dividing several weeks before birth. It reflects the growth of axons and dendrites (the tiny spines that reach out to other nerve cells), the formation of synapses (the sites of chemical interaction at the connections between the axons and dendrites of different nerve cells), and the development of myelin sheaths around the axons.

Various authors have attempted to simplify the complex and complicated scientific research findings on the human brain. One author[136] attempts to further consolidate the ideas of Paul MacLean and his medical associates at the National Institutes of Health' laboratory of brain evolution and behavior. MacLean describes a human brain in its evolutionary aspect as being comprised of three distinct neural structures[137]: the reptilian, limbic, and new mammalian brains. This simplistic view of the brain is problematic for some neuroscientists[138] who claim "For humans, the simplest motor activity involves enormous sets of nerve cells simultaneously at *several levels*. This being the case it seems very artificial to dissect the brain into successive "skins" -- reptilian, paleomammalian, and neomammalian ---." Although the simplistic view is problematic for those scientists involved at the neuron level of research, it can be useful for discussion of overall processes carried out by the brain even though neural cell connections may be more variable than implied by such a simplification. Each of these three structures has its unique functions, characteristics, and behaviors and can, to some extent, act "laterally" -- within its own structure and according to its unique specialties. Nevertheless, it is useful in this discussion to refer to the triune brain. The three neural structures are designed to act vertically as well, as an

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135 Ibid, pp. 199.

136 Pearce, John C., "The Triune Brain," Evolution's End: Claiming the Potential of Our Intelligence, HarperCollinsPublishers, pp. 43, 1992.

137 Donahue, Phil, "Too Much of a Good Thing?," Paul MacLean, The Human Animal, Simon & Schuster, pp. 45, 1985.

138 Changeux, Jean-Pierre, "The Power of the Genes," Neuronal Man: The Biology of Mind, Pantheon Books, pp. 124, 1985.

integrated unit. These characteristics summarize the evolution of behavior itself, and exactly parallel the stages of human embryonic development. The reptilian brain, or R-system as MacLean calls it, encompasses our sensory-motor system and all physical processes that give us our wake state awareness in a body and world. This neural system pushes relentlessly, without emotion or reason, for physical survival: food, shelter, sex (species survival) and territory. Our crudest emotions -- anger, fear, lust -- may originate[139] in our reptilian brain. It still performs those unlearned, automatic behaviors like breathing, swallowing, and blinking. Our reptilian brain also makes it possible for us to create new "automatic" routines. When someone says, "I could do it blindfolded," he is really bragging on his own reptilian brain.

The limbic neural structure is our "old-mammalian" brain. This structure, with help from the temporal lobes and possibly other parts of the neocortex is called our emotional brain. This neural structure converts the "aversion-attraction" responses of the reptilian to a complex of emotions or "feeling-tones" such as like-dislike, good-bad, sorrow-joy, pleasure-pain, etc. The limbic structure houses the insatiable desire for pleasurable sensory reports, anxiety over unpleasant reports, chronic resentments of previous painful experiences, and so on. Here too is an intuitive intelligence to move for the well-being of the self, offspring, and species. Here lies the seat of all emotional bonds, from that of mother-infant, child-family, child-society, and the foundational pair-bond of male-female. The limbic structure is involved in dreaming, visions of our inner world, subtle-intuitive experiences, and even the daydreams and fantasies spinning out of its upper neighbor, the neocortex. This middle emotional system ties the three brain structures into a unit, or directs the attention of any one to the other as needed. It can incorporate the lower intelligence into the service of the highest or vice-versa, it can lock our intellect into the service of the lowest defense system in an emergency --- real or imagined[140]. The limbic system includes[141] the most complex part of the

139 Ibid, Donohue, Phil, pp. 49.
140 Ibid, pp. 45.

brain, the hypothalamus, a pea-sized structure that regulates eating, drinking, sleeping, waking, body temperature, heart rate, hormones, and sexual activity. It also directs the brain's master gland, the pituitary.

The third and highest member of the triune brain, our neocortex or new-mammalian brain, is five times bigger than its two lower neighbors combined and provides[142] "intellect, creative thinking, computing, and, if developed, sympathy, empathy, compassion, and love. Here we reflect on reports from those two lower neighbors concerning our life in the world and our emotional responses to that world. Here we scheme, figure ways to predict and control our environment of world and people; brood on our mortality; spin out poems of other climes and days; experience worlds within or beyond; hammer our restrictive laws for the behavior of others; invent religions and philosophies, pondering the destinies of man." This neocortex is divided into separate hemispheres, each with its specialties. It directly builds its own corresponding neural patterns of all the "automated" learnings of its two lower neighbors. As our responses to the environment are imprinted on our R-system, they directly feed into our neocortex, which builds parallel neural structures of what would otherwise be automatic stimulus-response mechanisms. This allows us to guide and direct such simple systems, modulate them, and use them for higher purposes. Through this three-way, or "triune-brain" connection, those more primary instincts and intelligences take on a profoundly different character and have, as well, the intellect of our highest brain at their disposal in emergencies.

Our reptilian neural structure is the seat of our sexuality[143], but what we humans do with that basic instinct is different from that of the blacksnake. According to Pearce, "Our high neocortical system transforms this crude reproductive impulse into Romeo and Juliet. The simple system incorporated into the more complex opens new vistas of possibility. Same instinct, different setting. The new vistas of

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141 Ibid, Donahue, Phil, pp. 49.
142 Ibid, Pearce, John C., pp. 43.
143 Ibid, Pearce, John C., pp. 46.

possibility can be viewed as a never ending quest for novelty and invention -- the development of human intellect." A distinction can be made between intellect and intelligence. Intelligence, a species-independent quality, strives for well-being and continuity; intellect, a human trait, strives for novelty and possibility. Intellect is evolution's gamble. It asks only "Is it possible?" Intelligence, on the other hand, asks "Is it appropriate?"

The new vistas of possibility which result from the incorporation of the lower neural structures within the neocortex of the new-mammalian brain, include the possibility that humans interacting with other humans and the outside world somehow decide that they are homosexual. The neocortex is the agent for making this decision. It is the brain structure that rationalizes the interactions of self with the outside world. It is the neural structure that rationalizes the "pleasurable" sexual experiences that can stimulate the lower brain structures. For example, removing a large part of the limbic system, as well as part of the nonlimbic cortex of monkeys has resulted[144] in exaggerated sexual activity, masturbating incessantly and copulating indiscriminately, even with individuals of the same sex or those of different species. Similar symptoms can be observed in humans, usually associated with a lesion of the amygdala, which is part of the limbic system. In physically well humans, this kind of behavior, however arrived at, can result in a circular set of circumstances that invoke self-stimulation to repeat the "pleasurable" sensations. The neocortex is the neural structure that allows humans to construct a rationalization of such behavior. The higher cortical structures become servants of the lower animal neural systems. The existence of the neocortex, and its function in developing human intellect, is strong evidence that homosexuality is not present at birth but is the result of causal conditioning of the person via his/her environment, that is, interaction with others. This would be especially applicable to those who recruit or proselytize for the normalcy of homosexual behavior.

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144 Changeux, Jean-Pierre, "The Power of the Genes," Neuronal Man: The Biology of Mind, Pantheon Books, pp. 110, 1985.

With this summary of the nature of the human brain, we are now ready to address the question of whether or not homosexuality has a neurobiological explanation. Activist homosexuals would have us believe that there exist "neurobiological circuits" which implement sexual behavior. They reference scientific studies[145] of male and female rats. These studies show that in female rats, even a single perinatal exposure to testosterone will prevent the normal "hormonal communication" among the ovaries, hypothalamus, and pituitary gland to ovulate. In this normal "hormonal communication" process, at predefined intervals the ovaries pump estrogens into the bloodstream which in turn stimulate the hypothalamus (the small portion of the brain that regulates, among other things, body temperature, hunger thirst, and sexual drive) to secrete a hormone which acts on the pituitary gland. This hormone causes the pituitary to secrete two gonadotrophin hormones which are chemically programmed to act on the sex glands. The follicle-stimulating hormone (FSH) stimulates ovulation (release of an egg into the fallopian tube) in the female. The leutinizing hormone (LH) stimulates the ovaries to produce and release more estrogen. After ovulation, estrogen levels drop with a corresponding destimulation of the hypothalamus and pituitary gland. For the female rat in the testosterone study, this entire process is prevented by injection of testosterone.

The same article referenced above purported to show that male rats, perinatally castrated, respond as would a normal female rat in the "hormonal communication" process. That is, if estrogen is injected into the castrated male rats, the hypothalamus is stimulated and the sequence of hormone releases described above is observed. The activist homosexual reporter[146] uses this result to exclaim, "The male rats obviously had no ovaries or wombs, but they went through the biochemical motions of ovulation. If one grafted an ovary onto a male rat, he would ovulate perfectly." This patently false observation does not recognize the fact that the male rat could not ovulate, that is, release an egg into the fallopian tube, even if it had been "grafted" into his body.

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145 Burr, Chandler, "Homosexuality and Biology," The Atlantic Monthly, pp. 58, March 1993.
145 Ibid, pp. 51.
146 Ibid.

This has never been accomplished in rats or in humans. In addition, the observation completely misrepresents the normal "hormonal communication" system. The fact is that a "male" hypothalamus and pituitary gland do not exist. Likewise, a "female" hypothalamus and pituitary gland do not exist. These physical entities have no sexual differentiation. They serve both males and females. The normal "hormonal communication" between these structures is also naturally used to regulate the amount of testosterone in the bloodstream of males. That is, if for some reason, testosterone levels in a male became low, the hypothalamus and pituitary gland are stimulated as described above. In this case, however, the FSH hormone stimulates production of sperm in the male and the LH hormone stimulates the testes to produce and release testosterone. This increase of testosterone in the blood then causes the hypothalamus and pituitary glands to cease the release of their hormones. Thus, the testosterone levels in males tend to remain relatively constant, providing a steady stream of stimulation of the hypothalamus and a constant state of "sexual readiness." Thus the "hormonal communication" circuits used in the male rat study behaved exactly as they were designed. The circuit reacts to estrogens as well as testosterone because that is its natural function. They were designed to process the same intermediary hormones which have their differential effect based on whether testosterone or estrogen are the initial activating agents. Consequently, the experiments with male rats, while intellectually novel, demonstrate absolutely nothing concerning homosexual behavior. This is a clear example of how activist homosexuals misinterpret and misrepresent these studies to further their agenda in the popular press.

The absolute weight of the brain has no significance in itself. Early attempts to infer intelligence based on brain weight met with failure[147]. Whereas fifty-one unskilled workers averaged 1,365 grams of brain weight, that of twenty-four skilled workers averaged 1,420 grams. The brain weight shows wide variations from one individual to another. The average human brain weight is 1,330 grams. The smallest values

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147 Changeux, Jean-Pierre, "The Power of the Genes," Neuronal Man: The Biology of Mind, Pantheon Books, pp. 140, 1985.

known are between 1,000 and 1,100 grams while the highest are at more than 2,000 grams. A significant difference in brain weight seems to exist between the sexes. Adult males have on average 8.3 grams of brain per centimeter of height while females have only 8 grams[148]. Thus, men have a slight advantage of about 50 grams for a height of 1.65 meters. Little is made in scientific circles of this apparent sexual dimorphism of the brain. Other attempts have been made to show sexual dimorphism of the human brain. None of these have succeeded.

A surprisingly wide anatomical variability in the brain exists between individuals. Some of this is due to genetic mutations but most of it due to the activation of neural circuits during development, that is, the period in which the person interacts with the environment. Mutations are known to effect this variability. For example, anencephaly is a genetic mutation in humans involving the absence of the cerebral cortex. It is relatively frequent, affecting one to five births in a thousand. Nevertheless, mutations in general are rare events. On average, a given gene mutates in each generation between once in a hundred thousand and once in a million times[149]. The rarity of mutations means that most genes persist without modification for generations. This constancy of the genome of a species is assured. When a a baby is born, the cortical neurons have stopped dividing. Their maximum number is thus fixed. In the event of a lesion, the lost neurons cannot be replaced. Neurons can only decrease in number throughout life. The main features of the connections between the sensory organs, the central nervous system, and the motor organs, as well as between the principal centers in the brain, are already determined at birth[150]. The development of the embryo, and later the fetus, follows a highly reproducible pattern from one individual to another and from one generation to another. The power of the genes is obvious. Individual differences are small compared with the consistency in the major lines of cerebral organization. Whatever the ethnic,

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148 Ibid.
149 Ibid, pp. 175.
150 Ibid, pp. 202.

climatic, and environmental differences, the authority of the genes ensures the unity of the human brain within the species.

Certainly, the power of the genes exists, but it does not extend to the finest details of organization, to the precise form of every nerve cell and the exact number and geometry of the synapses (connections between nerve cells). The fact that there are approximately 10 billion neurons in a human brain, each with up to 10,000 separate connections dictates that there is not a gene for each connection. Humans have only about 100,000 to 300,000 genes[151]. Once a nerve cell has become differentiated (that is becomes a nerve cell rather than a body cell), it does not divide anymore. A single nucleus, with the same DNA, must serve an entire lifetime for the formation and maintenance of tens of thousands of synapses. It seems difficult to imagine a distribution of genetic material from a single nucleus to each of these tens of thousands of synapses. The differential expression of genes cannot alone explain the extreme diversity and the specificity of connections between neurons. This diversity can be explained by the selective activation and decay of neural connections as the person activates neural circuits by interaction with the environment, a process called epigenesis. Our behavior is determined primarily by the environment in which we are raised. The internal representation of our environmental experiences is in our neural connections.

Scientists have wondered whether genetically identical twins possess exactly the same brain. The answer to this question is essential to an understanding of the division of influence between genetics and environmental factors in the behavior of a human. Let us suppose the answer is yes. This would mean that the genes exercise an absolute power on every one of 10^{15} or 10^{15} synapses in the human cerebral cortex. Studies have been conducted to look at the identical brain cells in identical twins. This is impossible for humans or even lower animals. There are too many cells to match. But it is possible for the water flea which, without the intervention of a male, gives birth to exact clones -- asexually produced offspring who are genetically identical. That is, they produce a population of identical

151 "Genetic Research", Science, The New York Times, pp. B7, 30 March 1993.

twins. The small number of cells of this organism are individually identifiable under a microscope. It thus is easy to study in detail the differences between identical twins once one has gone to the trouble of mapping all the nerve cells and all their synapses. This is possible with an electron microscope. The first finding of such a study is that from one water flea to another the number of cells does not vary. What is more, the 176 cells establish synaptic contacts with exactly 110 neurons of the optic nerve. Nor is there any qualitative variation in the connections between these cells. Each sensory neuron, taken individually, terminates on the same neurons in the optic ganglion. The genes see to this. Close examination of the clones show a great deal of variability between individuals -- for example the exact number of synapses and the precise form of the axonal branches. The number of synapses may vary from fifty-four to twenty between specimens. An axonal branch may fork three times in one individual but only once in another. There is variability between left and right branches of the ganglion. Thus, although genetically identical, the water flea twins are not anatomically identical[152]. The same is true for higher species.

This research led to the discovery of nerve growth factor which helps explain the "growth" of a network of nerve cell connections after replication has stopped. This led to the concept of growth cones, groups of nerve cells which have appendages that will become either axons or dendrites and which grow toward a target area. The protein that stimulates this growth was discovered[153] and purified in 1975. Researchers have found that human neural circuits "grow" and "regress" as a result of their activation or inactivation during our formative years. These brain "growth spurts" occur in utero, at birth (beginning of development of the R-system), at ages one (beginning of limbic structure development) , four (beginning of right-hemisphere of neocortex development), and six[154] (beginning of left-hemisphere of neocortex development). Our six-year-old brain has five to seven times the ratio of axons and dendrites it had at eighteen months or will have

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152 Ibid, pp. 209.

153 Ibid, pp. 213.

154 Pearce, John C., "The Triune Brain," Evolution's End: Claiming the Potential of Our Intelligence, HarperCollinsPublishers, pp. 99, 1992.

as an adult, although it is still only two-thirds of adult size. At the beginning of each of these growth stages, the brain releases a chemical which washes away all redundant and/or unexercised connections. At age eleven, however, instead of a brain growth spurt, the brain releases this same chemical in the young brain that dissolves all undeveloped neural circuits. Myelin, a protective protein substance forms around axons when a neural circuit is exercised sufficiently during these growth/regression periods. This myelination of the circuits renders them impervious to these cleanup chemicals that are released periodically at the beginning of each growth spurt. This preserves connections which have been exercised by the individual as he/she develops an internal representation of the objects and experiences which are encountered in the person's external environment. Thus, at eleven years of age, 80 percent of the neural mass of the brain disappears, and we end up with the same "brain weight" we had at eighteen months. Use it or lose it is nature's dictate. This dictate reveals just how much of our behavior, resulting from the experiences we encounter while growing up, is encapsulated as a representation of our external environment -- a great deal. Our individual behavior, indeed, is accounted for by the neural connections that have been developed in our brain during our formative years. In terms of that behavior, we are our neural connections.

With this background knowledge, we are now ready to address the scientific evidence that homosexuality may have a neurobiological explanation. What is that evidence? In 1971 the anatomists Geoffrey Raisman and Pauline Field published a paper[155] that compared the synapses in the hypothalamuses of male and female rats. They found that the female rat hypothalamus had more connections than the male rat hypothalamus. In 1977 a team of neurobiologists found a second "sexual dimorphism" in the hypothalamus of rats. A small cluster of cells within the hypothalamus, five times larger in volume in the male rat than in the female rat, was found. The function of these clusters was and is unknown. In 1982 scientists[156] found that an examination of a

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155 Burr, Chandler, "Homosexuality and Biology," The Atlantic Monthly, pp. 52, March 1993.
156 Ibid.

structure in the human brain called the corpus callosum contains a small structure called the splenium which differs in shape (being larger in women than in men). This study has never been replicated despite many attempts to do so. Consequently, the finding has not met the most basic tenet of scientific proof. Thus, a "sexual dimorphism" of the brain has not been demonstrated. Its true, however, that the corpus callosum itself is 40 percent larger in the female human than in the male. This brain structure, however, has no known function related to either sexual behavior or sexual activity. It is simply the bridge that connects the left and right hemisphere of the brain.

Another scientist claimed to have found isolated evidence of instances of another "dimorphism" of the human brain, but this time associated with sexual behavior. In 1990 an article appeared[157] in the journal, Brain Research, reporting that a cluster of cells in the human brain called the suprachiasmatic nucleus was "dimorphic" according to sexual behavior. It reported that this cluster was nearly twice as large in homosexual men as in heterosexual men. The suprachiasmatic nucleus, however, has nothing to do with the regulation of sexual behavior, at least not in animals. It governs the body's daily rhythms. Thus, this discovery is no more interesting than the observation that the migration of geese south in Norway has, at times, correlated with a rise in the U.S. stock market average. Of course, the study has never been replicated.

Another researcher claims to have identified four small groups of neurons in the anterior portion of the hypothalamus in humans which exhibit "sexual dimorphism" -- being significantly larger in men than in women. This research has been vigorously contested[158] by prominent scientists, primarily on the basis of the fact that attempts to replicate it have turned up inconsistent results. Anne Fausto-Sterling, a developmental geneticist at Brown University and William Byne, a neurobiologist and psychiatrist at Columbia University have criticized the neurobiological investigations on the following grounds. The results from a long line of attempts to replicate "sexual dimorphism"

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157 Ibid.

158 Ibid, pp. 58.

has resulted in : "1985: no sex differences in shape, width, or area, 1988: three independent observers unable to distinguish male from female. 1989: women had smaller callosal areas but larger percent of area in splenium, more slender corpus callosum,, and more bulbous splenium." Thus, scientific results do not even support an explanation of a significant difference in the neural structure of men and women, much less an explanation of "sexual orientation."

Another hotly contested study is that of Simon LeVay of the Salk Institute in La Jolla, California. In a short paper entitled, "A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men," published in *Science* in August 1991, LeVay reported the results of a study he conducted on cadavers. He dissected brain tissue from the hypothalamus and looked for a small cluster of cells, called INAH 3. The dissected brain tissue came from routine autopsies of forty-one (41) people who had died at hospitals in New York or California. Nineteen were homosexual men, all of whom had died of AIDS, sixteen presumed heterosexual men, six of whom had been intravenous drug abusers and had died of AIDS, and six presumed heterosexual women. No brain tissue from lesbians was available. LeVay's conclusions included the following:

> *"INAH 3 did exhibit dimorphism -- the volume of this nucleus was more than twice as large in the heterosexual men . . . as in the homosexual men . . . There was a similar difference between the heterosexual men and the women . . . These data support the hypothesis that INAH 3 is dimorphic not with sex but with sexual orientation, at least in men."*

In spite of the fact that even LeVay admits to the methodological flaws of his study, it is being used by activist homosexuals to promote the idea in the public press that homosexuality has a neurobiological explanation, that is, that homosexual behavior is "normal." The flaws in LeVay's study are: the small sample size results in little statistical confidence in the results (i.e. coincidence cannot be ruled out), the samples displayed a huge variation in individual nucleus size (suggesting that the normal process of the variability in the number of synaptic connections could be the dominant factor in the results), the possibility that the results reflect only that AIDS or diseases from which AIDS victims die is an alternative explanation for the results --

since all the homosexual men died of AIDS, and the fact that *presumptions* were made concerning the sexual orientation of the heterosexual men (how would anyone know if records did not exist?) and concerning the heterosexual women. It is significant that LeVay's results have not been replicated by other scientists.

Research such as that conducted by LeVay has been severely criticized by prominent scientists who are not themselves homosexuals. Evan Balaban, a Harvard biology professor, in addressing a 7 March 1993 symposium at Harvard Medical School[159], stated "In LeVay's work, the physical differences may be effects rather than causes, or they may be coincidental." Such sound cautions do not find their way into the popular national press accounts of this research.

The fact is that activist homosexuals have even invaded the hallowed and respected halls of pure scientific research, including the areas of psychiatry, medicine, genetics, neurobiology, endocrinology, etc. These individuals have an agenda that uses science rather than being interested in science for the sake of scientific discovery. This fact is clearly demonstrated by the recent symposium at the Harvard Medical School. It was convened at the behest of homosexual medical students[160]. The Washington Post relates that many of the scientists in attendance are homosexual. The opening remarks at the symposium were given by Marshal Forstein, head of the American Psychiatric Association's gay caucus, clear proof of the politicization of not only the psychiatrists' professional organization but of some sciences in general. In fact, several researchers at the symposium clearly showed their bias and agenda by stating that "if they could prove convincingly that a predisposition to homosexuality is inborn, many critics might soften their opposition. Homosexuality could be seen as a natural trait, comparable to eye color or height, rather than a willful choice or sin." Observe that the quote did not include any comparison of linkage between race and IQ, an issue on which genetics has a sordid past. The activist homosexuals are indeed clever and politically astute

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159 Daly, Christopher, B., "Study of Twins Suggests Lesbianism Has a Genetic Component," Science: Sexuality, The Washington Post, pp. A3, 15 March 1993.
160 Ibid.

in their selective use of examples. In fact, the headline of the Washington Post article reporting on the symposium, "Study of Twins Suggests Lesbianism Has a Genetic Component," promotes the idea that such a link exists. Hidden within the middle of the text of the article, however, is the cautionary note that "a growing body of evidence -- still far from conclusive and lacking widespread confirmation -- has arisen in support of the thesis that predisposition to homosexuality is largely an inborn trait." The Post article then goes on to describe genetic research that attempts to find a "candidate gene" that would explain homosexuality. After raising one's curiosity with such a statement, the Post then states that "the results were negative." It furthers the credibility of the hypothesis, however, by stating that the research continues and quotes the researcher as "hinting that published findings are imminent." Such chicanery is never allowed in responsible scientific journals which are governed by peer review. No such attempt at scientific integrity, however, is observed in our national media.

Lawrence Hartmann, a past president of the American Psychiatric Association, at the Harvard symposium, said[161] "the search for the origins of homosexuality is one 'drenched in politics' and steeped in ambiguity." He should know, having gone through the process of politicizing the issue of whether or not homosexual behavior is psychotic behavior. A previous section of this report provided detailed evidence of how the activist homosexual agenda effected the removal of homosexuality as a treatable disorder in 1973. It was explicitly removed from their classification guide but left to individual psychiatrists the decision of how to treat homosexuals who continue to visit their office for problems related to their choice of sexual behavior. Thus the psychiatrists succumbed to political pressure and swept the issue under the rug.

So where is science in terms of a neurobiological explanation of our behavior? While much is known about the brain, we are still in the dark in terms of providing a specific neurobiological explanation to specific human behaviors. The "complexity" of the human brain needs no

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161 Ibid.

emphasis. Neuroscientists are right to insist that the use of this term usually reveals our ignorance[162]. The power of the genes perpetuates the major organizational features, such as the shape of the brain and its convolutions, the organization of its areas, and the general architecture of the brain tissue. But considerable variability, as seen in identical twins, remains, despite the gene's power. This becomes obvious at the cellular or synaptic level. In the water flea, this variability is limited to the geometry and number of synapses, but in mammals it affects the number and distribution of neurons. This phenotypic variability is intrinsic. It is the result of the precise "history"[163] of cell division and migration, of the wandering of the growth cone and its fission, or regressive processes and selective stabilization based on activation of the circuits (experience with the environment). These actions cannot be exactly the same from one individual to another even if they are genetically identical. The way in which the brain of the higher vertebrates, especially humans, is constructed introduces a basic variability.

The notion of epigenesis by selective stabilization of neurons and synapses during human development from infancy to adulthood explains the variability of the human brain[164]. Regression of synaptic connections (their decay if not activated) affects the peripheral as well as the central nervous system, suggesting that it is a generalized phenomenon, related to the development of neuronal networks. The very early activity of the nervous system in the embryo, together with the role of its spontaneous or evoked activity in regulating various formative stages of a synapse and its evolution up to adulthood, supports the theory.

According to this scheme, culture makes its impression progressively. The 10,000 or so synapses per cortical neuron are not

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162 Changeux, Jean-Pierre, "The Power of the Genes," Neuronal Man: The Biology of Mind, Pantheon Books, pp. 246, 1985.

163 Stent, G.S., "Strength and weakness of the genetic approach to the development of the nervous system," Annual Review of Neuroscience, 4, pp. 163-194, 1981.

164 Changeux, Jean-Pierre, et al, "A theory of the epigenesis of neural networks by selective stabilization of synapses," Proceedings of the National Academy of Science, 70, pp. 2974-2978, 1973.

established immediately. On the contrary, they proliferate in successive waves from birth to puberty in man/woman. With each wave, there is transient redundancy and selective stabilization. This causes a series of critical periods when activity exercises a regulatory effect. One has the impression that the system becomes more and more ordered as it receives "instructions" from the environment. To learn is to stabilize pre-established synaptic combinations, and to *eliminate* the surplus.

Use it or lose it is nature's dictate. Indications are that most of the loss of neural connections as humans develop from birth through adulthood involves the neocortex. The two "animal brains" are largely myelinated by age four and complete by around age six[165]. We share 98 percent of all our genetic materials with the higher apes, giving us but a 2 percent additional genetic "weight" over our cousins. From that slight addition, however, comes a light-year leap of ability. It is incumbent on us as a society to ponder whether or not our sometimes misguided intellect (the innate quest for invention and novelty) will be sufficiently conditioned by our intelligence, which asks the question "But is it appropriate?," to continue the positive human evolutionary process. The result of this pondering should provide answers to whether or not the quest to "normalize" homosexuality is a noble goal or whether it leads us down a path to insignificance. In pondering this issue, it seems reasonable to ask such questions as "What is the evolutionary purpose of the quest?" After all, the one simple lesson of evolution itself is that species must reproduce to survive. What is the purpose of "normalizing" human behavior that leads to the absence of reproduction?

Does Homosexuality Have an Environmental Explanation?

As discussed in a previous section of this report, from the moment of conception and the subsequent injection (or absence) of androgens in the fetus, the only hard-wired difference[166] that develops

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165 Pearce, John C., "The Triune Brain," Evolution's End: Claiming the Potential of Our Intelligence, HarperCollinsPublishers, pp. 101, 1992.

166 Donahue, Phil, "Too Much of a Good Thing?," The Human Animal, Simon & Schuster, pp. 113, 1985.

between the sexes is that men impregnate, while women ovulate, gestate, and lactate. That's it. No other differences are absolute or irreversible. Anything else is in the interaction between the culture and the chromosomes -- not differences in the brain. Phil Donahue, the paragon of those who attempt to explain our society to ourselves through television and the written word, has said, "In our sexual identities as in our destiny, we have the power to choose[167] what we want to be. If we're hung up on sexual stereotypes, it's our culture, not our chemistry or our cortex, that's at fault. We are the only ones who set the limits, and we are the only ones who can push these limits."

Stephen Gould[168] has stated that "For human beings, biological evolution is already over. It was completed fifty thousand years ago. There's no reason to think we're going to get bigger brains or smaller toes, or whatever -- we are what we are." At this point in our evolution, according to Gould and others, culture, not biology, is the force that shapes our behavior. Most of what our brains do, most of what is essential to our considering ourselves as human is not a product of natural selection, but arises as a nonadaptive consequence of having a computer as powerful as the human brain. Our brain is what makes us highly creative but it also renders us extremely self-indulgent. Humans are called on today to adapt themselves to a world that is continually overstimulating, isolating, and stressful without relief -- and with less and less of a sense of personal identity. Some cope with this stress by using legal drugs (e.g. alcohol) and/or illegal drugs (e.g. cocaine). But a vast majority of adults aren't addicted to any substance. No doubt many of them are just better equipped to cope with stress in their lives. Many such normal people, whether they are conscious of it or not, have some small form of compulsive craving. But there's something most people don't know about compulsive cravings. Human beings can achieve exactly the same minimizing, intensification, or escape from a stressful reality by engaging in compulsive behaviors that have nothing to do with alcohol or other drugs. For example, you can get an amphetaminelike rush to relieve your alienation and feelings

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167 Ibid, Donahue, Phil, pp. 123.

168 Ibid, Donahue, Phil, "Too Much of a Good Thing?," pp. 51.

of frustration by taking risks[169] -- by hang gliding, sky diving, drag-racing, engaging in sexual promiscuity, or committing crimes. Or you can escape reality by compulsively meditating or chanting in a religious cult or just by compulsively daydreaming -- your own brain naturally contains several key components of the drug LSD. And you can minimize your awareness of painful reality by compulsively watching endless amounts of TV, playing video games, becoming a workaholic, or overeating. That is, people who do those things compulsively do so for the same reasons and achieve the same results as alcoholics and other drug abusers. They actually alter their brain and body chemistry -- and therefore their experience of reality -- just as effectively with binge eating, promiscuous sexual behavior, or the thrill of crime or meditation as they do with chemical substances. And so they repeat these behaviors compulsively -- they become addicted -- as a way of narrowing the gap between what they want out of life and what they actually have.

Apparently, our brains are disappointed with the life they've built for themselves and, like anybody who's underemployed and unchallenged, they're always casting around for something to keep those tens of billions of nerve cells either busy or numbed. The trend toward promiscuous sexual behavior started with the invention and dissemination of birth control devices in this century[170]. These devices allowed widespread control of procreation but also sexual freedom and a subsequent spread of sexually transmitted diseases. The advent of sexual freedom, promoted by Hollywood, the mass media, and university elites during the 1960s is an example of the search of the human intellect for novelty, the quest for every remote possibility. This trend has been institutionalized in our television (afternoon soap operas, etc.), our books (Joy of Sex, More Joy of Sex, etc.), and our popular press. Our morning network TV programming is filled with marginalized humans with a need to display their quest for the bizarre. Within the current year we have been bombarded with TV programs either

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169 Ibid, Donahue, Phil, pp. 60.

170 Root-Bernstein, Robert, "Why AIDS is Epidemic Now." Rethinking AIDS: The Tragic Cost of Premature Census, The Free Press, pp. 282, 1993.

featuring a full homosexual script or programs with snippets of homosexual dialogue and interaction interwoven into conventional programming.

The nonfiction literature abounds with factual accounts of extremely promiscuous homosexual behavior. One account[171], written by an avowed homosexual, details the promiscuous homosexual activities carried out in homosexual bathhouses in New York City and San Francisco during the 1980s. It was common practice in New York City for up to 10,000 to 20,000 male homosexuals each night to engage in repeated anonymous sex (averaging 2.7 encounters each per night) in such bathhouses. These bathhouses became a breeding ground for the HIV virus which causes AIDS. More recent reports[172] document the fact that new sex businesses are proliferating once again in New York City. City officials know of 50 such clubs, about two-thirds of which are homosexual clubs. One club advertises an "HIV Positive Night" to attract those homosexuals already infected with the virus. Reports are starting to appear in the popular press that some heterosexuals are consciously spreading the AIDS virus by promiscuous sexual behavior. A heterosexual female trustee for the National Community AIDS Partnership, who was infected with the AIDS virus in the mid-1980s, has only recently decided to tell the dozen or so men she has slept with that she is HIV-positive[173]. It is obvious that our society is reaping the rewards offered by the "sexual freedom" movement of the 1960s in ways that are direct and brutal. This obsession with sexual promiscuity is certainly a product of our cultural environment. It is not genetic. It is not hormonal. It is not neurobiological, except in the sense that our neural structures are an internal representation of our interactions with our cultural environment.

Where do these sexual obsessions originate? There is no doubt that an infant's earliest emotional responses influence actual brain growth, and therefore affect all its future behavior. As the infant learns how to get its needs satisfied, behavior patterns, in the form of

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171 Shilts, Randy, "Before," And the Band Played On, St. Martin's Press, pp. 19-20, 1987.

172 Navarro, Mireya, "In the Age of AIDS, Sex Clubs Proliferate Again," The New York Times, pp. B1-B5, 5 March 1993.

173 NEWSWEEK, "The HIV Dating Game," pp. 56, 5 October 1992.

neural pathways, are literally formed in the brain, connecting stimulus with response. A stimulus -- discomfort -- hooks up with a response -- crying -- to produce the desired result -- its mother or father. Likewise with smiles and coos. If they work, neural structures in the brain will specialize for them in the form of new dendrite branches. As experience presents more complicated stimuli, the dendritic connections become a thicket of possibilities. Experience is the teacher, and its lessons are reflected in the actual physical structure of the brain. The result is an organ -- and an organism -- of infinite possibilities.

As discussed in the previous section of this report, the "triune" brain of the human includes the limbic structure. This structure is the "old mammalian" brain which represents[174] the "horse" in us. All of our mammal cousins have a similar brain with similar functions, including the control of our senses of smell and taste and our sexual activity. In all mammals, including man, the limbic brain governs three activities that are never found in reptiles: 1) childish, seemingly purposeless play; 2) nurturing and grooming behavior; and 3) the isolation sounds an animal makes when it is separated from its group. Aside from lust, rage, and fear, all of which are generated in the reptilian brain, most human emotions are derived from these three behaviors common to all mammals and rooted in the mammalian brain: playing, caring, and pining.

The human animal has the distinction of being the only animal that complicates the biological act of reproduction with the condition of love. It turns the somewhat commonplace, necessary animal behavior of sexual reproduction into magic and poetry. According to Dr. John Money[175], "If the people who wrote love songs were true to human anatomy, they'd be writing songs not about the heart or even the eyes, but about the hypothalamus." We know that the "feeling" of being in love begins deep in the brain in the pea-sized hypothalamus. This dense little cluster of nerves, weighing only a quarter of an ounce, controls hundreds of bodily functions, including sexual activity. "My theory," says John Money, "is that the nerve pathways produce substances that induce what people refer to as falling in love." According to Money,

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174 Ibid, Donahue, Phil, pp. 48.
175 Ibid, Donahue, Phil, pp. 127.

the way to a man's heart, and to a woman's is through the hypothalamus. Early in life, pleasurable stimuli such as contact with our parents "trigger the release of opioids," which in turn sedate the anxiety of separation when mother or father walks out of the room. We become addicted to these infusions of sedative and, in later life, search for relationships that provide them[176].

John Money[177] says that each of us has in his or her head a "lovemap" that's drawn sometime between the ages of five and eight and is based on early experiences with parents, siblings, relatives, and the outside environment. This lovemap determines who attracts us erotically. It's "a pattern in your brain that's going to tell you what is the perfect love affair and who is the perfect person to fall in love with. Although we don't know much about the process, it's likely that the broad outlines of the lovemaps are sketched in our genes. We come into the world wanting certain relationships. The outline may be as broad as that. The details, blond hair, hairy or 'sensitive,' remain to be filled in." Money suggests that the process can be compared to the "imprinting" of newborn animals on their mothers. Soon after birth, a young animal is genetically prepared to attach itself emotionally to -- "imprint" on-- a mother figure. Usually, because she's there and taking care of it, the newborn attaches to its real mother. But not necessarily. If another animal, even a human being, is around at the right time, the time when the newborn's genetic clock tells it to imprint, the newborn will attach itself to the other animal. In humans, the time for attachment is more flexible than it is for most animals. The fact that humans have an inordinately long time of dependency during childhood, an impressive opportunity exists to develop a profound and lasting attachment to our parents. Often, this interminable childhood encourages us to become obsessed with one of our parents. "'Mother' is the first person to fulfill our needs and she is the first with whom we 'fall in love.' She protects us, cares for us, provides all the satisfactions we crave. So as adults men tend to look around for the perfect mother forever and find someone who resembles her -- or

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176 Ibid, Donahue, Phil, pp. 129.
177 Ibid, Donahue, Phil, pp. 136.

sometimes, if their experiences with her were bad, someone who is reassuringly unlike her." In the same way, women often search for men who are like (or unlike) their father.

Given this background, what is the evidence for an environmental explanation of homosexuality? Dr. John Money[178] claims that "Every one of us has a homosexual side, in the sense that 'we can be attracted by both sexes.'" He attributes this element of bisexuality in all of us to the fundamental bisexuality of the human fetus. Recall that for the first few weeks after conception, the fetus is both male and female, and Money believes that it continues to carry the legacy of that bisexuality even after it begins to differentiate according to its chromosomal sex. "No matter what we become," says Dr. Money, "male or female, we always carry with us some hint of our early bisexual (both-sexed) nature. Female genital organs contain vestiges of male structures, and vice versa." This view is not universally accepted, however.

But even if this view were universally accepted, why would this seed of bisexuality develop into homosexuality in some people and heterosexuality in others? This question has not yet been answered by science. Dr. Money, like most scientists today, believes that homosexuality is a function of both nature and nurture. In only a small percentage of individuals, who receive an unusually large rush of masculine hormones in utero, does there seem to be no propensity whatever toward bisexuality. But the nurture part of the equation, Dr. Money says, is more than a matter of controlling mothers and weak fathers (the Freudian explanation). According to Dr. Money[179], "there are three leading causes of homosexuality: the effects of hormones before birth and soon after birth; gender learning that occurs between the ages of eighteen months and four years, and lastly, the lack of sexual and erotic rehearsal play among juveniles. But Dr. Money's theories, like most theories of sex-role information, are largely unproved and widely disputed. These three elements do, however, serve as a foundation for further inquiry.

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178 Ibid, Donahue, Phil, pp. 141.
179 Ibid, Donahue, Phil, pp. 144.

As we have discussed in previous sections of this report, there does not appear to be scientific evidence of either a hormonal or a prenatal explanation for homosexuality. This truth is summarized in the statement[180] "--- while hormones and other chemicals *influence* our behavior, they don't necessarily direct it. We're born with a pattern of behavior that's sketched by hormones and other chemicals. But unlike other animals, we don't have to follow the pattern. Our environment can alter it, or we can choose to alter it ourselves."
Thus,it is obvious that we cannot look to biology or chemistry or genetics for the answers to the causes of homosexual behavior. Most of the answers will come from looking at ourselves more closely. The environment within which our children are raised -- more than biology, more than genetics, more than neuroscience -- will determine the outcome for our children and grandchildren.

The environment within which we raise our children will include answers to such questions as the following. What role does sex play in our society? What do we teach our children about sex? What do we fail to teach them? The way our society answers such questions will play a dominant role in determining the sexual behavior of our children and grandchildren. It is clear that the recent experience with the "Rainbow Curriculum" in New York City shows us that parents are fighting back against pressures exerted on politicians, educators, and our mass media by activist homosexual organizations. As one critic proclaims[181], "And so they [parents] are fighting back -- against the same cruel combination of dishonesty, cowardice, resignation to political pressure, and blind moral vanity by which they and their children have so often been bullied and victimized in the past."

It is clear that parents, when made aware of the agenda of the activist homosexual organizations, will react in ways that give parents control over the kind of sex education that will be provided for their children. The activist homosexual organizations have been and are taking strong steps to indoctrinate our children in the homosexual

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180 Ibid, Donahue, Phil, "Vive La Difference, pp. 115.

181 Decter, Midge, "Homosexuality and the Schools," Commentary, Volume 95, No. 3, pp. 25, March 1993.

lifestyle. They are attempting to accomplish this under the smokescreen of "discrimination and civil rights." According to a recent poll, a large majority of New Yorkers support[182] teaching about homosexual and lesbian families, AIDS education, and condom distribution -- but only for children in junior high school and above. Yet those same New Yorkers would probably feel quite differently even about the upper grades if they saw the materials produced by activist homosexual groups to implement sex education. These groups are consciously using these issues to promote their homosexual lifestyle and behaviors. An example of this is the pamphlet produced by the New York City Department of Health for distribution in the high schools. In this pamphlet the kids are, among other things, instructed as follows:

> *"Use a latex condom for <u>any</u> sex where the penis enters another persons body. That means vaginal sex (penis into a woman's vagina), oral sex (penis into mouth), and anal sex (penis into the butt). Use a dental dam (a thin square of rubber), an unrolled condom cut down one side, or plastic food wrap for oral sex (mouth on vagina) on a woman. Hold it over her vagina to keep her fluids from getting into your mouth."*

Those same New Yorkers, and most of the U.S. population in general, would most likely object to certain other materials, not yet in use in the schools but circulating among the city's so-called AIDS educators. A guide for teaching teens, for instance, written by an activist homosexual, includes among its instructions for the proper application and use of condoms such tips as this:

> *"For oral sex, use no lubricant on the outside of the condom. For vaginal or anal intercourse, put a lot of water-soluble lubricant -- on the outside of the condom. For anal intercourse, lube up the receptive partner's anus [expletive-deleted] as well -- Do it! (Have fun!)"*

It is clear that activist homosexual organizations are attempting to strongly influence the environment within which our children must navigate during the development of their neural structures. They are

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182 Ibid.

attempting to accomplish this under the cover of "civil rights," "discrimination," "intolerance" issues. These are precisely the same issues on which they are also challenging the regulations which ban homosexuals from serving in the armed forces.

While this activist homosexual agenda aimed at the indoctrination of our children to their lifestyle is being carried out in certain urban areas, little is known of this agenda nationally. Most people in the U.S. are being indoctrinated by these same activist organizations in the "discrimination" and "civil rights" issues, usually by accounts of physical assault on homosexuals and loss ob jobs in the workplace. Indeed, a recent New York Times/CBS national poll[183] revealed that 44% of the nation's adults believe that homosexuals choose their homosexuality whereas 43% believe that it is not a matter of choice (13% don't know). This latter view is simply not supported by the scientific evidence. It is, however, widely held due to the efforts of politically astute activist homosexual organizations. They have been very adept at misusing science to forward their social and political agenda, as has been demonstrated in previous sections of this report.

So, what is the scientific basis for the argument that homosexuality is primarily a result of conditioning in our cultural environment? Several pieces of evidence stand out. First, it is well established[184] that men and women who have always considered themselves heterosexual often become homosexuals in prison. Thus the environment of forced sexual deprivation causes heterosexuals to turn to same-sex behavior in the absence of normal societal contact with members of the opposite sex. Second, the fact that most homosexuals have heterosexual parents seems to minimize the role of genes in causing homosexuality. Third, more and more activist feminists are insisting[185] that general conceptions of gender behavior are based primarily on cultural and traditional views that have no bearing at all on genetic differences between the two sexes. Those who are lesbian "choose" to be lesbian.

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183 Schmalz, Jeffrey, "Poll finds an Even Split on Homosexuality's Cause," The New York Times, pp. A14, 5 March 1993.

184 Schneider, Allen M. & Tarshis, Barry, "Homosexuality: Genetics or Environment?," An Introduction to Physiological Psychology, Second Edition, Random House, pp. 350, 1980.

185 Ibid, pp. 349.

Fourth, case studies have shown that our sexual behavior is extremely malleable. For example, Dr. John Money reported[186] that a seven-month-old boy, one of a pair of identical male twins, was the victim of a surgeon's carelessness during circumcision and lost his entire penis. The family ultimately decided to raise him as a girl, with plastic surgery creating a vagina and the overall plan calling for injections of estrogen during puberty. Money reported that this boy-girl responded to the change in upbringing as a girl, modeling behavior after the mother and taking on what we normally think of as "girlish" characteristics.

Whatever the genetic predisposition to homosexuality may be, it is reasonable to assume that many homosexuals are not "born" to that lifestyle but rather are shaped toward homosexual behavior by early childhood experiences. In the event that a boy's or girl's first sexual experiences are homosexual, and are also satisfying, it is likely that he or she will be more inclined toward homosexuality than someone whose early childhood sexual experiences were exclusively heterosexual.

The American Psychiatric Association classification guide, DSM-III-R, identifies two major gender identity disorders; one associated with childhood and one called transsexualism. In transsexualism, the person identifies with the opposite sex. The person's gender identity conflicts with his or her biological sex. These people do not[187] consider themselves to be homosexual. On the contrary, they believe that they are trapped inside the body of a member of the opposite sex. This contrasts starkly with the homosexual's view that he/she accepts his/her biological sex and chooses to have sex with a member of the same sex. Transsexulaism is more common in males than in females. They are quite rare; consisting of only about 30,000 worldwide.

Childhood gender identity is considered a psychological disorder. Children with this disorder have the same characteristics as transsexuals[188]. That is, boys display interests and characteristics that are considered feminine, and they are frequently labeled "sissies" by their male peers. They prefer playing with girls and generally avoid

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186 Money, J., & Ehrhardt , A.A., "Man and woman, boy and girl," Johns Hopkins University.
187 Sue, David, et. al., "Transsexualism," Understanding Abnormal Behavior, Third Edition, Houghton Mifflin Co., pp. 291, 1990.
188 Ibid, pp. 292.

rough-and-tumble activities in which boys are traditionally encouraged to participate. However, only a small percentage of children with the disorder become transsexuals. This disorder is indicated by the child's strong and persistent desire to be a member of the opposite sex or claims to be a member of the opposite sex. For girls, the gender identity disorder may involve the insistent claim of having a penis and an avid interest in rough-and-tumble play. A boy with this disorder may claim that he will grow up to be a woman, may demonstrate disgust with his penis, and may be exclusively preoccupied with activities considered "feminine." The disorder is much more common in boys than in girls. Boys with gender disorders exhibit general personality problems, in addition to their adoption of opposite gender attitudes and behaviors. In a long-term follow up study of 55 boys with opposite sex behaviors, nearly two-thirds developed a homosexual pattern later in life[189]. Factors thought to contribute to these disorders in boys include parental encouragement of feminine behavior and dependency, excessive attention and overprotection by the mother, the absence of an older male as a model, a relatively powerless or absent father figure, a lack of exposure to male playmates, and being encouraged to cross-dress[190]. A childhood background that results in other-sex behavior often leads to ostracism and rejection by one's peers. In that case, the only course available to the boy is complete adoption of the already familiar feminine role. Dr. John Money concludes that gender identity is malleable[191].

The treatment of childhood gender disorder includes separate treatment for the child **and for his or her parents**. For the child, treatment begins with sex education. The favorable aspects of the child's physical gender are highlighted, and his or her reasons for avidly pursuing opposite-sex activities are discussed. An attempt is made to correct stereotypes regarding certain roles that are "accepted" for one gender and not for the other. Young boys are always assigned to

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189 Zuger, B., "Early effeminate behavior in boys: Outcome and significance for homosexuality," Journal of Nervous and Mental Disease, 172, pp. 90-97, 1984.

190 Ibid, Sue, David, pp. 293.

191 Money, J., et. al. "Imprinting and establishing gender role," Archives of Neurological Psychiatry, 77, pp. 333-336, 1957.

male therapists, so that positive male identification is facilitated. Meanwhile, the child's parents receive instruction in the behavior modification practice of reinforcing appropriate gender behavior and extinguishing "inappropriate" behavior[192]. It is clear from this evidence that homosexual behavior has roots in early childhood and is directly attributable to how the child was raised. The treatment for children includes treatment for the parents. If this gender identity disorder is not caught and treated at an early age, many of these children will turn to the homosexual lifestyle. In an age when the activist homosexual agenda openly promotes and recruits for this lifestyle, these children will be tempted beyond their means to resist. In fact, Project Ten is a national project designed[193] to encourage confused teenagers who feel they are "homosexually inclined" to accept their inclination as positive and to teach their peers to be more loving and tolerant toward them. The activist homosexual agenda is attempting to shape the environment within which our children and grandchildren must grow to responsible adulthood.

So, if we are convinced that a large part of the root cause of homosexuality is the interaction of the individual with his/her immediate environment during childhood and adolescence, what would be the nature of that environment if we were to succumb to the argument that the homosexual lifestyle is a normal alternative for our children and grandchildren? What would they be encouraged to consider as a perfectly normal lifestyle? It is illustrative to observe the recent history of the gay liberation movement.

The Stonewall riots in New York City in 1969 formed the crucible from which the movement for gay liberation was cast. Subsequently, "coming out of the closet" became respectable for some and at least acceptable to those who empathized with those in open rebellion against heterosexuality as the norm. This miniature social revolution has altered not only the social perception of homosexuality but its medical

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192 Ibid, Sue, David, pp. 294.

193 Antonio, Gene, "The Threat of Safe Sex," AIDS: Rage & Reality: Why Silence is Deadly, Anchor Books, pp. 203, 1993.

aspect as well. For example[194], two physicians who treated patients between 1973 and 1977 for "social injuries of the rectum" have stated in the medical literature that "With the rapid emergence of the new sexual mores and permissiveness in our society, as well as a greater acceptance and understanding of sexual deviation by the general public, the surgeon is now confronted with new problems in diagnosis and treatment of unusual anorectal injuries." There was a documentable increase[195] in risky sexual behaviors among homosexual men immediately preceding the explosion of AIDS. Much of the new-found sexual liberation and promiscuity among homosexuals was fed by new social institutions. According to J. Weeks[196], who has studied the emerging social acceptance of homosexuality, "The 1970s did witness an explosion of what has been described as 'public sex' amongst gay men, with the appearance in most of the major American, Australian and European cities of such facilities as bath houses, backroom bars and public cruising areas where casual, recreational sex with multiple partners became the norm. -- It clearly represented some form of decoupling of sex and intimacy, and a normalisation in a new way of sex as recreation and pleasure." It also appears that for many homosexual men, establishing the gay liberation movement also meant developing uniquely homosexual types of sex (such as fisting) and specific places, such as bath houses and sex clubs, in which this liberation could be explored. Sex became a political statement! In fact, the book, *The Joy of Gay Sex*, proposes[197], "gay men should wear their sexually transmitted diseases like red badges of courage in a war against a sex-negative society." The extent of this sexual revolution is revealed by the following figures.

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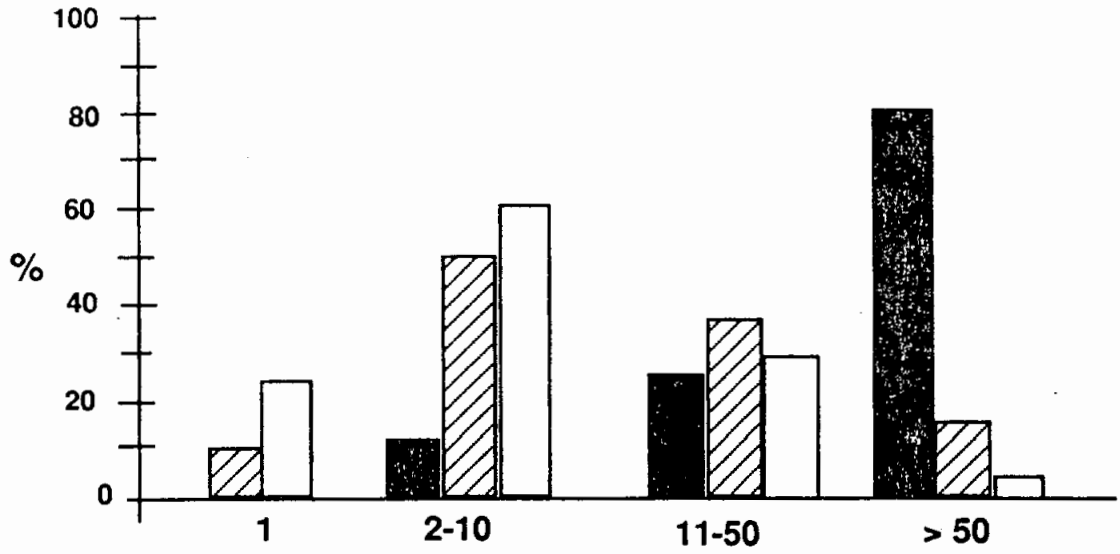
194 Root-Bernstein, Robert, "Why AIDS is Epidemic Now." Rethinking AIDS: The Tragic Cost of Premature Census, The Free Press, pp. 284, 1993.

195 Ibid, pp. 286.

196 Ibid, pp.286.

197 Ibid, pp. 286.



Number of lifetime sexual partners of heterosexual men and women in Atlanta, GA, and homosexual men in San Francisco

Key:

Homosexual men

Heterosexual men

Heterosexual women

A large study[198] of homosexual men in San Francisco performed during the mid-1980s (when it was well known that sexual promiscuity was a contributing factor to being infected with AIDS), found that no one reported having had a single lifetime sexual partner; 8 percent reported between two and ten lifetime partners; 17 percent reported between eleven and fifty lifetime sexual partners; and 75 percent reported more than fifty lifetime sexual partners. Homosexual AIDS patients have often been -- though not always -- among the most promiscuous of their brethren, sometimes reporting thousands of lifetime sexual partners. The data for heterosexual lifetime partners contrast markedly. The figure below reveals this contrast.

198 Jbid, pp. 286.

Eight percent of heterosexual men interviewed in Atlanta, GA, during the early 1980s reported having only one lifetime sexual partner; 48 percent reported having between two and ten partners; 32 percent between eleven and fifty partners; and 12 percent more than fifty. Heterosexual women were even less likely to be promiscuous. The data clearly show that homosexual promiscuity is far more extensive than heterosexual promiscuity. Such is the rewarded that society has reaped from the gay liberation movement.

Although homosexual men have not always been promiscuous (Kinsey reported in 1948 that homosexual men had few sexual partners), by the 1980s many homosexual men were having sexual relations with several, sometimes anonymous, partners each week, especially in major cities such as New York, San Francisco and Los Angeles[199]. Along with this promiscuity among homosexual men, venereal diseases became epidemic. The data definitely demonstrate that the gay liberation movement[200] resulted in a great increase in promiscuity among homosexual men, along with significant changes in sexual practices that made rectal trauma, immunological contact with semen, use of recreational drugs, and transmission of many viral, amoebal, fungal and bacterial infections far more common than in the decades prior to 1970.

Another important result of the gay liberation movement is the change in homosexual activity that took place during the 1970s in the U.S. Male prostitution grew tremendously[201]. During the second half of the 1960s, about 7,000 men were arrested each year on charges of prostitution -- about one-quarter of the number of women arrested on similar charges. More than 35,000 men were arrested on prostitution charges in 1987. Thus, the number of men arrested yearly on prostitution charges increased by a factor of five over a period of two decades. Male prostitutes are now almost as common as female prostitutes. Male prostitutes are among the most promiscuous of male homosexuals and they are more likely to engage in high-risk types of sex without safer sex measures. Male prostitutes also have extremely high

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199 Ibid, pp. 287.
200 Ibid, pp. 291.
201 Ibid, pp. 291.

rates of drug use, even compared with other homosexual men, with as many as 75 percent in cities such as San Francisco being addicted to intravenous drugs. Male prostitutes may represent one of the most important reservoirs of all sexually transmitted diseases in the homosexual community and one of the greatest AIDS threats. The gay liberation movement has indeed left a sordid imprint on our social landscape since the Stonewall riots.

Indeed, while writing on a subject of a global tendency toward aggression and warfare, Dr. Irven DeVore of Harvard University has said[202], "The brutal lesson of biology is that animals and individual humans do not on average work for the good of their species. They work out of more selfish short-term goals. That is why more than 99 percent of all species in the fossil record have gone extinct." This quote may appear equally appropriate to the history of the gay liberation movement in our society. It is clear that the legacy of the gay liberation movement is one that is not in the best interests of our children and grandchildren. This movement is currently being promoted by the activist homosexual organizations that are attempting to lift the ban on homosexuals in the U.S. military.

The activists are using all possible avenues to promote their agenda. The AIDS epidemic is another fact of life in our society which is being used by activist homosexual groups to promote their agenda. The next section of this report addresses this topic.

AIDS and the Activist Homosexual Agenda

AIDS activists, such as Larry Kramer, founder of the AIDS Coalition to Unleash Power (ACT-UP) and a homosexual who is infected with the AIDS virus, has emotionally chastised the heterosexual world on public television[203], by stating that "over 1 billion people in the world will contract AIDS by the year 2000 and you are doing nothing about it. We need a Manhattan Project to combat AIDS." Other activist

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202 Ibid, Donahue, Phil, "A Taste of Armageddon," pp. 239.

203 Kramer, Larry, Panel Discussion of AIDS at the Hartford Symposium on AIDS, Public Broadcasting System, Channel 26, 13 February 1993.

homosexuals[204] have stated on network television that "AIDS is not a gay disease," and that "babies are getting AIDS, women are getting AIDS" and that "gays are using safe sex to decrease their risk of AIDS" and "heterosexuals are increasingly at-risk to AIDS." It has been clear from the beginning of the AIDS pandemic in the early 1980s that it has been highly politicized. Randy Shilts, a homosexual reporter who has covered the AIDS story since its beginning in the U.S., has revealed[205] that public health officials in both San Francisco and New York City were prevented from taking obvious public health measures (e.g. closing public bath houses, requiring testing for the HIV virus in the blood supply, etc.) in the early 1980s by activist homosexual organizations. These activists claimed that such measures would send them to concentration camps and lead to the loss of their "sexual freedoms" which they had so ardently fought for during the past two decades. These activists have claimed a prominent role in the battle against AIDS, primarily through default by public interest heterosexual organizations.

As the federal government necessarily became more and more involved in the battle against AIDS, public health officials have become preempted by the agenda of activist homosexual organizations. That is the state of affairs today. The mid-term result of this reality is that billions of dollars of research money are being thrown at narrower and narrower regions of possible answers to the AIDS pandemic. The bureaucratization of the AIDS battle has become a fact. The activist homosexual community has contributed to driving the solution toward two major areas; drugs which will ameliorate the effects of AIDS or will "cure" it for those already infected and a "vaccination" which will protect all those not-yet-infected. Such an approach, if successful, would save those who have become infected as a result of their past sexual behavior, and it would allow the continuation of such behaviors for those who are not presently infected. AIDS would be rendered benign by the same technologies which render venereal diseases benign in the

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204 Thorne, Tracey, Ltjg USN, A homosexual who is on active duty in the U.S. Navy and who declared his sexual preference on national television, has made such statements on various network television programs during February 1993.

205 Shilts, Randy, "Before 1980," And the Band Played On, St. Martin's Press, pp. 19, 1987.

bodies of those infected. Sexually promiscuous homosexuals have become accustomed to picking up venereal diseases and going to a physician for a shot of penicillin or other antibiotics and returning sometimes immediately, to the original source for reinfection[206]. Consequently, if this approach succeeds, the gay liberation movement can continue its quest for "sexual freedom" unencumbered by the realities of the AIDS crisis.

Whether or not this narrow approach holds the eventual answer to the control of the spread of AIDS, it has driven not only the federal government's efforts but has provided a platform for empathy by the general population to be persuaded by the "civil rights" and "discrimination" arguments used by the activist homosexual organizations to render "normal" their chosen sexual behaviors. The activist homosexual organizations are using AIDS as a means of promoting the legitimacy of their lifestyle.

Only recently have responsible scientists challenged the myths such as those stated above that are being used by activist homosexual groups with the willing cooperation of our national mass media. Even the root cause of AIDS is being challenged by those researchers. For example, Robert Root-Bernstein, a physiologist at Michigan State University, has challenged the ingrained bureaucratic view that AIDS is caused solely by the HIV virus. He carefully documents five deaths[207] (from an Englishman in 1959 to a Swedish father, mother, and daughter in the early 1970s) in which HIV has subsequently been found in their saved blood samples. He has researched hundreds of AIDS-like cases which were documented in medical journals for decades prior to the recognition of AIDS in the 1980s. Root-Bernstein states that[208] "The case that AIDS was present in the Western world for at least a century prior to 1981 is actually much stronger than the meager instances of the five people described above." He goes on to reveal the results of his research of past medical journals which shows that "There is no doubt that AIDS itself, as distinct from HIV, is at least a century old." Root-

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206 Ibid, pp. 39.

207 Root-Bernstein, Robert, "Anomalies," Rethinking AIDS: The Tragic Cost of Premature Consensus, The Free Press, pp. 13, 1993.

208 Ibid.

Bernstein goes on to conclude that HIV is neither necessary nor sufficient to cause AIDS. If true, this means that one may not succumb to AIDS if HIV is the only insult to the body. It also means that one may succumb to AIDS due to other factors, not involving HIV.

So much misinformation has been promoted to support the agendas of various groups on the AIDS issue that it is difficult to obtain an unbiased account of the data. In this age, so much political power, research funding, and outright professional ego gets in the way of an unbiased look at the data. So what do the data show? What are the myths associated with AIDS during its 12-year history in this country. One of the myths is apparently that AIDS is easy to transmit. It is axiomatic to the HIV theory of AIDS that the syndrome is due to an infectious agent and that this agent, HIV, is transmitted from one individual to another either by sexual intercourse or by means of direct contact with infected blood or tissue. To be transmitted sexually, HIV must be present in the reproductive fluids. In fact, in most HIV-infected people, it is not[209]. While it is certainly the case for other sexually transmitted diseases such as syphilis and gonorrhea, in which it takes on the average, only two or three unprotected sexual contacts to infect the vast majority of people. HIV, however, is not typical in this regard. It can take hundreds of exposures to HIV for transmission to occur, or it may not occur at all[210]. It is estimated that the transmission of HIV occurs only once in about 500 such unprotected heterosexual intercourses with a partner who has HIV. These data are authenticated by scientific interviews with the sexual partners of such well-known people as Rock Hudson, Magic Johnson, and Arthur Ash. The data do not mean that it is safe to have sex with AIDS patients. Some partners do become infected after only a few contacts, and anal intercourse appears to increase the risk of HIV transmission greatly. But certainly these figures are vastly different from those documented for the transmission of syphilis, gonorrhea, and hepatitis B virus[211].

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209 Ibid, Root-Bernstein, Robert, pp. 30.

210 Padian, N.S., Shiboski, S.C., Jewell, N.P., "The effect of number of exposures on the risk of heterosexual HIV transmission," Journal of Infectious Diseases, 161, pp. 883-887, 1990.

211 Root-Bernstein, Robert, "Anomalies," Rethinking AIDS: The Tragic Cost of Premature Consensus, The Free Press, pp. 33, 1993.

So, why is an HIV infection so difficult to acquire as compared with other sexually transmitted diseases? One reason given by Root-Bernstein is that HIV is rarely present in semen in sufficient numbers to cause disease or is not present at all. That which is not present cannot be spread. Despite early evidence that HIV was present in semen of HIV infected men, more recent studies have shown conclusively that the virus is only rarely there. Semen contains approximately the same number of viruses excreted in saliva of HIV-infected individuals and in vaginal secretions. This amount of HIV is considered to be incapable of transmitting disease[212]. A related phenomenon confirms the absence of free HIV in the genital and reproductive tracts of most AIDS patients. Many sexually transmitted organisms, including herpes viruses and various Mycoplasmas, are often found in the urine of infected people. No such evidence has been found of the HIV virus in any AIDS patient[213]. Root-Bernstein concludes that[214] "In short, although HIV certainly can be transmitted through semen from one person to another, it is in fact transmitted so rarely to healthy sexual partners and is present at such low amounts in so few sperm samples from HIV-infected men that it is probable that those who become infected must be exposed repeatedly to many HIV carriers or have some unusual susceptibility for the virus. Clearly, this is not the picture of the cause of AIDS that the public has been given by the medical community or through highly publicized (and possibly misleading) cases."

The picture painted above is based on epidemiological evidence. That is, persons who have contracted AIDS are interrogated to determine possible risk factors. Given the latent period, up to 14 years, for HIV-positive individuals to develop AIDS, this view of the evidence does not satisfy other investigators. They prefer to observe the evidence of the location and quantities of HIV virus in various bodily fluids. They point out that a few cases have been reported[215] for homosexual males becoming HIV-positive wherein their only admitted risk factor was oral

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212 Levey, J., Journal of the American Medical Association, 259, pp. 3037-3038, 1988.

213 Ibid, Root-Bernstein, pp. 35.

214 Ibid, Root-Bernstein, pp. 38.

215 Antonio, Gene, "HIV disease can be transmitted by oral-genital acts including fellatio and cunnilingus," AIDS: Rage & Reality: Why Silence is Deadly, Anchor Books, pp. 79, 1993.

sex. They report that the HIV virus is present in saliva in HIV-positive persons in greater amounts[216] than in their blood. Evidence also exists[217] for the presence of the HIV virus in the urine of infected persons. This evidence is presented by some as indications of the possible future trend in transmission of the AIDS virus.

A proposed source of heterosexual transmission of HIV-are prostitutes. It has been claimed in the popular press that prostitutes are likely to contribute to an explosion of AIDS among heterosexuals. In fact, it was predicted[218] that AIDS would quickly become the predominantly heterosexual disease in Western nations. Root-Bernstein reveals that this prediction is not even close to being accurate. The data show that[219] "The number of American and European heterosexuals who have had sexual relations with a prostitute, who have no other admitted risk factors for AIDS (such as drug abuse or sexually transmitted diseases), and who have subsequently developed antibody to HIV can be counted on the fingers of one hand." In fact, "sex with a prostitute" is not even listed as a risk category by the Centers for Disease Control in the U.S.

Why is this so? There are two sides to the prostitute situation. First, prostitutes who do not abuse intravenous drugs almost never become infected with HIV. Second, even drug-abusing, HIV-positive prostitutes do not appear to transmit HIV to their drug-free patrons. Root-Bernstein presents this surprising result after reviewing the data from New York call girls (with relatively high social scale clientele) and New York City streetwalkers (a lower class of prostitute than call girls). This review showed that[220] "the data clearly suggest that a history of drug abuse is a far greater risk for contracting HIV than is even the most outrageous heterosexual promiscuity." Even more astounding, long-term studies in many European and U.S. cities have

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216 Ajdukovic, D., et. al, "Susceptibility to HIV of Blood Lymphocytes Transformed by Antigens/Mitogens of Oral Flora," IV International Conference on AIDS, Stockholm, Vol. 2, No. 2613, 1988.

217 Ibid, Antonio, Gene, pp. 95.

218 Ibid, Root-Bernstein, See reference to Steven Nahmias in the Journal of Sex Research, pp. 39.

219 Ibid, Root-Bernstein, pp. 40.

220 Ibid, Root-Bernstein, pp. 41.

found no increase in the incidence of HIV positivity among non-drug abusing prostitutes since the early 1980s. It is clear that HIV is not ravaging drug-free female prostitutes. The implications of these and related studies are astounding: HIV cannot be a sexually transmitted disease, in the usual sense of the term!

This surprising result is bolstered by the National Academy of Sciences which admits in their 1990 report, AIDS: The Second Decade[221], that non-drug abusing female prostitutes have no higher risk of AIDS than other women.

But what of the question "Who contracts HIV from infected prostitutes?" The fact is that there is also very little evidence[222] of transmission of HIV from female prostitutes, whether they are drug abusers or not, to non-drug abusing heterosexual men. Studies have shown that, when such factors as absence of either venereal disease, drug use, chemotherapy, surgical procedures, or other immune system suppressants in the customer, female prostitutes represent virtually no risk for spreading HIV to nonrisk heterosexuals. German and British studies have shown the same results. In fact, the U.S. National Academy of Sciences, in their publication, AIDS: The Second Decade, argues that the concept of the female prostitute as an agent for spreading HIV to the heterosexual population has no basis in the U.S. either.

One clear implication of these studies is that the non-drug abusing heterosexual community should have little or no risk of HIV or AIDS. Indeed, testing for HIV-antibody positivity among new recruits by the U.S. military services[223] and among first-time blood donors of all ages by the Red Cross[224] has been carried out since 1985. All three sets of data demonstrate clearly that HIV infections among the general population are no more common in 1992 than they were in 1985. For some groups, such as white males, the incidence of infection actually seems to have decreased. The same general trends have been observed in Canada

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221 National Research Council, AIDS: The Second Decade, National Academy Press, 1990.

222 Ibid, Root-Bernstein, pp. 42.

223 Garland, F.C., et al, "Incidence of human immunodeficiency virus seroconversion in U.S. Navy and Marine Corps personnel," Journal of the American Medical Association, 262, pp. 3161-3165, 1989.

224 Burke, D.S., et al, "Human immunodeficiency virus infections in teenagers," Journal of the American Medical Association, 263, pp. 2074-2077, 1990.

and Britain as well. HIV infections, and AIDS, are staying within the risk groups first identified for the disease[225]: homosexual men, drug addicts, hemophiliacs, and blood transfusion patients.

Some AIDS activists and uninformed citizens promote the idea that AIDS is not a "gay disease" by pointing out that Africa, where the disease presumably originated, displays a pattern of heterosexuals comprising almost 100 percent of those infected with AIDS. Indeed, the data show[226] that 71% of HIV infections world-wide are among heterosexuals, and only 15% among homosexuals. This is an extremely erroneous conclusion. Even eminently responsible scientists have been mislead by these data. For example, Stephen Jay Gould has written that[227] "AIDS in Western nations would resemble AIDS in African areas where it probably originated, and where the sex ratio of afflicted people is 1-to-1, male-female. Those afflicted will be our neighbors, our lovers, our children and ourselves. AIDS is both a natural phenomenon and potentially, the greatest natural tragedy in human history." Root-Bernstein shows the obvious and common-sense answer[228] to such predictions. The facts are that the typical sub-Saharan Africans are not comparable to Western heterosexuals in their disease load, their nutritional status, or their immunological functions. He shows that sub-Saharan Africans tend to be much more promiscuous than heterosexuals in Western culture, both pre- and postmaritally. This fact is mirrored in the extremely high rate of female sterility, rising as high as 30 to 50 percent in some sub-Saharan countries, linked to a very high incidence of sexually transmitted diseases. In addition, malaria and sickle cell anemia are rampant in this region. Both of these diseases are treated with blood transfusions wherein the blood supply is not tested for viruses. Medical procedures in this region of Africa are considered dangerous from a cleanliness standpoint. Malnutrition is commonplace. Added to the problems of disease, malnutrition, and inappropriate or dangerous medical practices, many

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225 Ibid, Root-Bernstein, pp. 43.

226 Mann, Jonathan, et. al., "Global Estimates," AIDS in the World: A Global Report, Harvard University Press, pp. 33, 1992.

227 Gould, S.J., "AIDS is natural," The New York Times Magazine, pp. 19, 19 April 1987.

228 Ibid, Root-Bernstein, pp. 301.

African heterosexuals are also prone to drug abuse. There is little doubt that some central African nations experience as much drug abuse as Central American countries and the U.S. Root-Bernstein claims that[229] "The comparison of the immunosuppressive risks encountered by the typical sub-Saharan African heterosexual and those of the typical American or European heterosexual undermines any attempt to predict the future of heterosexual AIDS in Western nations based on the history of AIDS in Africa. African heterosexuals in areas where AIDS is endemic are not comparable in general health, disease load, nutrition, or sexual activity to heterosexuals in the West. African heterosexuals are, however, properly comparable with the promiscuous homosexual men and intravenous drug abusers in the U.S. and Europe." These conclusions have been reached by other investigators[230,231] who have taken the time to compare the relevant statistics. A decade prior to the recognition of AIDS, physicians in New York City, Boston, and San Francisco had already begun to liken the prevalence and types of diseases appearing among homosexual men and drug abusers to those usually found only in Third World nations and on tropical islands such as Haiti. The similarity was validated in 1987 by researchers at the National Institutes of Health. Root-Bernstein concludes that[232] "AIDS will never become the major health threat to Americans and Western Europeans that it has become for Africans. AIDS will be a continuing problem only for individuals whose life-styles, medical histories, or socioeconomic conditions predispose them to immune suppression in general." Root-Bernstein goes on to state that "Heterosexual AIDS in North America and Europe is, and will remain, rare. This fact was recognized as long ago as 1987 by key individuals at the CDC and NIH: 'AIDS is not spreading at the anticipated rate among non-drug using heterosexual Americans, and medical officials here at the Centers for Disease Control and elsewhere are generally agreed that they see no evidence the disease will reach

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229 Ibid, Root-Bernstein, pp. 310.

230 Most H., "A tropic isle?," American Journal of Tropical Medical Hygiene, 17, pp. 333-354, 1968.

231 Kean, B.H., "Venereal amebiasis," New York State Journal of Medicine, 76, pp. 930-931, 1976.

232 Ibid, Root-Bernstein, pp. 311.

epidemic proportions, except among homosexuals and intravenous drug users. As a consequence, there is a growing consensus among leading medical scientists that the threat of AIDS to the wider population, while serious, has been exaggerated . . . '." In fact, the chances that a healthy, drug-free heterosexual will contract AIDS from another heterosexual are so small they are hardly worth worrying about. One statistician has compared them to the probability of winning a state lottery game or being struck by lightning[233]. Similarly, a report in the journal Science states that "the chance of becoming infected with the human immunodeficiency virus (HIV) after one sexual encounter with someone who has both tested negative for HIV and who has no history of high-risk behavior is 1 in 100 million. If the same couple uses a condom, the risk plummets to 1 in 5 billion, say the epidemiologists. Even having sex with someone whose HIV status is unknown, but who does not belong to any high-risk group, yields a calculated risk of 1 in 5 million, or 1 in 50 million per sexual episode, depending on whether or not a condom is used."[234,235]

Well wait a minute. Why then is AIDS epidemic now? Root-Bernstein claims that[236] "some people are far more susceptible to AIDS than others, and the reasons are far from mysterious: immunological exposure to semen, blood, or other alloantigens; multiple, concurrent venereal and other infections; prolonged medical or illicit drug use; and malnutrition." The answer, claims Root-Bernstein, is that AIDS is a social disease! The bacterium that causes syphilis affects 14 men to every woman today in Britain. The proportion is similar in other parts of Europe. The bacterium does not have an intrinsic 'preference' for men over women, since it will readily infect both sexes. Social factors are the cause of the unequal distribution of syphilis between the sexes. The proportion of cases of syphilis between males and females 50 years ago in Britain was about 50:50. The difference today is explained by

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233 Haney, D.O., "The odds on AIDS," The Lansing State Journal, pp. D1, 2 October 1987.

234 Booth, W., "Heterosexual AIDS: Setting the odds," Science 240, pp. 597, 1988.

235 Hearst, N., & Hulley, S., "Preventing the heterosexual spread of AIDS: Are we giving our patients the best advice?," Journal of the American Medical Association, 258, pp. 2428-2432, 1988.

236 Ibid, Root-Bernstein, pp. 281.

the near eradication of syphilis in the heterosexual community but the maintenance of a reservoir of syphilis among homosexuals. Sociology, not biology, explains the distribution of sexually transmitted agents[237]. Many scientists believe that the same conclusion can be reached about AIDS.

As was discussed in a previous section of this report, the invention and dissemination of birth control devices in this century has allowed widespread control of procreation but also sexual freedom and a subsequent spread of sexually transmitted diseases. AIDS was presaged by prior epidemics of herpes simplex, Chlamydia, gonorrhea, and syphilis. The gay liberation movement, beginning with the Stonewall riots in New York City in 1969 created another social revolution that presaged our current AIDS crisis. The resulting unusually high incidence of syphilis and other sexually transmitted diseases among homosexual men today cannot be ascribed to homosexuality per se but to significant changes in homosexual behavior in the recent past. The extreme rates of promiscuity, the highly dangerous anal sexual practices, the almost universal use of licit and illicit drugs, the immunological contact with semen, the transmission of many viral, amoebal, fungal, and bacterial infections through ingestion of fecal material, the explosion of the male prostitute population with extremely promiscuous sexual activity are all the legacy of the gay liberation movement.

It is clear that the AIDS crisis in the U.S. is accompanied by certain myths that have been encouraged and sometimes invented by the activist homosexual organizations. These activities have primarily been directed at assuring the continuation of the "sexual freedom" won by the homosexual community in pressing the agenda of the gay liberation movement. Actually, they have been a retarding influence on the process of addressing the AIDS crisis as a national health problem. It is crystal clear that the only effective means of stemming the AIDS crisis is the prevention of AIDS by alteration of behavior patterns which eventually result in the disease. Dr. Albert Jonsen, an ethics professor at the University of Washington and the chairman of the

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237 Weber, J., "AIDS and the 'guilty' virus," New Science, pp. 32-33, 5 May 1988.

National Research Council's committee on AIDS, says that[238] "The thing that leaps out at you is the way that almost every historical epidemic was social-culturally determined. People were not felled indiscriminately." It is clear that behavior must change, either voluntarily or by other measures if AIDS is to be controlled and eliminated from the general population.

According to Root-Bernstein, the longer the AIDS epidemic has lasted, the more people there are who are surviving HIV infections for ever-longer periods of time. One of the oddest observations that strikes a historian of the epidemic is that the latency period -- the estimated time lag between HIV infection and the development of clinical AIDS -- has expanded almost yearly. In 1986, the figure was less than two years; in 1987, ten; and as of the beginning of 1992, the latency period was calculated to be between ten and fifteen years[239]. This perplexing phenomenon leaves many questions unanswered. Evolutionists hypothesize that the virus may be entering a less virulent stage[240]. Others guess that the drug AZT and others are having accumulated short-term effects. Still others claim that the highest risk group, promiscuous homosexual men are assuming lower-risk lifestyles. Only time will tell. But Root-Bernstein notes that one curious and very striking thing is known: The median number of lifetime sexual partners for the first 100 homosexual men diagnosed with AIDS was a whopping 1,120; all had had multiple and recurrent venereal diseases and other chronic infections; and every single one of these homosexual men abused a multitude of recreational and addictive drugs[241]. They were not typical of homosexual men then; they are not typical of homosexual men contracting HIV today; and they are not typical of most heterosexuals. Root-Bernstein concludes that "it is quite plausible to hypothesize that the people who died most quickly of AIDS and who were the forerunners of the epidemic were those with the largest burden of ongoing risk factors.

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238 Kolata, Gina, "Targeting Urged in Attack on AIDS," The New York Times, pp. A1-A26, 7 March 1993.

239 Ibid, Root-Bernstein, pp. 55.

240 Cowley, Geoffrey, "The Future of AIDS," NEWSWEEK, A view attributed to Paul W. Ewald, pp. 50, 22 March 1993.

241 Ibid, Root-Bernstein, pp. 56.

If this is so, then HIV is only one actor in the multitudinous company that performs the tragedy of AIDS."

Voluntary behavioral changes undertaken by people at risk for AIDS have proved effective in controlling the spread and incidence of AIDS. There is no doubt that so-called safer sex practices combined with the fear of AIDS has had a profound and salutary effect on the health of homosexual men in general. The incidence of new cases of HIV, hepatitis B virus, gonorrhea, and syphilis, all other sexually transmitted diseases, and AIDS has decreased in the homosexual community since 1985[242,243]. This is due, in part, to increased use of condoms, more care in choosing partners, decreased promiscuity, and an apparent decrease in the frequency of anal intercourse, fisting, and related forms of sex[244]. These findings are somewhat counterbalanced, however, by reports that young homosexual men are not abandoning high-risk behaviors. In fact, sex clubs are proliferating[245] again in New York City and young males are taking fatalistic attitudes toward the disease[246]. Only time will tell whether or not these voluntary efforts will be successful.

The importance of controlling sexual behavior cannot be overemphasized in combating AIDS. One of the oldest and most fundamental truths of medical science is that public health measures are always more effective[247] in controlling disease than are all the medicines in the world. Neither vaccines nor medicines have led to the virtual elimination of typhoid, cholera, typhus, or plague in the industrialized countries of the world. These required nothing more than the simple expedients of improved sanitation, sewage systems, and the control of pests. Few of us think twice about using a toilet and then washing our hands afterward. Cleanliness is a requirement for food

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242 Kane, M.A., et. al., "Hepatitis B infection in the United States: Recent trends and future strategies for control," American Journal of Medicine, 87, pp. 11S-13S, 1989.

243 Gingold, B., "Gay bowel syndrome: An overview, In : Ma and Armstrong, eds. 1989, AIDS, pp. 49-58, 1989.

244 Ibid, Root-Bernstein, pp. 366.

245 Navarro, Nireya, "In the Age of AIDS, Sex Clubs Proliferate Again," The New York Times, pp. B1-B5, 5 March 1993.

246 NEWSWEEK, "Teenagers and AIDS," pp. 46, 3 August 1993.

247 Ibid, Root-Bernstein, pp. 366.

preparers. And yet a mere two hundred years ago, the daily sanitary habits we take for granted did not exist. Disease, and fear of disease, shape our lives in ways that influence culture itself. AIDS will have the same salutary effect.

Many responsible scientists and public health officials are finally finding the courage to look at the data on AIDS, absent the shrill cries of the activist homosexual organizations. Some have found new patterns in the AIDS data that convince them that the epidemic is[248] "settling into spacially and socially isolated groups and possibly becoming endemic in them." As a result, they are proposing sensible approaches to controlling the disease, that is targeting the few concentrated geographical areas and social groups (promiscuous homosexual men, intravenous and other drug abusers, and localized pockets of poverty). These approaches may even take advantage of ideas proposed by Paul W. Ewald[249] wherein approaches may be taken to force the AIDS epidemic into less virulent forms.

The AIDS epidemic will not be controlled until responsible scientists, public health officials, politicians, and concerned citizens insist on depoliticizing the AIDS crisis and take control out of the hands of the activist homosexual organizations and their sympathizers. Its resolution is too important for our children and our grandchildren to do otherwise.

Special Considerations for Whether or Not to Allow Openly Homosexual Persons to Serve in the Military

Subject will be covered in a future mailing.

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248 Kolata, Gina, "Targeting Urged in Attack on AIDS," The New York Times, pp. A1-A26, 7 March 1993.

249 Ewald, Paul W., "The Evolution of Virulence," Scientific American, pp. 86-93, April 1993.

FILE
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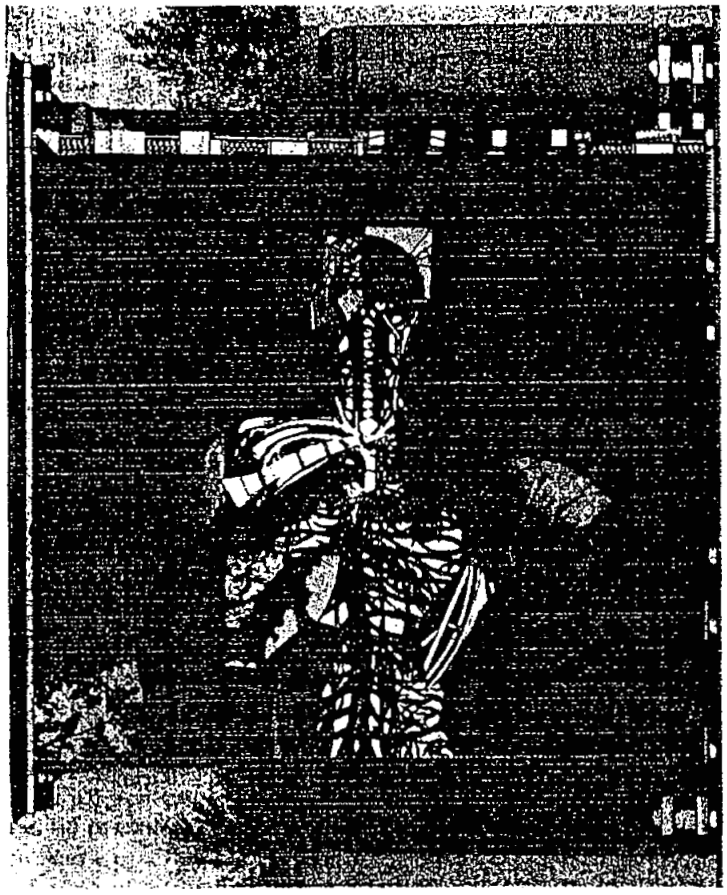
An introduction to a muddled and sometimes contentious world of scientific research—one whose findings, now as tentative as they are suggestive, may someday shed light on the sexual orientation of everyone

HOMOSEXUALITY AND BIOLOGY

BY CHANDLER BURR



THE ISSUE OF HOMOSEXUALITY HAS ARRIVED at the forefront of America's political consciousness. The nation is embroiled in debate over the acceptance of openly gay soldiers in the U.S. military. It confronts a growing number of cases in the courts over the legal rights of gay people with respect to marriage, adoption, insurance, and inheritance. It has seen referenda opposing gay rights reach the ballot in two states and become enacted in one of them—Colorado, where local ordinances banning discrimination against homosexuals were repealed. The issue of homosexuality has always been volatile, and it is sure to continue to inflame political passions.

It is timely and appropriate that at this juncture a scientific discipline, biology, has begun to ask the fundamental question What *is* homosexuality? And it has begun to provide glimmers of answers that may in turn not only enhance our self-knowledge as human beings but also have some influence, however indirect, on our politics.

What makes the science in this case so problematic, quite apart from the usual technical difficulties inherent in biological research—particularly neurobiological research, which accounts for much of the present investigation—is the ineffable nature of our psychosexual selves.

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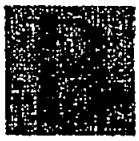
This encompasses a vast universe of stimulation and response, of aesthetic and erotic sensibilities. There are those who see an element of hubris in the quest to explain such things in biological terms. Others see not so much hubris as hype: certain well-publicized findings, they fear, could turn out to be milestones on the road to an intellectual dead end.

It is undeniably true that neurobiological research is often pursued in a context of great ignorance. The brain remains an organ of mystery even in general, not to mention with regard to specific functions. "We don't know" may be the most frequently used words in neurobiology, and they seem to be used with special frequency when the subject of sexual orientation comes up. Once, I mentioned to a researcher how often I heard these words on the lips of her colleagues, and she replied, "Good—then they're saying the right thing." In this context, and also considering that the subject matter is politically charged, professional rivalries are inevitable and occasionally bitter. Some of those involved in the research are motivated not only by scientific but also by personal concerns. Many of the scientists who have been studying homosexuality are gay, as am I.

Homosexuality's invitation to biology has been standing for years. Homosexuals have long maintained that sexual orientation, far from being a personal choice or lifestyle (as it is often called), is something neither chosen nor changeable; heterosexuals who have made their peace with homosexuals have often done so by accepting that premise. The very term "sexual orientation," which in the 1980s replaced "sexual preference," asserts the deeply rooted nature of sexual desire and love. It implies biology.

Researchers can look back on two histories: a century-long, highly problematic psychological investigation of homosexuality, and a short but extremely complex history of biological research that started out as an examination of ovulation in rats. Three distinct but interrelated biological fields are involved in the recent work on sexual orientation: neuroanatomy, psychoendocrinology, and genetics.

The Background



BIOLOGISTS EMBARKED UPON RESEARCH INTO homosexuality in response to an intellectual vacuum created by the failure of other sciences to solve the riddle of sexual orientation. "Other sciences" mostly means psychiatry. As Michael Bailey and Richard Pillard, the authors of one of the most important genetic inquiries into homosexuality, have observed, decades of psychiatric research into possible environmental causes of homosexuality—that is to say, social and cultural causes—show "small effect size and are causally ambiguous."

As a distinct concept, homosexuality is relatively recent. David Halperin points out in *One Hundred Years of Homosexuality* that the term itself first appeared in German (*Homosexualität*) in a pamphlet published in Leipzig in 1869; it entered the English language two decades later. That some human beings engage in sexual activity with others of the same sex has, of course, been noted since antiquity. Historically, however, the focus was on the acts themselves rather than on the actors. The historian John Boswell, of Yale, has noted that during the Middle Ages "same-sex sex" was regarded as a sin, but those who committed that sin were not defined as constituting a type of people different from others. Between the sixteenth and the eighteenth century same-sex sex became a crime as well as a sin, but again, those who committed such crimes were not categorized as a class of human being. This changed in the nineteenth century, when modern medicine and particularly the science of psychiatry came to view homosexuality as a form of mental illness. By the 1940s homosexuality was discussed as an aspect of psychopathic, paranoid, and schizoid personality disorders.

Having defined homosexuality as a pathology, psychiatrists and other doctors made bold to "treat" it. James Harrison, a psychologist who produced the 1992 documentary film *Changing Our Minds*, notes that the medical profession viewed homosexuality with such abhorrence that virtually any proposed treatment seemed defensible. Lesbians were forced to submit to hysterectomies and estrogen injections, although it became clear that neither of these had any effect on their sexual orientation. Gay men were subjected to similar abuses. *Changing Our Minds* incorporates a film clip from the late 1940s, now slightly muddy, of a young gay man undergoing a transorbital lobotomy. We see a small device like an ice pick inserted through the eye socket, above the eyeball and into the brain. The pick is moved back and forth, reducing the prefrontal lobe to a hemorrhaging pulp. Harrison's documentary also includes a grainy black-and-white clip from a 1950s educational film produced by the U.S. Navy. A gay man lies in a hospital bed. Doctors strap him down and attach electrodes to his head. "We're going to help you get better," says a male voice in the background. When the power is turned on, the body of the gay man jerks violently, and he begins to scream. Doctors also tried castration and various kinds of aversion therapy. None of these could be shown to change the sexual orientation of the people involved.

Among those who looked into the matter was the sex researcher Alfred Kinsey, whose 1948 report *Sexual Behavior in the Human Male* showed homosexuality to be surprisingly common across lines of family, class, and educational and geographic background. In his book *Being Homosexual*, the psychoanalyst Richard Isay writes,

> Kinsey and his co-workers for many years attempted to find patients who had been converted from homosexuality to heterosexuality during therapy, and were surprised that they could not find one whose sexu-

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al orientation had been changed. When they interviewed persons who claimed they had been homosexuals but were now functioning heterosexually, they found that all these men were simply suppressing homosexual behavior . . . and that they used homosexual fantasies to maintain potency when they attempted intercourse. One man claimed that, although he had once been actively homosexual, he had now "cut out all of that and don't even think of men—except when I masturbate."

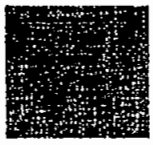
Psychiatry not only consistently failed to show that homosexuality was a preference, a malleable thing, susceptible to reversal; it also consistently failed to show that homosexuality was a pathology. In 1956, in Chicago, a young psychologist named Evelyn Hooker presented a study to a meeting of the American Psychological Association. Hooker had during her training been routinely instructed in the theory of homosexuality as a pathology. A group of young gay men with whom she had become friendly seemed, however, to be quite healthy and well adjusted. One of them, a former student of hers, sat her down one day and, as she recalls in *Changing Our Minds*, said, "Now, Evelyn, it is your scientific duty to study men like me." She demurred. It was only when a fellow scientist remarked to her, "He's right—we know nothing about them," that Hooker sought and received a study grant from the National Institute of Mental Health. She chose a group of thirty gay men as the objects of her research and thirty straight men as controls; none of the sixty had ever sought or undergone psychiatric treatment. "It was the first time [homosexuals] had been studied outside a medical setting or prison," she says. "I was prepared, if I was so convinced, to say that these men were not as well adjusted as they seemed on the surface."

HOMOSEXUALITY'S INVITATION TO BIOLOGY HAS BEEN STANDING FOR YEARS. HOMOSEXUALS HAVE LONG MAINTAINED THAT SEXUAL ORIENTATION, FAR FROM BEING A PERSONAL CHOICE, IS SOMETHING NEITHER CHOSEN NOR CHANGEABLE.

Hooker administered psychological tests to her sixty subjects, including the Rorschach ink-blot test, producing sixty psychological profiles. She removed all identifying marks, including those indicating sexual orientation, and, to eliminate her own biases, gave them for interpretation to three eminent psychologists. One of these was Bruno Klopfer, who believed that he would be able to distinguish homosexuals from heterosexuals by means of the Rorschach test. As it turned out, none of the three could tell the homosexuals and heterosexuals apart. In side-by-side comparisons of matched profiles, the heterosexuals and homosexuals were indistinguishable, demonstrating an equal distribution of pathology and mental health. Reviewing Hooker's results from a test in which the subject creates pictures with cutout figures, one of the interpreters, a psychologist named Edwin Shneidman, stumbled onto a particular subject's orientation only when he came across a cutout scene depicting two men in a bedroom. Shneidman remembers, "I said to Evelyn, 'Gee, I wish I could say that I see it all now, that this is the profile of a person with a homosexual orientation, but I can't see it at all.'"

Hooker's research throughout her long career was driven by the belief that for psychiatry to be minimally scientific, pathology must be defined in a way that is objective and empirically observable. Her study was the first of many showing that homosexuality could not be so defined as pathology. In 1973 the American Psychiatric Association removed homosexuality from its official *Diagnostic and Statistical Manual*, signifying the end of homosexuality's official status as a disease. Today's psychiatrists and psychologists, with very few exceptions, do not try to change sexual orientation, and those aspiring to work in the fields of psychiatry and psychology are now trained not to regard homosexuality as a disease.

Anatomy Lessons



WITH HOMOSEXUALITY MOVED FROM THE realm of psychiatric pathology into the realm of normal variants on human sexual behavior, research efforts took a new turn. Psychiatry had succeeded in defining what homosexuality is *not*—not in explaining what it is. Questions of etiology, in this as in other psychiatric matters, thus became by default questions for neurobiology. Are homosexuals and heterosexuals biologically different? In thinking about this question, biologists have been greatly influenced by findings that involve what may be a related question: Just how, neurologically, do men differ from women?

In 1959, at the University of California at Los Angeles, the neuroendocrinologist Charles Barraclough found that if a female rat was injected shortly before or after birth with testosterone, a male sex hormone, the abnormal amount of this hormone would make the rat permanently sterile, unable to ovulate. "Ovulation" as used here is in part a technical term: it refers both to what a lay person would think of as ovulation—the movement of an egg from the ovary into the fallopian tube—and to the series of hormonal interactions that cause that event.

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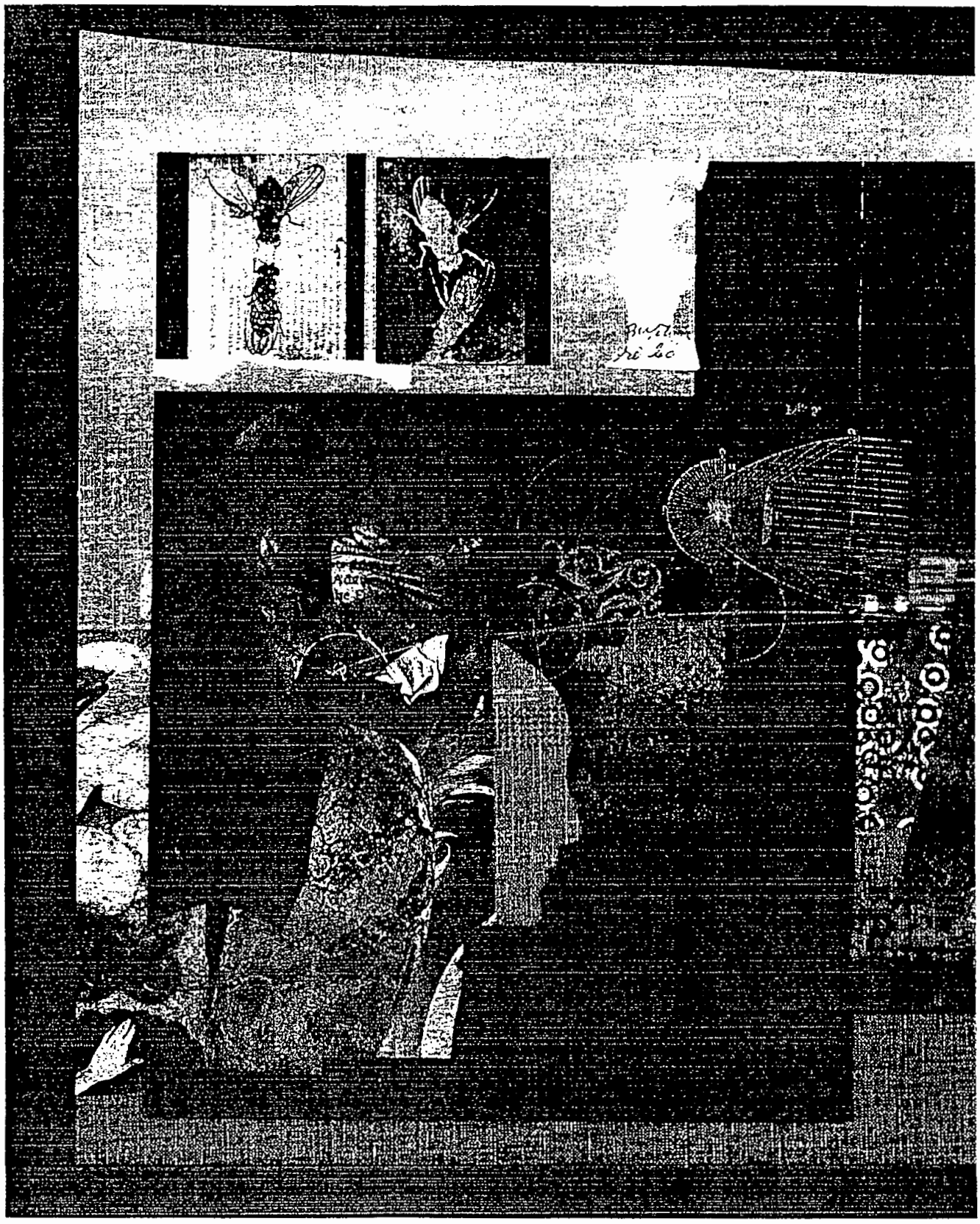

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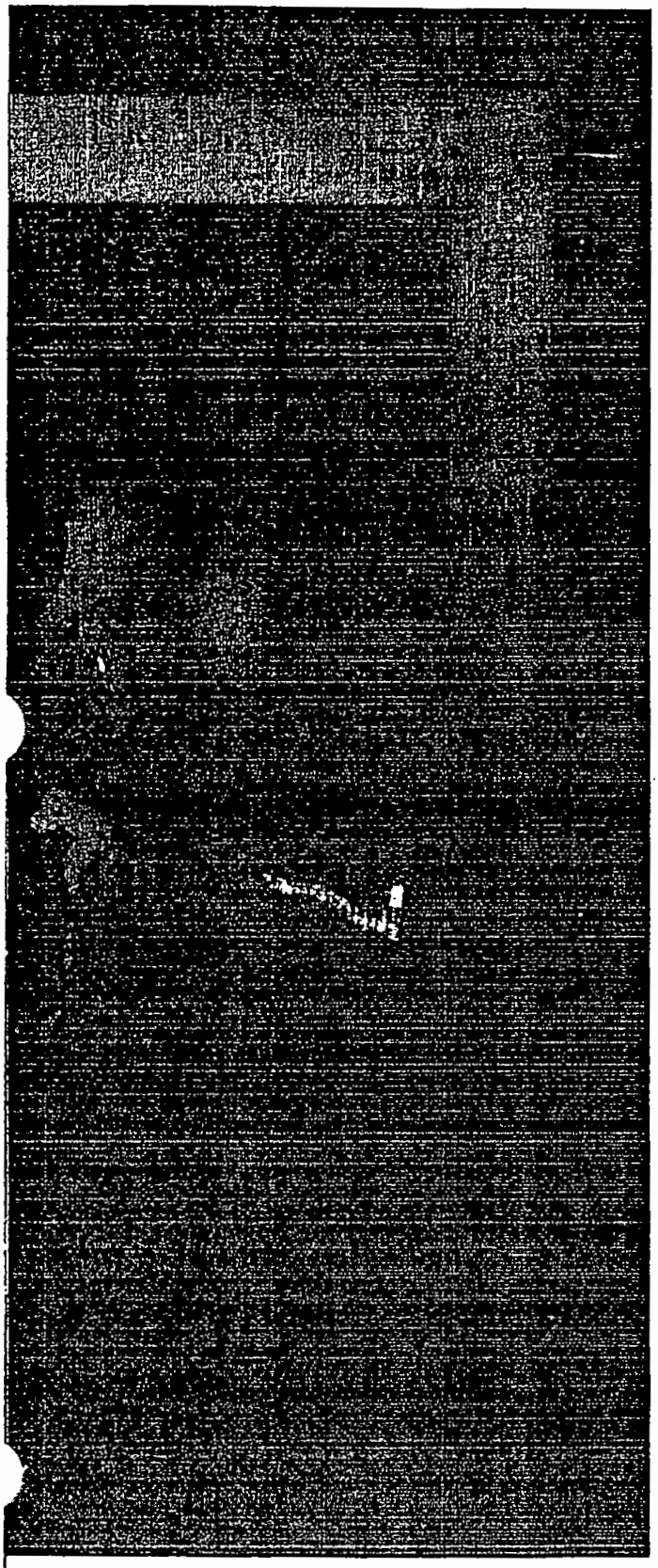

Rats have short estrous cycles. Every four days various glands in the rat's body start pumping estrogens, or female sex hormones, into the bloodstream, setting in motion a series of chemical events. Estrogen levels reach a certain concentration and stimulate part of the hypothalamus, the small portion of the brain that regulates (among other things) body temperature, hunger, thirst, and sexual drive. The hypothalamus in turn stimulates the pituitary gland; the pituitary then releases a burst of something called luteinizing hormone, which causes the ovary to release an egg. Barraclough discovered that in female rats even a single perinatal exposure to testosterone will prevent this entire process from ever occurring.

If that discovery was intriguing, a subsequent one was even more so: the discovery that male rats can ovulate—at least in the sense of going through the hormonal preliminaries. In 1965 Geoffrey Harris, a neuroendocrinologist at Oxford University, castrated a group of newborn male rats, depriving them of the testosterone from their testes. He found that if estrogen was injected into the bodies of these rats after they reached adulthood, it stimulated the hypothalamus, which initiated the sequence of hormone releases described above. The male rats obviously had no ovaries or wombs, but they went through the biochemical motions of ovulation. If one grafted an ovary onto a male rat, he would ovulate perfectly.

Further tests revealed a strange asymmetry. Whereas newborn male rats deprived of testosterone will, as Harris found, experience female-like ovulation, newborn female rats deprived of estrogen will continue to develop as females. In adulthood they will not seem somehow male. Although the rats' ovaries have been removed, their brains will still produce the stimulus to ovulate. Scientists realized that without testosterone the genetic blueprint for masculinity was essentially worthless. Indeed, they learned, for a male rat's brain to become truly organized as male, the rat must be exposed to testosterone within the first five days of life. After the fifth day the masculinizing window of opportunity is closed, and the genetic male will grow up with a "female" brain. In contrast, the brain of a female needs no estrogen for organization; left alone, it will become female.

Thus it came to be understood that what one might think of as the "default brain" for both sexes of the rat is feminine, and that testosterone is as necessary in the creation of a masculine brain as it is in the creation of masculine genitals. This concept, which is the basis of one approach to the neurobiological search for the origins of sexual orientation, is known as the "sexual differentiation of the brain."

Roger Gorski, a neurobiologist at the University of California at Los Angeles who has long been involved in research on sexual differentiation, looked back recently on the development of his field: "We spent much of our professional careers trying to understand this process of sexual differentiation, and what functions happen within it

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—male sex behavior, female sex behavior, control of ovulation, control of food intake, body weight, aggressive behavior, some aspects of maternal behavior. You know why male dogs lift their legs when they pee? Because the brain has changed. So this is really a fundamental concept, that the brain is inherently female and to develop as male it must be exposed to masculinizing hormones."

Several years after Harris's experiment other researchers at Oxford University succeeded in confirming anatomically what the principle of the sexual differentiation of the brain had strongly implied: that an observable difference exists between the brains of male rats and those of female rats. In 1971 the anatomists Geoffrey Raisman and Pauline Field published a paper that compared the synapses, or connections between brain cells, in the hypothalamuses of male and female rats. The prevailing view at the time was that all structures of male and female brains were alike. Raisman and Field found that female and male rat brains differed in the number of synaptic connections between brain cells in the hypothalamus: females had more. Rat brains, which varied by sex in terms of function, also varied in terms of structural shape—were "sexually dimorphic." In 1977 a team of neurobiologists led by Roger Gorski located a second sexual dimorphism, again in the rat hypothalamus: a small nucleus, or cluster of cells, five times larger in volume in the male rat than in the female. Gorski found that with the naked eye he could sex rats' brains with almost 100 percent accuracy. Gorski's team named the nucleus, logically, the sexually dimorphic nucleus. Its function is not known.

The groundwork had been laid in rodents. The next step was to see if sexual dimorphism of some kind could be found in the brains of human beings. In 1982 the cell biologist Christine de Lacoste-Utamsing and the physical anthropologist Ralph Holloway published in *Science* an examination of a structure in the human brain called the corpus callosum. The corpus callosum, which is made up of nerve fibers known as axons, is a long, narrow structure that connects and transmits information between the brain's right and left hemispheres. It is one of the largest and most clearly identifiable portions of the brain, and has for years figured prominently in brain research. De Lacoste-Utamsing and Holloway found that the shape of a portion of the corpus callosum called the splenium differed so dramatically between the sexes, with the splenium being larger in women than in men, that impartial observers were able to sex brains easily by looking at this single feature. The De Lacoste-Utamsing and Holloway study is well known and frequently cited, despite the failure of many of the attempts to replicate it. Whether the dimorphism found by De Lacoste-Utamsing and Holloway truly exists remains a matter of considerable debate.

In 1985, three years after the publication of the De Lacoste-Utamsing and Holloway article, Dick Swaab, a researcher at the Netherlands Institute for Brain Research, in Amsterdam, reported that he, too, had found evidence of sexual dimorphism in human brains—in the form of a human homologue of the sexually dimorphic nucleus that Gorski had found in rats.

Swaab announced an even more remarkable discovery five years later, in 1990. He had found, he wrote in an article in the journal *Brain Research*, that a cluster of cells in the human brain called the suprachiasmatic nucleus was dimorphic—but dimorphic according to sexual orientation rather than sex. Swaab said that the suprachiasmatic nucleus was nearly twice as large in homosexual men as it was in heterosexual men.

If true, this was something wholly new: an anatomical difference between homosexuals and heterosexuals.

SIMON LEVAY IS A YOUNG NEUROBIOLOGIST WHO AT the time of Swaab's second discovery was conducting research at the Salk Institute, in La Jolla, California. LeVay would soon become the author of what is surely the most publicized neurobiological article on homosexuality that has appeared to date. I spoke with him one day recently in his West Hollywood apartment. LeVay is a wiry, muscular man, remarkably intense. Perhaps the most striking thing about him is the way he talks. In a crisp British accent he zeroes in on each point and then moves on with an air of impatience.

> THAT MAKES THE SCIENCE IN THIS CASE SO PROBLEMATIC IS THE INEFFABLE NATURE OF OUR PSYCHOSEXUAL SELVES. THIS ENCOMPASSES A VAST UNIVERSE OF STIMULATION AND RESPONSE, OF AESTHETIC AND EROTIC SENSIBILITIES.

"You shouldn't draw such a distinction between biological and psychological mechanisms," he chided me at one point during our conversation. "What people are really getting at is the difference between innately determined mechanisms and culturally determined mechanisms, but people screw that up and say that's the difference between biology and psychology. It isn't. It's two different approaches for looking at the same thing: the mind. Biologists look at it from the bottom up, from the level of synapses and molecules, and psychologists are looking at it from the top down, at behavior and such."

LeVay had been intrigued by Swaab's research, but he was troubled by the fact that the portion of the brain ex-

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amined by Swaab seemed to have nothing to do with the regulation of sexual behavior, at least not in animals. The suprachiasmatic nucleus governs the body's daily rhythms; dimorphism there according to sexual orientation might be provocative, certainly, but it would seem to constitute an effect, not a cause. Why not check out the hypothalamus, a region that is intimately involved with sexual behavior?

Laura Allen, a postdoctoral assistant in Gorski's laboratory, had identified four small groups of neurons in the anterior portion of the hypothalamus, naming them the interstitial nuclei of the anterior hypothalamus (INAH) 1, 2, 3, and 4. Allen's research had shown that INAH 2 and INAH 3 were sexually dimorphic in human beings—significantly larger in men than in women. Was it possible that these nuclei were dimorphic according to sexual orientation as well? That was the focus of LeVay's research, and he presented his conclusions in a short paper titled "A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men." It was published in *Science* in August of 1991. In the introduction LeVay defined sexual orientation as "the direction of sexual feelings or behavior toward members of one's own or the opposite sex" and hypothesized that Allen's INAH nuclei were involved in the generation of "male-typical sexual behavior." He went on,

> I tested the idea that one or both of these nuclei exhibit a size dimorphism, not with sex, but with sexual orientation. Specifically, I hypothesized that INAH 2 or INAH 3 is large in individuals sexually oriented toward women (heterosexual men and homosexual women) and small in individuals sexually oriented toward men (heterosexual women and homosexual men).

LeVay dissected brain tissue obtained from routine autopsies of forty-one people who had died at hospitals in New York and California. There were nineteen homosexual men, all of whom had died of AIDS; sixteen presumed heterosexual men, six of whom had been intravenous drug abusers and had died of AIDS; and six presumed heterosexual women. No brain tissue from lesbians was available. LeVay's conclusions included the following:

> INAH 3 did exhibit dimorphism. . . . [T]he volume of this nucleus was more than twice as large in the heterosexual men . . . as in the homosexual men. . . . There was a similar difference between the heterosexual men and the women. . . . These data support the hypothesis that INAH 3 is dimorphic not with sex but with sexual orientation, at least in men.

The results were sufficiently clear to LeVay to allow him to state, "The discovery that a nucleus differs in size between heterosexual and homosexual men illustrates that sexual orientation in humans is amenable to study at the biological level."

The study, as LeVay himself readily admits, has several problems: a small sample group, great variation in individual nucleus size, and possibly skewed results because all the gay men had AIDS (although LeVay found "no significant difference in the volume of INAH 3 between the heterosexual men who died of AIDS and those who died of other causes"). As of this writing, LeVay's findings have yet to be replicated by other researchers. LeVay himself has extended his search for dimorphism according to sexual orientation to the corpus callosum, which he is studying by means of magnetic-resonance imaging. Until his original findings are confirmed, the notion that homosexuals and heterosexuals are in some way anatomically distinct must hold the status of tantalizing supposition.

It needs also to be remembered that, as noted earlier, the issue of dimorphism of any kind in the brain is hotly contested. The idea that the brains of heterosexuals and homosexuals may be different morphologically is derived from the idea that the brains of men and women are different morphologically—recall the corpus callosum study by De Lacoste-Utamsing and Holloway. But that study is itself problematic, efforts to replicate it having turned up inconsistent results. Anne Fausto-Sterling is a developmental geneticist at Brown University. She, along with

SARAJEVO BEAR

The last animal
in the Sarajevo Zoo

a bear
died of starvation

because the leaves
had fallen

from the trees
because

the air was
getting colder

so the snipers
could more easily see

the few remaining people
who were trying to

feed it.

—*Walter Pavlich*

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William Byne, a neurobiologist and psychiatrist at Columbia University, has been among the chief critics of neurobiological investigations of homosexuality. Fausto-Sterling during an interview not long ago itemized some of the results from a long line of attempts to replicate sexual dimorphism: "1985: no sex differences in shape, width, or area. 1988: three independent observers unable to distinguish male from female. 1989: women had smaller callosal areas but larger percent of area in splenium, more-slender CCs, and more-bulbous splenium." A new corpus callosum study by Laura Allen, conducted in 1991, *did* find sexual dimorphism—and the debate continues. Part of the difficulty is methodological, involving whose brains are being compared, and how. Dead people or living people? Old or young or mixed? Healthy or sick? By means of brain sections or magnetic-resonance imaging? LeVay calls studies of the corpus callosum "the longest-running soap opera in neurobiology." And, of course, he himself is now part of the cast.

Even if LeVay's hypothalamus study stands up to scrutiny, it will not justify drawing extravagant conclusions. Establishing a distinction is not the same thing as finding a cause. Anatomy is not etiology, but it may offer a starting point for a journey backward in search of the ultimate origins of sexual orientation. That journey takes us into the realm of hormones and genetics.

The Puzzles of Chemistry

IN A LARGE ROOM AT THE UCLA DEPARTMENT of anatomy, Roger Gorski and I recently stood facing a dozen black-topped lab tables, each below a ceiling-mounted video monitor. We were about to watch a tape of rats having sex. Gorski, an eternally cheerful, almost elfin man of fifty-seven, was energetically describing the tape. "There are six couples," he explained, though at the moment I saw only one uninterested-looking white rat. "That's an unaltered female," he said. "They're going to put in another female that has been injected with testosterone." Sure enough, someone's hand reached down into the screen and a second rat landed in the cage. The rats at first edged around each other, but in just a few seconds on the dozen monitors I saw the testosterone-injected female begin to sniff the other female rat and then mount her aggressively. At the lab tables a handful of medical students went on with their work, paying no attention. After a few moments the tape cut to two males, one perinatally castrated and injected with estrogen, one unaltered. After some initial maneuvering the castrated male responded to the advances of the unaltered male by bending his back and offering himself in what was to me indistinguishable from female-rat lordosis—behavior indicating receptivity to sex, pictures of which Gorski had shown me in his office. The altered rat submitted as the other male mounted him. The tape continued with similar scenes. It was quite dramatic.

Such research in animals has led to hypotheses that hormones are, in some way, a cause of homosexuality in human beings. No one, of course, suggests that the sexuality of rats and that of human beings are strictly comparable; some critics of neurobiological research on homosexuality question the utility of animal models entirely. Nonetheless, it was investigations involving animals that got researchers thinking.

Of the scientists who have concentrated on hormonal or psychoendocrinological studies of homosexuality, Günter Dörner, of Germany, is one of the best known. In the 1970s Dörner classified homosexuality as a "central nervous pseudohermaphroditism," meaning that he considered male homosexuals to have brains with the mating centers of women but, of course, the bodies of men. For decades endocrinologists had speculated that because male sex hormones are known to be responsible in human beings for masculine body characteristics and in animals for certain aspects of male sexual behavior, it follows that adult homosexual men should have lower levels of testosterone, or else higher levels of estrogen, in the bloodstream than adult heterosexual men, and that homosexual and heterosexual women should display the opposite pattern. This is known as the "adult hormonal theory" of sexual orientation, and Dörner claimed that some initial studies bore it out.

In 1984 Heino Meyer-Bahlburg, a neurobiologist at Columbia University, analyzed the results of twenty-seven studies undertaken to test the theory. According to Meyer-Bahlburg, a score of the studies in fact showed no difference between the testosterone or estrogen levels of homosexual and heterosexual men. Three studies did show that homosexuals had significantly lower levels of testosterone, but Meyer-Bahlburg believed that two of them were methodologically unsound and that the third was tainted by psychotropic drug use on the part of its subjects. Two studies actually reported higher levels of testosterone in homosexual men than in heterosexual men, and one unhelpfully showed the levels to be higher in bisexuals than in either heterosexuals or homosexuals.

AS IT CAME TO BE WIDELY ACCEPTED THAT ADULT hormone levels were not a factor in sexual orientation, scientists shifted their attention to prenatal hormone exposure. Many of the glands in a human being's hormone system are busily functioning even before birth—tiny hormone factories that produce the chemicals that help to mold the person who will eventually emerge. Perhaps, it was thought, different levels of prenatal hormones produce different sexual orientations. For obvious reasons, the sometimes brutal hormonal experiments done on monkeys and rats cannot be done on human beings, but nature at times provides a narrow window onto the mysteries of prenatal hormonal effects in ourselves.

Congenital adrenal hyperplasia (CAH) has been called

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by Meyer-Bahlburg a "model endocrine syndrome" for examining the effects of abnormal amounts of prenatal sex hormones. CAH, which can affect both males and females, is caused by a simple problem: an enzyme defect makes it impossible for a fetus's adrenal gland to produce cortisol, an important hormone. In a normal fetus, as the adrenal gland produces cortisol, the brain stands by patiently, waiting for the signals that the cortisol level is appropriately high and production can be shut off. But in CAH fetuses, which lack the enzyme to create cortisol, the brain doesn't get those signals, and so it orders the adrenal gland to continue production. The adrenal gland continues pumping out what it thinks is cortisol, but it is unknowingly producing masculinizing androgens. It dumps these into the fetus's system, thereby overexposing it to male hormones.

> HE RATS AT FIRST EDGED AROUND EACH OTHER, BUT IN JUST A FEW SECONDS ON THE DOZEN MONITORS I SAW THE TESTOSTERONE-INJECTED FEMALE BEGIN TO SNIFF THE OTHER FEMALE RAT AND THEN MOUNT HER AGGRESSIVELY.

The consequences are most dramatic in females. Once, in his office, Roger Gorski dug into a desk drawer and grabbed a few photographs. "What sex is it?" he asked. I squinted at close-ups of a child's genitals and saw a penis, plain as day. "It's a boy," I said confidently. Gorski's eyebrows shot up. "Where are the testicles?" he asked. I looked closer. Oops.

This was a CAH baby. In this case, Gorski told me, the doctors had decided at the time of birth that the child was a boy with undescended testicles, a relatively common and minor condition. But in fact I was looking at a genetic female.

With surgery a CAH female's external genitals can be made to look feminine, as her internal apparatus already fully is, and she will be raised as a girl. But hormones may have already had their effect in an area that plastic surgery cannot touch: the brain. Or at least so proponents of the prenatal-hormone theory of sexual orientation would argue. The sexual orientation of CAH females tends to bear them out. A 1984 study by the Johns Hopkins University sex researcher John Money found that 37 percent of CAH women identified themselves as lesbian or bisexual; the current estimate of the proportion of lesbians in the general female population is from two to four percent.

One possible clue as to whether the prenatal-hormone theory of sexual orientation is a profitable line of inquiry involves something called luteinizing-hormone (LH) feedback. The brain releases several hormones, including LH, which initiate the development of an egg in a woman's ovary. As the egg develops, the ovary releases increasing amounts of estrogen, stimulating the brain to produce more LH, which in turn promotes the production of still more estrogen. The process is called positive feedback. In men, estrogen usually acts to suppress the production of luteinizing hormone—it results in *negative* feedback. These differences in LH feedback in human beings, together with the discovery that male rats hormonally altered after birth will display both positive LH feedback and same-sex sexual behavior, led some researchers to a hypothesis. They speculated that gay men, their brains presumably not organized prenatally by testicular hormones, just as women's are not, would show a positive LH feedback, like that of a heterosexual female, rather than the negative feedback of the typical heterosexual male. If such feedback were to be found consistently in homosexual men—by means of chemical analysis of the blood after injection with estrogen—could this not be taken as evidence that some decisive prenatal hormonal event, with important bearing on subsequent sexual orientation, had indeed occurred?

This line of inquiry has given rise to an active field of study that as yet has little to show for itself. The uncertainties are of two kinds. The first one involves the following question: Do LH feedback patterns of the sort being sought in fact exist in human beings? The second comes down to this: Even if LH feedback patterns of the sort being sought do exist, will they really tell us anything about events that occurred before birth? Unfortunately, neuroscientists lack unequivocal answers to both questions, despite considerable efforts. Different studies have yielded conflicting data. No one has yet come up with what one neurobiologist facetiously terms a "gay blood test."

In an article published in 1990 in the *Journal of Child and Adolescent Psychopharmacology*, Heino Meyer-Bahlberg surveyed the work done so far on hormonal research in general and concluded: "The evidence available to date is inconsistent, most studies are methodologically unsatisfactory, and alternative interpretations of the results cannot be ruled out." On the other hand, Meyer-Bahlberg went on, "not all potential avenues to a psychoendocrine explanation of homosexuality have been exhausted."

Among the unexhausted avenues is one being explored by Richard Pillard.

A PSYCHIATRIST AT THE BOSTON UNIVERSITY SCHOOL of Medicine, Richard Pillard is a tall, pleasant man in his fifties with a neatly trimmed moustache and a relaxed manner. Even when talking seriously, he remains good-natured. When we spoke one afternoon in his Boston townhouse, he joked that he is uniquely

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equipped to investigate whether homosexuality has a biological basis: he, his brother, and his sister are gay, and Pillard believes that his father may have been gay. One of Pillard's three daughters from a marriage early in life is bisexual. This family history seems to invite a biological explanation, and it made Pillard start thinking about the origins of sexual orientation.

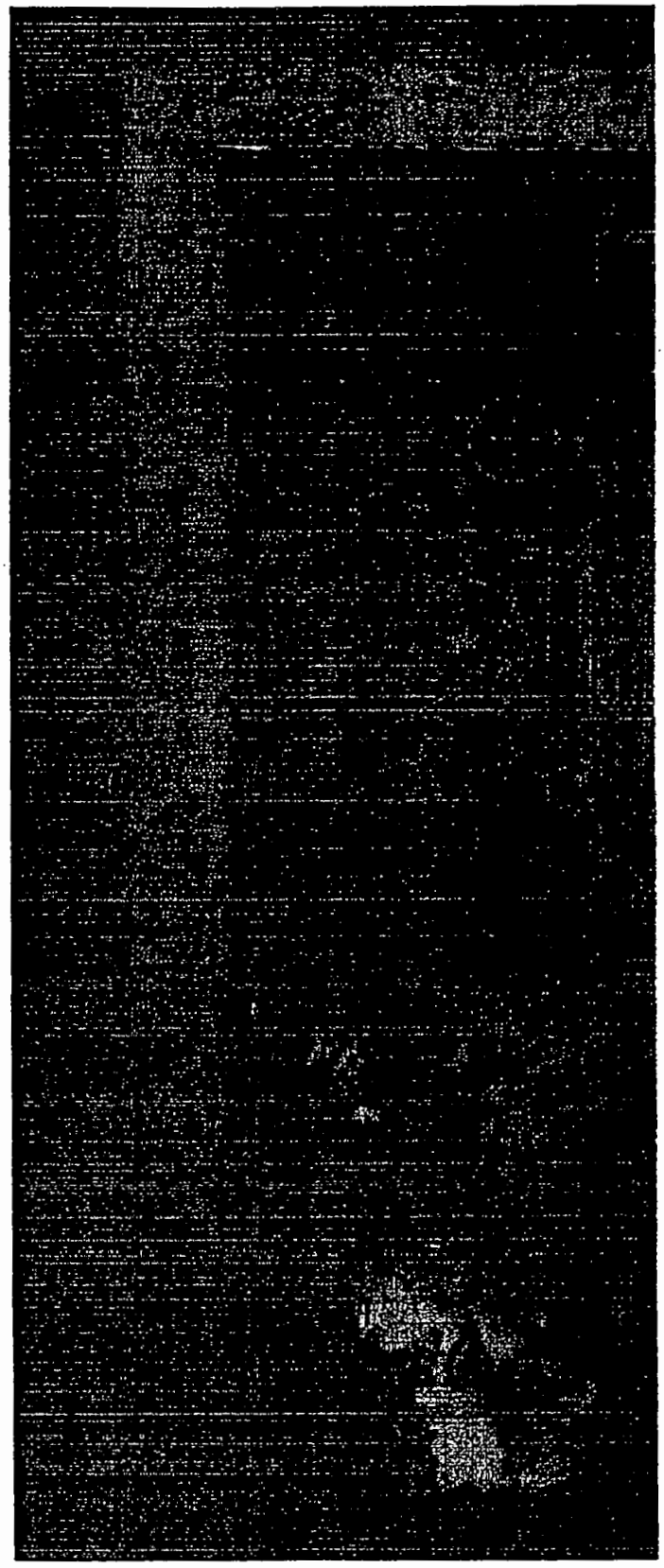
Pillard says that it had long puzzled him why transsexuals—men or women who wish to live in bodies of the opposite sex—are so different from gay people: "You'd think they'd be on the far end of the spectrum, the 'gayest of the gay.'" And yet transsexuals are not in fact gay. Whereas gay men, quite comfortably and unalterably, see themselves as men, male transsexuals see themselves as women trapped in men's bodies. Pillard and a colleague, James Weinrich, a psychobiologist at the University of California at San Diego, began to theorize that gay men are men who in the womb went through only a partial form of sexual and psychosexual differentiation. More precisely, Pillard and Weinrich theorized that although gay men do undergo masculinization—they are, after all, fully male physically—they go incompletely if at all through another part of the process: defeminization.

As fetuses, Pillard points out, human beings of both sexes start out with complete female and male "anlages," or precursors of the basic interior sexual equipment—vagina, uterus, and fallopian tubes for women, and vas deferens, seminal vesicles, and ejaculatory ducts for men. These packages are called the Müllerian (female) and Wolffian (male) ducts, and are tubes of tissue located in the lower abdomen. How do the sexual organs develop? It happens differently in men and women.

At the moment of conception an embryo is given its chromosomal sex, which determines whether it will develop testes or ovaries. In female human beings (as in female rats) the female structures will simply develop, without any help from hormones; the Wolffian duct will shrivel up. The process of becoming male, however, is more complex. Where women need none, men need two kinds of hormones: androgens from the testes to prompt the Wolffian duct into development, and a second substance, called Müllerian inhibiting hormone, to suppress the Müllerian duct and defeminize the male fetus.

Pillard speculates that Müllerian inhibiting hormone, or a substance analogous to it, may have brain-organizing effects. Its absence or failure to kick in sufficiently may prevent the brain from defeminizing, thereby creating what Pillard calls "psychosexual androgyny." In this view, gay men are basically masculine males with female aspects, including perhaps certain cognitive abilities and emotional sensibilities. Lesbian women could be understood as women who have some biologically induced masculine aspects.

An experimental basis is provided by research by the psychiatrist Richard Green, of the University of California at Los Angeles, which shows that children who man-



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ifest aspects of gender-atypical play are often gay. Green has concluded that an inclination toward gender-atypical play in prepubescent boys—for example, dressing in women's clothes, playing with dolls, or taking the role of the mother when playing house—indicates a homosexual orientation 75 percent of the time. If that is true, it is important, because it would be an example of a trait linked to sexual orientation which does not involve sexual behavior—suggesting how deeply rooted sexual orientation is. Discussing this line of research, Simon LeVay told me, "It's well known from animal work that sex-typical play behavior is under hormonal control. Robert Goy [at the University of Wisconsin at Madison] has done many studies over the years showing that you can reverse the sex-typical play behavior of infant monkeys by hormonal manipulations in prenatal life. [Play] is an example of a sex-reversed trait in gay people that's not directly related to sex. It's not sex, it's play. When you get to adulthood, these things become blurred. It's easier to tell a gay kid than a gay adult—kids are much of a muchness. Most gay men, even those who are very macho as adults, recall at least some gender-atypical behavior as children."

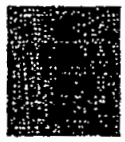
The Pillard-Weinrich theory also accords with what Green refers to as male "vulnerability" during the process of sexual differentiation. A considerably larger number of male embryos come into existence than female embryos, and yet males and females come into the world in about the same numbers. Therefore, phenomena linked to sex must reduce the number of males who survive to term. Many disorders are, in fact, more common in men than women, and some of these could result from problems originating in masculine differentiation. Although good statistics do not exist, it appears that there may be two gay men for every gay woman, which would be consistent with the vulnerability theory.

PILLARD AND WEINRICH THEORIZED THAT ALTHOUGH GAY MEN DO UNDERGO MASCULINIZATION—THEY ARE, AFTER ALL, FULLY MALE PHYSICALLY—THEY GO IN COMPLETELY IF AT ALL THROUGH ANOTHER PART OF THE PROCESS: DEFEMINIZATION.

It is important to remember that although homosexuals and heterosexuals may be "sex-reversed" in some ways, in other ways they are not. For example, neither gay nor straight men tend to be confused on the subject of what sex they are: male. LeVay says, "It's not just that you look down and see you have a penis and you say, 'Oh, I'm a boy. Great.' I think there must be some internal representation of what sex you are, independent of these external signals like the appearance of your body. I think most gay men are aware of some degree of femininity in themselves, yet there is no reversal of gender identity." Gay men and straight men also seem to display an identical strong drive for multiple sexual partners; lesbians and straight women seem to be alike in favoring fewer sexual partners.

The evidence from hormonal research may circumstantially implicate biology in sexual orientation, but it is far from conclusive. William Byne raises a warning flag: "If the prenatal-hormone hypothesis were correct, then one might expect to see in a large proportion of homosexuals evidence of prenatal endocrine disturbance, such as genital or gonadal abnormalities. But we simply don't find this." Moreover, the hormonal research does not answer the question of ultimate cause. If hormones help to influence sexual orientation, what is influencing the hormones?

The Genetic Quest



IN 1963 KULBIR GILL, A VISITING SCIENTIST from India working at Yale University, was conducting research into genetic causes of female sterility. His experiments involved exposing the fruit fly *Drosophila melanogaster*, that workhorse of genetic research, to X-rays, and observing the behavior of the resulting offspring. Gill noticed that a certain group of mutant male flies were courting other males, following each other and vibrating their wings to make characteristic courtship "songs." Gill published his findings in a short note in the publication *Drosophila Information Service* and then returned to the question of female sterility.

A decade later Jeffrey Hall, a biologist at Brandeis University, followed up on Gill's odd discovery. Every discovered *Drosophila* gene mutation is given a name, and Gill had called his mutation "fruity." Hall, considering this name to be denigrating, redubbed it, still somewhat tongue-in-cheek, "fruitless." Hall explains that the fruitless mutation produces two distinct behaviors. First, fruitless-bearing male flies, unlike nonmutant male flies, actively court other males as well as females, although for reasons that remain poorly understood, they are unable actually to achieve intercourse with members of either sex. Second, fruitless-bearing males elicit and are receptive to courtship *from* other males, which nonmutant males reject.

Fruit flies can live for two or three months, and this "bisexual" fly strain has existed behaviorally unchanged through hundreds of generations. Some gene mutations are lethal to flies; fruitless is not one of these, nor does it cause illness. It is, Hall says, a nonpathological genetic mutation that causes a consistent, complex behavior. And

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fruitless displays an anatomical sexual dimorphism, bringing LeVay's study to mind. In the abdomen of male *Drosophila* flies there is a muscle, the so-called muscle of Lawrence, whose function is unknown; female fruit flies don't have it, and neither do fruitless males.

Although fruitless flies don't mate, the perpetuation of the fruitless trait is made possible by the fact that it is recessive—a full pair of the mutations is needed for fruitless behavior to be expressed. When males that carry a single fruitless gene mate with a fruitless-carrying female, a percentage of their offspring will carry the full pair and display typical fruitless behavior. If a genetic component of homosexuality in human beings exists, it could possibly operate by means of a comparable mechanism.

Angela Pattatucci, a geneticist at the National Institutes of Health, gave me a demonstration a few months ago in her lab. She took a small glass container of tiny *Drosophila* flies, popped off the top, and plugged an ether-soaked cotton ball into the mouth. Within a few seconds the flies were lying stunned on the glass floor. Using a plastic stick Pattatucci separated out a few of the flies into a larger glass jar. I looked at a group of males and females through a microscope, their bodies vibrating, red eyes bulging. Pattatucci showed me how to differentiate the genitalia at the end of the abdomen—smooth and light-colored for females, furry and dark for males.

Pattatucci said that researchers are relatively close to finding the actual fruitless gene. It is already known that fruitless is located physically on the right arm of the third chromosome. After establishing the precise location (or locations) of the mutation, researchers can determine the sequence of biochemical information in fruitless's genetic code—the order of thousands of units of the basic genetic components adenine, thymine, guanine, and cytosine. Once the combination is known, the search can begin for a similar combination—a fruitless analogue—in human beings.

In the jar the males, separated out, eventually came back to awareness. "Watch that one," Pattatucci said, pointing to a fly that had come up behind another fly, vibrating his wings in courtship. He then climbed on top of the male he was courting. I watched the two flies, one atop the other, the one on the bottom wandering around as if a bit bored. As noted, for a fruitless fly that is as far as things can go.

I once asked Jeffrey Hall if courtship alone could be satisfying for a fly. "Could be," he said. "Maybe it's delicious, maybe he's frustrated. But this becomes ludicrous. How do you know when a fruit fly is frustrated?" It is an important point: the danger of anthropomorphizing insect behavior is great, and I found myself doing it almost by reflex when watching Pattatucci's flies. How can we equate fly behavior with a vast something that in human beings generates aesthetic and intellectual perceptions—with something that encompasses emotional need and love and the pain of love? So Hall is careful to describe fruitless as "a mutation that leads to a mimic of bisexuality." He is skeptical that finding a fruitless analogue will lead to a full explanation of human homosexuality. DNA analogues for all sorts of fruit-fly genes do exist in human beings, and the process of looking for them is relatively straightforward. But, as Hall points out, "it is very unlikely that the genetics of homosexuality will ever devolve to a single factor in humans with such major effects as it has in *Drosophila*."

WHEN BIOLOGISTS ARE INTERESTED IN ESTABLISHING whether genetics is involved in the appearance of certain characteristics or conditions, one obvious place to look is among people who are closely related to one another. In "A Genetic Study of Male Sexual Orientation," a study that has now achieved almost as much renown as LeVay's, the Northwestern University psychologist Michael Bailey and Boston University's Richard Pillard compared fifty-six "monozygotic" twins (identical twins, from the same zygote, or fertilized egg), fifty-four "dizygotic" (fraternal) twins, and fifty-seven genetically unrelated adopted brothers. Identical twins are important in sexual-orientation research because, of course, they have identical genomes, including the sex-chromosome pair. If homosexuality is largely genetic in origin, then the more closely related that people are, the greater should be the concordance of their sexual orientation.

That is, in fact, what the study found. Bailey and Pillard reported a gay-gay concordance rate of 11 percent for the adoptive brothers, 22 percent for the dizygotic twins, and 52 percent for the monozygotic twins. The findings suggest that homosexuality is highly attributable to genetics—by some measures up to 70 percent attributable, according to Pillard. This figure is based on something geneticists call "heritability," a painstakingly calculated indicator of how much genes have to do with a given variation among people. If heritability is less than 100 percent, then the characteristic being studied is by definition "multifactorial." Eye color is 100 percent dependent on genetics. Height, on the other hand, though about 90 percent genetic, is also affected by nutrition, and thus is multifactorial.

If a large contribution to homosexuality comes from genes, where does the rest of it come from? The range of environmental and biological inputs a developing child receives is both enormous and enormously complex. "Whatever the other variables are," Pillard says, "they must be present early in life. I think this because the gender-atypical behavior that so strongly prefigures an adult homosexual orientation can be observed early in development." And he goes on: "There certainly could be different paths to the same outcome. With individual cases, there are doubtless some that are mostly or all genes, and others that might be all environment. Our analysis [of twins] doesn't say anything about the individual." Jeffrey Hall can be so

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underwhelmed by the prospect of finding a human analogue of the fruitless mutation because, as he points out, if we do find it, we still will not have fully accounted for the etiology of homosexuality even in identical twins. "You will effectively know nothing from this genetic knowledge," Hall says. A behavior as simple as jumping, he notes, is quite complex genetically, having to do with all kinds of genes and other, unknown factors. He says, "We are not about to create a genetic surgical procedure which makes you Michael Jordan." LeVay made the same point in the course of our conversation: "It's one thing to say that genes are involved, as they almost certainly are. It's a whole other thing to actually identify those genes, because homosexuality may be polygenic, with each gene having a small effect."

Whatever the uncertainties ahead, though, the important point is that the genetic work is already fairly compelling. A new Bailey and Pillard genetic study of lesbian twins, to be published soon in the *Archives of General Psychiatry*, echoes the researchers' original male-twin findings with strikingly similar results. "We're getting a lot of consistency where we should be getting it," Bailey says.

The most interesting question is perhaps becoming not *whether* genetics plays a role in homosexuality but *how*. Why does nature preserve genes that influence sexual behavior and yet do not facilitate reproduction? Does less than 100 percent heritability mean that the Bailey and Pillard study is incompatible with a bipolar model of sexual orientation? In his study LeVay defined homosexuality in terms of the sex of a person's sexual-object choice: *either* men or women, *either* homosexual or heterosexual. Pillard and Bailey's multifactorial model suggests a shaded continuum of sexual orientations, and of origins and causes, more complex and subtle than a simple either-or model can accommodate, and closer to what may be the quirks and ambiguities of our real lives.

The Ramifications of Science

WHAT DOES IT ALL MEAN? AS WE HAVE SEEN, scientists must sift for their conclusions through ambiguous results from a disparate group of studies that are excruciatingly difficult to interpret. Yet even at this relatively early date, out of the web of complexities it is becoming ever clearer that biological factors play a role in determining human sexual orientation. Richard Green said to me, "I suspect that at least in your lifetime we will find a gene that contributes substantially to sexual orientation." Michael Bailey says, "I would—and have—bet my career on homosexuality's being biologically determined." The pace of neurobiological and genetic research is only increasing.

The search is not without its opponents. Some, recalling earlier psychiatric "treatments" for homosexuality, discern in the biological quest the seeds of genocide. They conjure up the specter of the surgical or chemical "rewiring" of gay people, or of abortions of fetal homosexuals who have been hunted down in the womb. "I think all of us working in this field," Pattatucci says, "have delusions of grandeur in thinking we can control the way this knowledge will be used." Certainly the potential for abuse is there, but that is true of much biomedical knowledge. It is no reason to forswear knowledge of ourselves, particularly when the potential benefits are great.

> IF A LARGE CONTRIBUTION TO HOMOSEXUALITY COMES FROM GENES, WHERE DOES THE REST OF IT COME FROM? THE RANGE OF ENVIRONMENTAL AND BIOLOGICAL INPUTS A DEVELOPING CHILD RECEIVES IS BOTH ENORMOUS AND ENORMOUSLY COMPLEX.

Some of the benefits could be indirect. Laura Allen points out, for example, that there are many now-mysterious diseases—autism, dyslexia, schizophrenia—that affect men and women differently, hiding inside parts of the human mind and body that we cannot penetrate. Neurobiological research into sexual differentiation may help us to understand and cure these diseases, as well as to unlock other mysteries—the mysteries of sexuality.

And then there is the question with which we began—that of the acceptance of gay people in American society. The challenge posed by homosexuality is one of inclusion, and, as Evelyn Hooker would say, the facts must be allowed to speak. Five decades of psychiatric evidence demonstrates that homosexuality is immutable, and nonpathological, and a growing body of more recent evidence implicates biology in the development of sexual orientation.

Some would ask: How can one justify discriminating against people on the basis of such a characteristic? And many would answer: One cannot. Yet it would be wise to acknowledge that science can be a rickety platform on which to erect an edifice of rights. Science can enlighten, can instruct, can expose the mythologies we sometimes live by. It can make objective distinctions—as, for example, between sexual pathology on the one hand and sexual orientation on the other. But we cannot rely on science to supply full answers to fundamental questions involving human rights, human freedom, and human tolerance. The issue of gay people in American life did not arise in the laboratory. The principles needed to resolve it will not arise there either. □

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CRS Report for Congress

Homosexuals and U.S. Military Personnel Policy

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CRS

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HOMOSEXUALS AND U.S. MILITARY PERSONNEL POLICY

SUMMARY

Department of Defense policies concerning homosexuals in military service have recently been the subject of increasing scrutiny and debate. In the 1992 presidential campaign, candidate Clinton indicated that as President he would rescind or modify the military policy excluding homosexuals from military service while maintaining strict limits on the behavior of those who serve.

Current military personnel policy bars homosexuals from entering or serving in the armed forces. Under this policy, Individuals who state they are homosexual, engage or intend to engage in homosexual behavior or attempt to marry someone of the same sex are administratively discharged from the military service. In addition, homosexual or heterosexual acts of sodomy or "disorders and neglects to the prejudice of good order and discipline in the armed forces" are punishable by court-martial.

Advocates for removing the policy view it as a violation of civil rights and fair treatment. They contend that it is unfair to separate individuals from the armed services merely as a result of their "sexual orientation." Proponents of the policy cite the need to maintain cohesion, discipline and morale within the working and living conditions imposed as a result of military service. They contend that allowing homosexuals into the service would prove disruptive to unit cohesion and, ultimately, to military readiness.

While an undetermined number of homosexuals have served in the military, such service has been performed without an open acknowledgement of their homosexuality. The question confronting policy makers remains, "To what extent, if any, would open homosexuality be disruptive to morale, cohesion and readiness in the ranks, and to what extent does any disruption justify discrimination?" Many military leaders, familiar with the military society and its rules believe that the presence of open homosexuality would prove sufficiently disruptive to justify continuing the policy. Homosexual rights advocates, many of whom have also served in the military, believe that not only will disruptions be minimal but that the overall effectiveness and readiness of the force will improve by allowing homosexuals to serve.

Advocates for repealing the policy have generally held that restrictions should be maintained on behavior but that a homosexual "orientation" alone should not be grounds for dismissal. Distinctions between orientation and behavior, seemingly clear in the abstract, may prove difficult to make in the complex realities of everyday life.

In addressing this issue, President-elect Clinton has suggested that he will consult with a "committee" and military leaders. Senator Nunn has suggested that hearings will be held on the issue. Congress may also consider other options including the formation of a commission or the enactment of specific legislation. Some observers believe that such military personnel policy changes may be made by President Clinton via either an executive order or what has been termed a "memorandum of understanding."

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HOMOSEXUALS AND U.S. MILITARY PERSONNEL POLICY

EXECUTIVE SUMMARY OF KEY OBSERVATIONS

CONTEXT

The Department of Defense (DoD) policy excluding homosexuals from serving in the armed forces has recently been the subject of increasing scrutiny and debate. This issue has been addressed in a number of fora including the media, college campuses, the courts, Congress, within the Executive branch itself, among military members, veterans and civil rights organizations, and as an issue in the 1992 presidential campaign. In the 1992 presidential campaign, the Democratic candidate for President stated that, if elected, he would rescind the policy on homosexuals in the military.[1] Following his election in November, President-elect Clinton has maintained his position on rescinding the policy while considering strict limits on behavior.

Current military personnel policy (see Appendix) excludes homosexuals from entering or serving in the armed forces. Under this policy, persons

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[1]The degree to which President-elect Clinton intends to modify current policy is not clear. According to reports quoting Clinton:

> "The difficulty, it seems to me," [Clinton] said, "is to get people to focus on what I believe the real issue is, to say that we don't have a person to waste. By the way, it's not as simple a question as it seems," he said, " because the sexes are segregated in the services to guarantee a certain level of security against sexual overtures, a certain level of cohesion, you know. So it's not a simple issue. But what I think the rule ought to be is in the absence of some inappropriate behavior, if someone has been in service and they're serving well, that alone should not be grounds for dismissal. I want to be very clear about this, because it is not a totally simple issue. There would have to be something besides the simple statement of status. But I think everybody understands that any kind of inappropriate behavior would be grounds for dismissal." Schmalz, Jeffrey, Difficult First Step, New York Times (News Analysis), Nov. 15, 1992: 22.

This statement, and others, have been subjected to interpretations as to what actions the President-elect may ultimately take, and what may be the political ramifications of these actions. See also, Lift the Ban on Gay Soldiers, New York Times, November 15, 1992: IV-18; Evans, David, Clinton's Promise on Gays could Cloud the Military's Future, Chicago Tribune, October 20, 1992: 25; Matthews, William, Navy Times, Clinton's Stance on Gay Ban Angers Many, October 5, 1992: 18.

identified as homosexuals (either through the individual's own statements, attempts to marry someone of the same sex or, by engaging or attempting to engage in homosexual acts as defined) are administratively discharged from the military. Four bills were introduced in the 102d Congress that would eliminate, or encourage the President to rescind, the military policy on homosexuals. While efforts to abolish the policy against homosexuals serving in the military have increased, previous efforts to change the policy have been unsuccessful in Congress. However, it appears that hearings may be held to address the issue in the 103d Congress.[2]

Advocates for rescinding the policy view it as a violation of civil rights and fair treatment. They contend that it is unfair to separate individuals from the armed services merely as a result of their sexual orientation. They note that many homosexuals have served with distinction but must live under the constant threat of being exposed and removed from the service. Proponents of the policy cite the need to maintain cohesion, discipline, and morale within the unique environment of military service. They contend that allowing homosexuals into the service would prove disruptive to unit cohesion and, ultimately, to military readiness.

PURPOSE AND SCOPE

This report examines the historical background of laws and DoD policy on homosexuals. Current Defense Department regulations and articles under the Uniform Code of Military Justice are discussed. Next are analyzed various important aspects of the issue including: origins of homosexuality, prevalence of homosexuality, homosexual orientation v. behavior, open v. covert homosexuality, fairness and discrimination, military readiness, sexual harassment, and foreign military experiences with homosexuality.

Other issues of immediate effect relating to the homosexual policy are also analyzed. These include: public opinion, effects on ROTC and recruitment advertising, the use of homosexuality as a means of avoiding service, and the deployment of homosexuals during time of war or crisis.

Finally, this report considers and discusses the issues confronting Congress in the context of a presidential pledge to rescind or modify the military policy excluding homosexuals.

In addition to the sources cited throughout this report, a large number of interviews were conducted with knowledgeable sources, including individuals for and against the current policy. This report considers and analyzes the various issues raised and arguments in favor of or against particular policy positions. However, their inclusion and subsequent analysis should not be considered, in this context, as evidence of congressional support or opposition. Instead, this

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[2]Kenworthy, Tom, Nunn, Dole Urge Caution on Military Gay Policy, Washington Post, November 16, 1992: A12.

report is intended to provide a range of views on competing perspectives regarding proposals to change or maintain the current policy on homosexuals in the military.

HISTORICAL BACKGROUND

Prior to World War I, U.S. military law did not address homosexuality. Although commanders had great discretion in the control and disciplining of their troops, specific laws, regulations or policies addressing homosexuality did not exist. The Articles of War of 1916 (effective March 1, 1917) restricted consideration of sodomy to cases of assault with the 'intent to commit' sodomy.[3] In 1951, the Uniform Code of Military Justice introduced Article 125 specifically banning sodomy (between members of the same or opposite sex) itself. Cases of assault with the intent to commit sodomy were charged under Article 134, or the General Article.

Despite a lack of laws specifically addressing the issue, numerous policies and regulations allowed for differential treatment of homosexuals or those who manifested homosexual behaviors. Prior to World War II, homosexuals were admitted into the services and, in the case of those who evidenced cross-gender mannerisms, often assigned tasks deemed relevant to the individuals' behavior and lifestyle. ("Effeminate" men were assigned away from the combat arms, for example, and placed in jobs not considered to require particularly masculine qualities, such as clerk, hospital corpsman, chaplain's assistant or camouflage specialties.[4])

During World War II, psychiatrists, who at the time tended to view homosexuality as a mental illness, attempted to identify and "treat" homosexuals in uniform. Numerous efforts to identify and treat homosexuals had mixed results. Failure to respond to treatment often resulted in a Section VIII discharge ("inaptness or undesirable habits"). With the social taboo against homosexuality (resulting in its concealment), the relative flexibility of personnel regulations, the need for personnel during wartime, and the inability of psychiatrists to determine who was homosexual (especially in an era of rushed wartime medical entrance examinations), meant that an undetermined number of homosexuals passed through the services without difficulty.

The policies concerning homosexuality shifted gradually from the 1940s to the 1970s. Early policies were based on a treatment and retention model. Later

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[3]Davis, Maj. Jeffrey S., Military Policy Toward Homosexuals: Scientific, Historical, and Legal Perspectives, Military Law Review, Vol. 131, Winter 1991: 115. (Hereafter referred to as Davis 1991.) For the definition of sodomy in the Manual for Courts-Martial (1917), see Appendix section "Text of Uniform Code of Military Justice . . ."

[4]Berube, Allan, Coming Out Under Fire: The History of Gay Men and Women in World War II, New York: Penguin Books (Plume), 1991.

policies continued to accept treatment but moved increasingly toward separation (and in certain cases, punishment) of known homosexuals. Flexibility was maintained to the extent that certain homosexuals could be retained in situations involving "heroic service." Nevertheless, until the mid-1970s, efforts to address the issue remained under a medical model of illness, treatment, and integration into or, later, exclusion/separation from the services.

> In 1966, for example the Army required a psychiatric examination prior to separation for homosexuality. In 1970 the homosexuality regulation was superseded and was integrated into regulations that covered all types of unfitness and unsuitability. Unsuitability could be demonstrated by evidence of homosexual "tendencies, desires, or interests . . . ."
>
> The regulatory scheme was significant because separation boards . . . generally had the authority to recommend retention of soldiers being processed for elimination, and commanders could disapprove a board's recommendation to separate . . . . Indeed, prior to February 1977, the Army's posture was that there was discretion to retain homosexuals.[5]

In the late-1970s, the Report of the Joint Service Administrative Discharge Study Group was completed.

> Two of the study group's recommendations concern homosexual behavior. One recommendation [was] to reaffirm the long-established ban on gays in the military. Specifically, the study group [had] proposed that the phrase "homosexuality is incompatible with military service" and "processing (for separation) is mandatory unless. . .the allegations are groundless" be included in all subsequent DOD directives on personnel separations. The second recommendation [was] that, in cases of "unsuitability," i.e., those involving homosexual tendencies or homosexual acts between consenting adults, individuals receive an *honorable* discharge.[6]

Created in a period of legal challenges to its policies on homosexuality (see court section below), the recommendations of this study group were used as the basis of current DoD policy.

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[5]Davis, 1991: 76-77. Although Davis notes that Army language concerning "tendencies, desires, or interests" was later "found to be unconstitutional" (see p. 77), he provides no court citation. Efforts to locate such a ruling have proven unsuccessful. In addition, in 1973, the American Psychiatric Association voted to remove homosexuality from its list of abnormalities.

[6]Snyder, William P., and Kenneth L. Nyberg, Policy Paper Gays and the Military: An Emerging Policy Issue, Journal of Political and Military Sociology, Vol. 8, No. 1, Spring 1980: 74.

SUMMARY OF KEY OBSERVATIONS

The military has generally been characterized as a separate institution governed by rules that may or may not be acceptable in civilian society. Differential treatment of military personnel has generally been justified on the basis of the uniqueness of the military mission. Discrimination on the basis of this mission and the unique nature of military society has been upheld, generally, in the courts. Discrimination on other bases has generally not been justified.

While many homosexuals have served in the military, such service has been performed in most instances without open acknowledgement of their homosexuality. The question confronting policy makers remains: "To what extent, if any, would open homosexuality be disruptive to morale, cohesion and readiness in the ranks, and to what extent does any such disruption justify discrimination?" Many military leaders, familiar with the military society and its rules believe that the presence of open homosexuality would prove sufficiently disruptive to justify continuing the policy. Homosexual rights advocates, many of whom have also served in the military, believe that not only will disruptions be minimal but that the overall effectiveness and readiness of the force will improve.

Advocates for repealing the policy have generally held that restrictions should be maintained on "**behavior**" but that a homosexual "**orientation**" alone should not be grounds for dismissal. However, distinctions between orientation and behavior, seemingly clear in the abstract, may prove difficult to make in the complex realities of everyday life.

Issues of privacy for heterosexuals, whether real or perceived, remain contentious.

Comparisons to foreign military policies appear informative, inconsistent and of problematic application.

Historically, the U.S. military has been in the forefront of some major social changes. The successful integration of blacks is widely viewed as a positive indication of the military's ability to make important social changes. However, some have questioned using the military as a vehicle of social change (see Project 100,000[7]). Among the question policy makers may consider is not whether the military can or should be forced to change, but whether society as

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[7]According to Laurence, Janice H., and Peter F. Ramsberger, "Beginning in 1966, under Project 100,000, some 300,000 low-aptitude men enlisted or were drafted into the rank and file as part of a social welfare program. Responding to President Lyndon Johnson's War on Poverty, then-Secretary of Defense Robert S. McNamara launched this project with the hopes of equalizing the burden of wartime service, while turning the lives of the disadvantaged around through a tour of military duty." (Low-Aptitude Men in the Military: Who Profits, Who Pays?, New York: Praeger, 1991: 1.)

a whole supports this change and whether the military is the appropriate vehicle for such a change? What impact, if any, would this change have on military readiness? Indeed, issues concerning civil rights and the definition of acceptable behavior may be raised both inside and outside of the military.

Under the Constitution, Congress has the authority "to make rules for the government and regulation of the land and naval forces." Congress, subject to presidential veto, has authority to create military rules and laws. Changes concerning repealing or modifying DoD policy on homosexuals in the military might also be made by executive order of the President, but in any case would likely present Congress with a range of legislative considerations including: equal opportunity/anti-discrimination issues; questions concerning military compensation and benefits particularly with regard to homosexual "partnerships" and definitions of dependency and family; issues concerning the separation of church and state; and, questions of fairness in maintaining morale and discipline under rules regulating conduct.

DEPARTMENT OF DEFENSE POLICY

The DoD policy addressing homosexuals is dealt with in three directives (on 1. Enlisted Administrative Separations, 2. Separation of Regular Commissioned Officers for Cause, and, 3. Physical Standards for Enlistment, Appointment, and Induction). In addition, the Uniform Code of the Military Justice regulates behavior concerning sodomy and general disorders and neglects to the prejudice of good order and discipline. Each of these is discussed below.

ADMINISTRATIVE REGULATIONS

The January 1982 directive on Enlisted Administrative Separations (discharges) establishes the DoD policy for enlisted administrative separations and is, therefore, the most often cited and disputed statement of this policy:

> Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers 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.[8]

Based on this policy, individuals who engage in homosexual conduct or exhibit an intention of engaging in such conduct are deemed to affect adversely the ability of the military to accomplish its mission. Such conduct is considered a threat to morale, good order, discipline, mutual trust, privacy, the ability of the services to attract and retain members, and public acceptability of military service.

As used in DoD policy, homosexual means "a person who engages in, desires to engage in, or intends to engage in homosexual acts" (or homosexual and heterosexual acts in the case of bisexuals). A homosexual act is defined as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires." (See Appendix). In order for an individual to be subjected to administrative discharge procedures, at least one of the following findings (with certain exceptions) must be made:

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[8]U.S. Department of Defense, Directive No. 1332.14, Enlisted Administrative Separations, January, 28, 1982: 1-9 through 1-13. For the complete text of this Directive, see Appendix.

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts;

(2) The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual and that the purpose of the marriage or attempt was the avoidance or termination of military service.

This directive addresses homosexual administrative discharges from a behavioral perspective, or 'behavioral intent,' perspective. In other words, "persons who *engage in homosexual conduct* or who, *by their statements, demonstrate a propensity to engage in homosexual conduct*" are considered, under this directive, eligible for separation. From a technical point of view, an individual must have engaged in, or stated a desire or intention to engage in, homosexual behavior. Statements that acknowledge an individual's homosexuality are considered reasonable grounds of intention but may not be sufficient to warrant a discharge, i.e., the member may be attempting to avoid service. To this end, an investigation is required. Such an investigation would need to determine if an individual had engaged, or intends to engage, in such behavior, or if such a statement is being used solely as a means of avoiding military service. Thus, the admission of being a homosexual is not treated as an *ipso facto* indication of a propensity to engage in homosexual behavior. Rather it is considered a reasonable cause for conducting an investigation. (It remains possible that an individual is both homosexual and attempting to avoid service.)

This directive provides exceptions to this policy including provisions that allow a member to remain in the service when it is in the service's interest and when it can be found that the member does not desire or intend to engage in homosexual behavior.

Generally speaking, when an individual is administratively discharged for homosexuality alone, an Honorable or General Discharge is issued. This directive lists those instances in which certain homosexual behaviors would result in a discharge Under Other Than Honorable conditions.[9] These conditions include the use of force, homosexual acts with a minor, and fraternization that is deemed sufficiently disruptive to good order.

Lastly, this directive provides direction concerning the procedure for such separations. In each of these, there needs to be a "finding," "probable cause," or "circumstances authorizing" such a separation. Without such, an administrative board is directed to retain the member. **Under these rules, an individual**

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[9]See Appendix for an explanation of discharge characterizations.

may be separated with a finding of conduct or intended conduct (including self-made statements) consistent with the definition of homosexual, bisexual and/or homosexual act as provided in this directive. Furthermore, "[T]he burden of proving that retention is warranted under the limited circumstances . . . rests with the member except in cases where the member's conduct was solely the result of a desire to avoid military service." Therefore, the service concerned must provide findings of probable cause of homosexual behavior or intended behavior, or determine that such statements or behavior are being used as a means of avoiding service. With the finding of such behavior or intention of behavior, the member must prove that retention in the service is warranted.[10]

While the above pertains to enlisted personnel, officers may also be separated (see the text of the directive on the Separation of Regular Commissioned Officers for Cause in the Appendix). The rules that apply to officers generally reflect the policy on homosexuality. However, these regulations are somewhat different than those pertaining to enlisted personnel due to procedural differences in the separation of officers.

Under the third directive, on Physical Standards for Enlistment, Appointment, and Induction (see Appendix), prospective service members may be denied entry into the service for homosexual activity. During the screening process, individuals are asked if they are homosexual. An affirmative answer, technically, is sufficient grounds to deny entry into the service. Thus, a recruit who states that he is a homosexual is reasoned to have been engaged in, or to have intended to engage in homosexual behavior. It is important to remember that under the 'separation directive' the burden of proof lies with the service member, or in this case with the recruit, once homosexuality is acknowledged. It may be impossible to prove that an individual has not and will not engage or intend to engage in homosexual activity. It should also be noted that neither

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[10]Under DoD regulations and the UCMJ, a person can not be prosecuted for merely being homosexual. Although a person can be administratively discharged, with an Honorable or General discharge--which is substantively different from prosecution--for making statements confirming that he or she is homosexual, such statements are viewed as acts (see *Ben-Shalom v. Marsh*, 881 F.2d 454, 462 (7th Cir. 1989) as discussed in the Appendix). Merely making a statement, however, is likely to lead to an investigation under the foregoing policy. For example, in one case, a sailor became president of the San Diego Veterans Association--whose membership is largely homosexual--and who advocates changing the military policy but who has not violated any of the provisions of the DoD regulation may be subject to investigation but can not be administratively discharged without a finding of homosexuality based on DoD definitions (see Reza, H.G., Sailor at Odds With the Navy's Anti-Gay Policy, Los Angeles Times (Washington, D.C. Ed.), April 1, 1992: B-2). While such an investigation, and perhaps an ensuing discharge, is not a form of prosecution, these processes have been seen by some as a form of persecution of homosexuals.

of the above two directives require "proof beyond a reasonable doubt" but are based on the less restrictive standards of an administrative finding of fact.

STATUTES

The Uniform Code of Military Justice (UCMJ), as enacted by Congress, lists sodomy and "disorders and neglects to the prejudice of good order and discipline" as grounds for conducting a court-martial proceeding (see Appendix). As such these regulations of behavior, in theory apply to both homosexuals and heterosexuals. Under these articles, legal rules of evidence apply. Unlike the directives described earlier, the results of findings by a court-martial may entail punitive sanctions. The threat of punitive actions under these articles may be used as leverage in getting service members to divulge homosexual activities. In other words, individuals apprehended under one of these articles, or acknowledged homosexuals who, subject to an investigation, are found to have fraternized with subordinates in such a manner as to endanger good order or morale, may be offered an administrative discharge (rather than court-martial and punishment) if they cooperate in providing evidence against themselves or other service members. Investigations of criminal behavior often require seeking confessions, or corroborating testimony. To this end, plea bargaining a punishable offense under the UCMJ to an administrative discharge, for example, is a legal tool for gaining evidence and expediting cases. As noted above, since certain individuals may resign from the military and thereby avoid prosecution, the manner and extent to which these statutes are used is not clearly known.

* * *

Under the above DoD directives, homosexuals are excluded from enlistment, appointment, and induction into the armed forces. Such individuals found to be serving in the forces may be administratively separated. Under the UCMJ, individuals (whether homosexual or heterosexual) found guilty of violating either of the above articles may be punished as the court martial may direct.

Under current practice, individuals who admit a homosexual orientation, admit past behavior of a homosexual nature, or who have been apprehended for behavior related to homosexual acts as described may be denied entry into the armed forces or separated from the armed forces. Thus, under current practice, merely stating one's homosexuality or having a homosexual orientation is sufficient grounds for denying enlistment to or removing a person from the armed forces.

BROAD POLICY ISSUES AND ARGUMENTS

The following discussion of military policy on homosexuals is divided into two major sections. The first one addresses the general context and broadly relevant aspects of the issue. The second major section addresses specific issues of more immediate effect. Such a distinction is not perfect nor mutually exclusive and, therefore, a certain degree of overlap between the two sections is unavoidable. In this first section, policy issues considered and analyzed include: the origins of homosexuality, estimates of the prevalence of homosexuality, orientation v. behavior, covert and overt homosexuality, social legitimacy considerations as well as consideration of fairness, and policies of other nations.

THE ORIGINS OF HOMOSEXUALITY

Attempts to ascertain the origins of homosexuality have proven inconclusive and no generally agreed causality has been established. Numerous research endeavors have been undertaken to determine factors that cause homosexuality or heterosexuality including genetic/biological, psychological and socio-cultural.[11] Difficulties in methodology, experimental controls and sampling have complicated these efforts. While each academic discipline has made certain "discoveries" or observations concerning the differences between homosexuals and heterosexuals, such findings 1) are not universal (or statistically significant), 2) can be explained by various factors or phenomena, and or 3) are unable to

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[11]LeVay, Simon, A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men, Science, 258, 1991: 1034-1037; Bailey, J.M., and Pillard R.C., A Genetic Study of Male Sexual Orientation, Archives of General Psychiatry, 48, 1991: 1089-1096; Gelman, David, et al., Born or Bred?, Newsweek, Feb. 24, 1992: 6; Kinsey, A, W. Pomeroy, and C. Martin, Sexual Behavior in the Human Male, cited in Davis, 1991; Voeller, Bruce, Some Uses and Abuses of the Kinsey Scale, in Homosexuality, Heterosexuality: Concepts of Sexual Orientation, The Kinsey Institute Series, June Machover Reinisch, ed., Oxford University Press, 1990: 35; Diamant, Louis, (Ed.), Male and Female Homosexuality: Psychological Approaches, Washington: Hemisphere Publishing Corp., 1987; Marmor, Judd, (Ed.), Homosexual Behavior: A Modern Reappraisal, New York: Basic Books, 1980; and, Pattullo, E.L., Straight Talk About Gays, Commentary, Vol. 194(6), December 1992: 21. A number of religion-based organizations exist to help "homosexuals" in "going straight," including Regeneration of Baltimore, MD. and Exodus International of San Rafael, CA., leading some to believe that homosexuality may be based on choice. According to Davis, 1991: 62-63, "The vast majority of homosexuals never seek treatment. Of those who have, there have been some reports of successfully changing homosexuals into heterosexuals, but the criteria for success often have been "either vague or considerably less than exclusive heterosexual behavior." . . . At any rate, the reports on treatment of homosexuality seem consistent with the hypothesis that efforts to change sexual orientation should be minimally effective."

discern temporal considerations (i.e. which came first: the associated factor or homosexuality).

Since no one area appears to adequately explain the entire range of sexual behaviors (including homosexuality), many researchers have assumed a more expansive explanation:

> . . . the diversity among sexual orientations is likely to be understood from a combination of sociological, cultural and biological factors.[12]

Efforts to discern "causes" for homosexuality or heterosexuality have been further complicated by one additional reality: the existence of bisexuality.[13]

Findings of a link between genetics and sexuality have been used by some to argue that homosexuals represent a class meriting protection under the law, or that homosexuality is an immutable characteristic (as is race, for example). These arguments are made in pursuit of legal protection as a legitimate minority but are based on scientifically disputed theses and courts have been generally unwilling to grant special protection for homosexuals (see Court section below).

ESTIMATES OF THE PREVALENCE OF HOMOSEXUALITY

The number of homosexuals in society or the military at any given time has not been reliably measured. Reports in the media have assumed that the proportion in the military is roughly equivalent to the number in society. (The validity of such an assumption cannot be measured.) Estimates of the numbers of homosexuals in society tend to be based on definitional considerations of who is homosexual. The most commonly cited number is 10 percent of the population. This number is based on one datum supplied by the 1948 Kinsey study. According to Berube:

> Kinsey found 4 percent of the white males he surveyed to be "exclusively homosexual throughout their lives" after the onset of adolescence, and 10 percent to be "more or less exclusively homosexual" for at least three years between the ages of sixteen and fifty-five.[14]

Although it can be argued that 4 percent is as relevant a finding as 10 percent, media sources and homosexual rights groups tend to cite the higher figure.

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[12]Gladue, Psychological Contributions, in L. Diamant (Ed.), Male and Female Homosexuality: 130.

[13]Toufexis, Anastasia, Bisexuality: What is it?, Time, August 17, 1992: 49-51.

[14]Kinsey, Alfred C., Sexual Behavior in the Human Male, Philadelphia: W.B. Sanders, 1948: 650-51; cited in Allan Berube, Coming Out Under Fire: The History of Gay Men and Women in World War Two, New York: Penguin Books (Plume), 1991: 289.

(Kinsey's data have been criticized for various reasons, including the "unrepresentativeness" of his sample.) More recent data provided by Smith found the percentage of a national sample of sexually active adults to be somewhat smaller:

> . . . results show that 98.4 percent of sexually active adults reported that they were exclusively heterosexual during the year preceding the survey. . . . This percentage is substantially higher than the commonly cited level of 90 percent, but concurs with the best available estimates.[15]

Using the definitions and data obtained by Smith, fewer than two percent of those men and women sampled could be considered homosexual or bisexual.

The proportion of military personnel who are homosexual remains unknown in part because of the policy excluding homosexuals from service. As a result of the policy, individuals in uniform who are homosexual are less likely to acknowledge their orientation or behavior. It can also be argued, however, that the policy discourages homosexuals from joining in the first place. Conversely, certain aspects of military service, including sexual segregation, physical aggressiveness, authoritarian atmosphere, may appeal to both men and women as well as to certain heterosexuals and homosexuals.[16]

The extent to which homosexuality exists in the military is, in part, dependent upon the definition of who is homosexual or what behavior constitutes homosexuality. The Department of Defense has outlined specific definitions as a part of its policy. Since this definition is likely to be different from others in use, it is unlikely that there will be agreement on the proportion of military personnel who are homosexual. (In the context of discussing the military's policy on homosexuals, the definition used by DoD applies.)

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[15]Smith, Tom W., Adult Sexual Behavior in 1989: Number of Partners, Frequency of Intercourse and Risk of AIDS, Family Planning Perspectives, Vol. 23, No. 3, May/June 1991: 104. (These data were collected as part of the General Social Survey, 1988 and 1989, by the National Opinion Research Center, University of Chicago. Smith's study was funded by the National Science Foundation.) See also, R.E. Fay et al., Prevalence and Patterns of Same-Gender Sexual Contact Among Men, Science, 243, 1989: 338. For a critique of Kinsey's work, see Reisman, Judith, and Edward W. Eichel, Kinsey, Sex and Fraud: The Indoctrination of a People, Huntington House Publishers, Lafayette, LA, 1990; Really Dr. Kinsey?, 337 The Lancet (British Medical Journal, 547, 1991; and, Kinsey Sex Reports: Dubious, Misleading, Fraud?, German Medical Tribune, July 19, 1991 (Jurgen Benning Trans.) cited in *Steffan v. Cheney*, 780 F. Supp. 1, (D.C. Cir. 1991).

[16]Berube, 1991: 32, 56-57.

HOMOSEXUAL ORIENTATION AND HOMOSEXUAL BEHAVIOR

"Orientation" is defined as "the act of determining one's bearings or settling one's sense of direction, . . . the settling of one's sense of direction or relationship in moral or social concerns or in thought or art, . . . awareness of the existing situation with reference to time, place, and identity of persons."[17] "Behavior" is associated with the particular action or reaction of an individual. Thus, homosexual orientation implies only that an individual has determined himself/herself to be homosexual without necessarily entailing a homosexual act. Interestingly, DoD policy concerning enlistment, while generally excluding homosexuals from entering the military, does allow certain individuals to enter the service who have committed or been a party to a homosexual act.[18] An admitted homosexual is also barred from the service despite the fact that such an individual may not have participated in such an act. In the case of *Ben-Shalom v. Marsh*, the court upheld the Army's right to administratively discharge an acknowledged lesbian based only upon her statement that she was a lesbian.

> Plaintiff's lesbian acknowledgement, if not an admission of its practice, at least can rationally and reasonably be viewed as reliable evidence of a desire and propensity to engage in homosexual conduct. . . . [T]he regulation does not classify the plaintiff based merely upon her status as a lesbian, but upon reasonable inferences about her probable conduct in the past and in the future. . . . Plaintiff has admitted that she has a homosexual desire, but not necessarily that she intends to commit homosexual acts. The Army need not try to fine tune a regulation to fit a particular lesbian's subjective thoughts and propensities.[19]

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[17]Webster's Third New International Dictionary of the English Language, Unabridged, Philip Babcock Gove (Ed.), Springfield, Massachusetts: G. & C. Merriam Company, 1971: 199, 1591. For a discussion of this issue in the civilian context, see Eddy, Mark, Prohibiting Discrimination on the Basis of Sexual Orientation: Arguments For and Against Proposed Legislation, Congressional Research Service Report 89-222 Gov, April 10, 1989. Under current DoD policy, no distinction is made on the basis of orientation versus behavior.

[18]For example, instances of youthful experimentation or sexual assault victimization may not be considered as grounds for denying an enlistment if there are reasons to believe that these instances do not represent a desire or intent to engage in future homosexual activities. Discretion, therefore, is involved.

[19]*Ben-Shalom v. Marsh*, 881 F.2d 464 (7th Cir. 1989). In addition, the Supreme Court held that there was no fundamental right of homosexuals to engage in consensual sodomy and upheld the Georgia statute criminalizing sodomy (*Bowers v. Hardwick*, 478 U.S. at 194-195, 106 S.Ct. at 2846).

"IN THE CLOSET" AND "OUT OF THE CLOSET"

Social taboos, legal restrictions and moral intolerance have historically forced individuals to hide or deny their homosexuality (i.e., keep their homosexuality "in the closet"). With increasing efforts toward gaining civil rights and social acceptance, increasing numbers of homosexuals are "coming out of the closet" or publicly proclaiming their identity. Definitions of "in the closet" or "out" are somewhat situational in actual practice. Individuals may "come out" with close friends or siblings but remain in the closet with employers, a spouse, parents or more distant relatives. "Outing" can be personal (i.e., a proclamation of self-identification), or forced by others (i.e., activists may proclaim a public figure to be homosexual without his or her consent). While military discharges have arguably "outed" thousands of homosexuals, many have simply been allowed to resign, in effect, protecting the individual's privacy by allowing him/her to "stay in the closet." Conversely, the decision to be "out of the closet" often is both personal and political (particularly in those instances where homosexuals seek to challenge the military's policy on homosexuals--see Court section in Appendix).

The concept of "in" or "out" of the closet should not be confused with issues relating to orientation or behavior. Consider the heuristic diagram 2 X 2 diagram below:

HEURISTIC FIGURE 1.		
STATUS	Orientation	Behavior
"In the Closet"	A	B
"Out of the Closet"	C	D

Individual homosexuals may find themselves to be exclusively in one cell or, given particular circumstances, in more than one cell. For example, certain individuals may have a homosexual orientation and chose to be "in the closet" with employers (cell A), but "out" with close friends (cell C). Still others may wish to remain behaviorally in the closet (cell B, but remain, de facto, "out" with partners). Finally, cell D represents those who not only have "come out" but who also manifest public behaviors (including, for example, marching in homosexual rights parades, "marriage" to a same sex partner, political "street theater" protests, or certain illegal behaviors). It is those individuals in cell C that homosexuals acknowledge most often in attacking the military's policy on homosexuals.

In the military context, most homosexuals are in cells A and B. Due in part to military restrictions, these individuals are forced to keep their homosexuality largely secret. Efforts to change the policy have, in most cases, concentrated on allowing individuals to acknowledge, through statements, their orientation without prejudicial action resulting. Other advocates claim that an orientation

alone (cells A and C) or private sexual acts between consenting adults (cell B) should not be grounds for discharge. Certain advocates have argued that sodomy laws should be revised.

(Some observers have claimed that the military, technically, does not have a "ban" on homosexuals since individuals who would fall into cell A or B are allowed to serve. These claims, however, have been attacked as being disingenuous since the military requires statements to be made about a recruit's sexuality. In addition, those in certain pre-commissioning programs must sign statements that they are not homosexuals--see ROTC section below. Also, those subject to review for security clearances are also asked about their sexuality. From this perspective, individuals are "allowed" to serve provided that they are willing to deny their homosexuality and thereafter live under threat of discovery.)

Although presented for analytic purposes, the above chart can be misleading. Homosexuals who only have an orientation but participate in political debates on homosexual rights or "street theater,"[20] could be placed in cell D. (It is important to note that many of the participants in political debates include heterosexuals as well.) As such the distinction between orientation and behavior is, at best, subjective, and at worst, a rhetorical obfuscation. Indeed, definitions of "acceptable behavior" remain a contentious issue for policy makers and those charged with enforcing laws, rules and regulations.

Advocates for removing or modifying the policy on homosexuals in the armed forces state that those who have a homosexual orientation should not be discriminated against based on their orientation alone. They argue that sexual orientation is non-threatening and to force individuals to divulge their private thoughts and emotions on such matters represents an invasion of the individuals' rights to privacy. In essence, since the services prevent those with such an orientation from entering the military, those so prevented are judged not on their behavior but on their very existence. Such individuals are, it is argued, "found guilty" without having performed an act beyond stating their sexual orientation. Many advocates state that it is not their intention to change those rules, regulations and laws regarding behavior.[21] In other words, some advocates have stated that homosexuals, and others, should be judged on the basis of what they do, not who or what they are. Those individuals who have proclaimed an "orientation" and are otherwise fit for duty should not be discriminated against. It is believed that such a reform would prevent many

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[20]Dewar, Helen, Nunn Assailed by Gay Rights Groups for Firing of Two Aides, The Washington Post, Dec. 8, 1992: A11. "About a dozen members of the gay rights group Queer Nation conducted a small demonstration -- a "kiss-in -- at Nunn's office on Capitol Hill yesterday to protest what the group's spokesman, Mike Petrelis, called Nunn's 'known homophobia.'"

[21]Rep. Schroeder, ABC News Nightline, Show #2867, Air Date: May 19, 1992.

otherwise outstanding service members from being forced out of the service merely as a matter of their sexual orientation.

Other advocates believe that once the policy on homosexuality is modified to recognize or tolerate orientation, other related policies may also be modified. As discrimination against homosexuals is eliminated, these advocates believe that legal restrictions pertaining to certain sexual acts of consenting adults, now termed sodomy, will be eliminated.

Finally, certain advocates have supported overturning the statutory language pertaining to behavior as the first step to eliminating discrimination against homosexuals.

> . . . [G]ay rights activists say the military's chief weapon to force out homosexuals is not the regulations [administrative discharge directive], but the threat of criminal prosecution under a 1956 military sodomy law.
>
> Such pressure tactics in military investigations create a climate of fear that make it easy for the military to separate anyone suspected or even rumored to be homosexual, the activists say. And no service member is safe, they say, as long as the military has the power to make intimate acts between consenting adults a crime.[22]

From this point of view, once privacy is recognized and non-intrusive behavior (including sodomy) between consenting adults is decriminalized or afforded privacy protection, the arguments for maintaining the policy will be insupportable.

Proponents of maintaining the current policy state that "allowing declared and open homosexuals to join and remain in the military . . . would be quite a different kind of social chemistry than the present situation, where homosexuals who do serve in the military are discreet about it."[23] Formally recognizing homosexuals would allow many "to come out of the closet" so long as they did not engage in homosexual behavior. Rescinding the policy on the basis of orientation alone would allow homosexuals legitimacy while maintaining the

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[22]Willis, Grant, Gay Activists Target Repeal of Sodomy Law, Navy Times, August 24, 1992: 21.

[23]Charles C. Moskos, Jr. ABC News Nightline, May 19, 1992. General Colin L. Powell, chairman of the Joint Chiefs of Staff: "I have never been of the view that this would break the armed forces of the United States if we [allowed homosexuals to serve openly in the military]. I'm also not of the view [as] some newspapers are, that there will be mass resignations. I am of the view, and continue to be of the view that it will be prejudicial to good order and discipline because (it will) introduce this added very complex social dimension into [this] institution . . . ." Powell: 'Gays in the Military Far More Complicated Issue,' Air Force Times, December, 14, 1992: 12.

illegal nature of their sexual behavior. (Also, it is not clear what affect changing the policy would have on homosexual "political behavior" in the services--such as forming organizations to advocate homosexual rights.) Under the first proposal, gays and lesbians would be permitted to join and stay in the military so long as they remain sexually inactive, "celibate," or, behaviorally "in the closet." This places homosexuals in the position of being recognized for their orientation and punished for the behavior that orientation may entail. (Some advocates of homosexual rights also acknowledge that once the homosexual orientation is officially accepted, restrictions on relevant behaviors will also be challenged.)

Thus, critics view the focus on orientation as a deception that would recognize homosexuality and lead to the inevitable recognition of homosexual behavior as "normal." These critics contend that the sexual drive is perhaps one of the most innate and profound human characteristics and that it would be foolhardy to acknowledge the homosexual orientation and continue to deny the ensuing behavioral manifestations.

H.R. 5208 and S. 3084

The "distinction" between orientation and behavior has been incorporated into proposed legislation. H.R. 5208 and S. 3084[24] would remove discrimination against homosexuals based on orientation while maintaining restrictions on certain unspecified behaviors (see Appendix). In the other words, this proposed legislation would require the services to remove any prohibitions barring an individual from remaining in the service or seeking to join the military on the basis of sexual orientation. Also, this language would maintain standards in law, regulation or policy preventing sexual misconduct (i.e., rape, harassment, sodomy, sex with minors, relations on duty as prescribed, etc.). These rules may not be applied, under this language, in a manner that discriminates on the basis of sexual orientation. Thus, homosexual conduct would be permitted provided that rules and regulations pertaining to conduct apply equally to heterosexuals. In other words, nothing in this language would permit sexual relations aboard a ship, for example, since such behavioral restrictions apply to both heterosexuals and homosexuals. In fact, nothing in this language would allow "unnatural carnal copulation with another person of the same or opposite sex" as prescribed under article 125 of the UCMJ. Presumably, any undefined conduct, as considered by a court martial which violates the customs and traditions of the armed services, deemed to be "prejudicial to good order and discipline" remains illegal provided that such standards would apply equally to heterosexual and homosexuals. (Without a clear definition of acceptable behavior, certain problems may arise. For example, asking for a date may be protected, arguably, unless a fight broke out. Harassment and solicitation would not be protected.) Instances of fraternization sufficient to threaten discipline, whether homosexual or heterosexual, may be resolved by court martial and/or discharge.

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[24]H.R. 5208, Rep. Patricia Schroeder, May 19, 1992; S. 3084, Sen. Howard Metzenbaum, July 28, 1992.

Proponents of this proposed legislation note that this language would remove discrimination and unfair treatment based on sexual orientation while keeping in place those rules, policies and laws pertaining to behavior. Under this language, discipline and good order would be maintained since behavior would be controlled. Courts martial and discharge options remain available in those instances, heterosexual and homosexual, involving violations of rules, regulations and laws pertaining to conduct. Proponents point out the success that has resulted in those instances where restrictions against homosexuals have been removed (i.e., in the civilian workplace). It can also be argued that although some personnel, homosexual and heterosexual, will behave in a manner that is deemed inappropriate, these cases will be more than offset by the increase in the number of professional and dedicated service members who would be allowed to enter the military and remain on active duty. That is, a homosexual orientation alone should not be considered an adequate indication of a behavior problem. Under current policy, many of those forced from the service "involve a soldier, sailor or airman who but for being homosexual, is outstanding in every respect."[25] Such a change, advocates believe, would ultimately enhance military readiness.

Critics view this language (H.R. 5208 and S. 3084) as going beyond efforts to merely protect those with a homosexual orientation. Narrowly interpreted, most, if not all, homosexual activity, critics argue, has been and will likely continue to be defined as "unnatural." This proposed language allows homosexuals into the service provided that they remain, for the most part behaviorally asexual. Such a situation places homosexuals in a position of being able to "come out of the closet," acknowledge their sexual orientation and then refrain from acting on that orientation. Critics note that given studies of male homosexual behavior and given the sexual segregation of the services, instances of such behavior will increase substantially if this legislation were to be enacted.[26] In other words, removing the stigma of homosexuality or rules that exclude homosexuals from the military will increase instances of and opportunities for such behavior in the services, leading to morale and discipline problems and disruptive of good order.

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[25]See, e.g., *Watkins v. United States Army*, 875 F.2d 699, 702-04 (9th Cir. 1989)(en banc); *Matlovich v. Secretary of the Air Force*, 591 F.2d 852, 854 (D.C. Cir. 1978); cited in Davis, Major Jeffrey S., Military Policy Toward Homosexuals: Scientific, Historical, and Legal Perspectives, Military Law Review, Vol. 131, Winter 1991: 55.

[26]Based on research conducted at the University of Indiana, 75 percent of white male homosexuals reported to have had 100 or more partners, and 28 percent reported 1000 or more. None of the respondents reported fewer than three partners. Bell, Alan P., and Martin S. Weinberg, Homosexualities: A study of Diversity Among Men and Women, New York: Simon & Schuster, 1978: 312. According to a University of Chicago survey (Smith, Tom W., Adult Sexual Behavior in 1989: Number of partners, Frequency of Intercourse and Risk of AIDS, Family Planning Perspectives, Vol. 23(3), May/June 1991: 104.) "Adults reported an average of 7.15 sexual partners since age 18."

Broadly interpreted, this "same treatment standard" could be construed to allow for homosexual co-habitation in the receipt of military housing benefits, homosexual marriages performed by military chaplains, co-location of homosexual military couples, and the extension of military benefits such as health care, survivor benefits and adoption to a homosexual couple. In other words, although proponents suggest that this legislation focuses only on orientation, broader issues involving behavior and definitions of family or dependents may be involved. The ability of commanders to maintain discipline and morale under this language could, it is argued, prove onerous.

While it can be asserted that removing such restrictions in civilian society have not brought about many problems, critics note that the military institutional environment (including geographic isolation, sexual segregation, and the lack of privacy) is very different and will intensify the likelihood of both homosexual acts and violent clashes with heterosexuals. Others believe that this language is the first step to repealing restrictions against not only homosexuality but also homosexual behavior. Finally, critics argue that in the interest of protecting homosexuals, the privacy and morality of heterosexuals, as well as readiness, would be sacrificed by this language.

MILITARY SERVICE AND THE SOCIAL LEGITIMACY OF OPEN HOMOSEXUALITY

It is said that efforts to eliminate or modify the military policy are but one part of a larger effort to gain a more universal acceptance of homosexual rights. From this perspective, proponents and critics alike contend that the movement for equal rights in the military (as with the civil rights movement) is a stepping stone to gaining greater acceptance in other fora including Federal and state courts, and legislative bodies. The argument is based on the concept that recognition by a major Federal institution, i.e., the military, would enhance and provide support for greater recognition of homosexuals' rights. According to some observers, this claim is similar to arguments pressed during the civil rights movement that it is unfair to allow blacks and other minorities to bear the burden of citizenship (i.e., military service, paying taxes, etc.) without allowing them to share equally in the benefits such citizenship has to offer. Such recognition would provide support for "partnership legislation"[27] and other issues of interest to the homosexual rights community and civil libertarians. As such, removing the military policy on homosexuality would represent a step toward the attainment of equal rights and opportunities as well as equal responsibilities for homosexuals.

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[27]"Partnership legislation" refers to proposals to have employers (including the government) recognize a gay partnership for the purposes of receiving health care and other employer-offered benefits. While a few employers and a small number of municipalities or other jurisdictions already recognize and/or provide limited benefits to "partners," most do not.

There are indications that social acceptance of homosexuality has increased in recent years. Some consider rescinding the military policy a natural extension of these changes. Others view rescinding the military policy as a means of allowing or forcing the military to take the lead on this issue, i.e., using the military as the engine for social change. In this latter sense, removing the policy is criticized as the means and not necessarily the result of the "homosexual rights agenda." The military has been the means of social change in the past.[28] In contrast, military leaders believe that such changes should be justified on the basis of military needs and readiness. Critics view the use of the military as a vehicle for social change without consideration of readiness issues as feckless and unwise. As stated by Gabriel:

> It will avail us little if the members of our defeated force are all equal. History will treat us for what we were: a social curiosity that failed.[29]

Not surprisingly, arguments against the policy focus on its unfairness and discriminatory basis. The denial of homosexuals the option to serve is arguably a prejudicial self-fulling prophecy which makes it impossible for homosexuals to prove their military value. While many homosexuals have served, the scenario

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[28]The integration of blacks is generally viewed as a success. (See Moskos, Charles, The Army's racial success story. How do they do it? The New Republic, August 5, 1991: 16.) The integration of women remains debated today (Collier, Ellen, Women in the Armed Forces, CRS Issue Brief, IB92008, updated regularly; The Presidential Commission on the Assignment of Women in the Armed Forces, Report to the President, Washington, D.C., U.S. Government Printing Office, November 15, 1992). The attempt to use the military as a means of social mobility for individuals of low-aptitude has been criticized by a number of observers as a failure that perhaps did more damage to those it was intended to help in the first place. (Laurence, Janice H., and Peter F. Ramsberger, Low-Aptitude Men in the Military: Who Profits, Who Pays?, Praeger, New York: 1991.) The services of women and blacks in various forms are not new to the military. Blacks served openly in every war (including as "Buffalo soldiers" during the Indian Wars) and were in segregated units at least since the Civil War (including Confederate units). By World War II, such segregation was recognized as problematic in terms of effectiveness and efficiency. The integration of women (including the opening of non-stereotypical military occupational specialties), particularly in the 1970s, was in part a result of a need for qualified personnel created during the transition to the All-Volunteer Force. Homosexuals, generally speaking, have not served "openly" in the military. Critics contend that, although the integration of the military and the expansion of opportunities had social and political underpinnings considering the history of blacks and women in uniform, these changes were justified on military needs. Homosexual rights advocates, critics contend, have not shown a *military* need or justification for changing the current policy.

[29]Gabriel, Richard A., Women in Combat? Two Views, Army, March 1980: 44.

of homosexuals openly serving can not be evaluated unless the policy is removed. Removing the policy may allow homosexuals to prove their military worth and gain greater social legitimacy. However, should presumed problems of discipline and morale prove to be true, it may be politically impossible to reinstate the current policy. Nevertheless, removing the policy in the military context may create a sense of increased social legitimacy for homosexuality generally and, thereby, foster changes in other areas.

THE RELEVANCE OF "FAIRNESS" AND "READINESS"

As described above, arguments for and against the policy on homosexuals are often considered on the basis of their effects on the military and on issues of fairness. Proponents of maintaining the military policy on homosexuals are concerned with the extent to which acknowledged homosexuality (whether orientation or behavior) would prove disruptive to unit cohesion, morale and discipline. Studies of soldiers in battle have shown that the existence of close and interpersonal relationships are of equal or greater importance (for military effectiveness) than training, physical conditioning, leadership, etc. S.L.A. Marshall states:

> . . . [I]t is far more a question of the soldier's need of physical support from other men. He must have at least some feeling of spiritual unity with them . . . Should he lack this feeling for any reason, whether it be because he has lost physical contact or because he has been denied a chance to establish himself with them, he will become a castaway in the middle of a battle and as incapable of effective offensive action as if he were stranded somewhere without weapons.[30]

Shils and Janowitz found interpersonal relationships to be a critical factor in a unit's ability to fight. Once these relationships have been disrupted, unit effectiveness disintegrated leading to desertion, surrender, and/or death.[31] Military leaders' concerns over the potentially disruptive effects of homosexuality relate, in large measure, to its effects on the development of these interpersonal relationships. While it is true that many homosexuals have served ("in the closet") in the military without incident, there are individual and legal accounts in which the effect of homosexuals in the ranks has proven disruptive.[32] The extent to which open homosexuality in the ranks would

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[30]Snyder, William P., and Kenneth L. Nyberg, Policy Paper Gays and the Military: An Emerging Policy Issue, Journal of Political and Military Sociology, Vol. 8, No. 1, Spring 1980: 72-73

[31]Shils, Edward and Morris Janowitz, Cohesion and Disintegration in the Wehrmacht, Public Opinion Quarterly, 12 (Summer 1948): 280-315.

[32]McCrane, Kevin M. Gays in the Military? A Cautionary Tale, Wall Street Journal, Dec. 2, 1992: A10; Hackworth, David, The Case for a Military Gay Ban: My Combat Experience Tells Me It's the Only Sensible Policy, Washington Post,

prove sufficiently disruptive to justify continued discrimination is not known.

Efforts to rescind the policy are rooted in a number of convictions, civil rights concerns, and social movement objectives. These efforts either ignore concerns over effectiveness or argue that there will be relatively little change in effectiveness. The most common source of objections to the policy is its perceived basic unfairness. According to Snyder and Nyberg:

> . . . [E]xisting policies [concerning homosexuality] are not being applied consistently; [closeted] gays continue to serve in the armed forces, apparently quite satisfactorily, despite the ban on their service (Lester, 1974: 5-13). This inconsistency creates the basis for a legal or political challenge to existing policies.[33]

In addressing this issue, the military has taken the approach of excluding all admitted homosexuals, even if this means excluding some individuals who would otherwise make good soldiers, airmen, sailors or marines. Such exclusion is justified by the services as being directly related to national defense considerations.

The military policy has been attacked variously on the issues of "fairness." These include the arguments that the policy (1) leads to "witch hunts," (2) is similar to the prejudice that kept blacks out of the service, (3) allows for differing treatment of civilian and military DoD employees, and (4) encourages the harassment of women. Each of these is considered and analyzed.

"Witch Hunts"

While DoD policy is explicit in terms of conducting investigations and providing for administrative discharges, actual practices may vary. According to some observers, the decision to investigate and discharge individuals for homosexuality can be discretionary and, therefore, arbitrary. Commanding officers who find such behavior problematic in terms of unit morale, or who have a personal or moral philosophy against such behavior, may choose to aggressively pursue the removal of homosexual service members from their units. Conversely, commanding officers may be more concerned with the day-to-day operation and welfare of their units, including administrative functions, training activities, other disciplinary issues, as well as their own personal, career and family needs, and choose not to spend much, if any, free time searching for "suspected homosexuals." Commanders and investigators who do discharge

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June 28, 1992: C5.

[33]Snyder, William P., and Kenneth L. Nyberg: 72.

homosexuals out of the service are often charged with conducting "witch hunts."[34] Commanders who fail to maintain discipline or follow DoD directives may be charged with dereliction of duty. During an investigation of homosexuality other individuals may be named as homosexuals (regardless of their sexual orientation, service record, or behavior) and may face the intimidation of an investigation, stigma of being labelled, possible court-martial and discharge.

The use of the term "witch hunt" has been applied by some to any attempt to discharge homosexual members whether or not the behavior at issue is flagrant or illegal. When such behavior comes to the attention of a commanding officer or investigators, it is nearly impossible for them to ignore it without being held accountable for dereliction of their duties. Such commanders may find themselves forced to conduct such investigations or bring their own careers into question.[35]

It can be argued that removing the policy would eliminate the exclusion of individuals who are otherwise performing their jobs, eliminate the unfair and disruptive effects of "witch hunts," and remove the threat to commanders' careers. Conversely, it can be argued, removing the policy would shift the unfairness to those who find their sense of morality (based on social, cultural or religious beliefs) and emotional and physical privacy violated by the presence of homosexuals in the close confines imposed by military service.

The services recruited, appointed, or commissioned approximately 330,000 people each year during the period 1980 to 1990. If the ten percent figure for homosexual prevalence widely reported in the media is accepted, approximately 33,000 homosexuals were included in that number. If so, it can be estimated that the service brought 330,000 over a ten-year period. According to the General Accounting Office,[36] during this ten-year period, the services

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[34]For example, homosexuals who come to the attention of investigators by being caught in homosexual acts may "plea bargain" to an administrative discharge (rather than face a court-martial) provided that they turn over the names and incriminating evidence against other homosexuals in the service. Providing information on "partners" needed in part to remove other homosexuals from the service as well as to determine whether the individual is trying to avoid military service necessarily broadens the scope on an investigation.

[35]In a recent incident, a vice admiral was censured and was retired at the reduced rank of rear admiral following accusations that he protected a member of his own personal staff "from disciplinary action resulting from alleged homosexual advances to other staff members." Burlage, John, The Fetterman Saga: Witch Hunt or Justice?, Navy Times, August 10, 1992: 14.

[36]U.S. General Accounting Office, Defense Force Management: DOD's Policy on Homosexuality, B-247235, June 12, 1992, (referred to hereafter as U.S. GAO-1); see also, U.S. GAO, Defense Force Management: Statistics Related to DOD's Policy on Homosexuality, B-247235, June 12, 1992.

discharged approximately 17,000 service members under the category of homosexuality. This represents approximately five percent of a presumed (if disputed) number of homosexual accessions. Numerous conclusions may be reached: (1) homosexuals are extremely adept at avoiding detection, (2) notions of a "witch hunt" are greatly exaggerated, (3) the services are doing a poor job of eliminating homosexuals from the ranks, (4) in most cases, the presence of homosexuals in the ranks does not constitute a problem requiring formal action, (5) estimates of the existence of homosexuality in society and the services are inflated, and/or (6) homosexuals may be discharged, denied reenlistment, allowed to resign for other reasons, including to avoid an investigation of suspected homosexuality. (If a lower estimate of the prevalence of homosexuality is used, say 1.6 percent, arguably 52,800 homosexuals would have been brought into the service, or over three times the number discharged during this same period.)

Analogies to the Treatment of Blacks

Numerous claims have been made that the military policy on homosexuals parallels the prejudice that kept the services racially segregated. Proponents of rescinding the policy view the successful integration of blacks in the military as an example of how the services are capable of overcoming preconceived prejudices and include all members of society as full members. According to the National Gay and Lesbian Task Force: "The rational for the exclusion of gays and lesbians is almost identical to the rationale used by the Department of Defense for maintaining a racially segregated Armed Services through 1948."[37] From this point of view, the policy itself supports and perpetuates prejudices against homosexuals. Once the policy is abandoned, it is argued, the services would integrate gays and lesbians in much the same manner as blacks and women have been integrated. Since DoD policy prevents homosexuals from joining the service and allows for the discharging of known homosexuals, continuing the policy is the same as keeping minorities out for who they are, rather than on the basis of their behavior.

Conversely, the Chairman of the Joint Chiefs of Staff, Gen. Colin L. Powell, responding to a letter from Representative Schroeder encouraging him to support efforts to rescind the policy, stated:

> I am well aware of the attempts to draw parallels between this position [excluding homosexuals from the service] and positions used years ago to deny opportunities to African-Americans. 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 a part of that history.
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> Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral

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[37]NGLTF, Policy Institute, Press Kit, Gays and Lesbians in the Military, Department of Defense, Robert Bray, Communications Director, 1734 Fourteenth Street, NW, Washington, D.C. 20009-4309, undated.

characteristics. Comparison of the two is a convenient but invalid argument.[38]

While the letter arguably can be criticized for erroneously presuming that sexual orientation usually has behavioral manifestations, it notes that race and behavioral manifestations are independent[39] and that by attempting to equate the behavioral consequences of race with sexual orientation such comparisons can become problematic. Such comparisons can be viewed as insulting to minorities and women. Critics contended that if the two are similar, homosexual rights advocates are presuming that merely being black or a women is the same as having a specific and identifiable "orientation."

In at least one way, the integration of homosexuals would well parallel the experience of expanding the numbers of women in the services: increasing opportunities for fraternization.[40]

Differing Standards for DoD Uniformed and Civilian Employees

Differing treatment of military and civilian personnel has been cited as justification for rescinding the policy. During the Persian Gulf War, a highly placed civilian official at the Department of Defense was "outed."[41] No effort was made to remove this individual from his post.[42] Critics of the policy cite this as a double standard. In other words, DoD "plays by two sets" of rules when it suits their purposes. It is blatantly unfair, critics contend, for gays to be forced from the serving their country in uniform, and in some cases rehired by the Department of Defense or one of the services immediately after discharge.

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[38]Powell, Gen. Colin L., Letter to Representative Patricia Schroeder, May 8, 1992.

[39]While race is not an indication of behavior nor is behavior an indication of race, the same can not be said of sexual orientation--sexual orientation is not necessarily an indication of sexual behavior (individuals can remain abstinent, for example), sexual behavior is an indication of orientation. It is difficult for someone who has voluntarily participated in homosexual acts to deny being homosexual or bisexual.

[40]Swasy, Alecia, Navy Babies, The Wall Street Journal, October 3, 1991, A1. "Kathleen was one of 36 Navy women who returned home pregnant from their tour on the [U.S.S.] Acadia. The ship was dubbed 'The Love Boat' in a newspaper cartoon. . . . 'Hanky-panky--hetero or homo--is a problem' says Charles Moskos, a military sociologist at Northwestern University. 'Propinquity breeds romance.'"

[41]"Outing" refers to the involuntary revelation that an individual is homosexual.

[42]Suplee, Curt, Pentagon Ban on Homosexuals Exempts Civilians, Cheney Says, The Washington Post, August 5, 1991: A6.

Comparisons of civilian working environments to the military sometimes overlook the distinctive nature of the military. According to scholars, the military has traditionally been viewed in the framework of an institutional model.

> (A)n institution is legitimated in terms of values and norms, i.e. a purpose transcending individual self-interest in favor of a presumed higher good. Members of an institution are often viewed as following a calling; they generally regard themselves as being different or apart from broader society and are so regarded by others.[43]

This unique institutional environment, resulting in part from the peculiar mission of the military--to prepare for and to fight wars, is recognized as a legitimate basis for differentiated treatment of military personnel from civilian employees. In *Orloff v. Willoughby*, the Court states

> The military constitutes a specialized community governed by a separate discipline from that of the civilian.[44]

Thus, proponents of the policy note that it only pertains to military personnel for reasons that have to do with the peculiar nature of the military environment and mission. The differences between the military and civilian society are recognized by the courts, Congress and the Executive branch. Civilians are not subject to the same deprivations as military personnel (including privacy) and are not subjected to the need to maintain the same levels of morale, cohesion and discipline under war-time conditions. Thus, the very purpose of the policy is not relevant to civilians. It would arguably be unfair to subject civilians to a similar policy for reasons that only apply to military personnel.

The Homosexual Policy and Sexual Harassment of Women

Critics of the policy have posited that the current policy encourages the harassment of women in uniform. They argue that women who refuse sexual advances by their male counterparts are labelled, or threatened to be labelled, lesbians. In one case, an Army staff sergeant finally confided to a friend that

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[43]Moskos, Charles C., From Institution to Occupation: Trends in Military Organization, Armed Forces and Society, 4(1), 1977: 41-50.

[44]345 U.S. 83, 93-94, 73 S.Ct. 540, 97 L.Ed. 842 (1953). Indeed, other courts have noted that restrictive rules demanding conformity, discipline and sacrifice required as a result of military service would not necessarily be viewed as constitutional in the civilian context. In upholding the discharge of homosexuals by the Navy, the court wrote: "It should be plain from our opinion that the constitutionality of the regulations stems from the needs of the military, the Navy in particular, and from the unique accommodations between military demands and what might be constitutionally protected activity in some other context." *Beller v. Middendorf*, 632 F.2d 812 (9th Cir. 1980).

she was a lesbian in an attempt to deflect his sexual advances. This revelation was turned over to the "Criminal Investigation Command which launched a three-month investigation . . . into [the staff sergeant's] sex life that those involved say included telephone taps and hostile interrogations" resulting in the staff sergeant's administrative discharge.[45] In other reported incidents, lesbians in uniform have "married" men in an effort to protect themselves from sexual advances or suspicious investigators.[46]

In rebuttal, it has been argued that sexual harassment, for whatever purpose, is against military regulations. While the services have been under vigorous scrutiny following revelations of incidents concerning sexual harassment,[47] the contention that a women can be harassed via threats of exposing her as a homosexual (i.e., lesbian-baiting) have been made. In these instances, DoD policy excluding homosexuals is viewed as a vehicle for sexual harassment.

Critics claim that lecherous individuals may use threatened revelations of drug use or other illegal behavior in a attempt to extort sexual favors. However, no one has argued that drug use should be made legal in order to avoid any chance that it could be used as a means of sexual harassment. The problem, it can be argued, *is* sexual harassment. Changing the policy on homosexuality (or drug abuse) will not "*fix*" the problem of harassment. It can also be argued that changing the policy may actually expand the problem for women and men. According to these claims, problems of harassment disproportionately involve women as victims. Removing the policy does nothing to limit and may actually make possible (although not sanctioned) the opportunity for broader incidents of harassment. Such harassment could include the harassment of male and female homosexuals by heterosexuals (gay bashing),[48] unwanted sexual advances by gays and lesbians toward heterosexuals,[49] and/or sexual harassment of homosexuals by other homosexuals in uniform. From this point

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[45]McIntire, Katherine, Fair Game? Lesbians Protest Army Investigations, Army Times, October 14, 1991: 12. According to a Congressional Caucus for Women's Issues letter (April 24, 1992) to Jean Appleby Jackson (Chair, Defense Advisory Committee on Women in the Service-DACOWITS), "DACOWITS heard testimony of lesbian-baiting, the practice of harassing and blackmailing service women by threatening to force their discharge by calling them lesbians."

[46]Risser, David, Gays Protest Policy, Daily Press, June 16, 1991, E3.

[47]See Smolowe, Jill, An Officer, Not a Gentleman, Time, July 13, 1992: 36.

[48]Seigle, Greg, In the U.S.: Fear and loathing, Army Times, January 11, 1993: 11; "Troops say if gays are allowed in the military, 'they'll get their asses kicked.'"

[49]Del Maris, James, How to Seduce a Straight Man, The Advocate, March 28, 1989: 38.

of view, eliminating the policy on homosexuals would not end harassment and may actually broaden the number of forms it can take.

THE RELEVANCE OF FOREIGN MILITARY COMPARISONS

Lastly, proponents of rescinding the policy note that many nations do not exclude homosexuals from entering the military service. GAO reviewed the policies of 17 nations.

> These nations had various, sometimes diametrically opposed approaches to and legislation affecting the presence of homosexuals in their armed forces. The attitudes ranged from the view held by the United States to less strict ones in other countries. Some, in fact, do not view homosexuality as a legal or military issue. Four of the 17, or 24 percent, had policies that specifically exclude homosexuals from serving in the armed forces. Four of the remaining 13 restricted homosexuals' duties or relieved them from duty for disruptive behavior. Seven of the 17, or 41 percent, had no written policy addressing homosexuality. Two of the 17, or 12 percent, stated that during the recruiting process, the question regarding the individual's sexual orientation was not asked.[50]

Davis, citing Tielman and de Jonge,[51] notes that in 60 countries, homosexual behavior is not illegal (although it may be regulated to some extent) and that in 55 countries, homosexual behavior is illegal.

> A number of countries have tackled the issue of whether homosexuals should be allowed in the military. Many countries do not allow homosexuals to serve, in spite of the fact that they consider homosexual acts between consenting adults to be legal. These countries include Canada, Peru, Venezuela, New Zealand, Italy, Great Britain, and Northern Ireland.[52]

In fact, many nations do not have formal policies on homosexuals in the military. In other cases, policies differ widely in that some nations may allow certain homosexuals to serve, but only in limited ways or subject to certain, arguably discriminatory, career restrictions. In certain nations, homosexuality

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[50]GAO-1: 40.

[51]Country by Country Survey, in Second ILGA Pink Book 186, 1988.

[52]On Oct. 27, 1992, Canada rescinded its policy on homosexuals serving in the military. (See Lancaster, John, Many Allies Allow Gays in the Military, Canada, Australia are Latest to Drop Exclusionary Policy, Washington Post, Nov. 30, 1992: 1.) It should be noted that GAO concluded that Italy allows homosexuals to serve while Davis lists Italy among those countries that bans homosexuals from the military. See Davis: 79-80.

that proves disruptive may or may not be dealt with administratively by commanding officers. It is possible, therefore, for different individuals to look at these foreign military situations and arrive at different conclusions as to whether they allow or prohibit homosexuality in the ranks.[53]

Comparisons of the U.S. policy to foreign military policies is based on qualitative comparisons that must consider differences in culture (particularly with regard to historic considerations of sexuality and varying definitions of what constitutes homosexuality[54]), military policies overall (internal force versus a force that is routinely sent or stationed overseas in countries that may or may not have similar views concerning homosexuality), as well as the considered opinions and judgments of those in charge of the military. These "analyses" of other nations' policies generally do not consider the effect open homosexuality has on the fighting capabilities of their armed forces nor do they consider what problems, if any, have occurred as a result of open homosexuality in the ranks.[55] Generally speaking, no effort is made to make an argument based on comparisons for strategic or national security purposes. Arguably, a more in-depth study of foreign experiences could prove instructive, but given differing cultural and social norms, its direct relevance might be scant or considerable.

One observer has concluded that when considering the policies of foreign nations, "(A) closer look reveals that supporters and opponents of the gay ban alike are clouding the debate with misleading statements. Citing laws and regulations alone is not enough to understand the situation. In many countries there is a vast difference between what is written and what is day-to-day reality."[56]

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[53]Philpott, Tom, In Israel: The Hard Reality, "Gays are allowed to serve in the military but they are not fully accepted" Army Times, January 11, 1993: 11; see related stories in same edition, Israeli's Invisible Soldiers, Gay Israelis avoid ridicule, get ahead by staying in closet (p. 18), and, NATO Acceptance of gays runs full spectrum (p. 20). See Appendix for a reproduction of these findings.

[54]"In many Latin societies, men do not consider themselves bisexual or gay unless they take the passive-receptive role during sex." Toufexis, Anastasia, Bisexuality What is It?, Time, August 17, 1992: 50.

[55]Maze, Rick, Study: Integration of Dutch navy not without problems, Army Times, Nov. 30, 1992: 4.

[56]Philpott, Tom, In Israel: The hard reality, Army Times, January 11, 1993: 11.

CURRENT ISSUES CONCERNING THE HOMOSEXUAL POLICY

In this section of the report, specific issues concerning the military's policy on homosexuals are considered. These include court challenges, public opinion surveys and polls, health issues, and the effects the policy has had on educational institutions vis-a-vis Reserve Officer Training Corps and recruiting. Also, the current policy is analyzed and scrutinized with regard to its use to avoid service and the deployment of homosexuals during war or crisis.

DOD POLICY AND THE COURTS

The military policy of excluding homosexuals has, generally speaking, survived legal challenges in the courts. Challenges to this policy have been made on constitutional grounds including: due process, equal protection, free speech, and right to privacy. In one unusual instance, the court disposed of the case on equitable estoppel[57] grounds without making any determination of the constitutional issues raised. For a more thorough and detailed discussion, see the legal analysis "DoD Policy and the Courts--Legal Analysis," by Charles Dale, in the Appendix.

PUBLIC OPINION AND THE POLICY

Some polls have shown an increasing social acceptance of homosexuality. GAO reported the findings of a national Gallup poll showing the percentage of the public who believe that homosexuals should be hired for various jobs.[58]

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[57]In *Watkins v. U.S. Army* 875 F.2d 701 (9th Cir. 1989), the court held that the "Army was estopped from barring reenlistment (of Watkins) solely because of the serviceman's acknowledged homosexuality; service man had been completely candid about his homosexuality from the start of his Army career, and the Army, with full knowledge of his homosexuality, had repeatedly permitted serviceman to reenlist in the past, despite its long-standing policy that homosexuality is a nonwaivable disqualification for reenlistment." Thus, the Army's continued violation of its own rules in the Watkins case lead to the estoppel ruling requiring the Army to reenlist Watkins and thereby preventing injury to him (i.e. loss of retirement and other benefits) on the basis of the Army's actions.

[58]GAO-1: 39.

GALLUP POLL, PERCENT WHO BELIEVE HOMOSEXUAL HIRING IS ACCEPTABLE FOR VARIOUS JOBS BY YEAR						
JOB\YEAR	1977	1982	1985	1987	1989	1991
Salesperson	68	70	71	72	79	89
Armed forces member	51	52	55	55	60	69
Doctor	44	50	52	49	44	54
Clergy member	36	38	41	42	44	54
Elem. school teacher	27	32	36	33	42	52
High school teacher	a	a	a	a	47	60

aThe poll did not address this category between 1977 and 1987.

Another poll conducted in 1991 (cited by GAO) found that 81 percent of Americans believed that homosexuals should not be discharged from that military based solely on their sexual orientation while 14 percent believed homosexuals should be discharged.[59]

These data show that from 1977 through 1991, a growing majority of Americans believe that homosexuals should be allowed to serve in the military. The level of support among Americans has increased by 18 percent. Given the increasing level of support as reflected by polling data and public ordinances, many argue that refusing to allow homosexuals to serve runs against popular sentiments and, therefore, is not supported as being the "will of the people."

However, according to a recent telephone poll conducted by USA Weekend, only 33 percent of the respondents were in favor of repealing the current military policy.[60] Of arguably greater importance is the issue of how those in the military view such a change, since it is, after all, these very individuals who will be directly affected. "All the service chiefs oppose lifting the ban."[61] In a

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[59]April, 1991, Penn and Schoen Associated, Inc., conducted this poll for the Human Rights Campaign Fund--a group dedicated, in part, to overturning the ban.

[60]How you voted: Keep gays out of the military, readers say, USA Weekend, September 4-6, 1992: 9.

[61]Wolffe, Jim, McPeak, Others Split on Handling Gay Ban, Air Force Times, December 14, 1982: 14.

speech at the Naval Academy, Secretary of Defense Cheney defended the policy of discharging homosexuals from the military. "Four thousand midshipmen gave him a standing ovation."[62] Finally, the Air Force Times published an editorial in support of eliminating the policy. In response, the Air Force Times published letters to the Editor (under the title "Readers strongly oppose accepting gays in service.")[63] While not a valid survey of military opinions, (perhaps only those who write are those against the position taken by the A.F. Times), it does at least suggest that military members have strong opinions on the issue. The Air Force is currently conducting a survey to find out what its enlisted personnel and officers think of "serving alongside openly gay men and women . . ." [64]

A November Newsweek poll suggested that public support for overturning the policy is "softer" than originally reported. When asked: "Should Clinton delay lifting the military restrictions on gays if there are strong arguments that it will produce serious morale and readiness problems?," 61 percent state "Should delay (28 percent stated "Should not").[65]

By the middle of December, 1992, polls showed that Americans are split over lifting the policy. According to the Associated Press, "forty-five percent said lesbians and gay men should be forbidden from joining, while 44 percent said they should be allowed into the military. The rest were not sure or would not answer the question."[66]

According to a Gallop telephone survey commissioned by the Retired Officers Association (conducted among the association's members from Nov. 27 through December 1, 1992), 83 percent opposed allowing homosexuals into the service. Although 86 percent said they had recommended a military career to a friend of family member,

> 53 percent said they would be less likely to do so if homosexuals were allowed to join. Some 42 percent said it would make no difference.

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[62]Cheney defends Pentagon's Anti-Gay Policy; Midshipmen Applaud, New York Native, October 21, 1991: 10; cited in Family Research Council, "In Focus," Homosexuals in the Military: Talking Points, INF29*5/92: 3.

[63]Air Force Times, September 21, 1992: 31.

[64]Air Force Surveys Itself on Attitudes about Gays, Baltimore Sun, December 4, 1992: 4.

[65]Newsweek Poll 19-20, 1992; cited in Newsweek, Nov. 30, 1992: 29.

[66]Goldberg, Harold, Poll Shows Country Splits on Gays in the Military, Associated Press wire service, December 17, 1992. In addition, this poll stated that the "same split occurred when Americans were asked how to treat those already in uniform who are discovered to be homosexual: 44 percent said the military should continue discharging homosexuals, 46 percent said that practice should stop."

> Slightly more than a third of the respondents said they had to deal administratively with a homosexual incident during a tour of duty. Of these, 50 percent said the experience was a major disruption to normal operations of their command, 34 percent considered it a minor disruption while 14 percent said it was not a disruption.[67]

In part, the variations in responses are somewhat affected by the type of question that is asked. A survey that considers the military policy (as cause for administrative separation: same-sex marriage, statements or behavior) may prove instructive.

HOMOSEXUALITY AND HEALTH

Critics of admitting homosexuals into the armed forces cite the high incidence of sexually transmitted illnesses, particularly AIDS,[68] as a reason for the policy. Critics contend that the incidence of transmittable illnesses will affect morale and threaten the military's "walking blood bank." In addition, these critics argue that the spread of such illnesses ultimately threatens military readiness. In part, these concerns are based on the reported levels of male homosexual promiscuity[69] and some have argued that given the high incidence of venereal diseases, in general, and HIV-1, in particular, among male homosexuals, the current policy should be expanded to include considerations of the health of the force as a reason for excluding homosexuals from the military. (In one case, a judge cited the need to protect military personnel from HIV-1/AIDS as a justification for the policy--an argument not made by the military.[70])

The military policy excluding homosexuals is not predicated on health care issues. Health care is generally treated as a medical concern and not necessarily a personnel issue.[71] Individuals are screened for health problems to ensure readiness. Health care is dependent upon illness, not the probability that an individual may become ill. (It would be equally inappropriate to refuse to enlist smokers on the basis that they, as a group, have a higher incidence of certain

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[67]Leigh, Julia Hood, TROA Members Nix Homosexuals in Service, The Retired Officer Magazine, January 1993: 21.

[68]Jaffee, Keewhan, et al., National Case-Control Study of Kaposi's Sarcoma, etc. in Homosexual Men; Part 1, Epidemiological Results, Annals of Internal Medicine, 99(2), 1983: 145-157.

[69]See Bell and Weinberg, 1978.

[70]See DoD and the Courts--Legal Analysis, *Steffan v. Cheney*, 780 F. Supp. 1 (D.C. Cir. 1991), in the Appendix.

[71]For example, see Burrelli, David F., HIV-1/AIDS and U.S. Military Manpower Policy, Armed Forces and Society, Vol. 18(4), 1992 452-475.

illnesses.) Thus, individuals who are unfit for service (or who have a history of certain illness with a substantial rate of reoccurrence) may be barred from entering the military.

Arguments concerning the military's homosexual policy and AIDS provide examples of the confusion brought about by combining these two issues. Generally speaking, in the United States, male homosexuals have a much higher incidence of human immunodeficiency virus (or HIV-1, the virus that causes Acquired Immune Deficiency Syndrome). Conversely, lesbians have a much lower incidence of HIV-1 infection rates than male homosexuals or heterosexuals. On the basis on limiting HIV-1, as argued by the above critics (and something that is not being considered here), the service could consider attracting more lesbians. "Only one case [of HIV infection] has been described as being transmitted by female homosexual contact."[72]

In order to prevent the spread of HIV-1, the military has introduced one of the most comprehensive screening and educational campaigns. Under this policy, individuals who show evidence of HIV-1 infection are not allowed to join the armed forces. Uniformed personnel are provided educational information on how to avoid infection. HIV-1 infected individuals in the military are counseled, provided health care and monitored. For this reason, the risk of contracting HIV-1 is reportedly better controlled in the military environment than elsewhere. (Ironically, for this reason, the military is perhaps one of the safest places to participate in "high risk" behaviors--such as sodomy.)[73]

AIDS, HIV-1 and other sexually transmitted diseases are medical issues. As such, for the services they remain unrelated to policies concerning homosexuality. Contracting HIV-1 or any other illness is not based on whether an individual is homosexual or heterosexual, but the risks of infection to which the person is exposed (i.e. the nature of sexual activity and the level of promiscuity). Some argue that keeping homosexual behavior illegal or punishable (or making heterosexual promiscuity punishable) under regulations may increase the chances for infection because such behavior (and the subsequent illness) is forced "underground" and therefore not subject to medical surveillance.[74] Under such a scenario, infected individuals are unlikely to seek medical care for fear of reprimand. (It is occasionally argued that should AIDS or other such illnesses be cured, it is unlikely that critics who cite these arguments would change their minds on allowing homosexuals to join the military.)

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[72]According to Zajdowicz, R., et al., The Truth on AIDS & HIV, Proceedings, December, 1987: 83.

[73]Davis, 1991: 70.

[74]In recognition of this, under DoD policy, "information gained as a result of testing [for HIV-1] may not be used as the independent means for an adverse administrative action." (Burrelli, 1992: 459.)

THE HOMOSEXUAL POLICY, ROTC, MILITARY RECRUITING, AND EDUCATIONAL INSTITUTIONS

With increasing calls for increased civil rights for homosexuals, numerous colleges and universities have sought to challenge the Department of Defense policy excluding homosexuals. These challenges have occurred as college and university (and in some cases, high school) deliberative bodies have sought to include rights and protection for those with homosexual orientations on the same basis as are provided racial and ethnic minorities, disabled, women, etc. Such changes have brought about conflicts on those campuses that maintain Reserve Officer Training Corps (ROTC) units. ROTC prohibits homosexuals from receiving scholarships (that inherently include an obligation to serve in the military).[75] Individuals applying for ROTC are required to sign documents stating that they are not homosexuals. Thus, certain campuses have recognized or supported homosexual rights that are at odds with ROTC policies.

On a number of occasions, campus administrators have been urged to remove ROTC units from the campus; and in one case they have done so.[76] Advocates of the removal of such units argue that it is improper to allow outside agencies to dictate campus policy or to conduct business (such as research or recruitment[77] or training) with agencies whose policies are antithetical to campus policies with regard to discrimination. In a number of instances, efforts have been made to ban military recruitment advertising from campus newspapers and other publications.

Such challenges to DoD policy have had relatively little impact on military recruiting or ROTC enrollment. (This is especially the case given the recent drawdown in force size and efforts to reduce inductions--including commissions

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[75]Although ROTC does not discriminate against those who wish to enroll in classes offered, receipt of a scholarship or enlisting as a senior cadet or midshipman is contingent upon being eligible to receive a military commission upon graduation. Those who fail to be eligible for a commission are required to repay their scholarships or serve for a specified period of time in the enlisted ranks--the latter option is unavailable to homosexuals.

[76]The National Lesbian, Gay & Bisexual Student Caucus, an affiliate of the United States Student Association, states that Rutgers University was the first school to remove four-year ROTC scholarships "in protest of anti-gay discrimination." According to an ROTC official at Rutgers, however, the program is still in place. John Jay University in New York, an ROTC extension center was closed. Other campuses listed as having some form of activities on this issue include: University of Wisconsin at Madison, University of Texas at Austin, University of Arizona (Tucson), University of Connecticut at Storrs, University of Oregon at Eugene, and state-wide activities at USSA-member groups in Wisconsin, Texas, New York and Oregon.

[77]Farrish, Katherine, Military Recruiter Barred at UConn Law, The Hartford Courant, October 15, 1992: 1.

via ROTC.) It has been argued that the only individuals harmed by removing these units from campus are those who sought ROTC training in the first place, including minorities, as well as the campus bursars. For example, the University of Wisconsin brings in more than $2 million in ROTC scholarships and salaries. "ROTC scholarships are strong incentives for attracting minority students, a perpetual problem for Midwestern schools. Added to this are the millions the Pentagon provides universities in research grants, which might be spoiled by sour relations with ROTC. . . . And there's another problem. Land grant universities such as Wisconsin and Minnesota are required by law to offer military instruction."[78] Given these circumstances, it is easy to see why university administrators feel caught between the competing demands of student relations, economic necessity, equal opportunity enrollment, and law (specifically with regard to states interfering with Federal interests).[79]

The issue of homosexuality and ROTC recently surfaced with regard to a student who had participated in ROTC (including the receipt of an ROTC scholarship) and then announced that he was homosexual. After investigating, the Army determined that the student was not making such a claim to avoid a service obligation. The service initially sought to recoup its scholarship payments from the student (approximately $25,000). Army officials ultimately decided to discharge the cadet from ROTC, deny him a commission, and not seek recovery of his scholarship. Army officials stated that the decision not to seek recoupment was particular to the circumstances surrounding this case.[80] Such a decision created debate in the sense that any student could receive a scholarship and later acknowledge being a homosexual and free himself/herself from any service obligation. It appears likely, however, that should this situation occur again, the service involved would seek recoupment of scholarship funding and continue to deny commissioning.

What effects, if any, lifting the policy will have on military recruiting remains unknown. Some have suggested that heterosexual young people will be discouraged from joining the military if such service means living and working with openly homosexual personnel. Others argue that the willingness to serve will depend on how well the military (and those serving) maintain discipline and restrictions on behavior. Lastly, there is no known indication of

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[78]Kosova, Weston, ROTC Ya Later, The New Republic, February 19, 1990: 24.

[79]Pyle, Amy, Ouster of ROTC Program Rejected at Northridge, Los Angeles Times, April 17, 1990: B1.

[80]Roth, Margret, Gay ex-ROTC cadet wins $25,000 battle, Army Times, June 4, 1990: 22. More recently, the military has instituted a policy of requiring ROTC cadets to declare that they are not homosexual. Maze, Rick, Forcing ROTC Applicants to Sign Non-Gay Affidavit Protested, Air Force Times, December, 14, 1992: 11; "Since 1986, 28 ROTC candidates have been dismissed because of their sexual orientation . . . . Nine were forced to repay their scholarship money, a decision made on a case-by-case basis . . . ."

the number of otherwise qualified homosexuals who will join should the policy be removed.

HOMOSEXUALITY AS AN EXCUSE TO AVOID MILITARY SERVICE

Under current policy, homosexuality may be used as a means of avoiding service. Individuals may join the service, and then at some later point decide to leave by acknowledging or claiming to be homosexual. The ability to use the homosexual policy as means of avoiding service, whether the claim of being a homosexual is legitimate or a ruse, is documented in other areas. During the draft era, for example, Baskir and Strauss cite incidents where young men were instructed on how to receive an exemption during the psychiatric interview at the induction station. The ability of psychiatrists who were at least somewhat suspicious of such behavior led to unexpected results. According to Baskir and Strauss:

> Homosexuality was a common ground for a psychiatric exemption and [one] antidraft pamphlet advised how to fake it[.] [Indeed,] San Francisco draft counselor Paul Harris recalled that "all clients who faked it got their exemptions, but they drafted the one fellow who really was gay."[81]

Even though the current policy is intended to prevent individuals from using homosexuality to avoid service, it may not necessarily work out that way. Under current policy, homosexuals can and do serve provided that they do not violate military regulations. Indeed, any change in the policy on homosexuality that maintains restrictions on behavior will allow certain individuals to avoid service (see also the French, German and Italian policies presented in the Appendix). Homosexuals need only admit to violating these restrictions; heterosexuals must bluff or violate these restrictions in order to seek the same escape.

DEPLOYMENT OF HOMOSEXUALS DURING A WAR OR CRISIS

Instances have been cited during the mobilization for the Persian Gulf War, wherein suspected or acknowledged homosexuals were sent to the Gulf only to be discharged upon their return.[82] In these cases, the individuals involved may have been under investigation or had acknowledged their homosexuality. On going personnel actions were placed on "hold" until their return. Many have concluded that DoD's position is that homosexuals can fight and possibly die

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[81]Baskir, Lawrence M., and William A. Strauss, Chance and Circumstance: The Draft, The War and The Vietnam Generation, New York: Knopf, 1978: 45-46.

[82]Lambert, Wade, U.S. Military Moves to Discharge Some Gay Veterans of Gulf War, The Wall Street Journal, July 30, 1991: B6.

when DoD needs them, but that they are otherwise to be treated with prejudice and forced out of the service once the crisis has passed.

DoD argues that its primary mission is to be prepared for and to fight wars. Once a conflict has begun, it is necessary for the Department to treat national security concerns as paramount relative to personal issues. For this reason, individuals who claim to be, or are under investigation as, homosexuals are deployed first while the issue of their homosexuality is investigated under proceeding prescribed. As such, this policy discourages service members from using homosexuality as a means of avoiding service.

During the mobilization for Desert Shield/Desert Storm, President Bush invoked a "stop-loss" order.[83] Under these provisions, administrative procedures deemed to be at cross-purposes with national defense may be suspended. To some extent, discretionary decisions are involved. Consequently, some individuals covered under the Secretary of Defense's Memorandum may have certain administrative actions (including separation for homosexuality) put on hold. Under this law, the President is provided with the authority to override various personnel actions. The practice can prevent individuals, who are about to be deployed, from using certain administrative policies (such as the policy on homosexuality) from avoiding military service during a time of crisis. Once the crisis has passed, administrative procedures involving promotion, retirement and separation will be put back in place.

It has been argued that allowing individuals to avoid their service obligation at a time of crisis (whether they are homosexuals or merely making such a claim to avoid service) may wreak havoc on the morale, cohesion and ability of certain units to function. In addition, it is considered unfair to the

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[83]10 USC 673c. Authority of President to suspend certain laws relating to promotion, retirement, and separation; Executive Order 12728, August 22, 1990; and, Office of the Secretary of Defense, Memorandum, Delegation of Authority to Suspend Provisions of Law Relating to Promotion, Retirement or Separation:

1. Delegation. . . . I hereby delegate to the Secretaries of the Military Departments for the armed forces within their respective Departments authority, within the limitations set forth . . ., to

(b) determine, for purposes of Section 673c, that members of the armed forces are essential to the national security of the United States.

2. Coverage. The authority granted by paragraph 1 may be exercised only with respect to members of the armed forces who:

(a) are, or are about to be, engaged in the conduct of operations i or around the Arabian Peninsula;

(b) are, or are about to be, engaged in the direct support of operation in or around the Arabian Peninsula;

(c) possess critical skills associated with operations in or around the Arabian Peninsula; or

(d) possess skill in short supply in the armed forces.

taxpaying citizens to train and pay service personnel and then allow them to walk away when their services are most required. Thus, it is argued that the deployment of personnel who are under investigation as, or claim to be, homosexuals need not necessarily imply that the services condone homosexuality. Instead, these policies demonstrate that homosexuality cannot reliably be used as a means of being excused from an active duty commitment made under voluntary circumstances during a time of crisis. These policies ultimately maintain DoD's commitment to national security as its first priority.

However, the situation that arises during time of deployment because of the homosexual policy arguably places homosexual service members in a no-win situation. They are allowed or ordered to serve at the risk of their own lives with the probability of a forced discharge when hostilities end. Perhaps no other scenario subjects the policy of excluding homosexuals to greater scrutiny. By deploying homosexuals with their units, the services bring into question their own argument that the presence of homosexuals "seriously impairs the accomplishment of the military mission."[84] In no other situation are a lack of privacy, the need for cohesion and morale, and the integrity of the system of rank and command more compelling than in time of war. If homosexuals pose such a threat, it seems fair to argue that they should not be deployed. Nevertheless, DoD has deployed them and has raised no questions on their abilities to serve. In can be argued that DoD's actions of investigating and/or threatening to remove these individuals does more harm to morale and cohesion then would be the case had they been left alone in the first place. It remains unknown whether eliminating known homosexuals would have improved service performance or lead to a reduction in discipline problems.

It is possible that, if the policy on homosexuality is altered, homosexuals and others may continue to use homosexual behavior as a means of getting out of the service. Again, assuming certain restrictions remained on behavior, those seeking to avoid military service, say at times of mobilization, need only "disclose" such acts and seek a discharge. Such a confession, however, may in some cases, risk more severe sanctions via court-martial.

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[84]DoD Directive 1332.14.

ISSUES FOR CONGRESS

With President-elect Clinton's stated support for rescinding the policy on homosexuals in the military, Congress is likely to be confronted with a number of direct and associated issues. Depending on the nature of the alteration of policy made or proposed, Congress may need to consider: laws and legislation regulating behavior and misconduct, and military compensations as they relate to homosexuals and their partners.

Given past experiences on integration, base closures, and women in combat, it is possible that hearings will be held and/or a committee or commission will be formed to consider these issues. The formation, direction and scope of such deliberations may entail congressional oversight or direct participation. This section discusses each of these after first considering how the policy may be repealed.

AN EXECUTIVE ORDER REPEALING THE POLICY

Following the election, President-elect Clinton reiterated his campaign commitment to repeal the military policy on homosexuals in the military. Such a repeal could be made via an executive order.[86] Under this authority, a President has the discretion to issue orders that would rescind or modify the policy (including modifications that may increase restrictions). For example, in 1948, President Harry Truman issued an executive order terminating racial segregation in the military. With minor modifications, similar language could be used to repeal, modify or strengthen the policy on homosexuals. (For the text of President Truman's Executive Order, see the Appendix.) The effective implementation of any hypothetical executive order could be made contingent (as was the case with Truman's executive order) upon the actions of a committee created for that specific purpose.

Beyond an executive order explicitly rescinding the policy, the Secretary of Defense could modify DoD directives to effectuate any changes. These changes could involve administrative procedures concerning investigations, discharges, administrative review boards, etc. Any changes made by these subordinates would require at least tacit approval of the President.

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[86]Some Clinton aides suggest that as President he may issue a "memorandum of Understanding." Although not clearly defined, it is suggested that such a memorandum would have the "same legal force as an executive order,. . ., but does not carry with it the same historic significance." Healy, Melissa, Clinton Aides Urge Quick End to Military Ban on Gays, Los Angeles Times (Washington edition), January 8, 1993: 1.

Any such change brought about by a President or appropriate subordinate would be subject to congressional oversight.[86] It is possible for a President or Secretary of Defense to modify current policy, only to have such a modification, itself, modified, enhanced, or rescinded by legislation. An attempt to rescind the policy against homosexuals, to make it more restrictive, or otherwise change it, could hypothetically prompt Congress to exercise its constitutional responsibility to make rules and regulations for the armed forces. Such legislation, of course, would be subject to presidential veto. For example, the President could issue an executive order rescinding the policy. Congress could consider legislation that would block the executive order by refusing the use of appropriated funds for its implementation, or reinstate the policy, in whole or in part, or as modified. If passed by both houses of Congress, this new language would be sent to the President to be signed into law. The President could sign or veto the bill. If vetoed the legislation would then be returned to Congress. To override the veto, both the House of Representatives and the Senate would need to pass the legislation again with a two-thirds majority in each chamber. Failure to gain such a majority in both chambers would mean defeat for the bill. Attaining such a majority would pass the bill into law over a presidential veto.

As a tactical matter, should such a scenario occur, it is likely that congressionally preferred modifying language would be incorporated in a larger bill (such as the annual National Defense Authorization Act or the DoD Appropriations Act). The President (lacking a line-item veto) would have to veto the entire bill (leaving the Department of Defense without authorization or funding) or accept the congressional language.

Whatever the outcome (i.e., passed, vetoed, rejected), the legislation can be further modified by Congress and, subsequently, reconsidered. Unlike legislation, executive orders may only make modifications to the extent that such modifications do not conflict, or at least are consistent, with existing law. Thus, the ultimate oversight responsibility rests with Congress. The President may modify the current language regarding homosexuals and military service, but such modifications remain subject to congressional oversight and constitutional challenges.

LAW REGULATING BEHAVIOR AND MISCONDUCT

Articles 125 (Sodomy) and 134 (General Article) of the Uniform Code of Military Justice may or may not be directly at issue. Explicit congressional action is required for these to be modified or struck from title 10, United States Code and the President alone cannot modify these articles. However, the

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[86]U.S. Constitution, Article I, Section 8, provides Congress with the power to "make rules for the Government and Regulation of the land and naval Forces." Under Article II, Section 2, the Constitution states "[T]he President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States."

enforcement of these articles remains under executive (presidential) control. Such enforcement is expected to be conducted in conformance with congressional intent. Failure to regulate conduct, consistent with congressional intent, could invite congressional action.

MILITARY COMPENSATION AND HOMOSEXUAL PARTNERSHIPS

The issue of "partnership" recognition may have more far reaching effects than generally recognized. The laws concerning domestic relations, including marriage or partnership, for example, are usually under state domain. Federal laws and regulations consider domestic relationships in terms of providing Federal employment benefits. Under Federal law,[87] familial relations or definitions of dependency are used to determine eligibility for Federal benefits including military health care, commissary and exchange privileges, housing and subsistence allowances, life insurance, survivor and death benefits, moving and transportation allowances, separation pay, adoption benefits, former spouse benefits, and Dependency and Indemnity Compensation and other veterans' benefits. Should the DoD policy on homosexuality be lifted, it is not clear how Federal regulations would be interpreted in situations where a state or municipality recognizes a homosexual partnership for the purposes of providing employer benefits. State regulations do not normally supersede Federal laws. Clearly, conflict and confusion may result if a state recognizes such a relationship and the Federal government does not. Congress may well be lobbied to reconsider family or dependency benefits for homosexuals. Failing this, it is possible that should the policy be lifted, limiting benefits to only heterosexual partners (marriages) or dependents would be challenged in court as unfair to those homosexual relationships that are recognized under other ordinances, regulations or laws.[88]

Changing the policy may also involve congressional or administrative consideration in other areas. For instance, should the Department of Defense Dependent Schools provide information on homosexuality in its curricula?[89] And, if so, at what age? How should benefits be taxed under "partnership" situations? Should partners receive employment preferences on the same basis

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[87]10 U.S.C. 1072 et seq., 1447 et seq., and 38 U.S.C. 410 et seq., for example.

[88]San Francisco, CA has an ordinance recognizing homosexual marriages. Numerous other municipal and state regulations recognize certain benefits for domestic partners. Recently the District of Columbia passed a domestic partnership bill that would allow city workers to purchase health insurance for his or her same-sex partner. An amendment (no. 2799) included in the District of Columbia Appropriations, 1993 (H.R. 5517), blocked such provisions (see Congressional Record, July 30, 1992: S10902-S10907).

[89]E.g. Lacayo, Richard, Jack and Jack and Jill and Jill, Time, December 14, 1992: 52, "In the quest to instill tolerance, schools are increasingly instructing children about homosexuality, What should they be taught--and when?"

as heterosexual spouses? Could military chaplains be compelled to perform homosexual weddings? These questions suggest the scope of the issues that are likely to arise.

COMMISSIONS, COMMITTEES, HEARINGS AND STUDIES

Although it appears likely that President-elect Clinton will make some modifications, there are indications that he may consult with, or form, a committee or commission to study the issue.[90] Congressional leaders have urged Clinton to proceed with caution.[91] Senator Nunn (chairman of the Senate Armed Services Committee), has agreed to hold hearings on the issue. Members of the Joint Chiefs of Staff have reportedly had input:

> "working through retired Adm. William J. Crowe Jr. and Rep. Dave McCurdy (D-Okla.), to convince Clinton that he will face serious repercussions in military ranks if he makes the change. Army Gen. Gordon R. Sullivan and other chiefs are urging Clinton 'to study it for a year or two,'..."[92]

The use of a commission remains an option (given the recent precedents including one on the role of women in the military and another on base closures). However, choosing commission members is, itself, a political issue. Members for the base closure commission were selected by the President subject to House of Representatives and Senate advice. Members for the commission on women were also selected by the President. The latter commission was criticized because of this method before it finished its work or filed a report.[93]

In the final analysis, whatever approach is taken to consider or actually make any changes in DoD policy, including committees, commissions, hearings, executive order, legislation, it appears likely that both the executive and

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[90]Clinton stated, "On the issue of Gays in the military, I have made no decision on a timetable except that I want to firmly proceed and I want to do it after consulting with military leaders." Chibbaro, Lou, Debate over ban ignites, The Washington Blade, November 20, 1992: 1, 15. Others expect that any change short of lifting the ban will involve a political problem for Clinton. Commentator Evan Thomas (same cite) stated "I think in the end, [Bill Clinton] will [lift the ban]. He's got to. I think his fourth largest contributor group was Gays...."

[91]Kenworthy, Tom, Nunn, Dole urge caution, Washington Post November 16, 1992: A12.

[92]Gellman, Barton, Clinton Says He'll 'Consult' on Allowing Gays in Military, Washington Post, Nov. 13, 1992: A1.

[93]Anton, Genevieve, Panel studying women in armed forces rapped, Gazette Telegraph (Colorado Springs, March 14, 1992: 1.

- legislative branches of government will share responsibility for the final outcome.

APPENDIX

TEXT OF CURRENT DIRECTIVES RELATED TO HOMOSEXUALITY

Directive on Enlisted Administrative Separations

This Directive provides the policy rationale concerning homosexuals and military service. This Directive is divided into three main parts. Part 1 gives the Basis for providing administrative discharges; part 2 provides guidance concerning the characterization and description of such discharges; and, part 3 outlines the procedures that are to be followed to administer or execute such discharges.

According to the Department of Defense Directive[94] on providing enlisted administrative separations (section H, cited verbatim except those parts enclosed by brackets-[ ]-for clarification purposes):

1. Basis

a. Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers 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.

b. As used in this section:

(1) Homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts;

(2) Bisexual means a person who engages in, desires to engage in, or intends to engage in homosexual and heterosexual acts; and

(3) A homosexual act means bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

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[94]U.S. Department of Defense, Office of the Assistant Secretary of Defense (formerly MRA&L, now FM&P), Directive No. 1332.14, Enlisted Administrative Separations, January, 28, 1982: 1-9 through 1-13.

c. The basis for separation may include preservice, prior service, or current service conduct or statements. A member shall be separated under this section if one or more of the following approved findings is made:

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings 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 the use of force, coercion, or intimidation by the member during a period of military service;

(d) Under particular circumstances of the case, the member's continued presence in the Service is consistent with the interest of the Service in proper discipline, good order, and morale; and

(e) The member does not desire to engage in or intend to engage in homosexual acts.

(2) The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual and that the purpose of the marriage or attempt was the avoidance or termination of military service.

2. Characterization or description. Characterization of service or description of separation shall be in accordance with the guidance in section C. of Part 2 [Characterization of Service or Description of Separation]. When the sole basis for separation is homosexuality, a characterization Under Other Than Honorable Conditions may be issued only if such a characterization is warranted under section C. of Part 2 and there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act in the following circumstances:

a. By using force, coercion, or intimidation;

b. With a person under 16 years of age;

c. With a subordinate in circumstances that violate customary military superior-subordinate relations;

d. Openly in public view;

e. For compensation;

f. Aboard a military vessel or aircraft; or

g. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

3. Procedure. The Administrative Board Procedure (section C. of Part 3) shall be used, subject to the following guidance:

a. Separation processing shall be initiated if there is probable cause to believe separation is warranted under H.1.c., above.

b. The Administrative Board shall follow the procedures set forth in subsection C.5. of Part 3, except with respect to the following matters:

(1) If the Board finds that one or more of the circumstances authorizing separation under paragraph H.1.c., above, is supported by the evidence, the Board finds that retention is warranted under the limited circumstances described in that paragraph.

(2) If the Board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph H.1.c. has occurred, the Board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

c. In any case in which characterization of service Under Other Than Honorable Conditions is not authorized, the Separation Authority may be exercised by an officer designated under paragraph B.4.a. of Part 3.

d. The Separation Authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary concerned with a recommendation that the Secretary separate the member under the Secretary's authority (section O. of this Part [Secretarial Plenary Authority]).

(2) If the Board recommends separation, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

1 There is insufficient evidence to support the finding; or

2 Retention is warranted under the limited circumstances described in paragraph H.1.c., above.

(3) If there has been a waiver of Board proceeding, the Separation Authority shall dispose of the case in accordance with the following provisions:

(a) If the Separation Authority determines that there is not sufficient evidence to support separation under paragraph H.1.c., the Separation Authority shall direct retention unless there is another basis for separation of which the member has been duly notified.

(b) If the Separation Authority determines that one or more of the circumstances authorizing separation under paragraph H.1.c. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in that paragraph.

e. The burden of proving that retention is warranted under the limited circumstances described in paragraph H.1.c. rests with the member, except in cases where the member's conduct was solely the result of a desire to avoid military service.

f. Findings regarding the existence of the limited circumstances warranting a member's retention under paragraph H.1.c. are required only if:

(1) The member clearly and specifically raises such limited circumstances; or

(2) The Board or Separation Authority relies upon such circumstances to justify the member's retention.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary concerned to take appropriate action in a case to ensure that there has been compliance with the provisions of this Directive;

(2) Precludes retention of a member for a limited period of time in the interests of national security as authorized by the Secretary concerned;

(3) Authorizes a member to seek Secretarial review unless authorized in procedures promulgated by the Secretary concerned;

(4) Precludes separation in appropriate circumstances for another reason set forth in this Directive; or

(5) Precludes trial by court-martial in appropriate cases.

Under this same Directive, Part 2(C)2(b) provides the following description of each type of discharge:

Honorable. The Honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

General (under honorable conditions). If a member's service has been honest and faithful, it is appropriate to characterize that service under honorable conditions. Characterization of service as General (under honorable conditions) is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

Under Other Than Honorable Conditions. (a) This characterization may be issued in the following circumstances:

1. When reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of members of the Military Services.

2. When the reason for separation is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of members of the Military Services. Examples of factors that may be considered include the use of force or violence to produce serious bodily injury or death, abuse of a special position of trust, disregard by a superior of customary superior-subordinate relationships, acts or omissions that endanger the security of the United States or the health and welfare of other members of the Military Services, and deliberate acts or omissions that seriously endanger the health and safety of other persons.

(b) This characterization is authorized only if the member has been afforded the opportunity to request an Administrative Board, except as provided in section L. of Part 1. (Separation in Lieu of Trial by Courts-Martial).

[Other discharge characterizations include Bad Conduct and Dishonorable. Both of these require a finding of unlawful behavior by a courts-martial and are not therefore included in the directive on administrative separations. Generally, speaking, those discharged under the characterization of General, retain

eligibility for many of the same benefits as those discharged under the characterization of Honorable.]

Directive on the Separation of Commissioned Officers for Cause

According to the DoD Directive on the Separation of Commissioned Officers for Cause:[95]

B. ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION

A commissioned officer may be separated from a Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when he or she is found to have committed an act or acts of misconduct or moral or professional dereliction, which include (but are not limited to):

4. Homosexuality. The basis for separation may include preservice, prior service, or current service conduct or statements. A commissioned officer shall be separated under this provision if one or more of the following findings is made:

a. The officer has engaged in, has attempted to engage in, or has solicited another to engage in a homosexual act or acts, unless there are further findings that:

(1) Such conduct is a departure from the officer's usual and customary behavior.

(2) Such conduct under all the circumstances is unlikely to recur.

(3) Such conduct was not accomplished by use of force, coercion, or intimidation by the officer during a period of military service.

(4) Under the particular circumstances of the case, the officer's continued presence in the Service is consistent with the proper discipline, good order, and morale of the Service.

(5) The officer does not desire to engage in or intend to engage in further homosexual acts.

b. The officer has stated that he or she is a homosexual or bisexual unless there is a further finding that the officer is not a homosexual or bisexual.

c. The officer has married or attempted to marry a person known to be of the same sex (as evidenced by the external anatomy of the persons involved), unless there are further findings that the officer is not a homosexual or bisexual and that the purpose of the marriage was the avoidance or termination of military service.

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[95]U.S. Department of Defense, Office of the Assistant Secretary of Defense (FM&P), Directive, Separation of Regular Commissioned Officers for Cause, No. 1332.30, February 12, 1986, section 2: 2-1, 2-2.

Directive on Physical Standards for Enlistment, Appointment, and Induction

Although the above Directives only address separations from the armed forces, this third Directive (Physical Standards for Enlistment, Appointment, and Induction) includes among the causes for rejection for appoint, enlistment and induction:

> a. Homosexual Behavior. This includes all homosexual activity except adolescent experimentation or the occurrence of a single episode of homosexual behavior while intoxicated.[96]

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[96]U.S. Department of Defense Directive, Office of the Assistant Secretary of Defense (HA), Directive No. 6130.3, Physical Standards for Enlistment, Appointment, and Induction, March 31, 1986: Sec. XVI. Mental Disorders, para. 2-34. Psychosexual Conditions, p. 1-36. The other two subsections cite as reasons for rejection: (b) Transsexualism and Other Gender Identity Disorders, and, (c) Exhibitionism, Transvestism, Voyeurism and Other Paraphilias. It remains a contentious point of fact that DoD and certain foreign countries continue to treat homosexuality as a "Mental Disorder" despite statements to the contrary by the American Psychiatric Association and the American Psychological Association.

TEXT OF UNIFORM CODE OF MILITARY JUSTICE PROVISIONS RELATED TO HOMOSEXUALITY

Title 10 United States Code (U.S.C.) contains two sections under the Uniform Code of Military Justice (UCMJ) under which certain behaviors may be prosecuted.[97] In other words, there is no law against being a homosexual. However, certain behaviors may be proscribed by law.

A. Article 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

B. Article 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

The current definition of sodomy (above) differs from that used in 1917. According to the Manual for Courts-Martial (United States, 1917, para. 443): "Sodomy consists in sexual connection with any brute animal, or in sexual connection, per anum, by a man with any man or woman. . . . Penetration of the mouth of the person does not constitute this offense. Both parties are liable as principals if each is adult and consents; but if either be a boy of tender age the adult alone is liable, and although the boy consent the act is still by force. Penetration alone is sufficient. An assault on a human being with intent to penetrate his or her person per anum." (See Davis 1991).

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[97] 10 U.S.C. secs. 925 and 934, respectively.

DOD POLICY AND THE COURTS--LEGAL ANALYSIS[98]

The military policy of excluding homosexuals has been judicially challenged, largely without success, on a variety of legal and constitutional grounds. Most of the early cases involved personnel suspected of homosexual conduct who argued that the policy violated the constitutional right of privacy;[99] that it was prohibited by the Equal Protection Clause because only homosexual sodomy was prosecuted while similar heterosexual conduct was not;[100] or that the procedure applied by the services to effect discharge did not conform to procedural due process requirements.[101] Later cases also raised First Amendment free speech claims when brought by admitted homosexuals who had been discharged not for alleged sexual conduct but rather because of their "status" as revealed by voluntary statements to colleagues, or in the press and other public fora.[102]

Due process challenges predicated on the right of privacy have been uniformly rejected by the courts in these cases, particularly after the U.S. Supreme Court in *Bowers v. Hardwick*[103] sustained a Georgia statute criminalizing sodomy as applied to consenting homosexual adults in the privacy of the home of one of them. The Court there expressed the view that homosexual sodomy was neither a fundamental liberty "implicit in the concept of ordered liberty" nor is it "deeply rooted in the Nation's history and tradition."[104] On parallel reasoning, the courts generally have refused to apply heightened scrutiny to the equal protection claims of discharged homosexuals according to the constitutional standards traditionally applied in cases of governmental discrimination based on race, ethnicity or other "suspect"

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[98]The author of this section, Charles V. Dale, is a Legislative Attorney with the American Law Division, Congressional Research Service.

[99]*E.g., Matlovich v. Secretary of the Air Force*, 591 F.2d 852 (D.C.Cir. 1978); *Dronenburg v. Zech*, 741 F.2d 1388 (D.C.Cir. 1984); and *Beller v. Middendorf*, 632 F.2d 788 (9th Cir. 1980), *cert. denied sub nom. Miller v. Weinberger*, 454 U.S. 855 (1981).

[100]*E.g., Hatheway v. Secretary of the Army*, 641 F.2d 1376 (9th Cir.), *cert. denied,* 454 U.S. 864 (1981).

[101]*See, e.g., Matlovich.*

[102] *E.g., Ben-Shalom v. Marsh,* 881 F.2d 454 (7th Cir. 1989). *cert. denied sub nom. BenShalom v. Stone*, 494 U.S. 1004 (1990); *Pruitt v. Cheney*, 963 F.2d 1160 (9th Cir. 1991), *cert. denied.*

[103]478 U.S. 186 (1986).

[104]*Id.*, at 191-92.

classifications.[105] First Amendment challenges to the military policy have fared little better. Thus, statement by a service person of his/her homosexuality, whether in the media or otherwise, has not generally been accorded First Amendment protection since it does not implicate the exchange of information and ideas on homosexuality as a matter of "public concern."[106] An important element in each of these decisions was the history of judicial deference to military judgments that is now firmly entrenched in our legal tradition.[107]

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[105]*See, e.g., Woodward v. United States*, 871 F.2d 1068, 1075-76 (Fed. Cir. 1989), *cert. denied,* 494 U.S. 1003 (1990) where the appeals court noted that *Hardwick* permitted the criminalization of "the most common sexual practices of homosexuals." Because "'there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal," the *Woodward* court reasoned that, under *Hardwick*, the military's discrimination against homosexuals is constitutional.

[106]In *Ben-Shalom v. Marsh*, 881 F.2d 454, 462 (7th Cir. 1989), *cert. denied,* 494 U.S. 1004 (1990), the federal appellate tribunal stated the proposition:

> [Appellant] is free under the regulation to say anything she pleases *about* homosexuality and about the Army's policy toward homosexuality. She is free to advocate that the Army change its stance; she is free to know and talk to homosexuals if she wishes. What [appellant] cannot do, and remain in the Army, is to declare herself to *be* a homosexual. Although that is, in some sense, speech it is also an act of identification. And it is the identity that makes her ineligible for military service, not the speaking of it aloud. *(emphasis in original).*

See also Johnson v. Orr, 617 F.Supp. 170 (E.D.Cal. 1985) (finding for the military), *aff'd mem.,* 787 F.2d 597 (1986); *Pruitt v. Cheney, (supra)* n. 5 (same).

[107]*See, e.g., Ben-Shalom v. Marsh,*881 F.2d 454, 461 (7th Cir. 1989)("The Commander -in-Chief, the Secretary of Defense, the Secretary of the Army, and the generals have made the determination about homosexuality, at least for the present, and we, as judges, should not undertake to second-guess those with direct responsibility for our armed forces. If a change of Army policy is to be made, we should leave it to those more familiar with military matters than are judges not selected on the basis of military knowledge."); *Goldman v. Weinberger,* 475 U.S. 503, 507-510 (1986)(Court deferred to the "professional judgment of military authorities" that Jewish officer's wearing of yarmulke justified a court martial for noncompliance with dress code); *Rostker v. Goldberg*, 453 U.S. 57, 70-71 (1981)("[J]udicial deference to such congressional exercise of authority is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulation for their governance is challenged."). *Also, Gilligan v. Morgan*, 413 U.S. 1, 10 (1973);

Accordingly, to date, successful judicial challenges to the military's policy regarding homosexuals have been few in number and of relatively narrow legal significance. For example, *Matlovich v. Secretary of the Air Force,*[108] involved an admitted homosexual with an "outstanding" 12-year record of military service who had not been charged with any homosexual activity on base or with other servicemen. Neither the court of appeals nor the federal district court on remand ever decided the main constitutional challenge asserted by the petitioner based on the right to privacy. Instead, the Air Force policy, which at that time permitted retention of homosexual personnel in "unusual circumstances," was held procedurally defective for its lack of fair and objective standards governing discharge. In other words, the petitioner was entitled to an explanation of why the exception did not apply to him. Subsequent to this decision, and a similar one concerning Navy regulations,[109] the Department of Defense issued revised regulations clarifying the exceptions to the policy of mandatory discharge of homosexual service members which effectively preempted any defense based on quality of performance in future cases.

In a more recent and highly publicized decision, *Watkins v. United States Army,*[110] condemnation of the DOD policy as violative of the Fifth Amendment right to equal protection and instead ordered reinstatement of a homosexual 16-year veteran on equitable estoppel grounds. The earlier panel ruling had determined that lesbian and homosexual persons constitute a "suspect class" and employed heightened equal protection scrutiny to invalidate the Army policy. On rehearing, however, the full court held that the Army could not refuse reenlistment to a highly rated serviceman who had openly acknowledged his homosexuality at the time of initial enlistment and who had consistently been reenlisted despite the Army's awareness of his sexual orientation. Because it disposed of the case on equitable estoppel grounds, based on the specific factual circumstances before it, the *en banc* court avoided making any determination of the constitutional issues raised. Consequently, the decision is likely to have minimal impact upon current military policy.

Judicial analysis of federal equal protection claims fall into three basic modes. First is the traditional "rational basis" standard that will uphold most legislative or executive action that classifies individuals as long as the classification is reasonable and rationally related to a legitimate governmental objective. Certain classifications are deemed "suspect" or "quasi-suspect," however, and governmental actions based on such classifications will be

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Orloff v. Willoughby, 345 U.S. 83, 93-94 (1953).

[108]*See Matlovich v. Secretary of the Air Force; Dronenberg v. Zech; Beller v. Middendorf; and, Miller v. Weinberger.*

[109]*Berg v. Claytor*, 436 F. Supp. 76 (D.D.C. 1977), *vacated and remanded,* 591 F.2d 849 (D.C.Cir. 1978).

[110]875 F.2d 699 (9th Cir. 1989), *aff'g en banc on other grounds,* 847 F.2d 1328 (9th Cir. 1988), *cert. denied* 111 S. Ct. 384 (1990).

subjected to rigorous or "searching" judicial scrutiny.[111] Governmental actions that burden members of a suspect or quasi-suspect class call for a higher level of justification both in terms of the weight of the government's interest[112] and the degree of relationship to the interest served.[113] The federal courts of appeals to date have generally refused to apply the so-called "strict scrutiny" test, or other heightened equal protection standard of judicial review, to the military policy regarding homosexuals.

Applying the more lenient equal protection standard, the courts have usually had little difficulty accepting as "rational" the military's justifications for its homosexual policy.[114] In *Beller v. Middendorf*,[115] the Ninth Circuit

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[111]The Supreme Court has found that classifications based on race, national origin, and in some cases, alienage constitute suspect classifications. *See Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439-42 (1985). In addition, classifications based on gender, *e.g. Craig v. Boren*, 429 U.S. 190 (1976), and illegitimacy, *Trimble v. Gordon*, 430 U.S. 762 (1977), are considered "quasi-suspect" and trigger a form of "intermediate scrutiny" that is more rigorous than basic rational relationship review. In addition to subjecting suspect or quasi-suspect classification to strict scrutiny, courts will apply strict scrutiny to classifications that burden "fundamental interests."

[112]These classifications must be supported by more than merely a "legitimate" interest: governmental actions that burden a quasi-suspect classification must be based on an "important" interest, *Craig v. Boren, supra* n. 14, while actions that burden a suspect classification must serve a "compelling" governmental goal. *Cleburne, supra* n. 14.

[113]The connection between the discriminatory action and the governmental goal must be more than merely "rational": for quasi-suspect classifications the relationship must be "substantial," *Craig v. Boren, supra* n. 13, and for suspect classifications the discriminatory action must be "precisely tailored" to the governmental interest at issue. *Plyler v. Doe*, 457 U.S. 202, 217 (1981).

[114]As it appears from the decided cases, the justifications asserted by the government are several. First, it is argued that the presence of homosexual personnel arouses "tensions and hostilities" and inspires a lack of confidence and respect for homosexual officers. The military has also contended that homosexuals would be unable to effectively perform their duties as a consequence of their emotional involvement with other homosexuals and fear of disclosure. Other factors relate to anticipated disruption of the command structure that could result from homosexual relationships with subordinates, the possibility that heterosexuals would be discouraged from enlisting, and the threat of adverse foreign reaction to homosexual military personnel stationed abroad. Finally, one court has opined that "toleration of homosexual conduct, as expressed in a less broad prohibition, might be understood as tacit approval." *See, e.g., Beller v. Middendorf*, 632 F.2d 788, 811 (9th Cir. 1980); *Dronenberg v. Zech*, 741 F.2d 1388 (D.C.Cir. 1984).

accepted all of the military's justifications and upheld the Navy policy as applied to the discharge of three enlisted personnel who had engaged in homosexual acts. Judge (now Justice) Kennedy wrote that:

> The Navy can act to protect the fabric of military life, to preserve the integrity of the recruiting process, to maintain the discipline of personnel in active service, and to insure the acceptance of men and women in the military, who are sometimes stationed in foreign countries with cultures different from our own.

Furthermore, although he felt the policy was "perhaps broader than necessary to accomplish some of its goals," Judge Kennedy concluded that it "represents a reasonable effort to accommodate the needs of the Government with the interests of the individual."[116] In *Dronenburg v. Zech*[117] Judge Bork wrote for the D.C. Circuit in another case involving homosexual conduct that "[t]he effects of homosexual conduct within a naval or military unit are almost certain to be harmful to morale and discipline." Finally, in *Ben-Shalom v. Marsh,*[118] a status (not conduct) case, the Seventh Circuit ruled that military discharge due to a declaration of lesbianism did not violate the First Amendment, and that the Army regulation barring homosexuals passed rational basis equal protection review.

A recent judicial development that may forecast invigorated scrutiny into the military's justifications for excluding homosexuals is the Ninth Circuit

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Most recently, the federal district court in *Steffan v. Cheney,* 780 F. Supp. 1 (D.C. Cir. 1991) upheld the forced resignation of a Naval Academy midshipman who though not charged with homosexual behavior had admitted his homosexual orientation just weeks before graduation. Judge Oliver Gasch ruled that the regulations were rationally related to the military interest in protecting soldiers and sailors from AIDS.

> Since Congress is empowered to raise and support armies, it may do whatever is necessary to protect the health and welfare of those armies. . . .The power to protect the armed forces from venereal disease is ample to sustain the power to protect them from what is now known to be a fatal and incurable virus.

[116]*Beller v. Middendorf at 811.*

[116]*Id.* at 812.

[117]*Supra* n. 17 at 1398.

[118]*881 F.2d 454 (7th Cir. 1989).*

decision in *Pruitt v. Cheney*.[119] Pruitt was an officer in theS. Army Reserve with an "outstanding" record in both active and reserve duty. Although it had no evidence of homosexual acts on her part, the Army moved to revoke Pruitt's security clearance and discharge her after she revealed, in a Los Angeles Times interview, that she was a lesbian and had twice participated in ceremonies of marriage to other women. Pruitt thereafter challenged the Army's actions, which were based solely on her own admissions of homosexuality, as a violation of free speech rights. This First Amendment claim was rejected by both the district and appellate court on the rationale that Pruitt's admission of her homosexual status was not protected speech.[120] The appeals court did hold, however, that the Army had to demonstrate a rational basis for its regulation and remanded the cases for appropriate proceedings. Moreover, the decision departs from *Beller* and related precedent by relying on two Supreme Court rulings which stand for the principle that governmental denial of equal protection is never justified by the antipathy of others towards the group adversely affected.

In the more recent of these, *City of Cleburne v. Cleburne Living Center, Inc.*,[121] the Court invalidated under rational basis equal protection analysis the refusal of a city to permit construction of a group home for the mentally retarded. Although neither a suspect nor quasi-suspect class was involved, the city's justifications for denying a permit were rejected. The desire to avoid negative reactions of neighbors was found to be an unacceptable basis for

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[119]963 F.2d 1160 (9th Cir. 1992), *cert. denied* 61 U.S.L.W. 3413 (S.Ct. 12-8-92).

[120]The gist of the Ninth Circuit reasoning is revealed in the following passage:

> The Army did not discharge Pruitt because she spoke candidly about her sexuality to a newspaper. Nor did it discharge her for publicly expressing her views on a timely and controversial subject, or for demonstrating compassion for and association with homosexuals. The Army discharged Pruitt because she admitted to being homosexual, . . .Pruitt's admission, like most admissions, was made in speech, but that does not mean that the first amendment precludes the use of the admission as evidence of the fact admitted. . . .The question is not whether the Army is free to discharge her for her speech, because it did not do so. The question is whether the Army is entitled to discharge her for her homosexuality--an issue not encompassed by Pruitt's first amendment claim. 963 F.2d at 1163-64.

[121]473 U.S. 432.

discriminatory treatment,[122] and even the legitimate goal of relieving congestion could not be achieved by prohibiting only certain types of group homes while allowing others. *Palmore v. Sidoti*[123] was an earlier case which struck down a denial of child custody based upon social disapproval of the interracial marriage of the mother. The Supreme Court declared that "[t]he Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."[124]

The Court's refusal in these cases to accept asserted governmental goals as legitimate, and its more than perfunctory scrutiny of the means by which the governmental body pursued its legitimate goals, may have important implications for future judicial review of military policies regarding homosexuals. At the very least, if applied in this context, it could mean that the military faces a weightier burden than heretofore in terms of justifying its policies as rational and reasonable based on factual evidence presented to the court. In this regard, the courts may be less willing to accept as rational the offer of any proof which reflects popular antipathy toward or stereotypical views concerning homosexuality.

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[122]The Court ruled in this regard that "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like." 473 U.S. at 450.

[123]466 U.S. 429 (1984).

[124]*Id.* at 448. *See also United States Dep't of Agriculture v. Moreno,* 413 U.S. 528 (1973)(invalidating under the rational basis test a provision of the Food Stamp Act that excluded households containing unrelated individuals because motivated by congressional dislike for "hippies").

SUMMARIES AND SUMMARY CRITIQUES OF PREVIOUS STUDIES ON HOMOSEXUALITY AND THE MILITARY

The U.S. General Accounting Office recently released a report entitled "Defense Force Management: DoD's Policy on Homosexuality."[125] Some of these findings have been considered in the text of this report. The general findings are presented and discussed below. GAO states:

> On the basis of its policy of excluding homosexuals from the military, DOD annually expelled an average of about of about 1,500 men and women between 1980 and 1990 under the separation category of "homosexuality." These expulsions reached a high of about 2,000 in 1982 and a low of about 1,000 in 1990. Separations for homosexuality do not require a determination that an individual's behavior affects the military's mission. In terms of rank, gender, and race/ethnicity, the majority of those expelled were enlisted personnel; most were men (about 78 percent); and most were white. When challenged, these discharges have been routinely upheld in the military adjudication and civil court systems.
>
> DOD does not maintain records of the costs associated with administering its policy; nor does it record the costs of investigating alleged cases of homosexuality. Accordingly, our analysis was limited to estimates of the costs of recruiting and training individuals to replace personnel discharged for homosexuality.
>
> Major psychiatric and psychological organizations in the United States disagree with DOD's policy and believe it to be factually unsupported, unfair and counterproductive. In addition, two DOD/service-commissioned study efforts have refuted DOD's position on the potential security risk associated with homosexual orientation as well disclosed information that raised questions about the basic policy. Further, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff have recently acknowledged that homosexual orientation is no longer a major security concern.

GAO also found that

- recent polls suggest that the public has become more accepting of homosexuality and homosexuals' serving in the military;
- some U.S. allied nations have policies similar to that of the United States, and others have policies that permit homosexuals to be members; and,

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[125]U.S. General Accounting Office, Defense Force Management: DOD's Policy on Homosexuality, B-247235, June 12, 1992; see also, U.S. GAO, Defense Force Management: Statistics Related to DOD's Policy on Homosexuality, B-247235, June 12, 1992.

- police and fire departments in several major U.S. cities have removed employment restriction without adverse effects on mission.[126]

Based on these findings, the GAO report has been cited by opponents of the policy to support their contention that the policy should be rescinded. Some have argued that the costs involved do not justify the policy. This report has not escaped criticism. First, it should be noted that the DoD policy is not predicated on economic issues. Critics contend that it is difficult to make an economic argument for keeping certain individuals on active duty (such as sodomists or those who prove disruptive to good order and discipline). Second, it has been noted that the reports cited by GAO (including the Crittenden Report[127]) actually support the DoD policy, or were dismissed because the "analysis" was flawed, uninformed and represented the opinions of the authors only (PERSEREC[128]).

While it stresses the high cost of replacing discharged homosexuals, critics note that GAO fails to consider the costs imposed on the service by rescinding the policy. Costs associated with discipline problems, fraternization, court-martials for sodomy (unless that too is rescinded) reduced morale, invasions of privacy, recruiting and retention difficulties and image problems.[129]

GAO has noted that the American Psychological Association, American Psychiatric Association and American Sociological Association have stated their opposition to the policy. This opposition is based on medical/clinical questions concerning the medical status of homosexuals and social equity issues. Critics contend that these positions are not based upon needs for discipline or good order, or on consideration based on combat effectiveness--the very basis for the policy.[130]

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[126]GAO estimated that in FY 1990, recruiting and initial training costs associated with the replacement of those discharged for homosexuality was $28,772 for each enlisted number and $120,772 for each officer.

[127]Officially, the Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of he Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals, March 15, 1957.

[128]GAO recognizes that this study went beyond its directed task, but does not believe the information should be discounted for that reason alone. Critics have questioned the level of scrutiny GAO applies to the PERSEREC reports, particularly the earlier drafts.

[129]Hackworth, David, The Case for a Military Gay Ban, Washington Post, June 28, 1992: C5; Matthews, William, Clinton's Stance on Gay Ban Angers Many, Navy Times, October 5, 1992: 18.

[130]Historically, the American Psychiatric Association was a major influence in creating the policy excluding homosexuals from the service. At one time, homosexuality was considered a mental illness by this group and the American

GAO also noted that among selected police and fire departments

> officials state that the elements of unit/team cohesiveness, discipline and good order and morale, trust and confidence, and a system of command rank and respect are important to their overall mission.[131]

The issue of comparing police and fire departments to military organizations has been raised as the only viable way to gain a perspective into the operation of 'paramilitary-type' organizations and their response to homosexuals in the ranks. Critics contend that this is a false comparison. The living environment, stresses, and issues of privacy available to fire fighters and police officers strain comparison when viewed from a military perspective. (See section above on "Differing standards for DoD uniformed and civilian employees.") While the military has police and fire fighting units, few civilian organizations are deployed for long periods under military conditions.

Psychological Association. Although homosexuality was dropped from the list of mental disorders in the 1970s, critics contend this change represented a change in these associations' political stance and was based not on scientific or medical concerns but rather on political activism. In addition, it is charged that the protests of these groups is based on medical or sociological opinions and considerations which do not take into account military considerations. These groups (the two APAs and ASA), however, deny these charges and note that efforts to link homosexuality to mental illness have failed. See Hooker, Evelyn, The Adjustment of the Male Overt Homosexual, Journal of Projective Techniques, 21, 1975: 18-31; Male Homosexuality in the Rorschach, Journal of Projective Techniques, 22, 1958: 33-54; and, A Preliminary Analysis of Group Behavior in Homosexuals, Journal of Psychology, 42, 1956: 217-225.

[131]GAO noted that one of the eight departments visited did not have a policy dictating nondiscrimination on the basis of sexual orientation or allowing the employment of homosexuals. GAO made no mention of their findings at this department.

NATO POLICIES

The following is reproduced from an Army Times report (see NATO policies on gays in uniform, January 11, 1993, p. 22). These findings are based on information provided by military and embassy officials of each country.

Belgium

Not acknowledged as a relevant issue. Neither conscripts nor volunteers are asked about their sexual orientation. Homosexuality itself does not exempt Belgians from the draft unless there are accompanying psychological disorders as determined by clinical evaluation. Homosexual conduct between consenting adults off-duty is not punished, but inappropriate homosexual and heterosexual behavior can lead to dismissal from military duty or exclusions from certain units and jobs.

Britain

Homosexuals are officially barred from service, but unofficially the British Defense Ministry says the practice of prosecuting gays simply for being gay is rare. Homosexual acts among consenting adults has been decriminalized in military as well as civilian law as long as it is off-duty.

Canada

Was ordered by the Federal Court of Canada to drop its ban on gays in the Canadian Forces in October 1992. Canadian service members were not required to certify they were heterosexual when they enlisted, but openly gay persons were often discharged or had their transfer or promotion opportunities limited. The files of service members who were either discharged or denied promotion because of their sexual orientation are being reviewed for reconsideration by military authorities.

Denmark

Now law or policy. Neither conscripts nor volunteers are asked about sexual orientation. Treated as a personal, private matter.

France

No legislation or written codes. Gays are allowed to serve in the French military as long as they do not harass other members of their units. But gays and lesbians can avoid being drafted by claiming their homosexuality is incompatible with service life.

Germany

Homosexuality cannot be used as a reason not to be drafted, although potential gay conscripts who claim service would be psychologically injurious are

evaluated and frequently given alternative mandatory service. Career members of the military who are openly gay do face discrimination, frequently finding promotions blocked and access to top-level classified information denied.

Greece

Homosexuals are banned from military service.

Italy

Homosexuals are deemed unsuitable for military service. During medical examinations, homosexual conscripts will be declared ineligible if found to have behavioral "anomalies" caused by sexual deviations.

Luxembourg

Homosexuals are not precluded from service. Military service is voluntary and enlistees are not asked about sexual orientation. Improper conduct -- whether homosexual or heterosexual -- is punishable by discharge or court martial.

Netherlands

Basic law prohibits all discrimination, for any reason. A union represents homosexuals in the military. Unwanted advances are treated as improper behavior. Courses in human relations are conducted for commanders and include homosexual issues. Legislation is pending for homosexual survivor benefits.

Norway

Not considered a relevant issue and no one entering the service is asked about their sexual orientation. Unwanted advances by either homosexual or heterosexual service members are treated as improper behavior contrary to good order and discipline.

Portugal

Not seen as a relevant issue. Homosexuals may serve in the armed forces, although conduct may be punishable.

Spain

There are no codes regulating homosexuals in the military. Like religion, sexual orientation is considered a person's own choice.

Turkey

Homosexuals are not permitted to serve openly in the armed services, although they are not asked about their sexual orientation upon entering the service.

TEXT OF 102D CONGRESS LEGISLATION ON HOMOSEXUALITY AND THE MILITARY

Four bills were introduced in the 102d Congress concerning the issue of homosexuality and military service. Two bills, **H.R. 5208** and **S. 3084**, contain identical language:[132]

> A bill to prohibit discrimination by the Armed Forces on the basis of sexual orientation.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
>
> **SECTION 1. PROHIBITION ON DISCRIMINATION IN THE MILITARY ON THE BASIS OF SEXUAL ORIENTATION.**
>
> (a) In General.--No member of the Armed Forces, or person seeking to become a member of the Armed Forces, may be discriminated against by the Armed Forces on the basis of sexual orientation.
>
> (b) Preservation of Rules and Policies Regarding Sexual Misconduct.--Nothing in subsection (a) may be construed as requiring the Armed Forces to modify any rule or policy regarding sexual misconduct or otherwise to sanction or condone sexual misconduct, but such rules and policies may not be applied in a manner that discriminates on the basis of sexual orientation.

On September 18, 1992 Senator Metzenbaum introduced the above language as an amendment to the FY 1993 National Defense Authorization Act.[133] After a brief debate, the Chairman of the Senate Armed Services Committee, Senator Sam Nunn, stated:

> . . . I think the subject [homosexuality and military service] ought to be heard before we complete our markup of the [FY 1994 defense authorization] bill. That markup is completed in either May or June of next year. I think before that time we ought to have hearings because this [homosexual policy] ought to be the subject of that [hearing]. I assure [Senator Metzenbaum] we will have hearings on the subject before we mark up our bill.[134]

---

[132]H.R. 5208, Rep. Patricia Schroeder, May 19, 1992; S. 3084, Sen. Howard Metzenbaum, July 28, 1992.

[133]Amendment no. 3047, S. 3114, Congressional Record, Vol. 138, no. 128, September 18, 1992: S13984-S13987.

[134]Congressional Record, September 18, 1992: S13897.

Following the above statement, Senator Metzenbaum withdrew this amendment.

Two other resolutions, **H. Res. 271** and **S. Res. 236**, were introduce.[135] Although differing in text and scope from the above bills and amendment, both the House and Senate version of this resolution were identical:

RESOLUTION

Expressing the sense of the [House of Representatives/Senate] that the Presi dent should rescind Department of Defense Directive 1332.14 section H.1, wh ich bans gay, lesbian and bisexual Americans from military service.

Whereas the effectiveness of the military's mission is hindered when competent and qualified personnel are denied the opportunity to give their services to the armed services of the United States;

Whereas an estimated 1,000 men and women are discharged from the armed services each year simply because of their sexual orientation, costing American taxpayers millions of dollars per year;

Whereas Secretary of Defense Richard Cheney acknowledged that the men and women banned from military service under Department of Defense Directive 1332.14 section H.1 are currently allowed to serve in sensitive civilian jobs at the Department of Defense;

Whereas studies authorized by the Department of Defense have shown that there is no correlation between successful military service and sexual orientation;

Whereas the men and women banned under 1332.14 section H.1 have, in fact, served in the Armed Forces of the United States throughout our history when our Nation has been at peace and at war;

Whereas the men and women banned under 1332.14 section H.1 have, in fact, served in the Armed Forces of the United States and fought in the Persian Gulf War;

Whereas the men and women banned under 1332.14 section H.1 have, in fact, been decorated for their valor and service to our country;

Whereas Secretary of Defense Richard Cheney testified that Department of Defense testified that Department of Defense Directive 1332.14 section H.1 is one that he "inherited";

---

[135]H.Res. 271, Rep. Barbara Boxer, November 6, 1991; S.Res. 236, Sen. Brock Adams, November 26, 1991.

Whereas Secretary of Defense Richard Cheney admitted that the security risk rationale for 1332.14 section H.1 is "a bit of an old chestnut"; and

Whereas all Americans who meet the criteria for service in the Armed Forces, regardless of sexual orientation, deserve an equal opportunity to serve in the defense of our country: Now, therefore, be it

Resolved, That the [House of Representatives/Senate] urges the President to rescind Department of Defense Directive 1332.14 section H.1 so that all Americans, regardless of sexual orientation, currently serving their country in the armed services, and those who want to serve, will not be prevented from, or punished for, doing so.

TEXT OF 1948 TRUMAN EXECUTIVE ORDER ON RACIAL DESEGREGATION[136]

EXECUTIVE ORDER 9981

Whereas it is essential that there be maintained in the armed services of the United States the highest standards of democracy, with equality of treatment and opportunity for all who serve in our country's defense:

Now, therefore, by virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed services, it is hereby ordered as follows:

1. It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed service without regard to race, color, religion or national origin. This policy shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale.

2. There shall be created in the National Military Establishment an advisory committee to be known as the President's Committee on Equality of Treatment and Opportunity in the Armed Services, which shall be composed of seven members to be designated by the President.

3. The Committee is authorized on behalf of the President to examine into the rules, procedures, and practices of the armed services in order to determine in what respect such rules, procedures and practices may be altered or improved with a view to carrying out this order. The Committee shall confer and advise with the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, and shall make such recommendations to the President and to the Secretaries as in the judgment of the Committee will effectuate the policy hereof.

4. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Committee in its work, and to furnish the Committee such information or the services of such persons as the Committee may require in the performance of its duties.

5. When requested by the Committee to do so, persons in the armed services or in any executive departments and agencies of the Federal Government shall testify before the Committee and shall make available for the use of the Committee such documents and other information as the Committee may require.

6. The Committee shall continue to exist until such time as the President shall terminate its existence by Executive Order.

Harry S Truman

The White House
July 26, 1948

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[136]Cited in MacGregor, Morris, J., Jr., Integration of the Armed Forces 1940-1965, Center of Military History, United States Army, Washington, D.C., 1981: 312.

FILE
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Gay and Lesbian Alliance Against Defamation
Gay and Lesbian Victory Fund*
Gay, Lesbian & Bisexual Veterans of America*
Gay Men's Health Crisis
Hollywood Policy Center
Hollywood Women's Political Committee
Human Rights Campaign Fund*
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Lambda Legal Defense and Education Fund
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Unitarian Universalist Association of Congregations in North America
United Church of Christ Office for Church in Society
United States Student Association
Universal Fellowship of Metropolitan Community Churches
Women of Reformed Judaism
Women's Law Project
Women's Policy Group
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(partial list)

*Executive Committee

THE CONSTITUTIONAL INVALIDITY OF THE BAN ON GAY, LESBIAN AND BISEXUAL SERVICEMEMBERS IN THE UNITED STATES MILITARY

Documents Presented:

1. Fact Sheet on Recent Legal Cases: Constitutional Analysis
2. Summaries of Principal Legal Cases
3. Testimony Before the Senate Armed Services Committee Hearings on the Military Policy Concerning the Service of Gay Men and Lesbians in the Armed Forces: The Constitutional Invalidity of the Exclusionary Policy (March 31, 1993)

PRESENTED TO THE MILITARY WORKING GROUP OF THE OFFICE OF THE SECRETARY OF DEFENSE

May 20, 1993

The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

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FACT SHEET
RECENT LEGAL CASES: CONSTITUTIONAL ANALYSIS

In the last five years, three Court of Appeals cases and two District Court cases have considered the constitutionality of the military policy banning lesbians, gay men, and bisexuals from the military.

Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989), Woodward v. United States, 871 F.2d 1068 (Fed. Cir.1989), and Steffan v. Cheney 780 F.Supp. 1 (D.D.C.1991)(currently on appeal) have upheld the constitutionality of the military's policy. Pruitt v. Cheney, 963 F.2d 1160 (9th Cir. 1992) ruled that there must be a **real basis** for the military's policy other than mere prejudice of others and remanded the case to the district court. Meinhold v. U.S. Dept of Defense, 808 F.Supp. 1455 (C.D.Ca. 1993), following the rationale of Pruitt, found there was no rational basis for the military's policy and held it was unconstitutional.

CASES FINDING THE BAN CONSTITUTIONAL

In the cases of Ben Shalom, Woodward and Steffan, the plaintiffs argued that the military's ban violated their federal constitutional right of equal protection. In each case, the courts focused primarily on the military's claim that the ban preserved "good order" and "morale." Finding that order and morale **were** important to an effective service, the courts simply **accepted** the military's claim that the ban was necessary to achieve good order and morale. None of these courts demanded from the military an **explanation** of **how** lesbians, gay men, and bisexuals would impair order and morale, nor did the courts require the government to provide any concrete evidence for its claims.

CASES QUESTIONING THE CONSTITUTIONALITY OF THE BAN

Pruitt v. Cheney

In Pruitt v. Cheney, the Ninth Circuit ruled that the appellate courts in Ben Shalom and Woodward had failed to adequately apply recent Supreme Court cases in their decisions.

It had long been the law that the government could not discriminate against a group of citizens just because of other peoples' hostility to the group. U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973). In Palmore v. Sidoti, 466 U.S. 429 (1984), the Supreme Court expanded on that point by ruling that a state court could not take custody of a child away from a white mother because she was living with a black man. The court ruled that constitutional equal protection prohibited the government from giving effect to **private prejudices** of **others** by discriminating against the woman.

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The next year, in Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985), the court said that Palmore was not limited to race or other "suspect" classifications. Ruling that a Texas town could not zone out a group home for the mentally disabled in a residential neighborhood, the court said that the fears of neighbors, and even the belief that some individuals might harass those living at the home, were not permissible bases for discriminating against an unpopular group.

The Pruitt court found that when the military offered an explanation for the threat to order and morale posed by lesbians, gay men and bisexuals, it had simply asserted that non-gay members of the service "despise/detest" gay people and that their hatred would lead to actions which would harm order and discipline. In light of Palmore and Cleburne, the Pruitt court ruled that the Federal Constitution did not allow the government to give effect to private prejudices by creating a policy that catered to that prejudice.

In Cleburne, the Supreme Court also held that courts may not simply accept **any** government argument that discriminating against an unpopular group will help achieve **some** legitimate purpose. Rather, the Court required the government to provide a real factual record for its claims. Based on the Cleburne ruling, the Ninth Circuit in Pruitt explained that if the military had some explanation for its policy that did **not** rely solely on the prejudice of others, the military would have to provide some factual support for its claim before the district court.

The Solicitor General, under the Bush Administration, asked the Supreme Court to review and reverse the Pruitt decision. The Supreme Court declined to hear the case, thus allowing the case to stand. The case is currently before a district court and is stayed until after July 15th.

Meinhold v. Department of Defense

The district court in the case of Meinhold v. Department of Defense was the first court in the Ninth Circuit to consider the validity of the military's policy following the principles set forth in Pruitt. The Meinhold court struck down the ban because the military was unable to come up with any nonprejudicial factual basis for its policy. As the court noted, the military's own studies of its policy -- the 1957 Crittenden Report, and the 1988 and 1989 PERSEREC Reports -- found there was no factual basis for the policy of excluding known gay men, lesbians and bisexuals from the armed services. The Meinhold court issued an injunction against the discharge of individuals based on sexual orientation. The Ninth Circuit has ruled that this injunction is consistent with the temporary compromise currently in place, which puts individuals who acknowledge gay status into the standby reserve.

CONCLUSION

As the Pruitt and Meinhold decisions demonstrate, once the "hatred of others" rationale is eliminated under the Supreme Court requirements of Palmore and Cleburne, and the military is required to show a factual basis for the policy, it is very difficult for the government to argue that the policy is constitutional. This is the case even when the government simply has to show a "rational relationship" for its policy. If the courts ultimately accept a stricter standard than simply "rational review," the military's ban is even more likely to be struck down as unconstitutional.

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SUMMARIES OF PRINCIPAL LEGAL CASES

1. Beller v. Middendorf, 632 F.2d 788 (9th Cir. 1980): Upholding pre-1982 DOD regulation against privacy challenge; no discussion of equal protection and no evidence presented by DOD.

2. Dronenburg v. Zech, 741 F.2d 1388 (D.C. Cir. 1984): Upholding 1982 DOD regulation against equal protection challenge; decided prior to Palmore and Cleburne.

3. Rich v. Secretary of the Army, 735 F.2d 1220 (10th Cir. 1984): Upholding policy; no evidence presented by DOD; decided before Palmore/Cleburne.

4. Palmore v. Sidoti, 466 U.S. 429 (1984): Case invalidating denial of custody of a child to a white mother currently in an interracial marriage. Court held that "[p]rivate biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect".

5. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985): Case invalidating zoning board decision that discriminated against a group home for people with mental retardation. Court required government to show with evidence that its discriminatory policy was rationally related to a legitimate government interest; "negative attitudes" and "irrational prejudice" of others could not be relied upon to justify discrimination.

6. Watkins v. United States Army, 875 F.2d 699 (9th Cir. 1989): Army equitably estopped from discharging openly gay sergeant who served with distinction for 14 years. Concurring opinion by Judge Norris found that military's policy unconstitutionally catered to prejudices of servicemembers who "despise" homosexuals.

7. Woodward v. United States, 871 F.2d 1068 (Fed. Cir. 1989): Upholding DOD's policy on motion to dismiss; no evidence presented by the government; no analysis of Palmore or Cleburne.

8. Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989): Upholding DOD's policy; no evidence presented by the government; no analysis of Palmore or Cleburne.

9. Pruitt v. Cheney, 963 F.2d 1160 (9th Cir. 1992): Reversing grant of motion to dismiss an equal protection challenge to DOD's policy; requires government to show "on the record" that there is a legitimate and rational basis for the ban; questions authority of Beller, Dronenburg, Rich and Woodward in light of Supreme Court decisions in Palmore and Cleburne.

10. Meinhold v. Cheney, 808 F. Supp. 1455 (C.D. Cal. 1993): Declaring policy unconstitutional; holding that, on the record, there is no rational and legitimate basis for military ban on gay people.

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TESTIMONY BEFORE THE

SENATE ARMED SERVICES COMMITTEE

HEARINGS ON THE MILITARY POLICY

CONCERNING THE SERVICE OF GAY MEN AND LESBIANS

IN THE ARMED FORCES:

THE CONSTITUTIONAL INVALIDITY OF THE EXCLUSIONARY POLICY

MARCH 31, 1993

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EXECUTIVE SUMMARY OF TESTIMONY

The ban on military service by lesbian, gay and bisexual Americans violates the most basic premise of Equal Protection law: that all similarly situated persons should be treated alike. The exclusionary policy treats identically situated heterosexuals and homosexuals differently in several ways. The Department of Defense policy - unlike the Uniform Code of Military Justice - penalizes homosexuals, but not heterosexuals, who engage in exactly the same sexual acts, i.e. private, consensual acts of oral or anal sex. The policy also allows heterosexuals who engage in isolated same-sex conduct to remain in the service, but mandates the discharge of homosexuals or bisexuals who do so. And lastly, the policy bans service even by gay or bisexual persons who engage in no sexual conduct at all.

Although a series of earlier judicial rulings found the policy to be constitutional, one recent decision has called it into serious question (Pruitt v. Cheney, 963 F.2d 1160 (9th Cir. 1992)) and a second has declared it unconstitutional (Meinhold v. Cheney, 808 F. Supp. 1455 (C.D.Cal. 1993)). These more recent rulings reflect better understandings of the law for two reasons.

* First, constitutional law has changed since the early 1980's decisions. In two critical cases, the U.S. Supreme Court has ruled that the government cannot discriminate against an unpopular group based solely on the hostility of others toward that group. This principle applies to discrimination against any unpopular group, not just gays and lesbians, but the military policy under review in these hearings provides a particularly dramatic example of reliance

on prejudice. All of the rationales asserted by the Department of Defense in support of its exclusionary policy amount to the invocation of intolerance: the military claims that heterosexual personnel are so hostile to the presence of lesbian women and gay men that morale and discipline will be threatened. In the cases of Palmore v. Sidoti, 466 U.S. 429 (1984) and Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985), the Supreme Court made clear that government may not acquiesce to private prejudice, even if individuals act on the basis of that prejudice. The recent federal court rulings against the military's anti-gay policy are based on these Supreme Court decisions. Applying these decisions, courts would find the exclusionary policy unconstitutional under a rational basis standard of review.

* Second, governmental classifications based on sexual orientation are inherently suspect. Lesbian and gay Americans meet all the criteria developed by the courts to identify groups who are accorded heightened judicial protection against discriminatory government actions: there is a history of discrimination; a complete absence of a relationship between the stigmatized trait and the ability to perform the job in question; and a lack of power in the majoritarian political system. For these reasons, any time the government makes policies that discriminate based on sexual orientation, there should be exacting scrutiny of whether that classification is necessary.

These reasons justify a judicial ruling that the current policy is unconstitutional. Congress now has the opportunity to correct the inequities of the present system and the turmoil of the

courts, which have been hearing challenges to this policy for the last 20 years, and which have reached contradictory results as to its constitutionality. As the Supreme Court has stated, the ultimate responsibility for military policy decisions is appropriately vested in the legislative and executive branches, which embody our democracy's principle of civilian control and electoral accountability.

Introduction

The current ban on military service by openly lesbian, gay and bisexual Americans raises constitutional questions of the most serious dimension. Military service represents one of the most meaningful ways in which an American can serve his or her country. It also provides access to benefits and training for millions of young Americans. The policy under review in these hearings bars openly lesbian, gay and bisexual Americans from ever receiving either the material or symbolic rewards of such service, without any relationship to whether they have the ability to perform the job and serve with distinction.

A series of lawsuits in the last 20 years has challenged this exclusionary policy, with contradictory results.[1] Although during this time four circuit courts of appeal have upheld the military's policy under a minimum scrutiny level of review,[2] another court of appeals and one district court have applied a more exacting form of

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[1]The first challenge was filed by two Navy enlisted women in 1973. Champagne v. Schlesinger, 506 F.2d 979 (7th Cir. 1974). At that time, the military argued that its policy did not require mandatory discharge. Id. at 984. In a later case, the Court of the Appeals for the D.C. Circuit ruled that the Air Force had failed to promulgate standards or criteria by which to determine the basis for the decision that the plaintiff, who had an exemplary service record, did not qualify for the "unusual circumstances" exception to the general policy. Matlovich v. Secretary of the Air Force, 591 F.2d 852, 857 (D.C. Cir. 1978). After an individual settlement was reached in this case, the military established its current policy mandating discharge based on sexual orientation, without regard to the individual's quality of performance of duties.

[2]See Rich v. Sec'y of the Army, 735 F.2d 1220 (10th Cir. 1984); Woodward v. United States, 871 F.2d 1068 (Fed. Cir. 1989), cert. denied, 494 U.S. 1003 (1990); Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir.1989), cert. denied, 494 U.S. 1004 (1990); Dronenburg v. Zech, 741 F.2d 1388, reh'g denied, 746 F.2d 1579 (D.C. Cir. 1984).

rational basis review based on more recent Supreme Court decisions.[3] In November 1992, a federal district court in the Meinhold case issued an injunction against discharge of persons based on sexual orientation, an injunction that the appellate court declined to stay.[4] The Pruitt case, another constitutional challenge now pending in the court system, has been remanded for trial, a clear message that the Department of Defense will be forced to come forward with evidence to support the justifications it asserts for its policy.[5] In yet another case, four years ago, the Court of Appeals for the Ninth Circuit ordered the reinstatement of a soldier who had served 14 years as an openly gay man, in a decision which rejected the Army's contention that the plaintiff's re-enlistment would injure the public's interest in an effective fighting force.[6]

In addition to the litigation against the Department of Defense, plaintiffs have brought claims against educational institutions that participate in Department of Defense (DOD) programs on the grounds that the military's exclusionary policy

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[3]See Pruitt v. Cheney, 963 F.2d 1160 (9th Cir. 1991), cert. denied, 113 S.Ct. 655 (1992); Meinhold v. United States Dep't of Defense, 808 F.Supp. 1455 (C.D. Cal. 1993).

[4]The Court of Appeals declined to stay the injunction issued in Meinhold, supra note 3, because it found that the injunction forbade discharges but did not contradict the current interim policy of the Administration, which is to place homosexual and bisexual personnel on standby reserve, pending the outcome of the policy review of which these hearings are a part.

[5]Pruitt, supra note 3.

[6]Watkins v. United States Army, 875 F.2d 699 (9th Cir. 1989), cert. denied,498 U.S. 957 (1990)[hereinafter Watkins II].

violates state or local civil rights statutes or the official anti-discrimination policies of the institution.[7] As a result, more than 100 heads of universities and colleges have called on the President and Congress to end the policy.[8] Congress now has the opportunity to correct the inequities of the present system and end the turmoil in the courts.

This testimony will analyze the constitutionality of the exclusionary policy. Because virtually all the cases have been decided on equal protection grounds, the analysis in this testimony addresses only that doctrine.

Structure of the Policy

The fundamental goal of the equal protection guarantee of the United States Constitution is "that all persons similarly situated should be treated alike."[9] The military's exclusionary policy treats similarly situated heterosexuals and homosexuals differently in at least three ways.

First, heterosexuals and homosexuals who engage in identical sexual conduct with another person of the same gender are accorded completely different treatment. The regulation expressly provides

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[7] United States v. City of Philadelphia, 798 F.2d 81 (3d Cir. 1986); Lloyd v. Grella, 1992 N.Y. Misc. LEXIS 46 (Sup.Ct., Feb. 13, 1992); Gay and Lesbian Students Association v. Board of Trustees, 1992 Conn. Super. LEXIS 2926 (Oct. 14, 1992).

[8] See advertisement of American Civil Liberties Union, N.Y. Times, Dec. 13, 1992. A number of colleges and universities have taken action to expel DOD recruiters and programs like R.O.T.C. from their campuses. Cf. Nomi v. University of Minnesota, 1992 U.S. Dist. LEXIS 9091 (D.Minn., June 16, 1992), 59 Fair Empl. Prac. Cas. (BNA) 235 (D.Minn. 1992).

[9] Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985).

that a heterosexual who engages in homosexual conduct will not suffer any adverse action if the conduct is found to be "an apparently isolated episode, stemming solely from immaturity, curiosity, or intoxication...."[10] For a person who is classified as fitting the regulation's definition of a homosexual, however, there is no "defense" to homosexual conduct, no matter what the "cause" of the conduct or how "isolated" the episode.[11] Thus, if a heterosexual and a homosexual engage in a single episode of homosexual conduct with each other, the heterosexual will be retained while the homosexual will be deemed to have committed a "nonwaivable moral and administrative" offense requiring permanent banishment from the military.[12]

Second, the military regulations treat certain forms of private physical contact between homosexuals differently from identical forms of heterosexual contact. The regulations broadly prohibit the desire to engage in any "bodily contact between persons of the same sex."[13] The regulations therefore permit the military to exclude lesbians and gay men who merely hug or hold hands or kiss off-base, off-duty and out of uniform (or even desire to engage in such conduct), while heterosexuals who hug or hold hands or kiss are not found to have committed any wrong whatsoever.

Finally, the regulation discriminates against lesbians and gay

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[10]AR 140-111.

[11]See, e.g., AR 140-111, Table 4-2, note 1.

[12]See id.

[13]Id.

men who have engaged in no conduct. The regulation specifically provides that the mere status of being a "homosexual" is a "nonwaivable" disqualifying characteristic, even if there is "no evidence" of "homosexual acts either before or during military service."[14] The regulation is directed against the mere presence of lesbians and gay men in the military without regard to their conduct or their sexual activity. The regulation applies alike to sexually active homosexuals, sexually inactive homosexuals, and married homosexuals who lead exclusively heterosexual lifestyles. It also applies to gay men and lesbians who forthrightly acknowledge their homosexuality but have engaged in no conduct at all which is obvious to others or can be shown to be detrimental to any legitimate military interest.

On its face, then, the policy bans lesbians, gay men and bisexuals without regard to whether any disruptive effect on unit cohesion exists or is likely. The same is true in practice. The policy is commonly enforced by extensive and intrusive investigations, often involving protracted and intimidating interrogation techniques.[15] A common method involves threatening one individual with especially harsh penalties unless he or she identifies other homosexuals on the base. Military police forces use these inquisitorial tactics precisely <u>because</u> private

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[14] <u>See e.g.,</u> AR 140-111, Table 4-2.

[15] <u>See, e.g.,</u> Benecke and Dodge, <u>Military Women in Nontraditional Fields: Casualties of the Armed Forces' War on Homosexuals</u>, 13 Harv. Women's L. J. 215, 221-231 (1990); Shuger, <u>American Inquisition: The Military vs. Itself</u>, 207 The New Republic 23 (Dec. 7, 1992).

homosexual conduct - like private heterosexual conduct - is in fact not disruptive.

Equal Protection Doctrine

Much of the debate in the case law concerns which level of scrutiny under equal protection law should be applied to assess the validity of the military's policy. In general, the courts have recognized four levels: strict scrutiny, for classifications such as race that are considered inherently suspect; intermediate level scrutiny, for classifications such as gender that are considered usually to be invalid but for which some justification has been found in certain instances; heightened rationality, or a requirement that the legitimacy of the reason for a classification be examined with genuine care, and minimal or rational basis review. In the past 20 years of litigation, courts have applied each level of scrutiny in their efforts to assess the military's exclusionary policy.[16]

There are two general steps in the analysis under any of these tests. The first is whether the classification itself, regardless of the justification for it, is based on a distinction which is presumptively invalid. If so, either strict or intermediate level scrutiny applies. The second general step is the examination of

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[16]Strict scrutiny was used by Court of Appeals in Watkins v. United States Army, 847 F.2d 1329 (9th Cir. 1988)[hereinafter Watkins I], vacated and aff'd on other grounds, 875 F.2d 699 (1989), cert. denied, 498 U.S. 957 (1990); intermediate scrutiny in Hatheway v. Sec'y of the Army, 641 F.2d 1376 (9th Cir.), cert. denied, 454 U.S. 864 (1981); heightened rationality in Pruitt and Meinhold, supra note 3; and minimal rational basis in Ben-Shalom, Woodward, Dronenburg, and Rich, supra note 2.

the government's asserted interest in making the classification. If the justification is found to be insufficient or improper, regardless of whether the classification is historically benign or suspicious, the law will fall. This second step forms part of the analysis under any level of review, although it is more searching at the stricter levels.

The military's exclusionary policy based on sexual orientation fails both of these steps. Because the policy creates a classification that meets the judicial criteria for suspectness under equal protection doctrine, Congressional review of it should proceed on the basis of the same kind of heightened scrutiny that would inform the review of a policy utilizing classifications by race or gender. Even if one does not utilize that level of review, however, the policy still fails the constitutional test because the asserted justifications for it amount to the institutionalization of private prejudice.

Classification by Sexual Orientation Is Inherently Suspect

The principle that certain types of government classifications should be viewed by courts as inherently suspect, and thus subjected to especially careful judicial review, was first expressed in United States v. Carolene Products Co..[17] In its famous footnote four, the Court suggested that "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and

[17]304 U.S. 144 (1938).

... may call for a correspondingly more searching judicial inquiry."[18]

The Supreme Court has more recently summarized that:

> [A] suspect class is one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of powerlessness as to command extraordinary protection from the majoritarian political process. ... [These groups have] been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities."[19]

Thus there are three considerations that lead to elevated equal protection scrutiny: (1) past disadvantage -- whether the group at issue has historically been subjected to "purposeful unequal treatment" or burdened with disabilities "on the basis of stereotyped characteristics" and prejudice; (2) a tenuous relation between the defining trait of the group and "the ability to perform or contribute to society"; and (3) a position of relative political powerlessness within the majoritarian, legislative political sphere. On all three factors, the position of gay men, lesbians, and bisexuals is analogous to (or worse than) the position of the groups already accorded heightened scrutiny by the Supreme Court.

There is little dispute that "homosexuals have historically been the object of pernicious and sustained hostility."[20] Even the

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[18]304 U.S. at 152 n.4.

[19]Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 313 (1976).

[20]Rowland v. Mad River Local School Dist., 470 U.S. 1009, 1014 (1985) (Brennan, J., dissenting from denial of certiorari).

judicial decisions upholding anti-gay policies "agree that homosexuals have suffered a history of discrimination,"[21] admit "general public opprobrium toward homosexuality,"[22] and state that "[t]here no doubt is prejudice against homosexuals both in and out of the Army."[23] On the most basic level of security from physical violence, a Department of Justice study of hate crimes found that "homosexuals are probably the most frequent victims" of hate-motivated violence in the United States today.[24]

It was formerly a routine practice of the federal government to deny employment to lesbian and gay Americans. Only a series of judicial decisions beginning 20 years ago succeeded in ending this policy, by forcing the federal Civil Service to adopt new regulations which forbade discrimination against gay employees unless their homosexuality could be shown to have interfered with job performance.[25] Widespread discrimination against lesbian and gay Americans continues today. In addition to exclusion from

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[21]High Tech Gays v. Defense Industrial Security Clearance Office, 895 F.2d 563, 573 (9th Cir. 1990).

[22]Padula v. Webster, 822 F.2d 97, 104 (D.C. Cir. 1987).

[23]Ben-Shalom v. Marsh, 881 F.2d 454, 461 (7th Cir. 1989).

[24]P. Finn and T. McNeil, The Response of the Criminal Justice System to Bias Crime (1987) at 2; see also, Herek, Hate Crimes Against Lesbians and Gay Men, 44 Am. Psychologist 948, 948 (1989) (citing National Institute of Justice and New York Governor's Task Force studies).

[25]Doe v. Hampton, 566 F.2d 265, 272 (D.C. Cir. 1977); Norton v. Macy, 417 F.2d 1161, 1165 (D.C.Cir. 1969). In accord with this line of cases, the Civil Service changed its policies. See Civil Service Bulletin, Dec. 21, 1973, quoted in Ashton v. Civiletti, 613 F.2d 923, 927 (D.C. Cir. 1979).

military service, lesbian and gay Americans continue to be subject to adverse treatment in such areas as employment and immigration.[26] In all spheres of life, gay men and lesbians have been "forced to deny or disguise their identity in order to enjoy rights and benefits routinely accorded heterosexuals."[27]

A second constellation of factors to be considered concerns "whether the discrimination embodies a gross unfairness that is sufficiently inconsistent with the ideals of equal protection to term it invidious."[28] Lesbian and gay Americans meet each of the indicia of invidiousness identified by the courts.[29] They have been judged according to their sexual orientation, despite the fact that all available evidence shows that sexual orientation is plainly irrelevant to an individual's "ability to perform or contribute to society." Further, "discrimination against homosexuals is 'likely . . . to reflect deep-seated prejudice

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[26]See generally, Developments in the Law -- Sexual Orientation and the Law, 102 Harv. L. Rev. 1508 (1989).

[27]Note, The Constitutional Status of Sexual Orientation: Homosexuality as a Suspect Classification, 98 Harv. L. Rev. 1285, 1286 (1985).

[28]Watkins I, 847 F.2d at 1329.

[29]To make an assessment of the fairness of the discrimination, courts have looked to: "(1) whether the disadvantaged class is defined by a trait that 'frequently bears no relation to ability to perform or contribute to society,' Frontiero [v. Richardson], 411 U.S. [677] at 686 [(1973)] (plurality); (2) whether the class has been saddled with unique disabilities because of prejudice or inaccurate stereotypes; and (3) whether the trait defining the class is immutable." Watkins I, 847 F.2d at 1346.

rather than . . . rationality.'"[30] Both the American Psychiatric Association and the American Psychological Association have adopted resolutions rejecting the conception of homosexuality as a mental illness, stating that "homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[31]

Discrimination against gay persons is particularly unfair because sexual orientation is so central to one's personality that it is for legal purposes immutable, in that it cannot be forcibly altered without the same violation of personality as would ensue from commanding an individual to change religions.[32] The trait that defines a particular group need not be biologically immutable for that group to be accorded heightened equal protection scrutiny.[33] Alienage, for example, is a condition that can be changed by the individual, but classifications drawn separating

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[30]Rowland, 470 U.S. at 1014 (Brennan, J., dissenting from denial of certiorari) (quoting Plyler v. Doe, 457 U.S. 202, 216, n.14 (1982)).

[31]Resolution of the American Psychiatric Association, Dec. 15, 1973; Resolution of the Council of Representatives of the American Psychological Association, 30 Am. Psychologist 633 (1975).

[32]Watkins, 847 F.2d at 1347.

[33]Some recent studies suggest, however, that there may be physiological components to sexual orientation. One study suggests that there may be a difference in brain structure based on sexual orientation, and the second posits a genetic difference. Simon LeVay, A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men, 253 SCIENCE 1034 (Aug. 30, 1991); J. Michael Bailey and Richard C. Pillard, A Genetic Study of Male Sexual Orientation, 48 ARCH. GEN. PSYCHIATRY 1089 (Dec. 1991).

aliens from others are nonetheless subject to strict scrutiny.[34] The determinative question is whether "the ... characteristic frequently bears no relation to ability to perform or contribute to society."[35]

A third factor relied on by the Supreme Court is whether the burdened group "lacks the political power necessary to obtain redress from the political branches of government."[36] When the democratic process can be expected to correct for erroneous classifications, courts will apply a more lenient standard of review.[37] The gay community is a classically "discrete and insular minority,"[38] with limited power to effect political change. "Because of the immediate and severe opprobrium often manifested against homosexuals once so identified publicly, members of this group are particularly powerless to pursue their rights openly in the political arena."[39]

Despite the repeated denials of governmental jobs and benefits to lesbian and gay citizens, which necessitated judicial rulings

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[34]Graham v. Richardson, 403 U.S. 365 (1971).

[35]Frontiero v. Richardson, 411 U.S. 677, 686 (1973).

[36]Watkins I, 847 F.2d at 1447, citing Cleburne, 473 U.S. at 441; Plyler, 457 U.S. at 216, n.14; Rodriguez, 411 U.S. at 28.

[37]Cleburne, 473 U.S. at 440.

[38]United States v. Carolene Products, 304 U.S. 144, 152-3 n.4 (1938).

[39]Rowland, 470 U.S. at 1014 (Brennan, J., dissenting from denial of certiorari).

that the denials were unconstitutional,[40] few legislative bodies have enacted anti-discrimination laws.[41] Openly gay men and lesbian women are virtually unrepresented in "this Nation's decisionmaking councils."[42] There has never been an openly gay president, vice president, Cabinet secretary, member of the U.S. Senate, mayor of a major city, governor, lieutenant governor, Supreme Court justice, or judge of any federal court. So powerful is the fear of political backlash from association with the gay community that some members of Congress return campaign contributions from gay organizations.[43] In such an atmosphere, the expectation that the normal operation of majoritarian political processes will protect lesbian and gay citizens from irrational discrimination is utterly unjustified.

The Policy's Rationales Are A Pretext For Prejudice

The military's primary proffered justification for its discrimination is to "maintain discipline, good order, and morale." There is only one conceivable basis for concluding that the mere

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[40] supra text at 11-12.

[41] Only seven states have such laws prohibiting discrimination on the basis of sexual orientation. The only level at which a substantial number of anti-discrimination laws or ordinances have been enacted is in municipalities, where lesbian and gay voters are often concentrated. Note, supra, 98 Harv. L. Rev. at 1286 n. 5.

[42] Cf. Frontiero v. Richardson, 401 U.S. 677, 686 n.17 (1973). The Court based its conclusion about underrepresentation and powerlessness of women on the fact that there had never been a woman president; had never been a woman on the Supreme Court; there was not then a woman in the U.S. Senate and there were only 14 women in the House of Representatives.

[43] Congressional Quarterly, Sept. 14, 1985 at 1824.

presence of openly gay people in the military is in any way damaging to military discipline, good order, or morale. That is that heterosexual members of the armed forces have such distaste and hatred for homosexuals that they will develop negative attitudes towards the military from having to work with lesbians, gay men, and bisexuals. Such an assertion cannot constitutionally provide a legitimate basis for discrimination under <u>any</u> standard of review.

With only one possible exception, the rest of the asserted interests suffer from the same fundamental flaw -- they are all based upon the irrational prejudices of other members of the military, potential recruits, and the public at large. The "integrity of rank and command" can be damaged by the mere presence of homosexuals in the military only if other members of the military do not wish to command or be commanded by lesbians and gay men. The interest in facilitating assignment and deployment of service members under close living and working conditions is affected only on the assumption that heterosexuals in the service will irrationally resist living and working closely with homosexuals. The ability to "recruit and retain members of the military service" is harmed only if potential recruits and members of the military harbor such strong prejudices against lesbians, gay men or bisexuals that they will opt against serving their nation. And public acceptability of military service will decline only if the general public also harbors such invidious prejudices. There is no escaping the conclusion that the asserted interests amount to

nothing more than a bare desire to maintain in law the irrational prejudices and biases of others in the military and in the civilian public.

In past justifications of the exclusionary policy, military spokespersons invoked the argument that homosexuality or bisexuality posed a security risk. That claim has now been abandoned. Former Secretary of Defense Richard Cheney, for example, characterized it as "a bit of an old chestnut."[44] Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, agreed that there is no security-based justification for the ban.[45]

A newer attempt to justify the ban has sought to make a modesty argument, asserting that mixing heterosexual and homosexual personnel in the same living quarters would invade the privacy rights of heterosexual soldiers, sailors and airmen. The argument is that homosexual personnel should not be quartered in general barracks for the same reasons that male and female personnel are separated. This argument is wrong for several reasons. The assumption underlying this leap of logic is that erotic attraction is the primary justification for providing separate facilities for men and women. However, there are numerous other justifications for gender segregation which do not apply to sexual orientation.

First, gender segregation in the military is justified by the existence of similar segregation of men and women in civilian life.

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[44]"Cheney Cites Problems with Anti-homosexual Rule," Washington Post, Aug. 1, 1991, at A7.

[45]U.S. General Accounting Office, Defense Force Management: DOD's Policy on Homosexuality, 35 (1992).

Men and women do not generally share living quarters in college dormitories or showers in gyms. Segregation in civilian life reflects society's discomfort with the idea of close physical proximity between groups of men and women who do not share emotional or affectional ties.

There is, however, no segregation based on sexual orientation in civilian life. Heterosexual and homosexual men - or women - live together in college dormitories as roommates without incident. They commonly share bathroom facilities as well as sleeping quarters. Moreover, college students are the same age group as military recruits and likewise are usually living apart from their families, and meeting and interacting with others of often radically different backgrounds, for the first time. Adults of all ages share gender-segregated showers in sports facilities. No problems have arisen from these experiences in civilian life. Therefore, although segregation based on gender can be justified by general societal practice, segregation based on sexual orientation cannot.

Second, gender segregation can be justified by the physiological differences between men and women. The embarrassment caused by disrobing in front of members of the opposite sex does not occur in a same-sex environment. Simple curiosity about the physiology of the other gender can lead to desires for seclusion. This curiosity and the resultant discomfort explain at least part of the concern behind gender segregation.

Lastly, a realistic justification for gender segregation is

protection - usually of women - from sexual harassment. This justification for gender segregation also does not apply to segregation based on sexual orientation. The safety of heterosexual male soldiers is not jeopardized by close proximity with gay men, nor is the safety of heterosexual women jeopardized by the presence of lesbian women. There is no difference based on sexual orientation in typical physical size and strength as there is between men and women, and the stereotype that homosexual men or women are sexually predatory has no basis in fact.

Other rationales that have been offered in support of the exclusionary policy fail to justify why a distinction is made based on sexual orientation. The government has argued that the ban is justified because emotional relationships between superior and subordinate personnel could impair performance or disrupt the chain of command[46] or because lesbians and gay men might assault others.[47] But neither of these arguments explains why the military excludes all lesbians and gay men instead of those who, for example, violate the prohibition against fraternization with other service members of a different rank, as it does with heterosexuals.

In Cleburne, the city attempted to defend its decision to deny a permit to a home for mentally disabled individuals on the basis of population and traffic congestion, and on the basis that the

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[46]See, e.g., Dronenburg v. Zech, 741 F.2d 1388, 1398 (D.C. Cir. 1984).

[47]See, e.g. Beller v. Middendorf 632 F.2d 788, 811 (9th Cir. 1980).

home was located in a 500 year flood plain. The Supreme Court acknowledged that those purposes were legitimate justifications for permit requirements, but nonetheless invalidated the city's action because it failed to explain how a home for the mentally disabled "threatened" these legitimate interests in a way that other uses allowed without permits, like boarding houses and fraternities, did not.[48] Similarly, there is no justification for subjecting lesbians and gay men to a blanket exclusion when the military deals with the same problems when presented by others on a case by case basis and could do the same when dealing with lesbians and gay men.

Because Its Justifications Are Insufficient, the Current Policy Fails to Meet Any Level of Review.

The fundamental assumption behind all of the asserted rationales for the exclusionary policy is that acquiescence to prejudice can justify governmental action. In a series of decisions starting in the mid-1980s, however, the Supreme Court has made clear that this assumption is not acceptable for constitutional purposes. For that reason, under even a rationality standard, the current exclusionary policy would be found unconstitutional.

In Palmore v. Sidoti,[49] the Supreme Court held that a state

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[48] City of Cleburne v. Cleburne Living Center, 473 U.S. at 448-450.

[49] 466 U.S. 429 (1984).

court could not take custody of a child away from a white mother because she was living with a black man. The state court judge who had ordered that custody be taken away from the mother did not base his decision on any law disapproving interracial relationships, or on his own views about them. Instead, he ruled that if the child were to remain with her mother, she would suffer from "the social stigmatization that is sure to come" as a result of her mother's relationship. He found that others in the community would stigmatize the child because of the mother's relationship and that the stigmatization would truly harm the child.[50]

The U.S. Supreme Court reversed the order. The Court recognized that the child would be subjected to "pressures and stresses."[51] Nonetheless, the Court ruled, the equal protection clause forbids government from giving effect, even indirectly, to private bias. That means, the Court said, that government may not discriminate even to avoid the real consequences of private prejudice.[52]

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[50]Palmore v. Sidoti 466 U.S. at 431-432.

[51]Palmore v. Sidotti, 466 U.S. at 433.

[52]Palmore v. Sidoti, 466 U.S. at 433-434. The decision in Palmore follows a long line of Supreme Court cases which held that the government may not discriminate just to harm the group which is discriminated against. See, e.g., U.S. Dep't of Agriculture v. Moreno 413 U.S. 528 (1973) (food stamps program could not discriminate against persons who live together out of hostility to hippies). See also, Truax v. Raich 239 U.S. 33 (1915)(purpose to disadvantage aliens is not legitimate). The Palmore decision takes these cases a step further by saying that the government may not discriminate if its purpose is to recognize or give effect to private bias.

One year after the Palmore decision, the Supreme Court extended its ruling on private biases to cases involving classifications other than those such as race, which had already been accorded suspect classification status. In City of Cleburne v. Cleburne Living Center,[53] the Court held that it was unconstitutional for a Texas city to deny a zoning permit to a group home for persons who were mentally disabled. The Court first ruled that the mentally disabled are not a "suspect" classification like race or gender, and thus the city's actions were not subject to strict intermediate scrutiny.[54] The Court went on to say, however, that even when the government employs classifications that are not suspect, it cannot discriminate simply to give effect to private bias. Since the city's decision to refuse the permit was based on the negative attitudes of neighbors, the Court found the refusal unconstitutional.[55]

Since Cleburne, lower courts have applied Palmore's and Cleburne's holdings that discrimination cannot be justified by private bias to a wide variety of classifications. Courts have ruled, for example, that the hostility of neighbors to unusual or "heretical" religious groups is not a proper basis for government discrimination against the groups.[56] Courts have also said that

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[53] 473 U.S. 432 (1985).

[54] Id. at 442-446.

[55] Id. at 447-450.

[56] See, e.g., Islamic Center of Mississippi v. Starkville 840 F.2d 293 (5th Cir. 1988); Marks v. City of Chesapeake, Va. 883 F.2d 308 (4th Cir. 1989).

responding to the negative attitudes of private citizens is not a permissible basis for government refusal to license a supervised residential program for ex-offenders.[57]

The lower federal courts have also applied Palmore's holding that government cannot give effect to private bias even though the private bias could actually do harm to some legitimate interest, and the aim of the discrimination is to prevent that. Courts have said, for example, that fears of and prejudices against the elderly cannot be used to justify limits on adult group homes, even though the government acted in the belief that the fears of others could harm commerce.[58] Public hostility to an entertainer's views on the Middle East is not a legitimate reason for discriminating against her, even though the hostility could hurt business and threaten public safety.[59]

As these lower federal decisions show, the Pruitt court was correct when it concluded that Palmore and Cleburne destroy much of the argument which the government has made in the past in favor of the military's policy against allowing lesbians, gay men and bisexuals to serve.[60] When called upon to explain the policy, the government has said that nongay members of the service "despise and

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[57]Bannum v. City of Fort Lauderdale, 901 F.2d 989 (11th Cir. 1990).

[58]See, Burstyn v. City of Miami Beach, 663 F.Supp. 528, 537(S.D.Fla. 1987).

[59]See, Redgrave v. Boston Symphony Orchestra, 855 F.2d 888, 901-03 (1st Cir. 1988) (applying federal constitutional analysis).

[60]Pruitt v. Cheney, 963 F.2d at 1165.

detest" lesbians and gay men,[61] and that their prejudice will create tension which in turn will interfere with efficient performance. But the dislike, or even the hatred, that some members of the military have for lesbians and gay men is no more a legitimate basis for discriminating against gay members of the service than was the hatred of neighbors in Cleburne for the mentally disabled or the fear of citizens in Miami of the elderly.[62] Even if the government could show that the hatred of others might cause some disruption in military efficiency, it would still not be legitimate for the government to discriminate against lesbians, gay men and bisexuals to minimize the disruption, any more that it would have been legitimate to change custody in Palmore to eliminate the real risk of harm to a child because others disapproved of her mother's interracial relationship.[63]

Bowers v. Hardwick And Article 125 Do Not Affect Equal Protection Law

The United States Supreme Court's decision in Bowers v. Hardwick,[64] does not foreclose a conclusion that the exclusionary policy is invalid on equal protection grounds. In Hardwick, the Supreme Court held only that there was no constitutionally protected due process right to engage in homosexual sodomy. The

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[61]Watkins II, 875 F.2d at 729.

[62]Cleburne, 473 U.S. at 447-450; Burstyn v. City of Miami Beach, 663 F.Supp. 528, 537 (S.D.Fla. 1987).

[63]Palmore v. Sidoti, 466 U.S. at 433-434.

[64]478 U.S. 186 (1986).

decision had nothing to do with government discrimination on the basis of sexual orientation generally, and the Court expressly noted that it was not deciding any equal protection issue.[65] The equal protection issue triggers a completely different analysis from the due process issue addressed in Hardwick.[66] Unlike the due process clause, the equal protection clause does not safeguard social convention or tradition, however longstanding or deeply ingrained.

Some persons contend that there is no legally relevant distinction between status and conduct, since status is indicative of a "propensity" to engage in proscribed conduct. Consequently, they argue, the criminalization of sodomy in the military,[67] justifies a regulation that excludes those the military presumes will violate the law.

This argument confuses sodomy with homosexuality. Article 125 of the Uniform Code of Military Justice ("UCMJ") criminalizes certain sexual acts and applies with absolute equality on its face to the same acts regardless of whether they are committed by

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[65]See id. at 196 n.8.

[66]See Watkins v. U.S. Army, 875 F.2d 699, 719 (9th Cir. 1989) (en banc) (Norris, J., concurring) ("Whether homosexual conduct is protected by the due process clause is an entirely separate question from whether the equal protection clause prohibits discrimination against homosexuals"), cert. denied, 498 U.S. 957 (1990). See also Sunstein, Sexual Orientation and the Constitution: A Note on the Relationship Between Due Process and Equal Protection, 55 Univ. Chi. L. Rev. 1161 (1988).

[67]See 10 U.S.C. § 925.

heterosexuals or homosexuals.[68] Because of the broad reach of this statute, the majority of persons in both groups engage in acts falling within the definition of sodomy.[69] There is simply no basis for assuming that one group - and not the other - has the propensity to violate the statute.

Conclusion

Both the Congress and the President have far broader power than the courts to mandate change. Judicial interpretation of the equal protection guarantee of the Fifth Amendment provides the floor, not the ceiling, for Congressional examination of this policy. Especially in matters of military policy, judicial oversight constitutes the most deferential, least assertive form of review.

> The complex, subtle, and professional decisions as to the composition, training, equipment and control of a military force are essentially professional military judgments, subject always to civilian control of the Legislative and Executive Branches. The ultimate responsibility for these decisions is appropriately vested in branches of the government which are periodically subject to electoral accountability.[70]

Thus, judicial findings of constitutional sufficiency create no

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[68] Id.

[69] The UCMJ criminalizes heterosexual and homosexual oral and anal intercourse. Thus, heterosexuals, including married couples, have been prosecuted under 10 U.S.C. § 925 for engaging in oral or anal sex with one another. See, e.g., United States v. Jones, 14 M.J. 1008 (A.C.M.R. 1982); United States v. Harris, 8 M.J. 52 (C.M.A. 1979). Adultery is also a crime under the UCMJ. See United States v. Hickson, 22 M.J. 146 (c.M.A. 1986). See P. Blumstein & P. Schwartz, American Couples 236, 242 (1983) (from 90 to 93% of heterosexual persons have engaged in oral intercourse; a smaller percentage in anal intercourse).

[70] Gilligan v. Morgan, 413 U.S. 1, 10 (1973) (emphasis in the original).

impediment to elimination of the current policy.

Congress now has the opportunity to exercise leadership by ending an unconstitutional and unjustified policy that bars an entire class of Americans from service to their country. We urge the Congress to take that step.

FILE
8

THE CAMPAIGN FOR MILITARY SERVICE
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ENDORSING AND PARTICIPATING ORGANIZATIONS

AFL-CIO
AIDS Project Los Angeles
American Association of University Women
American Civil Liberties Union*
American Ethical Union Washington Ethical Action Office
American Jewish Committee
American Jewish Congress
American Psychiatric Association
American Psychological Association
American Public Health Association
Americans for Democratic Action
Black Gay and Lesbian Leadership Forum*
Black Lesbian Support Group
Citizen Soldier
Gay and Lesbian Alliance Against Defamation
Gay and Lesbian Victory Fund*
Gay, Lesbian & Bisexual Veterans of America*
Gay Men's Health Crisis
Hollywood Policy Center
Hollywood Women's Political Committee
Human Rights Campaign Fund*
Japanese American Citizens League
Jewish Labor Committee
Lambda Legal Defense and Education Fund
Mexican American National Women's Association
National Abortion Rights Action League
National Association of Social Workers
National Council of Jewish Women
National Gay and Lesbian Task Force*
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National Lesbian, Gay and Bisexual Student Caucus
National Organization for Women*
National Urban Coalition
NOW Legal Defense and Education Fund
Parents and Friends of Lesbians and Gays, Inc.
People For the American Way Action Fund*
Sex Information and Education Council of the U.S.
Southern Christian Leadership Conference
Stonewall 25, NCBLG
Union of American Hebrew Congregations
Unitarian Universalist Association of Congregations in North America
United Church of Christ Office for Church in Society
United States Student Association
Universal Fellowship of Metropolitan Community Churches
Women of Reformed Judaism
Women's Law Project
Women's Policy Group
YWCA of the USA
(partial list)

*Executive Committee

A COMPREHENSIVE PROPOSAL FOR LIFTING THE BAN ON GAY, LESBIAN AND BISEXUAL SERVICEMEMBERS IN THE UNITED STATES MILITARY

Documents Presented:

1. Proposal for Lifting the Ban on Gay, Lesbian and Bisexual Servicemembers in the United States Military

2. Response to Common Concerns About Lifting the Ban on Gay, Lesbian and Bisexual Servicemembers in the United States Military

PRESENTED TO THE MILITARY WORKING GROUP OF THE OFFICE OF THE SECRETARY OF DEFENSE

May 20, 1993

The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

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PROPOSAL FOR LIFTING THE BAN ON GAY, LESBIAN AND BISEXUAL SERVICEMEMBERS IN THE UNITED STATES MILITARY

"DON'T ASK; DON'T PUNISH"

The United States military must be ready at all times to defend the nation, to go to the defense of its allies, to protect vital national security interests and to carry out the orders of the Commander-in-Chief. To achieve that constant state of readiness requires high levels of training, order and discipline. In turn, those levels can only be maintained in the presence of high morale, strong esprit de corps and an unquestioning willingness to sacrifice individual needs for the sake of the common good.

These values, held by the United States military, are also the values of the Campaign for Military Service. The following proposal to lift the ban prohibiting gay men, lesbians and bisexuals from serving in the United States military is intended to be, above all, workable. Furthermore, it is designed to ensure that the United States military will continue to be the best trained and best disciplined -- the readiest -- military force in the world.

The components of this proposal include the following elements:

I. NO DISCRIMINATION BASED ON GAY STATUS

The military should not ask any recruit or servicemember about his or her sexual orientation. This is a personal matter that individuals should disclose when and if they choose to do so.

Any member of the armed services should, however, be allowed to acknowledge his or her sexual orientation without the threat of discharge on that basis. The mere status of being a gay person should not be a basis for precluding that individual from serving in the armed forces.

By contrast, the "don't ask; don't tell" approach is inconsistent with this basic anti-discrimination principle. One of the major psychological harms caused by the current ban is that it forces thousands of young men and women, many of whom discover their sexual orientation only **after** they enter the military, to live a constant, **ongoing** lie -- a lie which is contrary to the military's code of integrity and honesty. This lie is lived inevitably everyday

because of commonplace questions that people are asked about their daily lives. The "don't tell" policy is also unworkable at its very core: under this policy, gay people still must live in constant fear that someone else will "tell on them"-- thus causing discharges and the end of distinguished careers. "Don't ask, don't tell -- won't work." It is not a "compromise." It maintains the essence of the current ban.

II. NO DISCRIMINATION BASED ON PRIVATE, CONSENSUAL GAY CONDUCT

It is not sufficient for the military to prohibit discrimination based solely on gay status. The military cannot allow people to stay in the military who simply "state" they are gay, but continue to discharge individuals who engage in private, consensual gay conduct. This is disingenuous and absurd.

Obviously, not all people who say "I am gay" have recently engaged, or will soon engage, in sex with a person of the same gender. Similarly, not all people who say "I am straight" have recently engaged, or will soon engage, in sex with the opposite gender. The fact is, however, that **most** people who say they are gay or who say they are straight have engaged, or will engage at some point, in sexual activity. As far as we have been able to determine, this is part of the human condition.

When it comes to private, consensual conduct, the military should treat all servicemembers the same. A policy ending the exclusion of gay, lesbian, and bisexual people from service in the military cannot be combined with a policy of excluding such individuals when they engage in private, consensual gay conduct. Otherwise, the change promised by President Clinton will become a mere facade of equality.

Some individuals have raised concerns that the statement that one has engaged in gay sexual conduct amounts to an admission that one has violated Article 125 of the Uniform Code of Military Justice (UCMJ), thus necessitating a criminal proceeding against that individual. This is wrong. Retention of individuals in the military who engage in gay sexual conduct, and retention of Article 125 of the UCMJ, can co-exist.

The potential Article 125 problem exists **solely** because the law is currently enforced differently for gay servicemembers and for straight servicemembers. The adoption of an even-handed enforcement policy would eliminate any potential conflicts.

Article 125 of the UCMJ prohibits "sodomy" between people of the same or opposite sex. The Executive branch (in the Manual for Courts Martial) defines sodomy as "oral or anal sex." When a person states that he or she has engaged in sex with a person of the same gender, it is possible -- although not necessarily true -- that the person has engaged in oral or anal sex. Similarly, when a person states that he or she has engaged in sex with a person of the opposite gender, it is equally possible -- although also not necessarily true -- that the person

has engaged in oral or anal sex. The fact is that based on all the surveys that have been done, there appears to be very little difference between gay and straight people with regard to the incidence of oral sex.

The military has dealt with this anomaly between a sodomy provision passed in 1951 and the current realities of heterosexual sexual life with the following approach: if straight servicemembers engage in sex that is **consensual and between adults**, the military does not investigate to determine whether that sex has included oral or anal sex. If a straight servicemember states that he or she has a girlfriend or a boyfriend, the military does not investigate to determine if the person is engaging in oral sex with that person. If another servicemember reports to a commander that he believes a co-worker is having oral sex with a consenting, adult girlfriend, the commander does not usually begin an investigation of the co-worker.

Thus, the policy is simple: **Consenting, private heterosexual sex between adults is not prosecuted by the military, although much of that activity probably violates Article 125.** By contrast, Article 125 does serve a function in prosecuting cases involving sex with minors or nonconsensual sex -- and it is used for that function with regard to straight servicemembers.

The military could choose to start enforcing Article 125 across the board, thus causing havoc in the personal lives of the vast majority of their servicemembers and quickly filling up their military jails. Alternatively, the military could continue the approach it has adopted thus far and essentially refuse to prosecute Article 125 with regard to private, consensual sex between adults.

If the military adopts the latter approach, it can easily apply this approach **evenhandedly** with regard to **both** gay and straight servicemembers. Indeed, given the fact that some chains of command will still harbor anti-gay sentiments after the ban is lifted, it is **essential** that the **military prosecutor's manual** be **amended** to **withhold the authority to prosecute sodomy cases in the absence of aggravating circumstances**, such as use of force or the minor age of one of the participants. In addition, the manual should provide that Articles 133 and 134 of the UCMJ be applied in an even-handed manner.

In the future, the military should consider proposing to the Congress changes in the UCMJ that would bring the code in line with current sexual practices of both gay and straight servicemembers, while maintaining prohibitions on nonconsensual sex and sex with minors. This would be consistent with reforms instituted in over half of the States in this country. The ban, however, can be lifted in an effective manner even before such reforms are instituted.

III. PROHIBITED SEXUAL CONDUCT: GAY OR STRAIGHT

Although the military should not discriminate against people who acknowledge they are gay, or against people who engage in private, consensual gay conduct, that does not mean that the military may not proscribe and punish certain forms of sexual conduct, including gay conduct. The touchstone in this area is **parity** between gay conduct and straight conduct.

For example, the military currently prohibits sexual harassment -- and, indeed, clearly needs to enforce its current policies more vigorously. The inappropriate sexual conduct of harassment should be prohibited in the military -- whether practiced by straight servicemembers or gay servicemembers.

Similarly, the military currently prohibits fraternization because it is concerned that problems may arise if sexual relations develop between servicemembers working together in the same chain of command. Fraternization should continue to be prohibited in the military -- whether practiced by straight servicemembers or gay servicemembers.

The military also prohibits other forms of sexual conduct, such as having sex in the barracks, because it views such conduct as likely to create problems for the military unit. Such sexual conduct should continue to be prohibited by the military -- whether practiced by straight servicemembers or gay servicemembers.

The key in all of these situations is **parity**. If a particular form of sexual behavior is deemed by the military to create problems for military effectiveness, it will have that effect whether it is practiced by gay servicemembers or straight servicemembers. Therefore, inappropriate types of sexual conduct should be strictly prohibited for both gay and straight members of the military -- and punishment for that form of behavior should be the same for both gay and straight servicemembers.

IV. PUBLIC DISPLAYS OF AFFECTION

Public displays of affection, in uniform and on-base, and in uniform and off-base, have traditionally been prohibited by the military services -- usually by custom and tradition and sometimes by service policy or regulation. This policy of discouraging inappropriate public displays of affection should be continued and need not be changed in the event the ban against gay people in the military is lifted. Moreover, the way in which these rules are enforced should continue to be a matter left to the province of the base commander.

The guiding principle in this area should be continued reliance on the base commander to prohibit public displays of affection. It is unnecessary for the military to develop a separate code of conduct regulating public displays of affection for gay servicemembers. If it does so, it will perpetuate an unacceptable form of second-class citizenship for gay individuals that could undermine unit cohesion by sending a message to straight servicemembers that gay

people are inferior and unworthy of their respect.

Indeed, the very idea that the military needs to develop a separate code of behavioral conduct for gay people is misplaced and a tremendous waste of energy. The idea reflects a profound misunderstanding about how gay people currently conduct themselves in today's society. **Much** more than straight people, gay people have learned to restrain themselves from displaying even simple manifestations of affection in public. Unfortunately, this restraint has been the result of a learned reaction to a hostile society. The fact is, however, that this self-restraint is a reality for gay people -- both inside the military and outside.

V. BENEFITS

Various individuals have voiced concern that lifting the ban will mean that the military will immediately have to provide to the life-partners of gay people all of the benefits it currently provides to the spouses of straight servicemembers. This is wrong. Lifting the ban will not automatically require such a shift. Currently, no federal government agencies provide benefits to gay partners. Realistically, the military's policy is likely to be changed only if and when the overall federal policy changes.

The military currently provides spousal benefits only to those who are **legally married** under state law. There is no state currently in the union that permits same-sex marriages. Hawaii may become the first such state based on a pending lawsuit, although the state may still prevail in this lawsuit. In any event, no same-sex marriages are currently recognized in the United States. Therefore, as currently established in military regulations, military benefits are not required to be extended to the unmarried life-partners of either gay or straight servicemembers.

This analysis is not affected by the fact that several localities have passed "domestic partnership" laws. None of these laws designate the individuals as "married" for purposes of state law and thus none would affect a military regulation that required proof of marriage. Moreover, to the extent that some of these ordinances require the provision of some substantial benefit to partners (such as health benefits), the ordinances uniformly restrict the right to such benefits to the employees of the particular state or locality.

It should be noted, of course, that a lawsuit can be brought arguing that the denial of benefits to the life-partners of gay people (who are precluded from getting married under state law) violates the equal protection clause of the federal Constitution. Such lawsuits have not generally been successful in the past, but they might prevail at some point in the future.

It does not make a lot of sense, however, for the military to spend significant time worrying about this issue now. For purposes of a lawsuit, the military is in no different position than the rest of the federal government. The same type of equal protection challenge could be brought against the Treasury Department as against the military. Thusfar, no such

challenge has been brought against any federal agency. When and if such a suit is brought, it is likely that it will be brought against the federal workforce as a whole, and not solely against the military. As a practical matter, the military will not be forced ahead of other executive branch agencies on this issue.

VI. PAST DISCHARGES

When the military lifts its ban, it will need to decide how to address the cases of those individuals who have been discharged under the ban. These cases should be divided into two categories: those individuals discharged after President Clinton entered office and those individuals discharged before the Clinton Administration.

A. Clinton Administration Discharges

In light of the fact that President Clinton committed, during the campaign and after the election, to a policy of ending the ban, there is a sense of reliance that individuals discharged after the President took office should be "made whole" in their relief. Indeed, the President's statement in January made clear that such individuals would receive "make whole" relief. Thus, such individuals should be reinstated to their former positions, should receive backpay and any seniority rights they may have lost in the interim, and should have their records reviewed to ensure that any bad evaluations or other adverse actions taken as a result of their advocacy for lifting the ban are corrected. In addition, any individual whose case is currently in litigation should be treated in this manner.

B. Pre-Clinton Administration Discharges

Individuals who were discharged, or who resigned in lieu of separation, prior to the Clinton Administration should have the right to be reinstated. Assuming that such individuals meet the military's other criteria for reinstatement, these individuals should be accepted into the military. As a general matter, as a means of compensating these individuals for the injury they have suffered, maximum good-faith efforts should be made to place these individuals in desirable positions.

Many individuals may not wish to be reinstated, but will want to have their discharges upgraded to "honorable." Unless there was some reason other than gay status or gay conduct at issue in the discharge (e.g., fraternization or assault), such discharges should be upgraded. In addition, any reference to the fact that the discharge was originally for homosexuality should be deleted.

VII. CONCLUSION

The military's policy of excluding known gay men, lesbians or bisexuals from the armed forces is a relic of old psychiatric assumptions about homosexuality as a mental illness and a hostage to new stereotypes about the inability of straight people to work with and bond with gay people. Gay men, lesbians, and bisexuals have been excellent members of the armed forces. They have been forced, however, to live a constant lie -- a lie at odds with their military and human values of integrity and honesty. Lifting the ban will allow such individuals to finally serve their country with full dignity and honor.

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*Executive Committee

RESPONSE TO COMMON CONCERNS ABOUT LIFTING THE BAN ON GAY, LESBIAN AND BISEXUAL SERVICEMEMBERS IN THE UNITED STATES MILITARY

The following response addresses two common concerns about lifting the ban on gay, lesbian and bisexual servicemembers in the United States military: the impact on the "right of privacy" of straight servicemembers and on first amendment rights.

I. PRIVACY RIGHTS

There are two types of "right of privacy" concerns, on the part of straight servicemembers, that have been raised. Both of these issues can be adequately addressed in a DOD policy lifting the ban.

The first right of privacy advanced by straight servicemembers is straightforward. That is the right of a straight person to be free from harassment by a gay person. No one contests this right. There should be **strict rules** governing inappropriate sexual conduct. This includes the right of straight and gay people to be free from harassment. **Everyone** has a right of privacy not to be subjected to unwarranted sexual advances. We should note for the record that all the evidence indicates that gay people actually tend not to make advances to straight people. Nevertheless, the rules should be there equally for gay and straight servicemembers.

The second right of privacy advanced by straight servicemembers is more subtle. This is the "right" of a straight servicemember not to feel **uncomfortable** by being forced to share living accommodations with a gay person. Examples of this right are primarily the "right" not to be forced to share shower or toilet facilities with a known gay person or the "right" not to be forced to sleep next to a known gay person. The argument in these situations is **not** that the gay person will "come onto" or harass the straight person -- but simply that the straight person may be **uncomfortable** being around someone whom they know is attracted to individuals of the same sex.

It is naive to assume that this discomfort does not exist among some straight people. It does. It is the result of years of socialization against gay people and the result of the lack of familiarity with gay people. While the military probably overestimates both the **level** of discomfort that exists and

the **number** of straight servicepeople who actually feel this discomfort acutely -- the fact is that the discomfort exists to some degree.

The question, however, is how to shape **public policy** in response to this discomfort. It is well documented that, in the 1940s, white people were not enthusiastic about sharing showers or barracks with African-Americans. But the public policy decision made at the time was not to segregate African-Americans, but rather to require integration and then to manage or mitigate the issues that arose.

A similar solution is called for here. As noted, it is naive to assume that the discomfort does not exist. But the public policy **response** should not be to **exclude an entire category of people from military service** because of the discomfort of some individuals. Indeed, such a response is probably unconstitutional. Rather, the solution should be to manage and mitigate the discomfort.

The truth is that men grow up taking showers together their entire lives -- in school, in camp, and in gyms. In today's society, it is perfectly possible for a man or a woman to take a shower in a health club next to someone they know or suspect is gay, lesbian or bisexual, as the case may be. Straight people manage. They may be uncomfortable the first few times -- but then they realize it is no big deal. This is a process of individuals managing their own discomfort.

The military can also mitigate the discomfort. For example, for those straight people who truly cannot get over the discomfort of showering with a gay person, or for those people who just want more privacy, the military can consider setting up a few private shower stalls that anyone can use. In fact, the trend in the military over the past twenty years has been to improve the personal living standards of servicemembers, including providing more private shower and toilet facilities. There is no reason to believe this trend will not continue. (During war, when a separate shower stall is not feasible, even people opposed to lifting the ban agree that this is the last thing people worry about.)

Housing and bunking situations call for a similar solution. First, the discomfort can be managed. Some straight people think they will be uncomfortable sleeping next to a gay person. They will soon discover that it is "no big deal" and the discomfort will dissipate. In this context, it is important to remember that most gay people will **not** divulge their sexual orientation until they believe those around them will feel comfortable with the information. This will help in most housing and bunking situations.

There may be cases, of course, in which a straight person will continue to feel discomfort sleeping next to a gay person. In these cases, the commander should exercise the same discretion that he or she would exercise in other situations where there are serious personality conflicts between servicemembers, whether based on race, ethnicity, religion, or some other factor. That is, the commander should first try to work with the straight person to

help him or her deal with the situation. If that proves unworkable, the commander should have the discretion to reassign the straight servicemember to a different living arrangement.

II. IMPACT ON FIRST AMENDMENT RIGHTS

Some individuals have raised concerns that lifting of the ban will mean that the military will not be able to stop radical pro-gay advocacy on military bases. Others have raised the concern that organizations such as gay groups could not be banned from military bases.

In light of the experiences of foreign militaries that have lifted their ban, many of these possible gay activities seem quite hypothetical and unlikely. Nevertheless, as a legal matter, the issue is not difficult. The courts have been consistent in their rulings that speech which the military determines is detrimental to good order and morale may be restricted. (See, e.g., Parker v. Levy, 417 U.S. 733 (1974); Brown v. Glines, 444 U.S. 348 (1980); see also Goldman v. Weinberger, 475 U.S. 503 (1986).

In practice, the military leaves decisions about a whole range of issues, including what groups can meet on military facilities, to the commander at each base. Realistically, gay people will probably choose to socialize off-base.

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FILE
9

Campaign for Military Service Report

At a meeting today, 14 June 1993, the Campaign for Military Service, one of the largest homosexual advocacy groups working to lift the current military ban, presented several reasons why they believe the momentum of the debate is shifting in their favor.

They believe that Rep. Barney Frank's proposal takes the initiative away from Senator Sam Nunn. They believe that Frank's proposal is close to their own proposal for lifting the ban.

They were further encouraged by Gen. Colin Powell's speech at Harvard University, in which he stated that the military will work faithfully to execute whatever executive order it receives.

Barry Goldwater, a leading American conservative figure helped their cause with his statement that discrimination against homosexuals "is just plain un-American."

The message of the CMS can be summarized as "end discrimination." They want to make the debate focus on discrimination, not the effect lifting the ban would have on the military. When framed as a discrimination issue, seventy percent of those polled supported lifting the ban.

The CMS presented a former Marine NCO who was discharged when she admitted her homosexuality during a security clearance check. She said that this is an issue of discrimination and civil rights, and the debate should not focus on personal sexual orientation. She was obviously well coached by the CMS staff.

- Unknown Source

They stated at this meeting that they believe that they have the support of 250 members of Congress. This figure was likely reached by adding known supporters to those they consider likely or potential supporters, and adding many unknowns. Representatives need to be made aware that their silence is being used by the CMS to create an impression of widespread Congressional support for their efforts to lift the ban.

At this meeting, they outlined a five part strategy for the coming weeks before Clinton unveils the expected executive order.

1) They plan to stage a media blitz using commercials and editorials to try to convince the American public. These commercials will focus on "exemplary" military personnel discharged for their homosexuality, trying to persuade people that service should be judged on performance, not sexual orientation.

2) They plan to wage a grass roots campaign, focusing petitions and postcards on members of Congress in closely contested districts with large numbers of undecided voters. They will also seek to convince members who are in the middle, who have not indicated support one way or the other.

3) They plan a legal policy/lobbying effort in the halls of Congress. They plan to send lobbyists and advocates door to door, or do anything else they can to contact members of Congress.

4) They want members of Congress who support homosexuals to give speeches on the floor explaining why the ban should be lifted. These speeches will focus on race, inconsistencies in the UCMJ and its enforcement (heterosexual oral intercourse), and discrimination.

5) Representatives Pat Schroeder and Gerry Studds are circulating a Dear Colleague letter that will be sent to the President. This letter was produced by the CMS. The members' letter outlines points they expect to be addressed by the President's directive and is in fact a summary of the CMS proposal.

COMPARISON OF CAMPAIGN FOR MILITARY SERVICE, CONGRESSMAN FRANK, AND SENATOR NUNN PROPOSALS REGARDING GAY MEN, LESBIANS AND BISEXUALS IN THE MILITARY

Proposal	Questions Regarding Sexual Orientation	Speech	Conduct/Misconduct	Ban Lifted?
Campaign for Military Service	Policy: Individuals entering the armed services, or undergoing security clearances, would not be asked if they were gay. Off-duty conduct, such as going to a gay bar or being seen with another gay person, would not permit a question regarding the person's homosexuality. On base, gay literature and photographs of partners would also not trigger questions. Result: This is a true "don't ask" policy. That is, there are no inadvertent actions that a gay person could take on-base (e.g., writing in a letter or a journal that he or she is gay), and no intentional actions taken off-base (e.g., throwing a party with a gay lover) that would permissibly trigger a question regarding the person's homosexuality.	Policy: A person could tell anyone that he or she is gay, on-base or off-base, privately or publicly. Result: This approach allows gay people to live honestly and with dignity in the military and will provide them with real and effective security. As a practical matter, most gay people in the military will share information about themselves discreetly. There is no evidence that knowledge that a person is gay (either through private or public speech) will affect unit cohesion.	Policy: Would allow private, consensual sex between gay adults, off-base. Would have strict rules against misconduct, such as sexual harassment and fraternization. Would apply current rules against public manifestations of affection, on-base or in uniform, even-handedly between gay and straight people, with traditional discretion allowed to commanding officers. Result: This allows gay people to have private, fulfilling lives, just like straight people. This approach does not condone misconduct, such as sexual harassment, nor does it establish an unnecessary separate behavioral code for gay displays of affection.	YES, because gay people cannot be discharged for acknowledging they are gay or for engaging in private gay conduct. Gay people, like straight people, can be discharged for sexual misconduct, such as harassment, nonconsensual sex, or fraternization.
Frank	Policy: Similar to the CMS proposal. Individuals entering the armed services, or undergoing security clearances, would not be asked if they were gay. Off-duty conduct would also not trigger questions regarding the person's homosexuality. On base, gay literature and photographs of partners would also not trigger questions. Result: Like the CMS approach, this is a true "don't ask" policy.	Policy: A person could privately tell a co-worker that he or she is gay. The person could also act in a manner off-base that made it clear the person is gay (e.g., appear at a gay event with a lover). But the person could not announce in a very "public" manner on base that he or she is gay. Result: Personal honesty is somewhat advanced by this approach because people can be honest with their coworkers. But an atmosphere of fear will still be maintained: when will a commander consider the speech too "public" and punish the gay person? Any restriction on saying that one is gay reduces the basic dignity of that person and leaves open the potential for abuse of power.	Policy: Would allow private, consensual sex between gay adults, off-base. Probable Policy: Would not allow public manifestations of affection between gay people on base or in uniform. (May have separate rules to this effect.) Would have strict rules against misconduct, such as sexual harassment and fraternization. Result: This allows gay people to have private, off-duty lives, like straight people have. This approach does not condone misconduct, such as sexual harassment. A separate behavioral code regarding gay displays of affection, however, is problematic because it is unnecessary given existing rules.	UNCLEAR, because although gay people cannot be discharged for privately acknowledging they are gay or for engaging in private, off-base gay conduct, they may be disciplined for "public" statements or conduct while on base, on duty or in uniform.
Nunn	Policy: Individuals entering the armed services would not be asked whether they are homosexual. Possible Policy: Perhaps people would not be asked during security clearances whether they are homosexual. It is unclear if going to a gay bar, reading a gay magazine, or attending a gay rights activity would trigger an investigation of whether the person is gay. Result: A commanding officer could always still ask a servicemember if he or she were gay. If the person were gay and chose to answer honestly, the person would be discharged. There would be no discretion to this discharge.	Policy: A person could not tell any co-worker, superior or subordinate that he or she is gay. A person could not engage in any action, on-base or off-base, that would indicate the person is gay. Result: In most cases, gay people in the military have not told others they are gay. Instead, other people have told on them — based on an overheard conversation, reading the person's letters, or just suspecting the person. This approach forces people to live an ongoing lie, directly contrary to the military values of integrity and honesty, and maintains an ongoing fear of disclosure for gay people.	Policy: Would not allow any private, consensual sex between gay adults, on-base or off-base. Any homosexual sex would be grounds for administrative discharge; homosexual sodomy (oral or anal sex) would be grounds for criminal prosecution under the Uniform Code of Military Justice (UCMJ). Result: This effectively maintains the ban for everyone other than celibate gay people, which is unacceptable. This approach also ignores the fact that straight people engage in oral sex at the same incidence as gay people (which is equally prohibited by the UCMJ as sodomy) but such acts are not currently criminally prosecuted by the military.	NO, because gay people can still be discharged for acknowledging they are gay or if found to have engaged in private consensual gay sex.

Prepared by Campaign for Military Service Legal/Policy Division

FILE
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* Materials to be provided in future literature distributions. (Materials in other sections will be supplemented as well.)

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FACT SHEET
GAY MEN, LESBIANS AND BISEXUALS IN THE MILITARY

* THE DEPARTMENT OF DEFENSE MILITARY BAN

The Department of Defense (DOD) excludes all gay men, lesbians and bisexual people from serving in the armed forces. DOD Directive 1332.14 states flatly: "Homosexuality is incompatible with military service." Since 1982, the military has discharged people who state they are gay; who engage in private, consensual gay conduct; who state a desire to engage in gay conduct; or who are found out to be gay accidentally or through a witch hunt investigation.

* THE MILITARY'S RATIONALES FOR ITS POLICY

The military's stated rationale is not based on an argument that gay people make poor fighting soldiers or fail to promote the military mission. The military's internal reports openly acknowledge there are thousands of gay men, lesbians, and bisexual people who are currently serving in the armed forces with valor and merit.

Rather, **the military's argument is based on catering to simple prejudice.** Without presenting any verified data, the military asserts that the mere presence of gay personnel, if others know that such persons are gay, will undermine: discipline, good order and morale; mutual trust and confidence; unit cohesion; the system of rank and command; assignment, deployment, recruitment and retention.

* THE MILITARY'S RATIONALES ARE UNSUBSTANTIATED

The military has never presented any evidence to support its assertions. The military's policy is premised on two unproven **assumptions:** 1) straight servicemembers will have such adverse reactions to openly gay servicemembers that the military mission will necessarily be compromised, and 2) there is **no** way to reduce these adverse reactions through strong military leadership so that adverse effects do **not** occur.

These assumptions are identical to those used to argue against integrating African Americans into the military. Bottom line: these assumptions are wrong. Many straight servicemembers currently know and work with comrades who are gay and **have no difficulty with that fact.** The experience of the U.S. military with race integration demonstrates that strong military leadership against discrimination and harassment can effectively mitigate adverse responses from others. The Defense Department's own internal PERSEREC studies support this assessment.

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* THE MILITARY'S POLICY UNDER THE CURRENT "COMPROMISE"

Under the compromise provision, the military's policy is essentially the same as before. The only two changes are: 1) applicants are no longer asked if they are gay, and 2) servicemembers who say they are gay continue to be processed through the discharge system, but may ultimately have that discharge suspended and be placed in "standby reserve." Servicemembers who acknowledge they have engaged in gay conduct are still subject to full discharge.

* WHAT WOULD BE THE RAMIFICATIONS OF LIFTING THE BAN?

Ending the ban would not decrease military effectiveness. As Dr. Lawrence Korb testified before the Senate Arms Services Committee on March 31, 1993: "Research shows that proper leadership and training can surmount . . . impediments [to unit cohesion]" and there is "no convincing evidence that changing the current policy would undermine unit cohesion any more than the other social changes that society has asked the armed forces to make over the past 50 years." Existing military policies adequately address concerns such as discipline, good order and the system of command. These measures include strict sanctions against fraternization between the ranks, sexual harassment, abuse of authority and other conduct that could undermine unit readiness.

* WHY DOES LIFTING THE BAN BENEFIT ALL AMERICANS?

Ending the ban will not only stop the unnecessary and unfair discrimination which is now officially sanctioned by the U.S. Government. It will also save American taxpayers millions of dollars. A 1992 GAO study found that it cost $493,195,968 just to replace gay military personnel discharged from 1980-1990.

* WHY SHOULD CONGRESS SUPPORT THE PRESIDENT'S PLEDGE TO OVERTURN THE BAN?

The ban against gay people in the military runs counter to the basic principles of liberty and justice on which our Nation stands. The fact that individual prejudice exists among some people has never been a valid reason to cater to the prejudice or reaffirm it. Rather, it is the responsibility of the government and the military to take active steps to counter such prejudice.

As Dr. Korb has testified: "the burden of scientific proof must be on those who wish to exclude gays from the military." The legal burden of proof is also on the military. The military has not met its burden. Gay people should not have to fight the military establishment and discrimination in order to defend their country.

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QUESTIONS AND ANSWERS ABOUT GAYS IN THE MILITARY

1. Military readiness will be hurt by allowing lesbians and gay men in the military.

FALSE: There is absolutely no data to support this assertion. History, in fact, proves otherwise. Internal Department of Defense (DOD) and General Accounting Office (GAO) reports support the fact that lesbians, gay men and bisexual people have served and can serve successfully in the military. Dr. Lawrence Korb, Ronald Reagan's Assistant Secretary of Defense, has testified that, ". . . I reject completely any inference that gay men and women do not embrace the values of the military, which is the desire to serve one's country and to deal with all enemies, foreign and domestic. I think in the military, as I said in my testimony, we have people with various backgrounds and various views on every issue but there's nothing that, with good leadership, would stand in the way of getting the correct values to perform effectively in battle."

2. The military's ban against homosexuals is simple discrimination.

TRUE: The DOD's ban is unnecessary for a strong national defense. The military's rationale is based on prejudice, not facts. In nearly identical language, the same arguments and stereotypes were used to block the creation of the 442nd (the World War II Japanese American unit) and the integration of African Americans. Prejudice is just as wrong today as it was 50 years ago.

3. The Uniform Code of Military Justice makes it impossible to lift the ban.

FALSE: The UCMJ is not a hindrance to ending the ban. When the ban is lifted, the UCMJ's anti-sodomy provision (which applies to both homosexuals and heterosexuals) can be enforced equally with regard to gay and straight people. In practice, this means allowing consensual private sex among adults, and may mean regulating conduct which occurs on-base, on-duty, or related to the service. The UCMJ can also be revised, either through amendment or through implementation regulations.

4. Homosexuals in the military will increase the prevalence of AIDS in the service and make blood transfusions in combat unsafe.

FALSE: Current DOD policy requires testing of all new recruits for HIV and excludes those who are HIV positive. All servicemembers are tested annually and none are permitted to serve in deployable combat units or overseas if they test HIV positive. Personnel in deployable units are tested every six months. Those testing positive are transferred, not discharged. Allowing gay people already in the military to acknowledge their sexual orientation will not affect the prevalence or treatment of AIDS in the military.

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5. Discharging homosexuals from the military is an expensive policy.

TRUE: A June 12, 1992 General Accounting Office (GAO) study estimated that in FY 1990, recruiting and initial training costs associated with the replacement of those discharged for homosexuality was $28,226 for each enlisted member and $120,772 for each officer. On the average, DOD expels 1500 women and men annually for homosexuality at a cost of more than $22 million. This figure does not include legal and investigation-related costs which often are quite costly.

6. Homosexuals pose a risk to national security.

FALSE: Department of Defense studies have conclusively found that gay, lesbian and bisexual members of the armed forces do not pose a security risk. In 1991, then Secretary of Defense Richard Cheney endorsed these findings in testimony before Congress, calling the security risk rationale "somewhat of an old chestnut." Additionally, the National Security Agency has dropped regulations pertaining to homosexuality and national security.

7. Allowing homosexuals to serve in the military will destroy unit cohesion.

FALSE: Readiness is increased when each servicemember is free to perform at his or her most effective level unburdened by fear of disclosure of sexual orientation that will result in discharge. In addition, existing military policies sufficiently address concerns about discipline, good order and the system of command that may result from straight peoples' discomfort with gay people.

Dr. Lawrence Korb, Ronald Reagan's Assistant Secretary of Defense, has testified, "So I don't think that there's any reason why, with proper leadership and training, as well as training of the other members of the group, as we've done to deal with problems caused by the integration of women and blacks, that you cannot achieve the cohesion. In fact, I know we already do."

8. The military is not equipped to handle the ramifications of lifting the ban.

FALSE: The existing infrastructure can handle any issues that may result from lifting the ban. Current military policies include strict sanctions against fraternization between ranks, sexual harassment, abuse of authority and other conduct that could undermine unit cohesion. Further, the military chain-of-command is experienced in ensuring that individuals work together regardless of personal prejudices.

Dr. Lawrence Korb, Ronald Reagan's Assistant Secretary of Defense, has testified, "Now, research tells us that the more dissimilar the group, the more difficult will be the task of trying to create cohesion. . . But research also shows that proper leadership and training can surmount these impediments. Since our armed forces already are and are likely to be composed of people with different background (sic) and values, its leaders have had and will continue to have to adjust to this diversity in building cohesion . . . "

9. Lifting the ban is a dangerous "social experiment" for the military.

FALSE: This is not a grand social experiment. Lifting the ban simply removes an old vestige of institutionalized discrimination without destroying military effectiveness or readiness.

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TALKING POINTS ON CURRENT STATUS OF LIFTING THE BAN

* The announcement by Representative Barney Frank, proposing an implementation for lifting the ban on gays and lesbians in the military, effectively shifted this debate to how the ban on gay and lesbian servicemembers can be successfully lifted in the current political climate.

* While the Frank proposal of "on base, on duty, in uniform" has yet to take specific shape, it is a policy framework that is far more acceptable than Sam Nunn's rigid position of "don't ask, don't tell."

* Under no circumstance is discrimination based on personal bias -- or a policy that countenances such discrimination -- acceptable to the gay and lesbian community and civil rights advocates. Frank's proposal narrows the application of appropriate codes of military conduct to "on base, on duty, in uniform." Lifting the ban must be the policy. An implementation plan using the Frank framework of "on base, on duty, in uniform," is an acceptable beginning to a dialogue on standards of sexual conduct for all military personnel.

* The Campaign for Military Service is presenting recommendations for successfully lifting the ban to Pentagon officials and Congressional leaders. It is the position of our broad-based coalition to stop discrimination and implement a policy that fairly and equitably treats all military personnel, gay and straight. Under no circumstance will we accept a policy that forces any person to hide or lie about his or her sexual orientation.

* This debate has shifted, and serious discussions regarding an implementation policy for lifting the ban should continue in Congress and within the Pentagon. Members of Congress are urged to adopt the CMS position as a standard for acceptable implementation.

* Any position that CMS might support must be based on two principles: non-discrimination, and codes of sexual conduct (for gay and straight servicemembers) that are fairly and equally applied. Employing the Frank framework, we believe it may be possible to achieve a fair and equitable solution.

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TALKING POINTS

GAY PEOPLE IN THE MILITARY

* **The military's policy which excludes lesbians, gay men, and bisexuals from serving in the military is simple discrimination.**

There is no evidence that gay people are not good soldiers. Military officials at the highest levels, Senators on the Armed Services Committee and proponents of keeping the ban, all **AGREE** gay people are currently serving in the military with valor and distinction and have done so for years. This is also **documented in the military's own internal reports.** But the military wants these good soldiers ONLY if they keep their sexual orientation a deep and dark secret. This is **not** about **merit and military effectiveness; this is simple discrimination.**

* **There is no evidence that allowing openly gay people in the military will reduce the effectiveness of the military.**

The military says openly gay people will affect "unit cohesion," "discipline" or "rank and command." But it simply is **NOT TRUE** that straight people hate gay people so much they cannot live and work with them. Over the years, lots of straight people have served with people they have known are gay – without problems. The military institution also has **amply** demonstrated its ability, through **order and command,** to tell any straight person who is uncomfortable with gay people to keep personal prejudices in check and to work with people based on merit. The **burden of proof** is on the military to justify its exclusion.

* **The military currently spends millions of dollars and thousands of person hours tracing down and "weeding out" gay people from the military.**

Stopping disruptive "witch hunts" of suspected gay people, allowing perhaps 10% of our military to serve productively and without constant fear of disclosure, will **enhance,** rather than decrease, the effectiveness of our fighting forces. Millions of tax dollars currently lost in investigating and discharging these thousands of talented servicepeople every year will be saved.

* **Allowing openly gay people into the military will not increase the risk of AIDS in the military.**

The military already has a stringent HIV-screening policy for applicants and denies entrance to those who are HIV-positive. The military also has a developed HIV/AIDS policy for servicemembers. None of these policies will be changed by allowing those gay people currently in the military to remain serving this country even if they are known to be gay. The AIDS issue is a complete **red herring.**

* **Lifting the military ban is not a grand social experiment.**

It is a simple application of our Nation's commitment to anti-discrimination and fairness. Racial integration of the military was not a grand social experiment in 1948. It was simply the right thing to do. Lifting the military ban against gay people now is the **RIGHT THING TO DO.**

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BACKGROUND PAPER

SUPPORTING PRESIDENT CLINTON'S POLICY TO LIFT THE BAN ON GAY PEOPLE IN THE MILITARY

Not everyone in the military establishment believes that the military's policy excluding gay men, lesbians and bisexuals from the armed services is justified. Two recent internal military reports prepared by the Personnel Security Research and Education Center (PERSEREC) questioned the need for the policy. The first report, "Nonconforming Sexual Orientation and Military Suitability," issued December 1988 (PERSEREC I), determined that the military's assertion that "homosexuality was incompatible with military service" was invalid. The second report, "Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability," issued in January 1989 (PERSEREC II), concluded that gay men, lesbians and bisexuals in the military do not pose increased security risks.

The military's policy embodies the purest form of unjustified discrimination: it establishes a blanket ban on the basis of a characteristic that has no proven relationship to the ability of an individual to perform a job. The anecdotal record is replete with incidents of servicemembers with exemplary records, distinguished careers, and high military honors discharged simply because they are found out to be gay.

Like all unjustified discriminatory policies, this one is based on myths, fears and stereotypes about gay people. Indeed, all of the military's rationales assume that a **significant majority** of today's Americans still fear and hate gay people. The policy further assumes the only way for the military to continue functioning effectively is to cater to and accommodate such prejudices. Catering to prejudice has never been a good reason for a policy and, indeed, is probably unconstitutional. (See "Recent Legal Cases: Constitutional Analysis" in CMS Briefing Book at Tab 6).

This concern for tolerating prejudice, however, is not new. The military echoed the same concerns regarding the integration of African-Americans in the armed services. The same concerns regarding the effect on "morale" and on "unity and esprit-de-corp" were voiced in 1941 with regard to "admitting Negroes." A Navy Department memorandum, dated December 24, 1941, outlined the basis for the military's exclusion of African-Americans:

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> The close and intimate conditions of life aboard ship, the necessity for the highest possible degree of unity and esprit-de-corp; the requirement of morale - all demand that nothing be done which may adversely affect the situation. Past experience has shown irrefutably that the enlistment of Negroes (other than for mess attendants) leads to disruptive and undermining conditions.

Doesn't that sound familiar.

The successful integration of African Americans into the military gives testimony to the military's system of discipline and order and its ability to overcome personnel prejudice and build unit cohesion. As the 1988 PERSEREC Report notes:

> The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions have come true. Social science specialists helped develop programs for combating racial discrimination, so that now the military services are leaders in providing equal opportunity for black men and women. It would be wise to consider applying the experience of the past forty years to the integration of homosexuals. (PERSEREC I, at 25.)

The devastating effects feared by the military did not occur with the integration of African-Americans into the armed forces, and will not occur when the ban on gay men, lesbians and bisexuals is lifted.

The irony of the military's position is that the majority of the American public does not harbor the degree of repulsion, hatred and fear of gay people presumed by the military, nor did they about African-Americans in the 1940s. The "dire consequences" predicted by the military as rationales for excluding gay people exist without any empirical basis. Over the past years, particularly as more and more gay men, lesbians and bisexual people have become more open in workplace and family surroundings, a significant percentage of the American public has found working, studying and living with gay people is not uncomfortable or emotionally devastating. Indeed, the level of public acceptance of gay people in this country now is higher than it has ever been. In its March 5, 1993 issue, The New York Times published a poll conducted with CBS News. The results showed: **The majority of Americans (78%) believe lesbians and gay men should have equal rights in terms of job opportunities.**

The military's policy has devastating consequences for individual lives. On the purely practical level, the military's policy means: if a gay person who has graduated at the top of his or her class from a prestigious school wishes to serve in the military without hiding the fact of his or her sexual orientation, he or she is precluded from such service.

On an emotional level, the military's policy forces thousands of qualified and dedicated gay, lesbian and bisexual professionals to live in constant fear of being exposed. A policy that forces people to lie does little to establish or maintain morale, trust or confidence in the ranks. The exclusionary policy itself breeds fear, mistrust and low morale. Gay people suffer through periodic "witchhunts," are subjected to pressure to "name names" of other gay members, and are inhibited in their ability to talk about anything remotely connected to their personal lives. The chilling of free speech and association among all servicemembers is one of the more invidious ramifications of the military's sweeping exclusionary policy.

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EXTRACT FROM DOD DIRECTIVE 1332.14: JAN. 28. 1982
ENLISTED ADMINISTRATIVE SEPARATIONS

Homosexuality (Part 1. Section H)

1. Basis

a. Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers 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.

b. As used in this action:

(1) Homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts;

(2) Bisexual means a person who engages in, desires to engage in, or intends to engage in homosexual and heterosexual acts;

(3) A homosexual act means bodily contact, actively undertaken or passively permitted between members of the same sex for the purpose of satisfying sexual desires.

c. The basis for separation may include preservice, prior service, or current service conduct or statements. A member shall be separated under this section if one or more of the following approved findings is made:

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that:

(a) Such conduct is a departure from the member's usual and customary behavior;

(b) Such conduct under all circumstances is unlikely to recur;

(c) Such conduct was not accomplished by the use of force, coercion, or intimidation by the member during a period of military service;

(d) Under the particular circumstances of the case, the member's continued presence in the Service is consistent with the interest of the Service in proper discipline, good order, and morale; and

(e) The member does not desire to engage in or intend to engage in homosexual acts.

(2) The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual and that the purpose of the marriage or attempt was the avoidance or termination of military service.

EXTRACT FROM DOD DIRECTIVE 1332.30: FEB. 12, 1986
SEPARATION OF REGULAR COMMISSIONED OFFICERS FOR CAUSE

DEFINITIONS

Bisexual. A person who engages in, desires to engage in, or intends to engage in both homosexual and heterosexual acts.

Homosexual. A person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts.

Homosexual Act. Bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION

Homosexuality. The basis for separation may include preservice, prior service, or current service conduct or statements. A commissioned officer shall be separated under this section if one or more of the following approved findings is made:

a. The officer has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are approved further findings that:

(1) Such conduct is a departure from the member's usual and customary behavior;

(2) Such conduct under all circumstances is unlikely to recur;

(3) Such conduct was not accomplished by the use of force, coercion, or intimidation by the officer during a period of military service;

(4) Under the particular circumstances of the case, the officer's continued presence in the Service is consistent with the proper discipline, good order, and morale; and

(5) The officer does not desire to engage in or intend to engage in homosexual acts.

b. The officer has stated that he or she is a homosexual or bisexual unless there is a further finding that the officer is not a homosexual or bisexual.

c. The officer has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the officer is not a homosexual or bisexual and that the purpose of the marriage or attempt was the avoidance or termination of military service.

CHARACTER OF DISCHARGE

A discharge shall be characterized as "Honorable" or "Under Honorable Conditions" when the sole basis for separation is homosexuality unless aggravated acts are included in the findings. A separation "under Other Than Honorable Conditions" may be issued if there is a finding that the Service member attempted, solicited, or committed a homosexual act:

(1) By using force, coercion, or intimidation.

(2) With a person under 16 years of age.

(3) With a subordinate in circumstances that violate the customary military superior-subordinate relationship.

(4) Openly in public view.

(5) For compensation.

(6) Aboard a military vessel or aircraft.

(7) In another location subject to military control under aggravating circumstances, noted in the finding, that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

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FACT SHEET

HISTORY OF THE BAN ON GAY PEOPLE IN THE MILITARY

ASSUMPTIONS

An examination of the historical development of the military's policy excluding gay men, lesbians and bisexuals from the armed services reveals that, contrary to common belief, gay people have not always been explicitly and automatically excluded from the armed forces. Nor has the policy been universally accepted within the military.

BEGINNINGS

The current Department of Defense policy excluding gay people from service first appeared during World War II. Prior to World War II, the military neither officially excluded nor discharged homosexual persons. Instead, the military targeted the specific act of sodomy, which was treated as a criminal offense. Any servicemember convicted of sodomy, **whether homosexual or not**, could be sent to prison.

The rationale for excluding homosexual persons from service was developed when the draft was reinstituted in 1940 as part of the country's mobilization for war. Members of the American Psychiatric Association's Military Mobilization Committee convinced the Selective Service System that **psychiatry** could play an important part in screening out potential draftees who would be **mentally unfit** for service. Although initial drafts did not identify homosexuals as necessarily "unfit" recruits, subsequent revisions **did** include "homosexual proclivities" on the list of disqualifying "deviations." **This paradigm was based on the belief (since rejected by the psychiatric (1973), psychological (1975) and social work (1988) professions), that homosexuality was a mental disorder.** Formal regulations in 1942 listed homosexuality as an excludable characteristic. (Longenecker, 1992; American Psychological Association, 1991; Rubenstein, 1991; Berube, 1990).

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PRACTICE

In practice, the military's exclusion policy proved difficult to implement. Screening efforts were notoriously unsuccessful. As a result, gay men and women served in nearly every capacity during WWII. Those suspected or charged with homosexual attempts or acts could, however, be discharged without honor because of their "excludable" characteristic. As the expanding war effort increasingly necessitated the use of all available personnel, the military found it necessary to make provisions for temporarily utilizing gay men and women in situations that served the war effort. (Berube, 1990; D'Emilio, 1983).

When the need for recruits began to diminish at the war's end, antihomosexual policies were enforced with increasing vigilance. The War Department continued to tighten its policy regarding homosexuals through the late forties and early fifties, in response to Congressional assertions that homosexuals posed security risks equal to, or greater than, communists. During this time, the provisions for retaining homosexuals or separating them with an honorable discharge were deleted and homosexuals were instead **tried by court-martial** or separated as **unfit with an undesirable discharge**. (Davis, 1991; Berube, 1990).

CHANGES OVER TIME

Military regulations were modified again in 1955, and following the Korean War era, to allow those individuals who were not "confirmed" homosexuals or who had not yet participated in homosexual acts to remain in service. (Army Reg. 635-89, 21 Jan. 1955).

With the build up of forces in Vietnam, the military **further relaxed** its policies regarding homosexuals. During this conflict, some enlistees who openly admitted their homosexuality were nevertheless retained and sent to fight. One example is Perry Watkins, who was inducted into the Army in 1967 after candidly admitting on the pre-induction medical screening form that he had homosexual tendencies. Watkins' commanders subsequently reenlisted him three times over the course of his exemplary fourteen-year career until, in 1981, they were forced to discharge him when the current strict policy was implemented. Before discharging Staff Sergeant Watkins, his commander praised him as "one of our most trusted and respected [noncommissioned officers]."

Army commanders had been able to retain Watkins, despite his open homosexuality, because of a change in Army regulations **in 1970**. Under this change, the homosexuality regulation was integrated into general regulations governing various types of enlisted unfitness and unsuitability discharges. (Chapters 14 and 13 of Army Regulation 635-200.) These regulations gave commanders **discretion to retain servicemembers, including homosexuals, for the good of the service.** The Army's litigation posture prior to 1977 confirmed that retention of homosexuals was discretionary. (DAJA-AL 1978/4168, 2 Jan. 1979).

The Air Force and Navy adopted similar practices allowing some open homosexuals to serve. The Navy argued in litigation in 1974 that the services' official policy of discharging homosexuals **did not require mandatory discharge**. (Berg v. Claytor) Navy pilot Jim Woodward was one of those encouraged to serve during this time, notwithstanding his openly stated sexual orientation. (Wooodward v. United States). Meanwhile, the Air Force stipulated during litigation that its regulations expressly allowed gay servicemembers to serve under certain circumstances and that it had retained homosexuals in the past. (Matlovich v. Secretary of the Air Force).

THE 1982 POLICY

The military's policy was changed again in 1982. In contrast to previous policies, DOD Directives 1332.14 and 1332.30 **mandate discharge** for gay servicemembers. (See CMS Briefing Book, at Tab 2.) For the first time, the new policy targeted **individuals,** rather than **conduct**. People who state they are gay, people who engage in private gay conduct, and people who simply state they desire to engage gay conduct are all subject to mandatory discharges--despite exemplary service records. By contrast, military personnel who are found to have engaged in homosexual behavior, but who deny they are gay, can be retained if they argue convincingly that their gay behavior was an isolated event.

The military's 1982 policy targets those who acknowledge their gay status and their gay conduct, rather than those who remain closeted and secretive. While military leaders concede that their ranks include lesbians and gay men who remain in the closet (Moskos, 1992; House Budget Committee Hearing, 1992), a conclusion supported by empirical research (Sarbin & Karols, 1988; Harry, 1984; Williams & Weinberg, 1971), the current strict, mandatory discharge policy operates to prevent these individuals from openly acknowledging their status and conduct.

Despite the official strict policy, it appears the military once again relaxed enforcement of the ban during the Gulf War. At least fourteen gay and lesbian reservists across the country were cleared by their commanders to serve in the Gulf after stating their sexual orientation. (See, e.g. Wade Lambert, "Gay GIs Told to Serve Now, Face Discharge Later", Wall Street J., Jan. 24, 1991, at B1.) No protection was assured such individuals against discharge in the future.

Dr. Lawrence Korb, the Assistant Secretary for Defense for Ronald Reagan, was the official in charge of implementing the policy. Dr. Korb now strongly opposes retention of the ban. As Dr. Korb testified before the Senate Armed Services Committee on March 31, 1993:

> . . . based upon my own military service, policy research and Pentagon experience, I find no convincing evidence that changing the current policy would undermine unit cohesion, any more than the other social changes that society has asked the armed forces to make over the past 50 years.

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MARCHING TO A DIFFERENT DRUMMER: LESBIAN AND GAY GIs IN WORLD WAR II

ALLAN BÉRUBÉ

World War II has increasingly been recognized as a turning point in American life. Allan Bérubé's research reveals the war to have had a major impact on homosexual identity as well. This revised script from a 1980 slide show, which the author has presented to over one hundred audiences in North America, argues that World War II was a watershed that contributed to the emergence of a postwar gay political movement in the United States. The military's wartime adoption of a policy designed to manage homosexuality, together with the individual lesbian and gay soldier's strategies for coping with the resulting public stigma, made homosexuality of increasing concern to federal institutions and strengthened the homosexual component of the veteran's identity.

The U.S. military has a long tradition of purging homosexuals from its ranks. In January, 1982, the Pentagon released a directive that may be its strongest antigay policy to date. "Homosexuality is incompatible with military service," the directive explained, because it undermines military discipline, creates security risks, and gives the military a bad reputation. Even a member of the armed forces who "has stated that he or she is a homosexual" or "desires" to "engage in homosexual conduct" is considered a threat to the military under these rules.[1]

The massive mobilization of all Americans for World War II allowed

Note: Originally published, in somewhat different form, in the [illegible], October 15, 1981.

the U.S. military to adopt its first explicit antihomosexual policy, which included provisions for temporarily utilizing homosexual men and women in situations that served the war effort. As one Women's Army Corps (WAC) officer testified early in 1944, during a secret investigation into lesbian activity in the WAC, "The Surgeon General's Office in the latest circular letter, particularly for soldiers overseas, [stressed] that homosexual relationships should be tolerated" as long as they were private, consensual, and did not disrupt the unit.[2] The military, in spite of its contempt for homosexuals, was not above using lesbian and gay GIs when it needed them to win a war.

The implementation of this secret policy was just one of the radical social changes that made World War II a turning point in the lives of lesbian and gay Americans. The massive war mobilization forced many American women and men to discover their homosexuality for the first time, to end their isolation in small towns and find other people like themselves, and to strengthen their identity as a minority in American society. Their experiences in the military and on the assembly line, their discovery of gay nightlife in the cities, and their struggle to survive the postwar antigay crackdowns all helped to lay the groundwork for gay life as we know it today. World War II was as crucial to these women and men as the 1969 Stonewall Rebellion would be to a later generation, but its impact was lost in the tragedy of a world war, with no gay movement or gay press to record its history.

Most Americans, when they talk about World War II, begin by telling what they were doing on December 7, 1941, the day Pearl Harbor was attacked. Stuart Loomis, a gay man who was twenty-one and still living in Omaha, Nebraska, remembers "sitting upstairs in the balcony of Walgreen's drugstore late in the afternoon, listening to a rebroadcast of President Roosevelt's announcement to Congress and talking with my friends—my gay set—over malted milks and peanut butter sandwiches, about what *we* were going to do. What was going to happen to *us*?"[3]

Stuart Loomis's generation soon discovered that the war mobilization made them part of a massive migration of Americans. More than fifteen million civilians—mostly women—moved across state lines during the war, lured by the millions of new defense jobs, while nearly as many men were drafted into the military. Black workers moved to northern and West Coast cities where they found new jobs; servicemen and their families flocked to port cities; Japanese-Americans were "relocated" in internment camps while the government shipped Mexican farmworkers into California to replace the evacuated Japanese workers. This massive mobilization radically changed the character of American life during the war. Women, for example, found a new opportunity to leave male-run households and live in all-female worlds. As wa[illegible]ners working in well-paying defense jobs, wearing men's clothes t[illegible]en's work," and

living, working, and relaxing with each other, many women for the first time fell in love with other women, socialized with lesbians, and explored the gay nightlife that flourished in the crowded cities.

Lisa Ben left a small northern California town and moved to Los Angeles to find secretarial work. "I got my own room," she recalled, "with kitchen privileges, and from there I met some gay girls. They lived on the floor above me, and one day we were all sunbathing on the garage roof, and they got to talking and I got to listening. . . . So when I heard these girls talk, I started talking, and finally they asked me, 'Do you like boys, or do you go out strictly with girls?' And I said, 'If I had my rathers, I'd go out strictly with girls,' and they said, 'Have you always felt this way?' and I said, 'Yes,' and they said, 'Well, then you're like we are,' and I said, 'You mean, you're like that?' Then they took me to a girls' softball game. . . . Then we went to the If Club, dancing, and ah! that was where I met lots of girls."[4] Lisa Ben's coming-out experience so radically changed her life that immediately after the war she began the first lesbian newsletter in the United States, which she called *Vice-Versa*.

Perhaps the most unusual experience for American women in World War II was the chance to enlist in the military, the largest women's branch being the Women's Army Corps, with nearly 150,000 women in the ranks. Unlike male branches of the military, however, which consisted primarily of draftees, the WAC was an all-volunteer corps. A nationwide campaign encouraged women to sign up with the WACS as well as with the Women Marines, the Women's Army Air Corps, the WAVEs, and the Coast Guard SPARS. The official rationale for recruiting women was that they were "releasing men to fight," but authorities later admitted that women also enlisted to overcome the restrictions of conventional women's roles, to learn new skills, and, for "a certain number of women," to "be with other women."[5] These women who chose to "be with other women" enlisted in great numbers, and lesbians seem to have made up a large percentage of the corps.

WAC officers faced a difficult dilemma when it came to formulating a policy on lesbian relationships within the corps. On the one hand, since the public had stigmatized the WAC as an army of lesbians and prostitutes, officers tried to prevent any disruptive witch hunts that might further discredit the corps and its recruiting program. On the other hand, while encouraging intimacy because it helped to unite the corps, officers tried to discourage any overt homosexual behavior. The official WAC policy on homosexuality was made clear in a secret lecture to officer candidates in 1943, which warned against "indulging in witch hunting or speculation." It was explained that, without men, women naturally formed "relationships in companionship and working together." The lecture even acknowledged the experience of coming out in t[illegible]C: "Sometimes [a relationship] can become an intimacy that ma[illegible]ally take some

form of sexual expression. It may appear that, almost spontaneously, such a relationship has sprung up between two women, neither of whom is a confirmed active homosexual."[6]

The lecturer was right. Life in the military provided many opportunities for women to form lesbian relationships. "Sami," a lesbian veteran, described how she came out in the navy during the war: "I was sitting in the barracks in Florida, and this one woman that I admired greatly—she was a little older than I, very articulate, very up, and a lot of fun—I just adored her. We were sitting next to each other on the couch with our feet propped up on the table and she started stroking my leg, and I thought, 'Wow! What's all this!' And I just got terribly excited about it. I just was instantly enchanted with this woman and had a lot of sexual attraction toward her. Eventually we got in bed together. We never talked about it, but we had a mad, mad love affair. . . . She had said that she had never related to a woman before. We didn't talk about what we were doing, we just did it and felt good about it. I just thought, well, this is the way it's going to be forever."[7]

Women in every branch of the military had similar experiences during the war. WAC officers were instructed by their superiors that only women whom they could prove to be "addicted to the practice" were to be discharged. "Any officer," warned the lecturer, "bringing an unjust or unprovable charge against a woman in this regard will be severely reprimanded."[8]

Early in 1944 the policy against witch-hunting was put to a test. The mother of a WAC recruit wrote to Washington, complaining that Fort Oglethorpe, a WAC basic training camp in Georgia, was "full of homosexuals and sex-maniacs." The Inspector General's office sent an emergency team to investigate. Witnesses testified that "women having the appearance of perverts have been observed at Fort Oglethorpe; . . . these women affect mannish appearance by haircut, by the manner of wearing the clothing, by posture, by stride, by seeking 'to date' other girls such as a man would, and when with other girls pay all the bills. . . . These addicts have certain signals by which they recognize each other. . . . The signal is said to be a whistle of the 'Hawaiian War Chant.' . . . Expressions common between them are said to include, 'We're going to have a gay time tonight'; 'Are you in the mood?' and 'Messing around.' " In spite of this testimony, the investigative team concluded that they could not find any real homosexual "addicts" and concerned themselves rather with how to keep as many of these women in the WAC as possible. Clearly Washington needed lesbian WACs to do their part in winning the war. The report recommended that there be no further investigations for the duration of the war.[9]

Gay men, as well as women, discovered that the war mobilization also gave them new opportunities to come out, but for [illegible] nt reasons. The tension of living in the all-male world of the mil[illegible] comradeship

that came with fighting a common enemy, and the loneliness of being away from home in strange cities looking for companionship all helped to create a kind of "gay ambiance," as one veteran put it. Servicemen openly cruised each other in the anonymity of crowded bus and train stations, city parks, restrooms, YMCAs, beaches, and streets. They doubled up in hotel beds, slept on the floor in movie theaters, and went home with strangers when there was no other place to sleep.

While this gay ambiance was attractive to many gay men, foremost in their minds after Pearl Harbor was an eagerness to participate in the war effort. Their patriotism was sometimes dampened, however, by rumors that the military was mistreating gay servicemen. Shortly before Pearl Harbor, both the army and navy made it their policy to keep all homosexuals out of the service. While men in World War I had been court-martialed for committing homosexual acts, never before had the U.S. military set out to identify and reject all homosexual recruits.

This impossible task created a dilemma for military authorities. How could they eliminate homosexuals from their ranks when they needed every warm body they could get? And how were they going to tell exactly who was genuinely homosexual? The military assigned the task of identifying homosexuals to draft board members and military doctors, who were supposed to become experts on homosexuality overnight. Standardized psychiatric testing, developed after World War I, made their job a little easier. Millions of men were asked at induction physicals if they had ever had homosexual feelings or experiences. For many, this was the first time that they had had to think of their lives in homosexual terms. This mass sexual questioning was just one of the ways that homosexuality became an issue during the war.

Gay men who wanted to serve in the military could easily get past this screening, however. "I walked into this office," recalls Bob Ruffing, who enlisted in the navy, "and here was this man who was a screaming belle—lots of gold braid but he was a queen if ever I saw one. And he asked me the standard questions, ending up with, 'Did you ever have any homosexual experiences?' Well, I looked him right in the eye and said, 'No.' And he looked right back and said, 'That's good.' Both of us lying through our teeth!"[10]

Most of these interviews lasted no more than three minutes. How could you identify a homosexual in three minutes? Easy, reported *Newsweek*. You could tell homosexuals by "their effeminate looks and behavior and by repeating certain words from the homosexual vocabulary and watching for signs of recognition." This screening, needless to say, identified only obviously effeminate men, many of whom were not gay. "Scores of these inverts," *Newsweek* complained, "managed to slip through induction centers." The military, in fact, accepted possibly a [illegible] n or more gay men into the ranks during the war.[11]

Many gay soldiers, however, did not even know the[illegible] homosexual

until after they were in the armed forces, where life in the barracks was especially charged with homosexual tension. A wartime psychiatric study of barracks life described what it called "homosexual buffoonery," a game that straight men played with each other. "In the barracks," the study observed, "usually when the men are getting undressed . . . various persons will 'kiddingly' assume the role of overt homosexual. One soldier, returning from the shower in the nude, will be greeted with catcalls, salacious whistling, comments like 'Hey Joe! You shouldn't go around like that—you don't know what that does to me!' Joe will respond by wriggling his hips in feminine fashion after coyly draping a towel around himself. . . . Others act the part of active solicitors for sexual favors. 'How much do you want for sleeping with me tonight?'; 'Come into my bed and I'll give you the time of your life.' "[12]

Young gay draftees had to grow up fast to survive being surrounded by all this joking about queers. While some gay men found safety in keeping to themselves, others sought out each other for support. "When I first got in the navy," recalled one man, "in the recreation hall, for instance, there'd be eye contact, and pretty soon you'd get to know one or two people and kept branching out. All of a sudden you had a vast network of friends, usually through this eye contact thing, sometimes through outright cruising. You could get away with it in that atmosphere."[13] These circles of gay friends were well known in military life. "You kind of migrated to other gays in the barracks," explained an army man, "and sometimes it would be referred to as the 'fruit corner' or the 'fruit salad.' But not with much violent intent. You were thought to be queer, but nobody could prove anything, unless you were caught."[14]

While the military generally tolerated gay men because of the manpower shortage, getting caught having sex with a man could be a serious crime. The brigs were notorious for guards who enjoyed beating up gay prisoners as well as prisoners of color. If a gay man was thrown in the brig, he found himself in a no man's land, where even his gay friends avoided him to protect themselves.

Some gay men could not take the harassment or isolation of life in the military and tried to get out. Army regulations clearly stated that homosexuality was an "undesirable habit or trait of character" and sufficient grounds for discharge. The catch-22 procedure for discharge, however, involved special board hearings, hospitalization in the psychiatric ward, the risk of a court-martial, and even a prison sentence. Discharges for homosexuality, often printed on blue paper, were sometimes called "blue discharges"; neither honorable nor dishonorable they labelled a gay man or lesbian as an "undesirable." Blue discharges could have "HS" or other codes for homosexual stamped on them, disqualifying [illegible]eteran from all GI rights and benefits and often preventing women [illegible] as men from getting a civilian job. The thousands of men and w[illegible] who received

these discharges formed the first wave of gay veterans to seek refuge in New York, San Francisco, Los Angeles, and other cities during the war.

As a result of these discharge procedures, military psychiatric wards were often filled with gay patients, some trying to get out of the military, others being kicked out. Psychiatrists took advantage of these captive patients to develop new techniques for identifying homosexuals. One study of over two hundred gay patients in an army hospital in 1944 observed, "Homosexuals tend to group together and it is interesting to observe the speed and certainty with which they are able to recognize one another. Within a few hours after admission to the ward, the homosexual will have located others of his type and becomes one of the group. They tend to stay grouped together and rarely include heterosexuals in their activities. . . . It is wise to insist that these cases be hospitalized for observation."[15]

A study of fourteen hundred patients in another hospital made its purpose even clearer. Homosexuals, the study observed, did not show a "gag reflex" when a tongue depressor was put down their throat. This "Gag Reflex Test," the study concluded, "is a definite aid in screening candidates not only for the military services, but for positions where the sexual deviate must be eliminated."[16] This military identification of homosexuals set a precedent for the massive screenings and purges of homosexual women and men and their acquaintances from federal agencies following the war.

While the military discharged thousands of men for being homosexual during the war, few were sent to prison. Those who were, however, were segregated, often received brutal treatment, and were set up as examples for the rest of the troops. A black serviceman stationed at the racially segregated Tuskegee Army Air Field in Alabama describes how officers treated black soldiers charged with homosexuality: "The way they dealt with the black troops was that if you were identified as a 'punk' or you were caught or confessed, you were removed from your position and you were given a pair of blue fatigues. You were made to know that if you got in trouble there was nobody going to help you. 'Even Mrs. Roosevelt ain't gonna come down here.' They even pointed out a tree where several people had been lynched. And you learned that very early. They put them in the blue outfits, put them in a barracks by themselves, where the sissies, the punks, were. Each was assigned eight men to march them three times a day from the barracks to the mess hall, taking the catcalls and stuff. It was horrible. I remember one man—I went up to him one morning and I put my hand on him and said, 'It's terrible what's going on,' and he said, 'Stay away from me, or you'll be called one too.' "[17]

Most gay men stayed in the military and ultimately received honorable discharges. For these men, being gay in the military could have its special advantages, particularly for young draftees who ha[illegible] left home. "You see," a twenty-year-old draftee wrote to a gay [illegible] 1945, "the

army is an utterly simplified existence for me—I have no one to answer to as long as I behave during the week and stay out of the way of the MPs on weekends. If I go home, how can I stay out all night or promote any serious affair? My parents would simply consider me something perverted and keep me in the house."[18]

With weekend passes and furloughs, the military gave its personnel the freedom to explore the gay nightlife that flourished during the war. In large cities servicemen and women found gay bars like Bradley's in Hollywood, The Black Cat in San Francisco, Mary's Tavern in Denver, and a small number of lesbian bars, such as the If Club in Los Angeles and Mona's in San Francisco. These were among the first exclusively gay or lesbian bars in America. They branched out from, and sometimes replaced, the bohemian cafes, hotel bars, skid row taverns, night clubs, and cafeterias of the 1930s where "queers," "fairies," and "dykes" could blend in with other social outcasts. These few meeting places of the Depression could not handle the large number of homosexuals uprooted by the war. As a result, lesbians and gay customers moved from bar to bar looking for a place that would accept their business. Bar owners sometimes discovered that catering to a gay crowd could improve their business, at least until the police or military put the heat on. Lesbians and gay men took advantage of a more tolerant social climate during the war to stake out a new public turf in these bars. Later, in the 1950s and 1960s, the successors to these wartime bars, which lawmakers called "homosexual hangouts," became a major battleground in the fight for public meeting places free from harassment.[19]

While lesbians and gay men could meet each other in these bars, on military bases, and even in defense plants, it was difficult for anyone to maintain a lasting relationship during the war. Lovers were transferred to other bases; couples and circles of friends split up as troops, including women's units, were sent overseas. Sometimes lovers never came back. Countless lesbians and gay men during the war faced the deaths of their lovers silently and alone.

A black aircorpsman who was stationed in the South remembers how he faced the death of his boyfriend. "In those days we couldn't tell anybody who we were. But we liked to be together. I used to send him books, and I had lunch with him. We played the game of 'circling,' which is all you could do in those days. He came up to my office one morning and he said, 'I'd like to have lunch with you. Can you meet me at 12:00 at the PX?' I said that would be good. And at 11:45 I looked out the window and I could see this burst. His plane blew up in front of my face. He was killed. You never really get over something like that. And you know, something happened. I stopped living for a while. And I couldn't grieve, because I'd be a punk if I grieved, and be treated like those men in the blue outfits."[20]

Because of these separations, letters and photographs became absolute necessities of life. But lesbians and gay men writing letters to their lovers and friends faced the special problem of wartime censorship. Military censors, of course, cut out all information that might aid the enemy, but this surveillance made it necessary for gay and lesbian correspondents to be careful not to expose their homosexuality. To get around this, gay men befriended sympathetic censors or tricked others by using campy phrases, signing a woman's name (like Dixie or Daisy), or changing the gender of their friends. Sailors became WAVEs, boyfriends became WACs, Robert became Roberta. There must exist, hidden in closets and attics all over America, a huge literature of these World War II letters between lesbians and between gay men that would tell us even more about this important part of American history.

By the end of the war, in August 1945, most Americans were exhausted from years of casualties, rationing, long work hours, and separations from loved ones and were anxious to settle down to a normal life again. Unfortunately, "normal life" meant different things to different people. For black Americans, it meant losing wartime jobs and stepping up their fight against segregation and discrimination. For women, it meant a return to the home as wives and mothers. And for lesbians and gay men, it meant witch hunts, bar raids, arrests, and a retreat to the closet.

The tolerance that some homosexual men and women experienced during the war proved to be all too temporary. Many patriotic lesbians and gay men saw their wartime freedom disappear as the country they fought for began to turn against them with the advent of peace. Churches, the media, schools, and government agencies conducted a heavy-handed campaign to reconstruct the nuclear family, to force women back into their traditional roles, and to promote a conservative sexual morality. A tactic of this campaign was to isolate homosexual men and women and identify them, like Communists, as dangerous and invisible enemies. These attacks on nonconformists of all kinds soon replaced the live-and-let-live climate of the war years.

Throughout the war, to prepare for peacetime, the government, industry, and the media had carefully controlled the radical social changes that were necessary to win the war. Advertisements reminded women that even though their labor was desperately needed in heavy industry, their jobs were only temporary and ultimately belonged to men. White men in America were supposed to come first both in war and in peace, and their return as head of the household was one of the goals men and women were both supposed to be fighting for. By early 1945, as soon as the end of the war was in sight, the media began to prepare the nation's women and men for their reentry into "normal" life. "Rosie the Riveter," the media's symbol for women working in heavy industry during the war, disappeared from the magazine covers, replaced by the traditional symbol

of American womanhood: the young mother and wife, whose fantasies were of babies, whose only joy was to please her husband and children and to buy new appliances for her kitchen. The media took the reality of postwar families struggling to reestablish their lives and transformed it into hard-hitting propaganda for the nuclear family. Lesbians and gay men, many of them unable or unwilling to conform to this narrow family ideal, stood out more and more as "queers" and "sex deviates" who endangered the fragile security of the postwar American family.

While the media tried to lure women back into the home, the government drove women out of industry and the military. Thousands of women working in shipyards, for example, were fired shortly after V-J Day. Anti-lesbian witch hunts in the military, generally avoided during the war, spread like an epidemic after the war. The extent of these witch hunts is still unknown, but we are beginning to realize that they affected hundreds of women. Many lesbian veterans remember them with horror and pain. "I was trained as an aviation machinist mate," remembers a woman stationed at a Florida naval base in 1945, "which is not a usual women's task. [My] first important love relationships with women were in the navy. And then—this was near the end of the war—the interrogation came about and I was terrified. I remember I was interrogated and was scared to death and just lied through my teeth. I stopped running around with the women I was running around with and felt very isolated. The other people that I had been really friendly with—the relationships just were cut off completely."[21] In the film *Word Is Out*, Pat Bond recalled what happened to her WAC unit stationed in occupied Japan after the war: "They started an incredible witch hunt in Tokyo. Unbelievable. Sending five hundred women home for dishonorable discharges. Every day there were courts-martial and trials—you were there testifying against your friends, or they were testifying against you . . . until you got afraid to look your neighbor in the eye. Afraid of everything."[22] These women had nowhere to turn. Gay and lesbian organizations did not yet exist, and liberal and radical organizations refused to help homosexuals who pleaded with them for support.[23]

According to some veterans, similar military purges affected gay men after the war at U.S. bases in Europe, Asia, and stateside. Thousands of men were put in detention barracks and shipped home with dishonorable discharges on special "queer" ships. On some bases, gay office workers were able to sabotage these purges by warning their friends just before the investigation teams arrived. Many of these discharged personnel could not return to their hometowns, so they remained in port cities, where they became a part of the rapidly growing urban gay population in the early 1950s.

The civilian world had its counterpart to the military witch hunts. The U.S. Senate and many state legislatures held unprecedented antihomosexual

hearings, causing the firing of thousands of men and women from government jobs merely for being suspected of "homosexual perversion." The FBI began nationwide surveillance of gay and lesbian bars, compiling enormous lists of homosexuals and "associates of homosexuals." In addition, local antigay crusades swept through many American towns and cities, particularly where gay bars had become most visible and were continuing to multiply. Refugees from these crackdowns moved from city to city, looking for more tolerant surroundings. A San Francisco grand jury even held special hearings to curb what it called a postwar "invasion of sex deviates." States began to pass laws to close down the growing number of bars that catered to "sex perverts," both male and female. Massive bar raids and street arrests received prominent coverage in the press. Pulp magazines, exploiting the national paranoia, ran antigay articles in nearly every issue, with titles such as "Hidden Homos and How to Spot Them."

How did the postwar years affect the new generation of lesbians and gay men? Many returning veterans based their decisions for civilian life on their newly discovered homosexuality. "I can't change," wrote a gay GI in a letter shortly before his discharge in 1946. "I have no desire to change, because it took me a long, long time to figure out how to enjoy life. For you'll agree, I'm not going back to what I left."[24] Many veterans left their parents, abandoned small towns, and migrated to large cities they had seen for the first time during the war. There they created lesbian and gay neighborhoods, risked going to the growing number of lesbian and gay bars, and looked for work that would allow them to lead relatively open lives. Others, who had found lovers after the war, tried to settle down into quiet, private lives and even joined the exodus to the suburbs. Reuniting with wartime friends, they socialized with other gay couples in their homes and avoided the bars. With the heat on in public gay life, private homes were often the safest places to be gay.

While this backlash pushed many into the closet, it also forced others to realize the extent of their oppression, their identity as a minority, and the power of their numbers. Like the GI facing his discharge, many could not go back to what they left. Some even came out with a vengeance. It was thus no accident that the postwar years witnessed the birth of a small gay and lesbian movement in America, beginning with veterans' social groups, the Mattachine Society, and the Daughters of Bilitis. The taste of freedom during the war, the magnitude of the postwar crackdown, and the example of the growing black civil rights movement caused more and more lesbians and gay men to think of themselves as an unjustly persecuted minority. They increasingly realized that when they defended their new bars from attacks by queerbashers, when lesbians kicked straight men out of their bars, when bar owners challenged the cops and liquor control boards, and when lesbian and gay defendants began to plead "not guilty" in court, they were actually fighting to establish a public turf of

their own, defending their right to gather in public places. After they returned home, the generation of World War II veterans began to lay the groundwork that made the Stonewall Rebellion and gay liberation possible.

"IMAGINE MY SURPRISE": WOMEN'S RELATIONSHIPS IN MID-TWENTIETH CENTURY AMERICA

LEILA J. RUPP

The original version of this essay, written in 1980, was a response to the publication of two homophobic works, *The Life of Lorena Hickok* and *The Making of a Feminist: Early Journals and Letters of M. Carey Thomas*, which dismissed evidence of their subjects' erotic involvement with women. This revised version incorporates some of the developments in lesbian history since 1980 while still addressing the question of how to characterize women's relationships in the past. Using evidence drawn from the files of the American Woman's Party after women's suffrage had been achieved, Rupp discusses the emotional and erotic complexities of the relationships among women whose primary commitments were to women. Although they lived into the 1940s and 1950s, when a lesbian culture existed, these white, middle-class women did not identify themselves as lesbians. However difficult the endeavor, Rupp argues, historians need to be careful in describing women's relationships neither to deny their significance to the individuals involved nor to impose modern sexual categories on them.

When Carroll Smith-Rosenberg's article, "The Female World of Love and Ritual," appeared in the pages of *Signs* in 1975, it revolutionized the way in which women's historians look at nineteenth-century American society and even served notice on the historical profession at large that

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Review Essay

Challenging the Military's Antilesbian and Antigay Policy

William B. Rubenstein*

REVIEWING COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR TWO. BY ALLAN BÉRUBÉ. NEW YORK: THE FREE PRESS, A DIVISION OF MACMILLAN, INC., 1990. PP. XIII, 377.

I. INTRODUCTION

Allan Bérubé's *Coming Out Under Fire: The History of Gay Men and Women In World War Two*[1] could not have come out at a better time. In February 1990, the United States Supreme Court decided not to hear two cases—one involving a lesbian[2] and one a gay man[3]—that raised constitutional challenges to the military's policy of discharging individuals for being openly lesbian or gay. The Court's refusal to hear these cases signaled lesbian and gay activists that the movement to change the military's policy would probably be better served through lobbying the other two branches of the federal government: Congress and the President (or, more specifically, the Department of Defense). After a brief overview of current military policy in Part II of this essay, Part III demonstrates that Bérubé's book will be an important lobbying tool among legislators and bureaucrats, because it effectively and poignantly undermines the myths upon which the military's policy is based.

Arriving as it does at a time when civil litigation challenging the military's policy is stymied by an unwelcoming judiciary, Bérubé's book also

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1. ALLAN BÉRUBÉ, COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR TWO (1990).
2. Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989), *cert. denied*, 110 S. Ct. 1296 (1990).
3. Woodward v. United States, 871 F.2d 1068 (Fed. Cir. 1989), *cert. denied*, 110 S. Ct. 1295 (1990).

provides an opportunity to assess the value of this quarter-century civil rights struggle. Part IV of this essay undertakes this appraisal. First, I explore the arguments made against this lengthy litigation effort—namely, a questioning of the goal ("Why would we want to fight to get people into the military?"), a critique of the strategy ("Federal constitutional litigation against the military was doomed to fail from the start."), and an evaluation of the disastrous consequences of the bad law that was made. I then examine the counterarguments: that although the litigation against the military has not yet achieved its primary goal—elimination of the offensive antilesbian and antigay policy—it, nonetheless, has served several other significant purposes. For example, the litigation has, in and of itself, provided a history of lesbians and gay men in the military; like Bérubé's book, it has undermined the myths upon which the military's policy is based; litigation has also forced the military to articulate a defense of its policy, thereby revealing the absurdity of it; and, it has provided a useful vehicle for educating the public.

In Part V, the final section of the essay, I examine more closely the tension between these competing visions of the value of civil rights litigation, between what Cornel West has referred to as "the Scylla of upbeat liberalism that harbors excessive hopes for the law and the Charybdis of downbeat leftism that promotes exorbitant doubts about the law."[4] In so doing, I consider, again by analogy to Bérubé's book, where we go from here and how we might think differently about getting there.

II. Current Military Policy Regarding Lesbians and Gay Men

The military is the sole area in which the United States government still explicitly discriminates against lesbians and gay men.[5] The military

4. Cornel West, *The Role of Law in Progressive Politics*, in The Politics of Law: A Progressive Critique 468 (David Kairys ed. 1990).

5. The Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) also have refused to hire, and have fired, lesbians and gay men. Although legal challenges to these practices have been rejected, *see, e.g.*, Dubbs v. Cent. Intelligence Agency, 866 F.2d 1114 (9th Cir. 1989) (CIA); Padula v. Webster, 822 F.2d 97 (D.C. Cir. 1987) (FBI), these agencies appear to be backing away from explicitly discriminatory policies. When questioned about its recruiting practices by universities with nondiscrimination policies, the FBI has professed not to discriminate solely on the basis of sexual orientation, *see* Letter from William S. Sessions, Director, Federal Bureau of Investigation, to Geoffrey R. Stone, Dean, University of Chicago Law School (Oct. 26, 1990) (copy on file at the *Law & Sexuality* office), and the FBI is reported to have settled a case involving a gay male employee. *See* Lou Chibbaro, Jr., *For the First Time, Gay FBI Worker is Reinstated*, Wash. Blade: Gay Weekly of Nation's Capitol, Nov. 16, 1990, at 1, col. 1. Similarly, the CIA has settled the *Dubbs* case. *See* Settlement Agreement and Stipulation of Dismissal, Dubbs v. Cent. Intelligence Agency, 866 F.2d 1114 (9th Cir. 1989) (No. C-85-4379 EFL) (filed June 17, 1991).

Relatedly, lesbians and gay men are also subjected to heightened screening in applications for security clearances, a practice which, again, has been upheld by the courts. *See* High Tech Gays v. Defense Indus. Sec. Clearance Office, 895 F.2d 563 (9th Cir. 1990), *reh'g denied*, 909 F.2d 375 (9th Cir. 1990).

The United States government's traditional ban on lesbian and gay immigration, *see, e.g.*, Hill v. United States I.N.S., 714 F.2d 1470 (9th Cir. 1983) (in which the court held that the Immigration

does so routinely, openly, and proudly. The military's policy is not prescribed by an act of Congress—it is not a law, but rather regulatory policy. The only congressional enactment that even indirectly affects this issue is the federal sodomy law that governs persons in the military.[6] The sodomy law, however, prohibits certain sexual acts whether committed by heterosexuals or homosexuals.[7] On its face, the law does not discriminate against lesbian or gay persons, nor mandate our removal from the armed forces.

Nonetheless, the Defense Department has developed its own internal regulations to preclude lesbians and gay men from serving in the military.[8] The currently stated rationale for this policy is that:

> Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers 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.[9]

This language is important because it so clearly parallels the rationale that the military provided for its racial policies before 1948:

> The close and intimate conditions of life aboard ship, the necessity for the highest possible degree of unity and esprit-de-corps; the requirement of morale—all these demand that nothing be done which may adversely affect the situation. Past experience has shown irrefutably that the enlistment of Negroes (other than for mess attendants) leads to disruptive and undermining conditions. It should be

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and Naturalization Service could not exclude self-declared homosexual aliens without medical certification of psychopathic personality, sexual deviation, or mental defect), was repealed by Congress in the summer of 1990. *See* Immigration Act of 1990, Pub. L. No. 101-649, § 601, 104 Stat. 4978 (1990).

6. *See* 10 U.S.C. § 925, art. 125 (1988), which states:

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

7. *See id.*

8. *See* Enlisted Administrative Separations, 32 C.F.R. pt. 41, app. A, pt. 1.H (1990). At least one federal circuit court has recognized the Secretary of Defense's authority to promulgate this regulation. *See* Rich v. Secretary of the Army, 735 F.2d 1220, 1224-25, n.1 (10th Cir. 1984).

9. Enlisted Administrative Separations, 32 C.F.R. pt. 41, app. A, pt. 1.H.1.a (1990).

> pointed out in this connection that one of the principal objectives of subversive agents in this country in attempting to break down existing efficient organization is by demanding participation for 'minorities' in all aspects of defense, especially when such participation tends to disrupt present smooth working organizations. . . . It is considered also that the loyalty and patriotism of the minority should be such that there be no desire on their part to weaken or disrupt the present organization.[10]

In practice, the military's policy results in discrimination against lesbians and gay men in at least three distinct fashions. First, lesbian and gay soldiers go to jail for engaging in conduct for which heterosexuals are never prosecuted, although the military's sodomy law applies equally to heterosexual sexual activity.[11] Second, nearly fifteen hundred lesbians and

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10. United States Navy Department memorandum from the Committee (organized to investigate admitting blacks into the Navy) to the Secretary of the Navy (Dec. 24, 1941) (copy on file at the *Law & Sexuality* office). *See also* E.W. Kenworthy, *The Case Against Army Segregation*, 275 ANNALS 27 (1951), which states:

> Now the Army's duty is to fight battles and win wars. Therefore, the Army must maintain morale in the ranks and use its manpower with maximum efficiency. Integration would lower morale and impair efficiency. Whites just will not serve with blacks, and even if they would, it is not possible to train and use Negroes in highly skilled jobs. The Army must take the country as it is. It must accept social patterns and keep abreast of changes, but is not an instrument for social experimentation.

11. Heterosexual sodomy is rarely, if ever, prosecuted by the military in the absence of aggravating circumstances. Thus, a review of heterosexual sodomy convictions reveals only cases that involve sodomy in nonprivate places, *see, e.g.*, United States v. Sales, 22 M.J. 305, 306 (A.F.C.M.R. 1986) (setting aside a male defendant's conviction for committing lewd and lascivious acts by "having '(1) exposed himself by removing his pants; [and] (2) voluntarily participated in a group sexual encounter' "); United States v. Linnear, 16 M.J. 628, 629-30 (A.F.C.M.R. 1983) (male defendant's engaging in fellatio with a female snack bar cashier "behind a closed door with a sheet of paper over a wire opening in the door" while customers waited for the snack bar to open was not a "private" act); or sodomy accomplished by force, *see, e.g.*, United States v. Jones, 14 M.J. 1008, 1009 (male defendant threatened to kill his female victim if she bit his penis); *Sales*, 22 M.J. at 306 (male defendant charged with rape of a female airman and with forcing her to commit sodomy with him); United States v. Lockett, 7 M.J. 753, 754 (A.C.M.R. 1979) (finding that the male defendant, "by threatening the victim . . . committed forcible sodomy"), or sodomy with a prostitute (considered an aggravating circumstance by the military), *see, e.g.*, United States v. Cleveland, 15 C.M.A. 213, 35 C.M.R. 185 (A.C.M.A. 1965).

By contrast, the military will prosecute, convict, and discharge servicemembers for acts of consensual same-sex sodomy even if the conduct is private and takes place off-base. *See, e.g.*, United States v. Baum, 30 M.J. 626 (N.M.C.M.R. 1990) (overturning a female defendant's conviction for consensual oral sodomy and indecent acts, because of a legal defect with corroborating evidence); United States v. Miller, No. 86-0346, slip op. (N.M.C.M.R. July 8, 1986) (convicting a male defendant of committing oral sodomy with one enlisted man and of committing an indecent act of mutual masturbation with a second enlisted man in separate incidents at his off-base apartment).

The disparity in treatment between heterosexual sodomy and same-sex sodomy is further evidenced by the relative sentences imposed. In the aforementioned cases involving same-sex private sodomy, Baum was sentenced to forfeit all pay and allowances and to be dishonorably discharged from the Marine Corps, reduced in rank to private, and imprisoned for one year (confinement in excess of 226 days was suspended for one year), *Baum*, 30 M.J. at 627, and Miller was sentenced to dismissal, total forfeitures, and one year confinement (although later reduced to two months), *Miller*, slip op. at 2.

By contrast, in *Jones*, 14 M.J. at 1009, the accused forced a four month pregnant woman to have oral and anal sex with him; then he put the victim on the floor, banging her head on the floor; then tied her to the bed and tried to suffocate her with towels; and finally, cut her throat with a knife. For these acts, he was charged with consensual sodomy and assault with intent to murder and convicted of consensual sodomy and aggravated assault. *Jones*, 14 M.J. at 1009. He received a bad conduct dis-

gay men are "separated from" (a quaint euphemism the military uses for "kicked out of") the services each year—about six each working day.[12] This discrimination is particularly acute for lesbians, who are constantly combatting the military's virulent sexism as well as its malicious homophobia.[13] Finally, beyond the individuals directly disadvantaged by it, the symbolism of the military's policy indirectly affects each and every one of us.

Indeed, the military's homosexuality policy is constructed by, and in turn constructs, a number of myths about lesbians and gay men, the existence of which affects each of our lives. The policy posits, among other falsehoods:

- that there are two distinct categories of human beings, homo- and heterosexuals;
- that those labeled "homosexual" do not make good soldiers;
- that heterosexual soldiers do not like, and, thus would not want to serve with, homosexual soldiers;
- that "the public would lose confidence in the military if homosexuals were permitted to serve," which is simply a euphemistic way of stating that everybody dislikes lesbians and gay men;
- that the exclusion of lesbians and gay men has always been the nation's policy;
- that there is no criticism of this policy from within the military; and, finally,
- that the policy "works," in that all lesbians and gay men are identified and discharged, resulting in a better military.[14]

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charge, confinement at hard labor for 18 months, forfeiture of all pay and allowances and reduction to the grade of private. *Jones*, 14 M.J. at 1009. In United States v. Sales, No. ACM 24219, slip op. at 2, (A.F.M.C.R. July 19, 1984), the accused, charged with rape and forcible sodomy, "straddled [the woman] like a horse" and forced her to have fellatio with him, in the barracks where a third person was present. For these acts, the accused received a sentence of six months hard labor confinement, forfeiture of all pay and benefits, a bad conduct discharge, and reduction in status to airman basic. *Sales*, 22 M.J. at 306. (The Court of Military Appeals subsequently set aside the sentence and remanded the case due to multiplicious findings of guilt. *See Sales*, 22 M.J. at 309.)

12. During fiscal years 1985, 1986, and 1987, the Army discharged 829 enlisted men and 11 male officers, 354 enlisted women and 3 female officers for homosexuality; the Navy discharged 1,825 enlisted men and 30 male officers, 382 enlisted women and 4 female officers; the Marine Corps discharged 213 enlisted men and 6 male officers, and 90 enlisted women; the Air Force discharged 644 enlisted men and 41 male officers, 220 enlisted women and 7 female officers. Theodore R. Sarbin & Kenneth E. Karols, Nonconforming Sexual Orientations and Military Suitability, Defense Personnel Security Research and Education Center (PERSEREC), PERS-TR-89-002, Dec. 1988, at 21-22, B1-B4, *reprinted in* GAYS IN UNIFORM: THE PENTAGON'S SECRET REPORTS 27-28, 79-84 (Kate Dyer ed. 1990) [hereinafter Nonconforming Sexual Orientations].

13. *See* Recent Development, *Military Women in Nontraditional Job Fields: Casualties of the Armed Forces' War on Homosexuals*, 13 HARV. WOMEN'S L.J. 215, 216 (1990) (authored by Michelle M. Benecke & Kirstin S. Dodge) [hereinafter *Military Women*]; Rhonda R. Rivera, *Queer Law: Sexual Orientation Law in the Mid-Eighties—Part II*, 11 DAYTON L. REV. 275, 306-09 (1986).

14. As Bérubé writes:

> Since the antigay policies were introduced during World War II, military officials have spent much time and resources denying that the armed forces have any significant problem with homosexuality. They have done this by erasing the history of the policies, refusing to

III. *Coming Out Under Fire*—Erasing the Military's Myths

Allan Bérubé's *Coming Out Under Fire: The History of Gay Men and Women In World War Two* successfully challenges many of the premises upon which the military's policy is based. First, it traces the historical development of the modern policy, erasing the myths that lesbians and gay men have always been explicitly and automatically excluded from the armed services and that the policy is universally accepted within the military. Second, it demonstrates that the military's screening policy actually does not work effectively and that, as a result, lesbians and gay men have served their country—admirably—during war. Third, in addition to demonstrating how we are just like everyone else in our ability to serve, the book also documents lesbian and gay soldiers' distinct attributes and the particular skills we brought to the services during World War II.

Bérubé's account traces the lives of about half a dozen soldiers through different chapters, arranged not according to individual stories, but rather according to the process: from the decision to enlist ("Getting In"), to induction and basic training ("Fitting In"), through the search for other lesbians and gay men (" 'The Gang's All Here': The Gay Life and Vice Control"), a depiction of daily life and action ("Comrades in Arms"), the fears and realities of being found out ("Fighting Another War"), and, finally, the return home ("Rights, Justice, and a New Minority"). This structure means that the book reads less like an oral history, with lengthy quotations of individuals' stories, and more like a cultural history tracing particular issues common to the experiences of all lesbians and gay men.

A. *The Recent Genesis of the Military's Antilesbian and Antigay Policy*

Perhaps the most interesting element of Bérubé's book is his discussion of how the military's modern antilesbian and antigay policy came to be. According to Bérubé, the military's interest in screening out homosexual individuals prior to service, and in discharging those discovered during service, was developed at the beginning of World War II with the growth of modern psychiatry. Prior to that time, military policy focused primarily on homosexual acts, severely punishing, through the military's criminal justice system, individuals caught engaging in homosexual sodomy.

The increasing need for bodies to send to the war combined with the "professionalization" of the psychiatric profession to change the military's paradigm for dealing with homosexuality. Psychiatrists at the time sought

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discuss them in public, and suppressing even the friendliest internal criticism. In the process, military officials have successfully perpetuated three myths: that the armed forces always had an antigay discharge policy, that known homosexuals cannot fit into the military organization and are routinely discharged, and that organized opposition to the policy comes only from outside and not from within. A policy that appears to have existed for all time, to be unanimously supported within the military, and to allow for no exceptions, is not easily abandoned.

A. Bérubé, *supra* note 1, at 277.

both to validate their relatively new profession and to show how they could contribute to the war effort. "[T]o enhance the prestige, influence, and legitimacy of their profession," Bérubé writes,[15] they demanded that the Selective Service require psychiatric, as well as physical, examinations of selectees. Using as an example the thousands of soldiers who returned shell-shocked from World War I, psychiatrists convinced the military that if they were permitted to screen incoming recruits, they could weed out persons deemed psychologically unqualified for combat.

The psychiatrists did not originally intend to focus on homosexuals. Indeed, many were horrified by the fact that the military jailed persons found engaging in homosexual conduct and wanted to bring enlightenment to the treatment of homosexuals. Nonetheless, by the time the psychiatrists' early screening plans passed through Washington's bureaucracy, what emerged was a policy that called for the exclusion of lesbians and gay men on the grounds that we were mentally unfit for service. This shift jibed with the military's desire "[t]o prevent additional strain on the already overburdened military prisons."[16] Suddenly, homosexuality was no longer a category of human behavior, but rather a classification of (sick) human beings.

Bérubé summarizes the theoretical meaning and practical effect of this paradigm shift:

> While for decades men convicted of sodomy had fought their individual battles to stay out of prison, psychiatrists in World War II had won a major victory against the penal system itself. Their reforms, however, didn't free "discovered" gay GIs. Now, instead of being locked up behind prison bars, they were forcibly committed to hospital psychiatric wards, sometimes under lock and key, and discharged as psychopathic undesirables. Gay GIs were still fighting a war within the service, but the battlefield on which they defended themselves was moving from the courts to the discharge boards, from the penitentiaries to the hospitals, requiring them to learn the lay of this new land and to develop appropriate tactics.
>
> The discharge system not only expanded the military's antihomosexual apparatus in practice but strengthened the ideology that justified it, rooting it more deeply in the psychiatric conception of homosexuality as mental disease. As psychiatric screening had introduced this model into preinduction examinations, the discharge system embedded it in Army and Navy regulations and procedures.[17]

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15. *Id.* at 10.
16. *Id.* at 128.
17. *Id.* at 148.

Notwithstanding the American Psychiatric Association's 1973 pronouncement that homosexuality was not a mental disorder,[18] or even its own internal reports to that effect,[19] this paradigm of homosexuality remains the operative framework for the military's policy even today.

B. *Lesbians and Gay Men* Do *Serve Their Country—And Admirably*

Effectuation of the military's changing policy, Bérubé shows, was not a simple matter. "It was easier for [the military] to put together a rationale for rejecting homosexuals than to teach their audience of psychiatrists exactly how to detect selectees who had successfully hidden their homosexuality from families, friends, teachers, employers, and even their wives," he writes.[20] Often the psychiatrists charged with screening out homosexuals had absolutely no idea what they were looking for, and Washington gave them little guidance. Further, they were, more often than not, terrified of speaking openly about sexuality at all. Accordingly, the important screening question was rarely asked, or, if it was, it was asked in an oblique fashion easy to evade. Not surprisingly, those most often ensnared as homosexuals were effeminate men and masculine women who did not conform to conventional gender stereotypes. In the end, "after examining nearly 18 million men, the military had officially rejected only 4,000 to 5,000 as homosexual."[21]

With these exceptions, lesbians and gay men who wanted to enlist in the war effort—and many did as the war fervor swept the county—encountered little difficulty, though often great anxiety, in doing so. Once in, lesbians and gay men not surprisingly served in nearly every type of combat and noncombat position, with and without military distinction, but with little difference from their heterosexual counterparts:

> The stereotype of the gay GI obscured the reality of the many gay men who were sent to the fighting fronts. They served in combat zones in all branches of the military . . . . Like their buddies, some were bad at being combat soldiers, and others received medals for their fighting skills and courage.
>
> Gay soldiers went into combat with all the fear, griping, and fighting spirit of their heterosexual fellows. Some had tried to get assigned to noncombat duties and went overseas reluctantly, resigned

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18. *See* RONALD BAYER, HOMOSEXUALITY AND AMERICAN PSYCHIATRY: THE POLITICS OF DIAGNOSIS 40 (1981).

19. *See generally* Nonconforming Sexual Orientations, *supra* note 12; Michael A. McDaniel, Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability, Defense Personnel Security Research and Education Center, PERS-TR-89-004, Jan. 1989, *reprinted in* GAYS IN UNIFORM: THE PENTAGON'S SECRET REPORTS 111-35 (Kate Dyer ed. 1990) [hereinafter Preservice Adjustment].

20. A. BÉRUBÉ, *supra* note 1, at 16.

21. *Id.* at 33 (footnote omitted).

> to their fate. Others did whatever they could to be sent to the fighting fronts.[22]

That the service of lesbian and gay soldiers would so closely resemble that of heterosexual soldiers is so stunningly obvious that Bérubé (thankfully) does not spend a lot of time developing it as a theme: it simply emerges as an obvious central tenet of the book. However, though such a simple conclusion may not shock us, its value on heterosexual soldiers should not be underestimated: "Simply by doing what they were expected to do," Bérubé writes,

> they powerfully challenged the stereotypes that portrayed homosexuals as poor soldiers, proving to their heterosexual buddies, other gay soldiers, and themselves that they would not let each other down. It is one of many tragic ironies of the war that gay soldiers and officers had to kill, risk their lives, and see their buddies die in order to gain some respect and a sense of belonging as "men among men."[23]

* * * *

THE CAMPAIGN FOR MILITARY SERVICE
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ENDORSING AND PARTICIPATING ORGANIZATIONS

AIDS Project Los Angeles
American Association of University Women
American Civil Liberties Union*
American Ethical Union
American Jewish Committee
American Jewish Congress
American Psychiatric Association
American Psychological Association
American Public Health Association
Americans for Democratic Action
Black Gay and Lesbian Leadership Forum*
Black Lesbian Support Group
Citizen Soldier
Gay and Lesbian Alliance Against Defamation
Gay and Lesbian Emergency Media Campaign
Gay and Lesbian Victory Fund*
Gay, Lesbian & Bisexual Veterans of America*
Gay Men's Health Crisis
Hollywood Policy Center
Hollywood Women's Political Committee
Human Rights Campaign Fund*
Japanese American Citizens League
Jewish Labor Committee
Lambda Legal Defense and Education Fund
Mexican American National Association
National Abortion Rights Action League
National Association of Social Workers
National Council of Jewish Women
National Gay and Lesbian Task Force*
National Lesbian and Gay Law Association
National Lesbian, Gay and Bisexual Student Caucus
National Organization for Women*
NOW Legal Defense and Education Fund
Parents and Friends of Lesbians and Gays, Inc.
People For the American Way Action Fund*
Sex Information and Education Council of the U.S.
Southern Christian Leadership Conference of Greater Los Angeles
Stonewall 25, NCBLG
Union of American Hebrew Congregations
Unitarian Universalist Association of Congregations in North America
United Church of Christ Office for Church in Society
United States Student Association
Universal Fellowship of Metropolitan Community Churches
University of Connecticut Women's Center
Women's Action for New Directions
Women's Policy Group
YWCA of the USA
(partial list)

*Executive Committee

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The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

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BACKGROUND PAPER

THE MILITARY'S JUSTIFICATIONS FOR ITS EXCLUSIONARY POLICY

The military's entire justification for its exclusion of gay men, lesbians and bisexuals is as follows:

> Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate the assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security.

Extract from DOD Directive 1332.14.

The military's stated justifications for its policy illustrate graphically how fears and stereotypes of gay people underlie the policy. The following sections offer a detailed examination of the military's justifications and an articulation of arguments against the policy.

The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

1. DISCIPLINE, GOOD ORDER AND MORALE

CURRENT POLICY: The military believes the presence of people who are gay, or show a propensity for being gay, "seriously impairs the accomplishment of the military mission," because the "presence of such members adversely affects the ability of the Armed Forces to maintain discipline, good order and morale."

ARGUMENT: The military does not spell out the connection between the presence of known gay men, lesbians and bisexual people in the military and the anticipated result -- in this case, a decline in discipline, morale and good order. The only possible explanation is that the military assumes that heterosexual members of the Armed Forces have such hatred, fear and disgust regarding homosexuals that the presence of known gay people will result in morale plummeting, discipline disappearing and good order becoming impossible to maintain. In other words, **the policy is designed to cater to an assumed fear and prejudice instead of eradicating it.** The assumption also runs counter to the extensive historical, anecdotal evidence that has been gathered -- which indicates that straight people in the military have been able to live and work with people they knew were gay. (See Shilts, Randy (1993), Conduct Unbecoming: Gays & Lesbians in the U.S. Military; Berube, Allan (1990), Coming Out Under Fire: The History of Gay Men and Women in World War II.) (See also attached piece on Unit Cohesion).

2. MUTUAL TRUST AND CONFIDENCE

CURRENT POLICY: The military believes the presence of gay servicemembers will "adversely affect the ability of the Armed Forces . . . to foster mutual trust and confidence among servicemembers."

ARGUMENT: This rationale assumes that most heterosexual individuals cannot imagine having a relationship of trust and confidence with a gay person. It is akin to arguing that known gay students should not be allowed to participate in athletic or debate competitions, that gay people who acknowledge they are gay should not serve as police, fire, paramedic personnel, nurses or doctors, or in any situation in which members of a team must have trust and confidence in each other, since straight "teammates" would have difficulty trusting such gay personnel. More and more these days gay men, lesbians and bisexuals are acknowledging their sexual orientation in today's workforce and straight co-workers are adjusting to that change without difficulty. People with different attributes mix successfully in **all** professions and schools. There is no reason for the military profession to be any different. (See also attached piece on Unit Cohesion.)

3. INTEGRITY OF RANK AND COMMAND

CURRENT POLICY: The military believes the presence of gay servicemembers will "adversely affect the ability of the Armed Forces . . . to ensure the integrity of the system of rank and command.

ARGUMENT: As with the other rationales, this argument is premised on the assumption that a straight servicemember would be unable or unwilling to accept orders from a superior who is known to be gay, thus undermining the integrity of rank and command. There is absolutely no evidence to support this assertion. In fact, the strength of the military's system rests on the incredible authority that being a commander brings -- simply by virtue of his or her position. An analogue in civilian life would be to say that students will not listen to or learn from professors they know are gay, or that medical residents would not listen to physicians they know are gay. This is simply not true in the civilian world -- where the authority of the position is what commands the respect. There is no reason to expect the military to be any different.

4. CLOSE LIVING QUARTERS

CURRENT POLICY: The military believes the presence of gay servicemembers will "adversely affect the ability of the Armed Forces . . . to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy."

ARGUMENT: This rationale assumes straight servicemembers would be repelled by the thought of living in close quarters with servicemembers who acknowledge they are gay. This ignores the fact that unit cohesion usually brings disparate individuals together in a bonding process of trust. This trust allows servicemembers to function in the face of bullets and severe conditions. The bonding, according to military experts, begins at basic training and continues through the service. No one asks the recruits who they like or what prejudices they might have brought with them into the military. Rather, differences are ignored and prejudices rooted out so that all may serve as equals, with equal responsibility. Since trust is built among individuals, prejudice and exclusion against a group is totally irrelevant and antithetical to the military mission.

Again, the historical anecdotal evidence counters this concern: there have been hundreds of examples of straight servicemembers who knew their co-servicemembers were gay and who had no problems with privacy issues. (Shilts, 1993). Successful integration of known gay people in police departments and fire departments, where individuals work and/or live in conditions affording minimal privacy, also supports the proposition that privacy issues will <u>not</u> be a major hinderance to the successful integration of known gay people in the military.

It is true that some straight servicemembers do feel uncomfortable with having to share close living quarters with gay people, including showers and bathroom facilities. This discomfort stems largely from unfamiliarity with gay people and from many years of socialization resulting in deeply held feelings of discomfort against gay people. It would be absurd to deny the existence of such feelings. But those feelings should not dictate a policy of excluding an entire category of people from service altogether (or forcing such people to live lives of deception) in order to accommodate some feelings of discomfort on the part of others. Rather, heterosexual people who have these feelings of discomfort will ultimately adapt to the situation -- just as heterosexual people adapt to such situations in paramilitary organizations and, in fact, in various civilian activities such as exercising in gyms and health clubs.

To the extent the privacy concerns relate to fears that gay people will actually harass or "come on" to straight people, the answer is simple: there should be strict codes of sexual misconduct enforced against gay and straight people alike. The truth is that, as a practical matter, there probably is (and will continue to be) a greater problem of heterosexual misconduct in the military rather than homosexual misconduct.

5. RECRUIT MEMBERS AND MAINTAIN PUBLIC ACCEPTABILITY

CURRENT POLICY: The military believes the presence of gay servicemembers will "adversely affect the ability of the Armed Forces . . . to recruit and retain members of the armed forces [and] to maintain the public acceptability of military service."

ARGUMENT: Like the other rationales, this one assumes that significant numbers of straight people who would otherwise have joined the armed forces (for financial, training or other reasons) will not do so if they know they will meet and serve with known gay colleagues. It also presumes that public acceptability of the military will decrease significantly because of the presence of known gay servicemembers. Like the previous assumptions, there is no hard data to support these presumptions.

In fact, it appears that younger people today are much more tolerant of gay people than twenty years ago -- and more tolerant than their older counterparts. This apparent greater tolerance among younger people was noted by Senator John Warner during Senate hearings. This tolerance and opposition to discrimination on the part of young people is evidenced by the extensive efforts on hundreds of college campuses across the country to ban the ROTC program because of its discriminatory policy against gay students.

6. SECURITY BREACHES

CURRENT POLICY: The final military rationale is that the presence of gay servicemembers will impair the military's ability "to prevent breaches of security."

ARGUMENT: There is absolutely no evidence to support this rationale. Indeed, the 1957 "Crittenden Report," conducted for the military, concluded "no factual data exists to support the contention that homosexuals are a greater risk than heterosexuals." (PERSEREC, p. 29.) In 1975, the American Psychological Association passed a resolution stating, "homosexuality pre se implies no impairment of judgement, stability, reliability, or general or vocational ability." A similar resolution was adopted by the Defense Personnel Security Research and Education Center (PERSEREC) titled "Non-conforming Sexual Orientation and Military Suitability," confirmed the results of the "Crittenden Report." The study concluded, "**the preponderance of the evidence presented in this study indicates that homosexuals show preservice suitability-related adjustment that is as good or better than the average heterosexual.**" The National Security Agency has dropped "homosexuality" from its lists of excludable conditions for a security clearance.

The military has essentially dropped the security clearance rationale as a basis for its policy -- acknowledging that if a person is willing to acknowledge his or her sexual orientation, it is the existence of the ban that makes the person subject to pressure and potential blackmail, not the fact of the person's sexual orientation.

Many of the military's stated justifications -- e.g. disruption of morale and infringement of privacy -- have been subsumed under the concept of "undermining unit cohesion." Attached are a fact sheet and talking points on Unit Cohesion.

THE CAMPAIGN FOR MILITARY SERVICE

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TALKING POINTS
UNIT COHESION

* Unit cohesion is based upon the shared **military values** of the unit, not the personal prejudices of its members. **Military values** develop from camaraderie and pride in the unit and are wholly unrelated to sexual orientation.

* Proponents of keeping the ban state that the **military values** which lead to unit cohesion are: fighting skill, professional teamwork, physical stamina, self-discipline, duty (selfless service), respect for unit leaders (both professionally and personally), and loyalty to unit. None of these serve to rule out gay, lesbian or bisexuals soldiers.

* Unit cohesion works for the betterment of the military as a whole only when it aims at these worthy **military values**, not discrimination and prejudice. A unit which becomes cohesive based upon individual bias is one in which **military values** will fail and scenarios such as Tailhook occur.

* An effective military cannot tolerate disobedience by its troops in the face of an order. If the **military orders non-discrimination** in regard to gay men, lesbians and bisexuals, such orders **must and will be obeyed** or unit cohesion will not exist.

* The essential factor for the development of unit cohesion is the guiding and watchful eye of the **Non-Commissioned Officer ("NCO")**. The NCO makes the unit work through demands of absolute obedience to his or her orders. If one of those **orders** demands **non-discrimination** it will be **obeyed.**

* **No factual evidence exists** which concludes that service by gay people has or will have a deleterious effect on unit cohesion or morale. To the contrary, all of the **Pentagon's internal studies** have concluded no negative correlation exists between sexual orientation and ability to serve.

* Gay people **have always served** in the military without any factual evidence of unit cohesion or morale problems. The **Persian Gulf War** experience serves as immediate proof of effective, honorable and successful service by persons **known to be gay**.

* The arguments proposed for keeping the ban under the **guise of unit cohesion** are the same arguments utilized **opposing the integration of African-Americans** in the Armed Forces in the 1940's. **Unit cohesion** cannot mean **unit discrimination.**

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FACT SHEET

UNIT COHESION

Unit cohesion is one of the most critical elements in successful military endeavors. It is the fundamental bond between soldiers, under the watchful and guiding eye of the Non-Commissioned Officer ("NCO"), which allows the military mission to function positively. Both sides on the ban issue agree that unit cohesion must be maintained in the military.

Many who oppose lifting the military's ban on lesbian, gay and bisexual servicemembers argue that to do so would adversely impact unit cohesion in the armed forces. This position is not based on any presumed negative consequences of homosexual behavior. Instead, the argument is based primarily on assumptions about heterosexuals' reactions to gay people.

Those promoting the continuation of the ban suggest that soldiers will not bond if one of the members of the small group is a gay person because it is likely or possible that some members of the group will be prejudiced against gay men, lesbians and bisexuals. In that case, the bond relies upon shared prejudices and bigotry, not the military mission. These are not universal American norms or values.

It is true that each man or woman entering the military does so with a different history, life experience and world view. Some are Democrats, others Republican. Some are Jewish, some Catholic, some Protestant, some Muslim. Some have ancestors who arrived on these shores on the Mayflower, others on far less welcome ships.

These personal experiences and opinions are those of the entering person. But they should not be confused with the values of the military. A soldier serves not his or her personal opinions, but rather his or her country. This proud service is what creates a bond within the unit.

Unit cohesion begins with basic training and continues with service to one's immediate colleagues and to the military. It is the goal of being the best soldier, best platoon, best division, best battalion. None of these goals are assisted when a quality soldier is excluded for being lesbian, gay or bisexual -- not because that individual presents a problem of misconduct, or because he or she doesn't pull her or his weight, or because she or he is not loyal or brave; but just because he or she is gay.

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The history of our armed forces also supports the view that lifting the ban will not adversely impact on unit cohesion. Many gay men and lesbians served with relative openness during World War II and yet won the respect and admiration of their straight comrades. To a lesser extent, this scenario was repeated in the Vietnam Conflict and the war in the Gulf. The military has relaxed its ban at various points in peacetime as well as during war, permitting some openly gay people to serve, apparently with no ill effect. Published works and legal challenges to the DOD policy have repeatedly demonstrated that many gay servicemembers have served with at least the tacit knowledge of some of their peers and superiors.

The secret to unit cohesion is the watchful and guiding eye of the NCO. An NCO is responsible for making the unit work, even under the most difficult of situations. An NCO could not succeed if the soldiers' opinions were allowed to outweigh the military values of loyalty and unit integrity.

However, this is exactly what proponents of the ban insist will occur. Opponents of change seem to suggest that our military leaders cannot control our troops. This is preposterous. Our Nation has built the finest military in the world based on our soldiers' unparalleled ability to carry out the orders of their chain-of-command, including its civilian Commander-in-Chief, regardless of political party. This process is an integral part of our Nation's world-renowned peaceful transfers of power. In our military, if a servicemember refuses to follow an order, he or she faces the severe consequences of strict military discipline. When the current ban is lifted, servicemembers will continue faithfully to execute their orders, regardless of the issuing officer's sexual orientation. To suggest otherwise is to question the integrity of the military's entire system of rank and command.

Indeed, it is this very system of rank and command that will ensure a smooth transition when the ban is lifted. When our Commander-in-Chief issues a new executive order, our military leaders will salute smartly and implement the new policy in a timely and professional manner, as they would any other order. The cornerstone of the new policy will be discipline and good order. Conduct that is inappropriate in a military environment will not be tolerated, regardless of the sexual orientation of the perpetrator.

Good leaders know that unit cohesion is based on the common value of accomplishing the military mission, not on personal characteristics. Despite opponents' suggestions to the contrary, our troops understand this and hold an adult view of what is needed for combat success. To continually assert that our hardworking American military professionals -- among the most dedicated and courageous in the world -- will be unable to perform because of the personal characteristics of some small number of their comrades is insulting. Our fighting men and women deserve more respect.

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FACT SHEET

THE COST OF THE DOD'S EXCLUSIONARY POLICY

In June, 1992, the General Accounting Office (GAO) issued a report analyzing what it cost the government to enforce its ban against gay people in the military. GAO noted that its task was significantly limited by lack of data. Although each investigative branch of the Armed Services investigates people for suspected homosexuality, none of them keeps records of the amount of staff time or related cost spent on such investigations. There are also no separate records for costs such as administrative proceedings, military police investigations, or litigation expenses. Because of these limitations, the GAO report had to focus very narrowly simply on the cost of **training and replacing** discharged personnel.

A Decade of Discharges and Lost Investment

According to the GAO, between 1980 and 1990, the military discharged 16,692 enlisted personnel and 227 officers charged with homosexuality. **It cost $28,226 to train one enlisted person and $120,772 to train one officer, for a total of $498 million over ten years.** As noted, this figure does not include investigative and administrative costs, including out-processing or legal expenses or Reserved Officer's Training Corp (ROTC) costs. These costs would include legal counsel for the defendant and the command investigator or prosecutor, as well as litigation costs for civilian court challenges to the dismissals.

Some investigation costs can be estimated. GAO again reports a repeated problem in gaining reliable and consistent information, noting this figure is likely underestimated. The three agencies from which the figures are derived are Army Criminal Investigations (CIS), Navy Investigative Service (NIS) and Air Force Office of Special Investigations. Using their figures for 1990, costs for investigations alone totalled over $2.5 million that year.

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GAO

United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-247235

June 12, 1992

The Honorable John Conyers, Jr.
The Honorable Gerry E. Studds
The Honorable Ted Weiss
House of Representatives

This report responds to your joint request that we review the Department of Defense's (DOD) policy of excluding homosexuals from serving in the armed forces. Also, as you requested, our supplemental report Defense Force Management: Statistics Related to DOD's Policy on Homosexuality (GAO/NSIAD-92-98S) contains statistical information such as the number of service personnel expelled for homosexuality as a result of DOD's exclusion policy.

Unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from its issue date. At that time, we will send copies to interested committees; other Members of Congress; and the Secretaries of Defense, the Air Force, the Army, the Navy, and the Marine Corps. We will make copies available to other parties upon request.

Please contact the Director for Defense Force Management Issues, Paul L. Jones, on (202) 275-3990, if you or your staff have any questions concerning this report. The major contributor to this report are listed in appendix V.

Frank C. Conahan

Frank C. Conahan
Assistant Comptroller General

Executive Summary

Purpose

In response to a request from Representatives John Conyers, Jr., Ted Weiss, and Gerry E. Studds, GAO examined certain aspects of the Department of Defense's (DOD) policy of excluding homosexuals from serving in the U.S. armed forces. Specifically, GAO was asked to

- compile and analyze statistics on the separation of homosexuals from the military services between 1980 and 1990, including the number of personnel by service, race/ethnicity, gender, rank, and occupational category;
- determine the cost of replacing personnel separated under this policy and the cost of investigating allegations of homosexuality;
- identify and analyze the evidence that has been developed by DOD, the military services, or nondefense sources and cited as support for the current policy on homosexuality; and
- obtain information on the general public's attitudes, other nations' military forces policies, and other organizations' views on the compatibility of homosexuality with the military or other work environments.

Background

According to DOD officials, U.S. forces have had policies prohibiting homosexuals from serving in the military since the beginning of World War II. DOD's current policy on homosexuality was formalized in 1982 and specifically states that:

> Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security.

According to DOD, a homosexual is "a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts." DOD defines a homosexual act as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires."

Results in Brief

On the basis of its policy of excluding homosexuals from the military, DOD annually expelled an average of about 1,500 men and women between 1980 and 1990 under the separation category of "homosexuality." These expulsions reached a high of about 2,000 in 1982 and a low of about 1,000 in 1990. Separations for homosexuality do not require a determination that an individual's behavior affects the military's mission. In terms of rank, gender, and race/ethnicity, the majority of those expelled were enlisted personnel; most were men (about 78 percent); and most were white. When challenged, these discharges have been routinely upheld in the military adjudication and civil court systems.

DOD does not maintain records of the costs associated with administering its policy; nor does it record the costs of investigating alleged cases of homosexuality. Accordingly, our analysis was limited to estimates of the costs of recruiting and training individuals to replace personnel discharged for homosexuality.

Major psychiatric and psychological organizations in the United States disagree with DOD's policy and believe it to be factually unsupported, unfair, and counterproductive. In addition, two DOD/service-commissioned study efforts have refuted DOD's position on the potential security risk associated with homosexual orientation as well as disclosed information that raised questions about the basic policy. Further, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff have recently acknowledged that homosexual orientation is no longer a major security concern.

GAO also found that

- recent polls suggest that the public has become more accepting of homosexuality and of homosexuals' serving in the military;
- some U.S. allied nations have policies similar to that of the United States, and others have policies that permit homosexuals to be members; and
- police and fire departments in several major U.S. cities have removed employment restrictions without adverse effects on mission.

GAO Analysis

Number of Discharges

During fiscal years 1980 through 1990, approximately 17,000 servicemen and women (an average of about 1,500 per year) were separated from the services under the category of "homosexuality." Approximately 1,000 military personnel were discharged in 1990. No determination that their behavior had adversely affected the ability of the military services to perform their missions was required. In terms of rank, gender, and race/ethnicity, the majority were enlisted personnel; most were men; and most were white. However, some groups were consistently discharged at a rate higher than their representation in the total active force or individual service. For example, between 1980 and 1990, the Navy, representing 27 percent of the active force, accounted for about 51 percent of the discharges; and women, representing 11 percent of the total active Navy force, accounted for 22 percent of those discharged.

Cost of Policy

Limited cost information associated with the administration of DOD's I was available. Basically, only the costs of recruiting and training the personnel needed to replace those discharged for homosexuality could be readily estimated. In fiscal year 1990, recruiting and initial training costs associated with the replacement of personnel discharged for homosexuality were estimated to be $28,226 for each enlisted troop and $120,772 for each officer. The total cost of replacing personnel discharged for homosexuality, however, would need to include other factors such as out-processing and court costs.

The services' investigative agencies could not provide specific information on the costs of investigating alleged cases of homosexuality. However, during fiscal years 1986 through 1990, DOD investigative agencies conducted a total of 3,663 such investigations. In 1990, a total of about 472 investigations were conducted. These figures are approximate because the services can administratively handle investigations involving homosexuality under other categories, and the investigative agencies had to estimate the number of such cases. In addition, Navy investigations are simultaneously categorized as more than one offense, such as sodomy and indecent assault; again, the Navy adjusted its figures to account for this policy.

Studies of Homosexuality in the Military

DOD and the services have commissioned two major efforts that focused on whether homosexuals were more of a security risk than heterosexuals and concluded that there was no factual data to substantiate that premise. The Navy's 1957 Crittenden Report[1] (which did not question the underlying premise of DOD's policy) stated, "A third concept which persists without sound basis in fact is the idea that homosexuals necessarily pose a security risk." A more recent draft report, prepared by DOD's Defense Personnel Security Research and Education Center (PERSEREC), commented that the DOD policy prohibiting homosexuals from serving in the military was based on the same rationale used to limit the integration of blacks.[2] Specifically, it stated:

> The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true.

The PERSEREC effort, initiated in 1986, has been packaged as several interim products with the final report issued in late 1991.

In addition, national organizations such as the American Psychiatric Association and the American Psychological Association, familiar with the extensive research conducted on homosexuality in the general population and with military veterans, disagree with DOD's policy and the policy's implied characterization of homosexuals.

In testimony before the House Budget Committee, the Secretary of Defens in July 1991 and the Chairman of the Joint Chiefs of Staff in February 19 backed away from security concerns as a major basis for DOD's policy. However, both officials continued to support the policy on the basis of their belief that it is needed to maintain good order and discipline.

[1]Officially, the Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals, Mar. 15, 1957.

[2]Presidential Executive Order 9981, July 26, 1948, required the integration of blacks into the arm forces. Congress also passed the Women's Armed Services Integration Act in 1948 to institutionali career opportunities for women in the military.

Attitudes Toward Homosexuality

General public attitudes in the United States about homosexuality appear to be changing. GAO reviewed three recent national polls, conducted by Gallup and Penn and Schoen Associates, Inc., which indicated that more Americans now say they believe that homosexuals should be allowed to participate in various occupations, including the armed forces. A Gallup survey conducted in March 1991 of a cross section of the American population of adults aged 18 and over showed that 69 percent of those interviewed felt that homosexuals should be allowed to serve in the armed forces, whereas only 51 percent felt that way in 1977.

Selected Police/Fire Department Policies

Additionally, since the early 1970s, a number of police and fire departments have adopted policies prohibiting discrimination on the basis of sexual orientation and have hired homosexuals into their work forces. Officials from all eight of the departments that GAO contacted stated that they had not experienced any degradation of mission associated with these policies. Most department officials did not identify major problems related to retaining homosexuals in a work force, but a few pointed out isolated cases of problems indirectly involving homosexuals.

Other Nations' Policies on Homosexuals in the Military

The policies regarding homosexuals serving in the military forces of 17 selected nations—predominantly members of the North Atlantic Treaty Organization and other U.S. allies—ranged from policies very similar to that of the United States to no stated policy addressing homosexuality as either a legal or a military personnel issue.

Four of the 17 countries, or about 24 percent, had policies that appear to have been designed to prevent homosexuals from entering military service and to separate from service or preclude retention beyond an existing service obligation those active duty personnel identified as homosexual. While 13 countries did not exclude homosexuals from entering their armed forces, several had policies requiring separation if an individual's homosexuality was disclosed later or if an individual's behavior was found to be aggressive, harassing, or disruptive. During the past 10 years, at least two countries have dropped their exclusion policies. One of the four countries that now exclude homosexuals is reviewing its policy—it expects to rescind the existing restriction in the near future.

Recommendations

On May 19, 1992, a bill to prohibit discrimination by the armed forces on the basis of sexual orientation was introduced. While GAO is making no recommendations in this report, GAO's analysis should assist the Congress in deliberating legislative initiatives relative to changing DOD's policy, which excludes homosexuals from serving in the U.S. armed forces.

Agency Comments

In commenting on a draft of this report, DOD agreed or partially agreed with some findings and did not agree with others. DOD said that its homosexual exclusion policy is not based on any belief that homosexuality is a mental disorder, nor is it based solely on security concerns. DOD said that GAO correctly notes that the DOD policy is based on military judgment and that scientific or sociological analyses are unlikely to affect its policy of excluding homosexuals from the military. DOD said that the courts consistently have found that the military interests underlying the policy—good order, discipline, and morale—were substantial and that military concern about homosexuality has a basis in fact.

DOD said that GAO erred in stating that the two cited reports did not support DOD's policy. DOD said that the Crittenden report clearly supported the policy and that the PERSEREC draft misstated the policy. That is, DOD said that the PERSEREC draft did not address the issues of morale, discipline, and so on, and, therefore, its "analysis" was flawed.

DOD correctly states that the Crittenden report did not question the premise of DOD's exclusionary policy - - that is, that homosexuality is incompatible with military service - - and GAO's report points this out. However, the report that was issued in 1957 stated that (1) many homosexuals have served honorably in all branches of the military and (2) the concept that homosexuals pose a security risk is unsupported. It also noted that the number of homosexuals disclosed represented only a very small proportion of those in the Navy.

With regard to the PERSEREC draft, GAO recognizes that this study went beyond its directed task. However, GAO believes that the information presented should not be discounted by DOD solely for that reason.

In a draft of this report, GAO suggested that individual Members of Congress may wish to direct the Secretary of Defense to reconsider the basis for DOD's prohibition. Because legislation has since been introduce on this matter, GAO has deleted its suggestion.

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TALKING POINTS

COMPARING CURRENT OPINION POLLS ON GAYS IN THE MILITARY TO THOSE ON BLACKS IN THE MILITARY IN THE 1940s

* **Opinions of military personnel should not form a major basis for determining whether to lift the ban on gays and lesbians in the military. Had President Truman listened to the opinions of his military personnel, he would have never issued his historic Executive Order ending segregation in the armed forces.**

Armed with opinion polls, those who support the ban argue that military personnel do not want gay men, lesbians and bisexuals in the armed services and that deference to the opinion of service personnel is appropriate in this matter. Exactly the same argument was used against African-Americans in the 1940s by supporters of racial segregation. An Army study, conducted in May 1942 by the research branch of the Special Services Division of the War Department, found an overwhelming majority of servicemembers strongly opposed to desegregation of the PX and recreational facilities. Another Army study conducted following World War II found a majority of white servicemembers did not think that racial integration in the military was appropriate. 81% opposed integration in the PX; 83% opposed integration of the service clubs; and 84% stated their belief that there should be no integration of the entire military. Samuel A. Stouffer, et al., The American Soldier (Princeton, New Jersey: Princeton University Press, 1949).

* **Initial fears and prejudices about another group of people are mitigated when soldiers have an opportunity to work and learn together.**

Historical data shows that much of the prejudices of white soldiers **dissipated** dramatically once they had the opportunity to work with African-American soldiers. A 1945 poll of infantrymen serving in partially integrated units in the European Theater of Operations found that, initially, 64% of white soldiers were opposed to integration. However, after working with African-Americans for a period of time, 77% of the white soldiers questioned held **favorable** attitudes towards racial integration. A study done by the U.S. Army during the Korean War, Project Clear, produced similar results. Researchers found that while 84% of white soldiers opposed racial integration in **1943**, only 44% opposed the same racial integration in **1951**. Furthermore, integrated units favored the policy of desegregation more than all-white units that had no experience working with African-Americans. See Charles C. Moskos, Jr., "Racial Integration in the Armed Forces," American Journal of Sociology, September 1966, p. 140.

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TALKING POINTS

CURRENT OPINION POLLS ON GAYS AND LESBIANS IN THE MILITARY

* **Public opinion has consistently supported the right of gay men, lesbians and bisexuals to serve in the military over the past decade.**

Opponents to lifting the ban on gay people in the military argue that the American public does not support the right of gay people to serve. While recent national polls vary on the issue, an overwhelming number of polls over the past decade demonstrate otherwise.

Gallup Poll. Do you think homosexuals should or should not be hired for the armed services?

Year	Should Be Hired.
1977	51%
1982	52%
1985	55%
1987	55%
June 1992	57%
Nov. 1992	49% (plurality)

Penn & Schoen (August 1991, immediately after Persian Gulf War.)

Question 1. Should gays and lesbians be discharged from the military solely because of their sexual orientation?

Answer. No: 81%

Question 2. Should gays and lesbians be admitted to serve in the military?

Answer. Yes: 65%

* **While public opinion polls have inherent problems and do not always translate into good policy, these polls indicate that those who argue that public opinion is solidly against allowing gays and lesbians to serve in the military are simply wrong.**

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FACT SHEET

UNIFORM CODE OF MILITARY JUSTICE

The Uniform Code of Military Justice (UCMJ) was enacted by Congress in 1950. The UCMJ defines crimes and sets forth procedures for the administration of military justice.

Historically, Congress has shared authority for the regulation of the armed forces with the President of the United States. As part of this shared authority, Congress delegated to the President the power to prescribe procedures for courts-martial cases, maximum sentences for courts-martial, and limitations on the kind of punishments.

Under this authority, the President has promulgated the Manual for Courts-Martial (MCM), first issued in 1951 and most recently revised in 1984.

RELEVANT UCMJ PROVISIONS

A. Article 125. Sodomy.

"(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the **same or opposite sex** or with an animal is guilty of **sodomy**. Penetration, however, slight, is sufficient to complete the offense."

The President, in the MCM, has defined "sodomy" to mean oral or anal sex. The MCM has set the maximum punishment as dishonorable discharge, forfeiture of all pay and allowances, and imprisonment for 5 years.

In practice, Article 125 has been used by the military to prosecute **nonconsensual heterosexual sodomy** or heterosexual sodomy with other aggravating circumstances (e.g., with a minor). By contrast, Article 125 has been used to prosecute **consensual homosexual** sodomy between adults.

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B. Article 133. Conduct Unbecoming an Officer and a Gentleman.

"Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct."

C. Article 134. General Article.

" ... all disorders and neglects to the armed forces, all conduct of a nature to bring discredit upon the armed forces ... shall be punished at the discretion of that court."

Both Articles 133 and 134 are general catch-all provisions that are used to punish actions that are not crimes under other articles of the UCMJ, but which are deemed to be "prejudicial to the good order" of the military. Various "sexual misconduct" cases, such as adultery, have been prosecuted under these articles.

ANALYSIS

Repeal of the military ban against gay servicemembers will not necessarily require any revision to the UCMJ, although such revision would of course be helpful. Article 125 applies evenhandedly regardless of the sexual orientation of the accused person. The military's enforcement of Article 125, however, would have to be modified so that the provision was **evenly applied** to all violations, regardless of sexual orientation. The military could easily use the approach it has used over the years with regard to heterosexual sodomy: i.e., prosecutors essentially choose not to pursue cases of consensual sex between adults. The military can continue this approach with regard to both gay and straight sex.

Articles 133 and 134 also apply evenhandedly, on their face, to both gay and straight servicemembers. Acceptance of openly gay service members by order of the Commander-in-Chief would eliminate any claim that gay people engage in conduct unbecoming an officer or that they bring discredit upon the armed forces. Other sexual conduct issues, from prohibitions against fraternization to limitations on public displays of affection, can and should be applied evenly to gay and straight people under these Articles.

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FACT SHEET
RECENT LEGAL CASES: CONSTITUTIONAL ANALYSIS

In the last five years, three Court of Appeals cases and two District Court cases have considered the constitutionality of the military policy banning lesbians, gay men, and bisexuals from the military.

Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989), Woodward v. United States, 871 F.2d 1068 (Fed. Cir.1989), and Steffan v. Cheney 780 F.Supp. 1 (D.D.C.1991)(currently on appeal) have upheld the constitutionality of the military's policy. Pruitt v. Cheney, 963 F.2d 1160 (9th Cir. 1992) ruled that there must be a **real basis** for the military's policy other than mere prejudice of others and remanded the case to the district court. Meinhold v. U.S. Dept of Defense, 808 F.Supp. 1455 (C.D.Ca. 1993), following the rationale of Pruitt, found there was no rational basis for the military's policy and held it was unconstitutional.

CASES FINDING THE BAN CONSTITUTIONAL

In the cases of Ben Shalom, Woodward and Steffan, the plaintiffs argued that the military's ban violated their federal constitutional right of equal protection. In each case, the courts focused primarily on the military's claim that the ban preserved "good order" and "morale." Finding that order and morale **were** important to an effective service, the courts simply **accepted** the military's claim that the ban was necessary to achieve good order and morale. None of these courts demanded from the military an **explanation of how** lesbians, gay men, and bisexuals would impair order and morale, nor did the courts require the government to provide any concrete evidence for its claims.

CASES QUESTIONING THE CONSTITUTIONALITY OF THE BAN

Pruitt v. Cheney

In Pruitt v. Cheney, the Ninth Circuit ruled that the appellate courts in Ben Shalom and Woodward had failed to adequately apply recent Supreme Court cases in their decisions.

It had long been the law that the government could not discriminate against a group of citizens just because of other peoples' hostility to the group. U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973). In Palmore v. Sidoti, 466 U.S. 429 (1984), the Supreme Court expanded on that point by ruling that a state court could not take custody of a child away from a white mother because she was living with a black man. The court ruled that constitutional equal protection prohibited the government from giving effect to **private prejudices** of **others** by discriminating against the woman.

The next year, in Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985), the court said that Palmore was not limited to race or other "suspect" classifications. Ruling that a Texas town could not zone out a group home for the mentally disabled in a residential neighborhood, the court said that the fears of neighbors, and even the belief that some individuals might harass those living at the home, were not permissible bases for discriminating against an unpopular group.

The Pruitt court found that when the military offered an explanation for the threat to order and morale posed by lesbians, gay men and bisexuals, it had simply asserted that non-gay members of the service "despise/detest" gay people and that their hatred would lead to actions which would harm order and discipline. In light of Palmore and Cleburne, the Pruitt court ruled that the Federal Constitution did not allow the government to give effect to private prejudices by creating a policy that catered to that prejudice.

In Cleburne, the Supreme Court also held that courts may not simply accept **any** government argument that discriminating against an unpopular group will help achieve **some** legitimate purpose. Rather, the Court required the government to provide a real factual record for its claims. Based on the Cleburne ruling, the Ninth Circuit in Pruitt explained that if the military had some explanation for its policy that did **not** rely solely on the prejudice of others, the military would have to provide some factual support for its claim before the district court.

The Solicitor General, under the Bush Administration, asked the Supreme Court to review and reverse the Pruitt decision. The Supreme Court declined to hear the case, thus allowing the case to stand. The case is currently before a district court and is stayed until after July 15th.

Meinhold v. Department of Defense

The district court in the case of Meinhold v. Department of Defense was the first court in the Ninth Circuit to consider the validity of the military's policy following the principles set forth in Pruitt. The Meinhold court struck down the ban because the military was unable to come up with any nonprejudicial factual basis for its policy. As the court noted, the military's own studies of its policy -- the 1957 Crittenden Report, and the 1988 and 1989 PERSEREC Reports -- found there was no factual basis for the policy of excluding known gay men, lesbians and bisexuals from the armed services. The Meinhold court issued an injunction against the discharge of individuals based on sexual orientation. The Ninth Circuit has ruled that this injunction is consistent with the temporary compromise currently in place, which puts individuals who acknowledge gay status into the standby reserve.

CONCLUSION

As the Pruitt and Meinhold decisions demonstrate, once the "hatred of others" rationale is eliminated under the Supreme Court requirements of Palmore and Cleburne, and the military is required to show a factual basis for the policy, it is very difficult for the government to argue that the policy is constitutional. This is the case even when the government simply has to show a "rational relationship" for its policy. If the courts ultimately accept a stricter standard than simply "rational review," the military's ban is even more likely to be struck down as unconstitutional.

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SUMMARIES OF PRINCIPAL LEGAL CASES

1. Beller v. Middendorf, 632 F.2d 788 (9th Cir. 1980): Upholding pre-1982 DOD regulation against privacy challenge; no discussion of equal protection and no evidence presented by DOD.

2. Dronenburg v. Zech, 741 F.2d 1388 (D.C. Cir. 1984): Upholding 1982 DOD regulation against equal protection challenge; decided prior to Palmore and Cleburne.

3. Rich v. Secretary of the Army, 735 F.2d 1220 (10th Cir. 1984): Upholding policy; no evidence presented by DOD; decided before Palmore/Cleburne.

4. Palmore v. Sidoti, 466 U.S. 429 (1984): Case invalidating denial of custody of a child to a white mother currently in an interracial marriage. Court held that "[p]rivate biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect".

5. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985): Case invalidating zoning board decision that discriminated against a group home for people with mental retardation. Court required government to show with evidence that its discriminatory policy was rationally related to a legitimate government interest; "negative attitudes" and "irrational prejudice" of others could not be relied upon to justify discrimination.

6. Watkins v. United States Army, 875 F.2d 699 (9th Cir. 1989): Army equitably estopped from discharging openly gay sergeant who served with distinction for 14 years. Concurring opinion by Judge Norris found that military's policy unconstitutionally catered to prejudices of servicemembers who "despise" homosexuals.

7. Woodward v. United States, 871 F.2d 1068 (Fed. Cir. 1989): Upholding DOD's policy on motion to dismiss; no evidence presented by the government; no analysis of Palmore or Cleburne.

8. Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989): Upholding DOD's policy; no evidence presented by the government; no analysis of Palmore or Cleburne.

9. Pruitt v. Cheney, 963 F.2d 1160 (9th Cir. 1992): Reversing grant of motion to dismiss an equal protection challenge to DOD's policy; requires government to show "on the record" that there is a legitimate and rational basis for the ban; questions authority of Beller, Dronenburg, Rich and Woodward in light of Supreme Court decisions in Palmore and Cleburne.

10. Meinhold v. Cheney, 808 F. Supp. 1455 (C.D. Cal. 1993): Declaring policy unconstitutional; holding that, on the record, there is no rational and legitimate basis for military ban on gay people.

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Examples of Expulsions for Which Performance Was Not an Issue

Matlovich v. Secretary of the Air Force

Former Technical Sergeant Leonard P. Matlovich was a 12-year Air Force veteran who had served a tour of duty in Vietnam and had received a Bronze Star and a Purple Heart. Matlovich informed the Secretary of the Air Force in writing of his belief that his sexual preferences were homosexual, although he did not believe these preferences would in any way interfere with his Air Force duties. Under an Air Force regulation that bars homosexuals except in exceptional situations, he was administratively processed for separation after admitting his sexual orientation and his engagement in homosexual activity. Subsequently, Matlovich was honorably discharged. On the day before his discharge, Matlovich filed suit with the United States District Court for the District of Columbia Circuit, seeking a temporary restraining order against his discharge and an injunction and declaratory relief against the Air Force on the grounds that its policy was unconstitutional. The District Court ruled in favor of the Air Force, stating that, although there had been times when, due to extenuating circumstances, the Air Force had retained persons who had engaged in homosexual acts, there was no need to consider this case an exception (exceptions have been granted to only one-time offenders). The United States Court of Appeals for the District of Columbia (591 F.2d 852 (D.C. Cir. 1978)) held that it was unable to determine from the record why the Air Force had not retained Matlovich under the "unusual circumstances" exception to the general policy and remanded the case to the district court. The appeals court instructed the Air Force to either promulgate advance written rules or directives, or formulated criteria; or to establish the standards for the policy through case-by-case decision-making and apply those standards to Matlovich's case. The case was subsequently dismissed on December 16, 1980, pursuant to a court-approved monetary settlement between Matlovich and the Air Force.

Secora v. Fox

Former Technical Sergeant Claude E. Secora was a 16-year active duty veteran in the United States Air Force serving as a computer operator. He was the recipient of the Air Force Commendation medal and the National Defense medal. Secora was administratively processed for separation in 1978 under an honorable discharge on the grounds that he had violated th same Air Force regulation challenged in the Matlovich case. Secora filed suit in the United States District Court for the Southern District of Ohio on the grounds that the Air Force regulation was unconstitutional and that it had denied him equal protection.

A federal magistrate, upon declining to address the constitutional issues, relied on the Matlovich decision in finding that the Air Force had not

complied with its own regulations in discharging Secora because it had failed to put forth its reasons for not retaining him under the "unusual circumstances" exception to the general policy of discharging officers wh engage in homosexual activity. The District Court agreed with the magistrate and ruled that Secora was entitled to a reasoned explanation with respect to the regulation as to why he did not come within the "unusual circumstances" exception (747 F. Supp. 406 (S.D. Ohio 1989)) The court held that such an explanation required a fact-sensitive inquiry into Secora's particular circumstances, especially since he was facing discharge notwithstanding a 16-year, unblemished service record. The court ruled that the Air Force must show cause why Secora did not meet the Air Force's rule of exception to its policy if there was no current pattern of homosexuality and Secora's ability to perform military service had not been compromised. Both parties have moved for summary judgment in the District Court, where the case is currently pending.

Watkins v. United States Army

Former Staff Sergeant Perry Watkins was a 14-year active duty veteran i the United States Army, who had served tours in Vietnam and Korea. He had been completely candid about his homosexuality from the start of hi Army career and had been allowed to reenlist on three occasions (in 197 1974, and 1979), with the Army's full knowledge of his homosexuality. ' record indicates that in all respects Watkins was an outstanding soldier. became, in the words of his commanding officer, "one of our most respected and trusted soldiers." This official stated that "from daily personal contact I can attest to the outstanding professional attitude, integrity, and suitability for assignment within the Personnel Reliability Program, of SP5 Watkins." While Watkins' case was making its way through eventual appeals in the federal courts, the Army rated his performance and professionalism. He received 85 out of 85 possible points, including perfect scores for the categories "earns respect," "integrity," "loyalty," "moral courage," "self-discipline," "military appearance," "demonstrates initiative," "performs under pressure," "attains results," "displays sound judgment," "communicates effectively "develops subordinates," "demonstrates technical skills," and "physical fitness."

In 1982, Watkins filed suit in the United States District Court for the Western District of Washington challenging revocation of his security clearance and seeking to prevent his discharge from the Army under ar Army regulation that mandated the discharge of all homosexuals regardless of merit. The District Court enjoined the Army from dischar

Watkins based on his admission of homosexuality. After the Army subsequently denied Watkins' reenlistment under a regulation making homosexuality a nonwaivable disqualification for reenlistment, the court held that the Army was estopped from relying on this regulation. After certain procedural maneuvers by the parties between the United States Court of Appeals for the Ninth Circuit (721 F.2d 687 (9th Cir. 1983)) and the District Court, a panel of the appeals court held that the reenlistment regulations violated the constitutional guarantee of equal protection because they discriminated against persons of homosexual orientation and were not necessary to promote a legitimate compelling governmental interest (847 F.2d 1329, 1352-1353, (9th Cir. 1988)).

The full appeals court, declining to rule on the constitutional issue, held the Army to be estopped from barring Watkins' reenlistment solely on the basis of his acknowledged homosexuality (875 F.2d 699 (9th Cir. 1989)). The appeals court reasoned that Watkins had been completely candid about his homosexuality from the start of his career, and the Army, with full knowledge of this fact, had continued to reenlist him despite its long-standing policy to the contrary. In weighing the injustice to Watkins against the possible damage to the public interest, the court noted that Watkins, after having relied on the Army's 14-year approval of his service, had been injured by the loss of his career, whereas harm to the public interest from his reenlistment was nonexistent since he had demonstrated he was an excellent soldier. In 1990, the United States Supreme Court denied the Army's petition to review the case (875 F.2d 699 (9th Cir. 1989) cert. denied, –U.S. –, 111 S. Ct. 384, 112 L. Ed. 2d 395 (1990)), and Watkins and the Army subsequently agreed to settle. Watkins was promoted to the rank of sergeant first class effective June 1, 1992, and voluntarily retired. He received back pay and allowances with offsets from civilian pay earned for the period between his 1984 discharge and his retirement date.

Pruitt v. Cheney

Former Captain Dusty Pruitt was a 15-year active and reserve veteran in the United States Army who was separated from the Army Reserve under an honorable discharge for homosexuality on July 19, 1986. Pruitt served in the Army between 1971 and 1975. After leaving active service to seek ordination as a methodist minister, Pruitt remained an officer in the U.S. Army Reserve. On May 25, 1982, Pruitt was notified of her selection for promotion to the rank of major effective February 6, 1983. Pruitt's outstanding record in both active and reserve service is undisputed.

Pruitt, who had no record of allegations of prohibited homosexual condu openly admitted in an interview published in the Los Angeles Times on January 27, 1982, that she was a homosexual. The Army, as a result of tl article, suspended her promotion to major pending an investigation that ultimately resulted in her being discharged from the reserves based on a Army regulation providing for the discharge of a person who "desires to engage in, or intends to engage in, homosexual acts." On the basis of her written admission of homosexuality to her commanding officer, an administrative board concluded that separation of Pruitt was warranted, and she was discharged from the reserve effective July 9, 1986. Pruitt fil suit in 1987 in the United States District Court for the Central District of California (See Pruitt v. Weinberger, 659 F. Supp. 625 (C.D. Cal. 1987)) alleging that Army regulations had violated her first amendment rights because they called for punishment solely on the basis of her assertion o her status rather than any conduct in which she had engaged. The Distric Court dismissed Pruitt's action for failure to state a first amendment clai reasoning that acknowledgment of her homosexuality was simply an admission that she fell within a class of people whose presence the Army deemed incompatible with its expressed goals, and it was not for the cou to question the wisdom of the Army's policy. A three-judge panel of the United States Court of Appeals for the Ninth Circuit (943 F.2d 989 (9th Cir. 1991)) agreed with the District Court that Pruitt had failed to state a first amendment claim. The appeals court further held that Pruitt's case stated an equal protection claim—that she had been discharged based or her mere status as a homosexual without evidence that she had engaged homosexual conduct while on duty or had performed poorly as an officer—which should have been heard by the District Court. The appeal court held that Pruitt should have been allowed to present evidence to support her equal protection allegations and that the Army should have been required to establish on the record that its regulation had a rationa basis. Accordingly, the appeals court reversed the dismissal of Pruitt's action and remanded the case to the District Court to determine whethe the Army's discrimination against Pruitt was rationally related to a permissible governmental purpose.

The Army has asked for reconsideration of the decision by the full appe court, contending that Pruitt had not properly raised the equal protectic claim in the District Court. The Army's request is currently pending bef the appeals court, and the decision on rehearing is pending before the District Court. Rehearing was denied & the Supreme Court subsequently denied cert. The case has now been remanded back to the district court & is currently stayed until mid-April.

Steffan v. Cheney

Former midshipman Joseph C. Steffan was a 4-year student at the United States Naval Academy who was administratively processed for separation 6 weeks prior to graduating at the top of his class and after admitting he was homosexual. Although he was not charged with any homosexual conduct, he resigned on April 1, 1987, and was honorably discharged. On December 22, 1987, he filed suit in the United States District Court for the District of Columbia challenging DOD's policy of excluding homosexuals from active service, alleging that his separation violated his constitutional rights of free speech and association, due process, and equal protection. He sought reinstatement, a bachelor of science degree, and a commission as an ensign.

During the discovery phase of his case, Steffan refused to answer a deposition question asking whether he had engaged in homosexual activities while at the Academy or since departing on the grounds that the question was irrelevant and violated his fifth amendment privilege against self-incrimination.

In November 1989, the District Court (733 F. Supp. 121 (D.D.C. 1989)) dismissed Steffan's suit as a sanction for failure to cooperate in discovery regarding his homosexual activities. The court reasoned that Steffan could not refuse to answer on the grounds of irrelevance since the Navy had the right to refuse his reinstatement for homosexual conduct, and his request for reinstatement raised the issue of whether he was qualified for such relief. Moreover, the court stated that the Navy was entitled to information necessary to defend itself against Steffan's claims to such relief. In addition, the court reasoned that since Steffan had raised the issue of homosexual conduct by seeking reinstatement, he could not use the fifth amendment as a shield to frustrate the Navy's right to prepare a defense.

The United States Court of Appeals for the District of Columbia (920 F.2d 74 (D.C. Cir. 1990)) reversed and remanded to the District Court, holding that the discovery sanction was improper because Steffan's discharge was based solely on the grounds of his admission that he was homosexual; his request for relief on those grounds did not put into issue the question of whether he had engaged in homosexual conduct, unless such conduct was a basis for his separation. On December 9, 1991, the District Court (Cir. No. 88-3669-OG, D.D.C.) upheld the right of the Navy to expel Steffan from the Naval Academy, holding that the military's ban on homosexuals was justifiable on military grounds as well as a reasonable step toward protection against the spread of Acquired Immune Deficiency

Syndrome in the armed forces. Steffan's attorneys have indicated that th will appeal the District Court's decision in the near future. The DC Court of Appeals recently announced that the gov's request for a stay was denied. The case will therefore be heard approx. Nov. 199

Dronenburg v. Zech

Former petty officer James L. Dronenburg was a 27-year-old, 9-year veteran who had served in the Navy as a linguist and cryptographer with top secret clearance. He had maintained an unblemished service record and earned many citations praising his job performance. During a Navy investigation and an administrative discharge hearing concerning allegations of homosexual conduct, Dronenburg acknowledged that he w a homosexual and that he had repeatedly engaged in homosexual condu with a 19-year-old seaman recruit in the Navy barracks. On April 21, 198 Dronenburg was honorably discharged for violating regulations implementing a Navy policy of mandatory discharge for homosexual conduct.

On April 20, 1981, Dronenburg filed suit in federal district court challenging the Navy's policy as unconstitutional on the grounds that it violated his right of privacy and right of equal protection of the laws. Th district court granted summary judgment for the Navy, and Dronenburg appealed to the United States Court of Appeals for the District of Columbia. A three-judge panel of the Appeals Court (741 F. 2d 1388 (D. Cir. 1984)), concluding that it found no constitutional right to engage in homosexual conduct, applied the rational basis standard in reviewing Dronenburg's constitutional challenges to the Navy's regulation. In applying that standard, the court held that the Navy's policy did not viol Dronenburg's rights of privacy or equal protection because the policy is rational means of achieving legitimate state interests such as discipline, good order, and morale. In so holding, the court noted the following:

> The effects of homosexual conduct within a naval or military unit are almost certain to b harmful to morale and discipline. The Navy is not required to produce social science da the results of controlled experiments to prove what common sense and common experi demonstrate... 741 F.2d at 1398. [Underscoring supplied.]

A rehearing on the case before a full panel of the appeals court was den (746 F.2d 1579 (D.C. Cir. 1984)).

Ben-Shalom v. Marsh

Former Army Reserve Sergeant Miriam Ben-Shalom originally enlisted in the Army Reserve in 1974 for a 3-year period, serving as a drill instructor. She apparently was the only woman in her drill sergeant training school course and was acknowledged to be a fine candidate for drill sergeant school, a capable soldier, and an excellent instructor. Ben-Shalom publicly acknowledged her homosexuality at various times during her enlistment: in conversations with fellow reservists, in an interview with her division newspaper, and while teaching drill sergeant candidate class. During an investigation of the matter and at an administrative discharge hearing, there was never any evidence that she had engaged in homosexual conduct. On December 1, 1976, she was honorably discharged under an Army regulation that permitted discharge for any soldier who "evidenced homosexual tendencies, desire or interest, but is without homosexual acts." Ben-Shalom filed suit in the United States District Court for the Eastern District of Wisconsin seeking reinstatement on the basis that her discharge under the regulation had violated her constitutional rights of free speech and privacy and equal protection of the laws. The District Court (489 F. Supp. 964 (E.D. Wisc. 1989)) held the regulation to be constitutionally overboard and a violation of Ben-Shalom's right of privacy. The equal protection claim was denied because the court found she could not establish either a constitutionally protected "property" or "liberty" interest under the fifth amendment. The court ordered her to be reinstated for the remainder of her enlistment term.

Following additional court actions concerning enforcement of the reinstatement order, the Army eventually reinstated Ben-Shalom for her original enlistment term, which was extended by court order due to the protracted litigation.

While serving her original enlistment term, Ben-Shalom, again admitting her homosexuality, sought and was denied reenlistment for another 6-year term. She was denied reenlistment on April 7, 1988, under a new, reworded Army regulation making the status of homosexuality a "nonreviewable morale and administrative" disqualification. On May 3, 1988, Ben-Shalom filed suit in the United States District Court for the Eastern District of Wisconsin, claiming that the new regulation violated the first amendment because it chilled her right to freedom of speech since she would no longer be able to make statements regarding her sexual orientation. She also claimed the regulation violated her fifth amendment right to equal protection of the laws because the regulation was not necessary to achieving a compelling state interest or, alternatively, failed to rationally further a legitimate, articulated state purpose. The district court (702 F.

Supp. 1372 (E.D. Wisc. 1989)) agreed with Ben-Shalom, holding that the regulation unreasonably chilled her right to freedom of speech and did no further a compelling state interest in violation of equal protection principles. The United States Court of Appeals for the Seventh Circuit reversed (881 F. 2d 454 (7th Cir. 1989)). The Appeals Court ruled that th regulation did not prohibit speech per se, but prohibited the homosexuali that Ben-Shalom's speech merely identified. The court reasoned that whei speech and nonspeech elements are combined in the same course of conduct, limitations on speech are permissible when there is a sufficiently important governmental interest in regulating the nonspeech element. Regarding the due process claim, the court ruled that the deferential rational basis standard of review was applicable and that the regulation m this standard because it promoted a legitimate government interest. In 1990, the United States Supreme Court denied Ben-Shalom's petition to review the case (881 F.2d 454 (7th Cir. 1989), cert. denied, – U.S. –, 11(S. Ct. 1296, 108 L. Ed. 2d 473 (1990)).

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Statement of Dr. Edward D. Martin
Acting Assistant Secretary of Defense for Health Affairs

April 10, 1993

Gays in the Military

The following statement issued by Dr. Edward D. Martin, Acting Assistant Secretary of Defense for Health Affairs, clearly states that homosexuality, per se, does not correlate with mental disorders, promiscuity, disease incidence or medical costs:

> Homosexuality was once medically defined as an aberrant sexual behavior. However, years of medical, psychologic and sexual research consistently failed to demonstrate the presence of any specific biologic marker, clinical syndrome and/or psychologic profile in practicing homosexuals of either sex.
>
> By 1975, the American Psychological Association no longer considered homosexuality an aberrant sexual behavior. By 1976, the American Psychiatric Association enacted the same resolution and removed homosexuality from its Diagnostic and Statistical Manual. Shortly, thereafter, the American Medical Association adopted the same position.
>
> It is important to note that high-risk behavior of any kind, such as substance abuse, chemical addiction, drunk driving, sexual promiscuity or domestic violence, is clearly associated with specific human pathology, high-cost medical interventions, uncertain rehabilitation, and long-term social, economic, and political consequences.
>
> Great caution is required, however, when identifying high-risk behaviors as the cause of a variety of problems found in different social groups. In fact, from an epidemiological point of view, specific risk-behavior incidence can be statistically related to various racial, economic, geographic, ethnic, religious or other groups, and clearly is often not causal.
>
> **We are not aware of any scientific evidence that individual sexual preference, in and by themselves, be they homosexual, heterosexual or bisexual, affect work productivity, scholastic aptitude, disease incidence, medical costs or crime rate in the population at large. In conclusion, since homosexuality, per se, cannot scientifically be characterized as a medical issue, DoD policies related to homosexual or heterosexual behavior should be based upon military personnel, unit and mission concerns and considerations.**

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TALKING POINTS

THE INTERNATIONAL EXPERIENCE

* Two of America's closest allies, **Canada and Australia**, have **recently repealed** bans on gay men, lesbians and bisexuals serving in the military. Neither country reported morale or conduct problems, any resignations, any complaints by heterosexuals, or any violence aimed at gay men, lesbians or bisexuals.

* **No ban** exists in **most of the U.S. allies' militaries**. There is no ban against gay men, lesbians and bisexuals in **Australia, Belgium, Canada, Denmark, France, Iceland, Israel, Italy, Luxembourg, the Netherlands, Norway** and **Spain**. There is also **no ban** in the **neutral countries** of **Austria, Finland, Sweden** and **Switzerland**.

* **Morale problems** have not been reported in countries without bans on gay men, lesbians and bisexuals in the military.

* In the no-ban nations, **conduct regulations** are **strictly, equally and successfully applied** to heterosexual and homosexual conduct. No sexual conduct is allowed between a soldier and any other person while on base, on ship, on-duty or generally between an officer and a subordinate.

* **None** of the no-ban countries officially **ban gay people from combat or deny security clearances** to gay people solely on the grounds of sexual orientation. **None** of these countries report **combat failures** or **breaches of security** related to the existence of gay men, lesbians and bisexuals assigned to combat or security positions.

* Countries with **no ban** on gay men, lesbians and bisexuals in their militaries have **successfully worked** with soldiers from the United States without any problems, including actual experience in combat during **Operation Desert Storm**, in United Nations field operations, and through participation in **NATO field exercises**.

* Countries that have **official bans** against gay people in their militaries are Libya, South Africa, Iran and other nations. **New Zealand** has **reported plans to lift its ban**. **Ireland** is considering **lifting its ban as well.**

* Militaries without bans **do not segregate** gay men, lesbians and bisexuals by either assignment or housing. No privacy violations, conduct problems or complaints have been reported.

[SOURCE: All data derived from Frank D. Pond, Esq., *A Comparative Analysis of Military Policies With Regard to Gay Men and Lesbians*, 1993 (Unpublished at present). This 108 page document is available upon request.]

The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

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FACT SHEET

THE INTERNATIONAL EXPERIENCE

MOST OF AMERICA'S MILITARY AND POLITICAL ALLIES HAVE NO BAR AGAINST GAY MEN, LESBIAN OR BISEXUAL MILITARY SERVICE

America's military and political allies, many of whom participated in Operation Desert Storm, do no exclude, segregate or discriminate against gays, lesbians or bisexuals in their militaries. Military allies which have **no ban** and **do not discriminate or segregate** include: **Australia, Belgium, Canada, Denmark, France, Israel, Italy, Luxembourg, the Netherlands, Norway, and Spain.** Neutral countries, but allies of America, which **also have non-discrimination** as a policy include: **Austria, Finland, Sweden and Switzerland.** None of these countries have reported any problems with regard to the equal integration of gay men, lesbians and bisexuals within their militaries.

CANADA AND AUSTRALIA RECENTLY REPEALED BANS ON GAY PEOPLE IN THEIR ARMED FORCES AND HAVE EXPERIENCED FEW, IF ANY, PROBLEMS

On October 27, 1992, Canada formally repealed its ban on gay men, lesbians and bisexuals from its military. After careful study and review of all of the pertinent data and information, the **Canadian Government and Defence Forces** determined that there was **no rational basis** on which to continue the policy of exclusion. **No legitimate information** could be found to suggest that lifting the ban would lead to increased problems in unit cohesion and morale. Since the ban's repeal, **no reports of morale problems or unit cohesion failures** have occurred. **No resignations** have been tendered **nor** have there been any reports of **violence against gay men, lesbians or bisexuals.** All personnel now have the same strict regulations regarding sexual conduct applied to them on a **"sexual orientation-neutral" standard.**

Similarly, on November 23, 1992, **Australia repealed its ban** on gay people in the military. Australia's ban was originally based on concerns related to (1) morale and unit cohesion; (2) national security and the threat of blackmail; (3) health concerns regarding the transmission of HIV/AIDS; and (4) protection against the corruption of minors. An official review by the Defence Forces proved that the arguments of **national security, health concerns and corruption of minors had no basis in fact.** After further and substantial review, **no evidence was found to support the ban based on unit cohesion and morale grounds.** The ban was repealed and accompanied by strict sexual conduct regulations which are applied on a **"sexual orientation-neutral" standard.** No sexual conduct was permitted between an officer and a subordinate, nor between persons while on base or ship or while on duty. **No morale problems, privacy complaints, resignations or violence against gay men, lesbians or bisexuals have occurred following the lifting of the ban.**

The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

FEW OF AMERICA'S ALLIES HAVE ANY BAN

Among America's military allies only four have official military bans excluding gay men, lesbians and bisexuals. **New Zealand's** Defence Ministry reports serious consideration and **plans for a repeal** of its ban. Other countries which **have official bans** are those in which Constitutional rights and liberties are not often respected. They include: **Libya, South Africa, Iran, and Serbia.**

ISRAEL, WITH ONE OF THE MOST TESTED, COMBAT-READY MILITARIES IN THE WORLD HAS A NON-DISCRIMINATION POLICY REGARDING GAY SOLDIERS AND REPORTS NO MORALE OR UNIT COHESION PROBLEMS OR PRIVACY COMPLAINTS

Israel has not barred gay men, lesbians or bisexuals from its military since 1974. Gay people were afforded **equal status** within the military in 1988, with the exception that all gay people are psychologically tested to determine fitness with regard to the ability to withstand combat and high-security stress. The present Government is considering changing this policy of psychologically testing all gay soldiers and insists that its policy does not discriminate against gay people. **No per se limitation** exists based on sexual orientation regarding **assignment or security clearance**. Gay, lesbian and bisexual soldiers **share housing and assignments** both while on active duty and while serving in the reserves.

SEXUAL CONDUCT REGULATIONS ARE STRICT, BUT APPLIED EQUALLY AND FAIRLY, IN NON-BAN NATIONS AND LEAD TO A REDUCTION OF PRIVACY VIOLATIONS AND SEXUAL HARASSMENT PROBLEMS

In all of the non-ban countries, **sexual conduct within the military is strictly regulated regardless of sexual orientation**. Sexual contacts are barred while on base or ship, while on duty, between officers and subordinates. **Sexual harassment, straight or gay, is prohibited.** These countries report few problems relating to sexual conduct and where such problems have occurred, a majority of those problems are heterosexual in nature. Strict conduct regulations hold that any privacy violation be treated as sexual harassment and punished accordingly.

THE UNITED STATES MILITARY HAS PARTICIPATED IN JOINT COMBAT AND FIELD EXERCISES WITH NO-BAN MILITARIES WITHOUT MORALE OR UNIT COHESION PROBLEMS AND WITHOUT PRIVACY COMPLAINTS

Militaries with **known gay, lesbian and bisexual soldiers, sailors and airmen** have long participated in NATO field exercises with common military intermingling of troops without problem. Similarly, troops from non-ban countries actively and successfully served **alongside U.S. troops** in the **Persian Gulf War** without any privacy complaints, morale problems, resignations, violence against gay, lesbian and bisexual servicemembers and **without any deleterious effects on combat success and unit cohesion.**

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SUMMARY

THE INTERNATIONAL EXPERIENCE

GAY MEN, LESBIANS AND BISEXUALS IN FOREIGN MILITARIES

* A comparative analysis of America's political and military allies demonstrates most of these countries have no bar to service for gay men, lesbians or bisexuals within their armed forces. No official policies of exclusion or segregation are permitted in a majority of these countries. Unofficial discrimination may exist due to the prejudice of certain individuals within the military. This unofficial discrimination is not tantamount to official policy and, if discovered or shown, would not be tolerated.

* The military ban in the United States must be repealed. The experience of America's military allies demonstrates that morale and unit cohesion problems do not occur with significance upon the lifting of a ban or where no exclusionary policy exists. Similarly, mass resignations, violence against gay people, and privacy complaints have not been reported. Most gay people serve their nations proudly and effectively without their sexual orientation becoming an issue.

* Although certain of the non-ban countries have social policies more liberal than those of the United States, not all of the countries fit this pattern. Canada and Australia are very similar in attitudes to the United States, and Israel would likely be considered more socially conservative. These nations do not ban gay, lesbian or bisexual service.

* While true that the United States' military is unique in size and history, nothing about the U.S. armed forces suggests that the integration of persons known to be gay would be more problematic than has occurred abroad.

* It is appropriate to compare the experience of America's political and military allies. Such comparison demonstrates that strict conduct regulations for on-base, on-duty sexual behavior are appropriate and necessary. These regulations are neutral with regard to sexual orientation. They assist the military in controlling sexual harassment, whether male against female, male against male, female against female. The mere knowledge that a soldier is gay or that the soldier may have off-base, off-duty consensual sexual relations with a person of the same gender is not permitted as a basis for exclusion or segregation in most of these countries. The conduct regulations make such unfair exclusion completely unnecessary. While examples of unofficial discrimination may occur and be shown, the toleration of such acts through the promulgation of an official policy of exclusion or disparate treatment is antithetical to the military mission.

* The United States should implement strict conduct regulations which are neutral, on their face and in their application, and which will stop all sexual harassment and improper sexual conduct. These conduct regulations work for America's military allies and will accomplish the same military goals as the present exclusionary policy without denying any American citizen the opportunity to do his or her duty for his or her country.

The Campaign for Military Service is a short-term, broad-based effort to secure congressional and public support for an executive order to eliminate the ban against lesbians, gay men and bisexuals in the U.S. military. Each of the organizations listed above has specifically endorsed that goal.

THE CAMPAIGN FOR MILITARY SERVICE

2027 Massachusetts Avenue N.W. ▼ Washington, D.C. 20036 ▼ 202.265.6666 ▼ 202.265.7393 Fax

ENDORSING AND PARTICIPATING ORGANIZATIONS

AIDS Project Los Angeles
American Association of University Women
American Civil Liberties Union*
American Ethical Union
American Jewish Committee
American Jewish Congress
American Psychiatric Association
American Psychological Association
American Public Health Association
Americans for Democratic Action
Black Gay and Lesbian Leadership Forum*
Black Lesbian Support Group
Citizen Soldier
Gay and Lesbian Alliance Against Defamation
Gay and Lesbian Emergency Media Campaign
Gay and Lesbian Victory Fund*
Gay, Lesbian & Bisexual Veterans of America*
Gay Men's Health Crisis
Hollywood Policy Center
Hollywood Women's Political Committee
Human Rights Campaign Fund*
Japanese American Citizens League
Jewish Labor Committee
Lambda Legal Defense and Education Fund
Mexican American National Association
National Abortion Rights Action League
National Association of Social Workers
National Council of Jewish Women
National Gay and Lesbian Task Force*
National Lesbian and Gay Law Association
National Lesbian, Gay and Bisexual Student Caucus
National Organization for Women*
NOW Legal Defense and Education Fund
Parents and Friends of Lesbians and Gays, Inc.
People For the American Way Action Fund*
Sex Information and Education Council of the U.S.
Southern Christian Leadership Conference of Greater Los Angeles
Stonewall 25, NCBLG
Union of American Hebrew Congregations
Unitarian Universalist Association of Congregations in North America
United Church of Christ Office for Church in Society
United States Student Association
Universal Fellowship of Metropolitan Community Churches
University of Connecticut Women's Center
Women's Action for New Directions
Women's Policy Group
YWCA of the USA
(partial list)

*Executive Committee

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The Washington Post

THURSDAY, JUNE 10, 1993

Barry M. Goldwater

The Gay Ban: Just Plain Un-American

After more than 50 years in the military and politics, I am still amazed to see how upset people can get over nothing. Lifting the ban on gays in the military isn't exactly nothing, but it's pretty damned close.

Everyone knows that gays have served honorably in the military since at least the time of Julius Caesar. They'll still be serving long after we're all dead and buried. That should not surprise anyone.

But most Americans should be shocked to know that while the country's economy is going down the tubes, the military has wasted a half-billion dollars over the past decade chasing down gays and running them out of the armed services.

It's no great secret that military studies have proven again and again that there's no valid reason for keeping the ban on gays. Some thought gays were crazy, but then found that wasn't true. Then they decided gays were a security risk, but again the Department of Defense decided that wasn't so—in fact, one study by the Navy in 1956 that has never been made public found gays to be good security risks. Even Larry Korb, President Reagan's man in charge of implementing the Pentagon ban on gays now admits it was a dumb idea. No wonder my friend Dick Cheney, secretary of defense under President Bush, called it "a bit of an old chestnut."

When the facts lead to one conclusion, I say it's time to act, not to hide. The country and the military know that eventually the ban will be lifted. The only remaining questions are how much muck we will all be dragged through, and how many brave Americans like Tom Paniccia and Col. Margarethe Cammermeyer will have their lives and careers destroyed in a senseless attempt to stall the inevitable.

Some in Congress think I'm wrong. They say we absolutely must continue to discriminate, or all hell will break loose. Who knows, they say, perhaps our soldiers may even take up arms against each other.

Well, that's just stupid.

Years ago I was a lieutenant in charge of an all-black unit. Military leaders at the time believed that blacks lacked leadership potential—period. That seems ridiculous now, as it should. Now, each and every man and woman who serves this nation takes orders from a black man—our own Gen. Colin Powell.

Nobody thought blacks or women could ever be integrated into the military. Many thought an all-volunteer force could never protect our national interest. Well, it has—and despite those who feared the worst, I among them, we are still the best and will continue to be.

The point is that decisions are always a lot easier to make in hindsight, but we seldom have that luxury. That's why the future of our country depends on leadership, and that's what we need now.

I served in the armed forces. I have flown more than 150 of the best fighter planes and bombers this country manufactured. I founded the Arizona National Guard. I chaired the Senate Armed Services Committee. And I think it's high time to pull the curtains on this charade of policy.

We have the strongest military in the world because our service people respect the chain of command and know how to follow orders. The military didn't want blacks in integrated units, or women, and now it doesn't want gays. Well, a soldier may not like every order, or every member of his or her unit, but a good soldier will always follow orders—and, in time, respect those who get the job done.

What would undermine our readiness would be a compromise policy like "Don't ask, don't tell." That compromise doesn't deal with the issue—it tries to hide it.

We have wasted enough precious time, money and talent trying to persecute and pretend. It's time to stop burying our heads in the sand and denying reality for the sake of politics. It's time to deal with this straight on and be done with it. It's time to get on with more important business.

The conservative movement, to which I subscribe, has as one of its basic tenets the belief that government should stay out of people's private lives. Government governs best when it governs least—and stays out of the impossible task of legislating morality. But legislating someone's version of morality is exactly what we do by perpetuating discrimination against gays.

We can take polls. We can visit submarines to get opinions on who are the best citizens. But that is not the role of a democratic government in a free society. Under our Constitution, everyone is guaranteed the right to do as he pleases as long as it does not harm someone else. You don't need to be "straight" to fight and die for your country. You just need to shoot straight.

With all the good this country has accomplished and stood for, I know that we can rise to the challenge, do the right thing and lift the ban on gays in the military. Countries with far less leadership and discipline have traveled this way, and successfully.

When you get down to it, no American able to serve should be allowed, much less given an excuse, not to serve his or her country. We need all our talent.

If I were in the Senate today, I would rise on the Senate floor in support of our commander in chief. He may be a Democrat, but he happens to be right on this question.

When the government sets policy, it has a responsibility to acknowledge facts, tell the truth and lead the country forward, not backward. Congress would best serve our national interest by finding the courage to rally the troops in support of ending this un-American discrimination.

The writer, a former senator from Arizona, was the Republican nominee for president in 1964.

Compromising on Homosexuals

In the Military, Bolder Talk of Acceptance

By ERIC SCHMITT

WASHINGTON

As the Clinton Administration strug-gles to find a compromise to allow homosexuals to serve in the armed forces, more and more soldiers, sailors and pilots are bucking the early tide of outrage in the ranks and quietly saying, "Let's get on with it."

"As long as we don't back down on discipline and a code of conduct, people can accept it," said Brig. Gen. Lester L. Lyles of the Air Force, commander of the Ogden Air Logistics Center in Utah.

General Lyles's views are by no means a majority opinion in the military, but a new undercurrent of pragmatism has emerged in comments by dozens of members of the service in congressional testimony, public letters and interviews across the country in recent weeks.

Traditionally, the armed services have been an effective, if unusual, laboratory for social change. The chain of command and military code of justice, which do not offer soldiers the same rights and freedoms due civilians, are powerful tools for molding behavior and attitudes that are not available to city governments, universities, corporations or other civilian bureaucracies.

From the integration of blacks in the 1950's to wider roles for women in the 1970's, the military has often outpaced civilian society.

"The military was a decade ahead of the civil rights movement," said Martin Binkin, a military manpower expert at the Brookings Institution in Washington. "There have been difficult transitions, and I'd expect when and if the gay ban is removed, you'll have difficulties as well. But there's not much question the military has been far ahead of other institutions."

It has not been easy. Race riots broke out on Navy ships during the Vietnam War, 20 years after President Harry S. Truman ordered the services integrated. As a result, the Navy, under Adm. Elmo Zumwalt, created stiff new rules against exhibiting racial bias and ordered senior officers to uphold them or be dismissed.

Stevens R. Amidon, a heterosexual Navy petty officer, testified before Congress against banning homosexuals. With him was Margarethe Cammermeyer, a National Guard colonel discharged for acknowledging that she is a lesbian.

Beating Death

This month Col. Fred Peck, a Marine Corps spokesman, said he would not want his gay son to serve, largely because he feared bigots would hurt or kill him. Last week, a Navy sailor, Airman Apprentice Terry M. Helvey, was sentenced to life in prison for beating a gay shipmate to death in Japan. Witnesses testified that he'd said he'd done it because he hated homosexuals.

When ordered by Congress or the President, though, the military has demonstrated it can salute smartly and swiftly enforce a policy it once opposed. Less than two years ago, for example, Adm. Frank B. Kelso 2d, the Chief of Naval Operations, urged the Senate to keep restrictions that prevented women from flying combat planes or going to sea on anything but supply or repair ships. A few weeks ago, seeing change in the wind, the same admiral proposed an ambitious plan to let women fly combat missions and serve on almost all warships.

In the wake of the Tailhook scandal, the armed services now require all personnel to take sensitivity courses. In the last year, the Navy alone has discharged 41 officers and sailors for sexual harassment. Many more may face charges when the Tailhook prosecutions are complete.

But no change proposed recently has raised as many hackles as the issue of ending the policy of drumming homosexuals out of the ranks. Last week, Mr. Clinton endorsed a compromise that would allow homosexuals to serve but "does not appear to endorse a gay life style," he said. The approach, "don't ask, don't tell," still undefined, but would end investigati into the sexual preferences of personnel break no military rules.

In January, following the very pu lead of Gen. Colin L. Powell, most serv members voiced outrage when Mr. Clin restated his campaign promise to lift the b

Now, four months later, tempers h calmed somewhat, and arguments on b sides are heard. Many service men and w en have stepped forward and spoken up

In testimony before Congress month, Stevens R. Amidon, a heterose chief petty officer with 18 years of N service, said he had served on submari with declared homosexuals who worked with their shipmates.

Grad School Changes Views

Chief Amidon said in a telephone in view that he had felt compelled to tes even though it might hurt his career beca "there are a lot of very professional, dedi ed people out there who are suffering a lo hurt." Chief Amidon said his views tow homosexuals have changed dramatic since he met gay classmates in a gradu program at Goddard College in Vermont

And in a letter to The Washington P last week, Maj. C. R. Myers, a Marine Co Harrier jet pilot, defended letting women combat and homosexuals serve.

"The military has a natural resista to change," Major Myers wrote. "It's a m dominated kingdom afraid to admit a ranks that don't necessarily fit the mold.

"Let's not forget that the military w be overrun with women wanting to fly figh and gays pounding at the doors to get in," continued. "During these times of force ductions, the military will be able to be m selective of new recruits and officer ca dates. If a woman or a gay person is the m qualified candidate, let her or him in."

In a telephone interview Major My said that he was not "a crusader, an acti or a publicity hound — I just prefer no judge people by their sexual preference, by their qualities as individuals."

It's a view some service members v openly — and many others seem to con with privately.

"I don't think it'll make a big dif ence," said Navy Lieut. Chris Chop, who f a Super Sea Dragon helicopter and is ba at the Alameda Naval Air Station in Cali nia. "People aren't going to throw away t careers over this. They'll continue to w hard and cope."

Capt. William R. Graner, commander of the Na mine warfare forces on the West Coast, agreed: "It'l disruptive at first, but then we'll get used to it."

Since his testimony, Chief Amidon said many s mates have taken issue with his position. But he's b surprised by how many others agree with him. " reaction to this whole issue has been blown grossly ou proportion," he said. "It also underestimates the abilit non-commissioned officers to deal with situations might arise. If that means supervising sailors who are that's what we'll do. I'll guarantee you that."

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(partial list)

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Resources Available from the Campaign for Military Service and Allied Organizations

To receive materials described below, please call the CMS Legislative Office at 202-462-7288.

Video:

"To Serve and Defend" - narrated by Cybil Shepard, 18 minutes, featuring lesbian and gay veterans

Fact Sheets:

* Gay Men, Lesbians and Bisexuals in the Military
* Exclusion Policy (includes excerpts from DoD Directives)
* History of the Exclusion Policy"
* Policy Rationale: Arguments and Analysis
* The Cost of the DoD's Exclusionary Policy
* Unit Cohesion
* Current Opinion Polls on Gays and Lesbians in the Military
* The International Experience
* Conduct and the Uniform Code of Military Justice
* Summary of Principal Legal Cases
* Health Issues - Mental Health and HIV/AIDS
* History of the Ban on Gay People in the Military
* Constitutional Analysis

Reports:

* "Nonconforming Sexual Orientation and Military Suitability" - prepared by military research arm, Personnel Security Research and Education Center (PERSEREC), 1988
* "Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability" - prepared by PERSEREC, 1989

Books (for loan):

* Coming Out Under Fire - A. Berube
* Gays in Uniform - K. Dyer
* My Country, My Right to Serve - M. Humphrey
* Conduct Unbecoming - R. Shilts

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Chairman of the Joint Chiefs of Staff Report on the

Roles, Missions, and Functions of the Armed Forces of the United States

February 1993

THE CHAIRMAN, JOINT CHIEFS OF STAFF

WASHINGTON, D.C. 20318

CM-1584-93
10 February 1993

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: 1993 Report on the Roles, Missions and Functions of the Armed Forces

1. As required by Title X of the United States Code, the 1993 Report on the Roles, Missions and Functions of the Armed Forces of the United States is forwarded. Although I have consulted with the Joint Chiefs and combatant commanders in its development, this report presents my views and is not a consensus document.

2. The report describes those issues reviewed and provides specific recommendations for improvements needed to maintain the maximum effectiveness of the Armed Forces.

COLIN L. POWELL
Chairman
of the
Joint Chiefs of Staff

Chairman of the Joint Chiefs of Staff Report on the Roles, Missions, and Functions of the Armed Forces of the United States

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Chairman of the Joint Chiefs of Staff Report on the Roles, Missions, and Functions of the Armed Forces of the United States

February 1993

Executive Summary

SOME DEFINITIONS

The terms "*roles, missions,* and *functions*" are often used interchangeably, but the distinctions between them are important, particularly in the context of this report. ROLES are the broad and enduring purposes for which the Services were established by Congress in law. MISSIONS are the tasks assigned by the President or Secretary of Defense to the combatant Commanders in Chief (CINCs). FUNCTIONS are specific responsibilities assigned by the President and Secretary of Defense to enable the Services to fulfill their legally established roles. Simply stated, the primary function of the Services is to provide forces organized, trained and equipped to perform a role -- to be employed by a CINC in the accomplishment of a mission.

A SHORT HISTORY

For the first century-and-a-half of our nation's history, roles and missions were not subject to much debate. The Army's role was fighting on land. The Navy's and Marines' role was fighting on, and from, the sea. This simple division of labor started to get complicated after World War I, when the Services began to adapt the increasing combat potential of the airplane to its respective warfighting role.

Roles and missions grew even more confused during World War II, when the globe was divided into theaters, each encompassing land and sea areas. A CINC was appointed for each theater and given a mission, so that admirals began to command soldiers and generals began to command sailors. After the war, in order to implement lessons learned, Congress passed the National Security Act of 1947. This Act made the Joint Chiefs of Staff a permanent, formal body; created the United States Air Force as a separate Service; and, after amendment in 1949, led to establishment of the Department of Defense. This Act also attempted to clarify and codify Service roles

and missions to provide a framework for program and budget decisions. After the Act became law, Service leaders met at Key West, Florida and produced a broad outline for Service functions. That outline guides the division of labor to this day.

In 1986, Congress passed the Goldwater-Nichols Department of Defense Reorganization Act. It requires the Chairman of the Joint Chiefs of Staff "to periodically recommend such changes in the assignment of functions (or roles and missions) as the Chairman considers necessary to achieve maximum effectiveness of the Armed Forces." This is the second report in accordance with the Act.

This report is a comprehensive summary of a process of internal review and self-appraisal that goes on in the Armed Forces every day. It represents the culmination of months of effort by the Chairman and the Joint Staff. The recommendations of this report are the Chairman's alone though the Service Chiefs, the combatant CINCs, and their staffs were directly involved in the review process.

A Rapidly Changing World

Three years ago, when the first report on roles and missions was prepared, the Berlin Wall still stood. American strategic forces were on constant alert, and more than 300,000 US troops were in Europe, ready to repel any attack by the Warsaw Pact. Today the Cold War is over. The Warsaw Pact is dissolved. The Soviet Union has ceased to exist. Our strategic bomber force is no longer on alert. Nuclear and conventional arms control agreements have been concluded, eliminating entire classes of nuclear weapons and thousands of tanks, armored vehicles and artillery pieces. Over a hundred thousand troops have come home from Europe.

But the disappearance of the Soviet threat has not eliminated the need for trained and ready Armed Forces. In the three years since the last report, American troops have been committed in over two dozen crises, ranging from armed conflict in Panama and the Persian Gulf to peacekeeping and humanitarian assistance missions in several parts of the world, and to disaster relief operations at home and abroad. In short, our Armed Forces have been busier than ever in this rapidly changing world.

Four key factors -- the end of the Cold War, budgetary constraints, the Goldwater-Nichols Act, and the press of new regional crises -- converged to provide the opportunity, the necessity, and the authority

to address the ways in which all four Services are structured, trained, and employed in combat. As a result, more changes have occurred in the US military in the past three years than in any similar period since the National Security Act of 1947.

THE METHOD OF CHANGE

First, the *National Military Strategy of the United States* was developed, taking into account the new strategic landscape.

Next, the Base Force was established to provide the means for implementing the new military strategy. Smaller than the Cold War force but flexible, well-trained and highly capable, the Base Force is a dynamic force which can be tailored in response to further changes in the strategic environment.

Finally, a detailed review of the roles, missions, and functions of the Armed Forces was undertaken to ensure the new strategy and force structure were aligned as effectively as possible. In developing the recommendations contained in this report, the objective was to maintain -- and where possible enhance -- the combat readiness of the Armed Forces even as we reduced their size and the cost of maintaining them.

WHAT WE'VE ALREADY DONE

In the three years since the first of these reports was submitted under Goldwater-Nichols, many steps have been taken -- some with little public notice -- to respond to the rapidly changing world and to improve both effectiveness and efficiency. Even as walls fell and empires toppled, we were making the adjustments our nation's security required.

The Creation of US Strategic Command

The organization of our nuclear forces has been changed fundamentally. For the first time, all of America's strategic bombers, missiles, and submarines are under one commander, either an Air Force general or a Navy admiral. This arrangement, hard to imagine only a few years ago, represents perhaps the most dramatic change in the assignment of roles and missions among the Services since 1947.

The Elimination of Nuclear Functions

As a result of Presidential nuclear initiatives, developed under the direction of the Joint Chiefs of Staff and the Secretary of Defense, the Army and Marine Corps -- both of which have had a nuclear function since the mid-1950s -- no longer have nuclear weapons. Now they rely on the Navy and

the Air Force for nuclear support. Moreover, all tactical nuclear weapons have been removed from ships, submarines, and land-based naval aircraft. Finally, for the first time since the 1950s, all US strategic bombers and all 450 Minuteman II missiles have been taken off alert.

No More Chemical Weapons

With the signing of the Chemical Weapons Convention in Paris on January 13, 1993, the United States renounced the use of chemical weapons. The Services no longer need to maintain a capability to retaliate with lethal chemical weapons.

This will reduce training, maintenance, and procurement costs and permit chemical weapons stockpiles to be destroyed in the safest, most efficient manner.

Better Strategic Lift

Our new regional focus, combined with major reductions in overseas troop levels, puts enormous emphasis on strategic mobility. The formation of Transportation Command had already set our management house in order; what remained was to match our lift capabilities with the new strategy and Base Force. The Mobility Requirements Study does just that. The study's recommended mobility improvements will enable deployment of an Army light division and a heavy brigade to any crisis area in approximately two weeks, and two heavy divisions in about a month.

Expanded Mission: Counter-Drug Operations

In 1989, the Department of Defense began to expand significantly its participation in America's fight to stem the flow of illegal drugs. This expanded mission requires the sustained use of active duty and Reserve forces who are properly trained and equipped for a non-traditional role. They are involved with interagency organizations and host-nation police and military forces in planning and carrying out these counter-drug operations. This campaign involves several of our CINCs who are working together closely so they can share joint lessons learned and continue to improve our capability to perform this unprecedented mission.

A New Look in Combat Logistics

A change of strategic focus from global to regional conflict allowed us to make major changes in the way we calculate and provide for our logistics support needs. For global war, we needed enough stocks so that each CINC could fight his theater's forces alone and for some considerable time without resupply from the continental United States (CONUS). With our new strategy, we need only enough "starter" stocks to last until theater forces are resupplied from CONUS,

or from other propositioned "swing" stocks that can be moved quickly from one region to another. To do this, some stocks are being repositioned from land to "afloat." The Army, for example, has estimated that it can achieve a 50% reduction in war reserve requirements under this new concept. Combat logistics have entered a new era with our new strategy.

Better Intelligence Support to the Warfighter

The intelligence support available to US forces in the Gulf War was probably the best in history. This was partly because of innovations that preceded the war and partly because of innovations made during the war. Notwithstanding this success, additional needs were identified. Combining the success and the needs, we have greatly improved what was already a good intelligence system. For example, we set up a standing board comprised of senior intelligence officials from all intelligence organizations to determine program priorities and coordinate support for military operations. We established a Joint Intelligence Center -- just as General Schwarzkopf had -- for all our CINCs. We established the National Military Joint Intelligence Center in the Pentagon. This Center serves as a focal point for support to the commands and to joint task forces by acting as a national clearing house for intelligence requests and by coordinating support from the CIA, DIA, and NSA. We established a Central Imagery Office to coordinate the timely provision of imagery products -- maps, target photos, intel photos -- to the warfighters. We also established an Office of Military Affairs within the CIA to correct a deficiency in national intelligence availability identified by our commanders during the Gulf War. Finally, we eliminated a shortfall in Human Intelligence (HUMINT) -- the information gathered by people -- by giving tasking authority for all HUMINT to DIA.

Doctrine and Training

We have made great strides in developing, and training under, joint doctrine. Foremost among our new publications is *Joint Warfare of the US Armed Forces: Joint Warfare is Team Warfare*. It serves as the focal point for further refinement. OCEAN VENTURE 92 and TANDEM THRUST 92 -- conducted off the Carolina coast and in California and the mid-Pacific respectively -- saw thousands of soldiers, sailors, airmen and Marines training together on joint wartime tasks. Clearly indicative of our new joint doctrine and training emphasis was the use of the Joint Force Air Component Commander (JFACC) concept in the Gulf War. The JFACC oversaw and synchronized all air component operations for General Schwarzkopf. This was a historic first. The overwhelming success of the concept was

dramatically apparent in the results obtained.

Dramatic Infrastructure Changes

The drawdown to the Base Force requires a commensurate reduction in our infrastructure. More than 170 activities have been identified by the Services for elimination, consolidation, or realignment. For example, the commissary functions of all Services have been combined into a single Defense Commissary Agency. We have assigned executive agents to oversee common functions such as clean-up of former DOD-owned hazardous waste sites, operation of common-user ocean terminals, and support for medical materiel, military postal service, and domestic disaster relief. We have reduced and reorganized Service staffs.

WHAT WE'RE DOING NOW

The foundation for the current assignment of Service roles and functions -- the Key West Agreement -- was the product of a meeting convened by the first Secretary of Defense, James Forrestal, to work out disagreements among the Services sparked by the National Security Act of 1947. Many argue that the agreement reached at Key West is flawed, that it failed to resolve redundancy and duplication among the Services. In fact, what was recognized in 1947, and has been supported by Congress ever since, is that there are advantages in having complementary capabilities among the Services. At the national command level, such flexibility provides additional options to senior decision-makers in a crisis. At the theater level, CINCs can more effectively tailor a military response to any contingency, regardless of location.

Despite the enduring wisdom of the Key West Agreement, we recognized the need to review the underlying division of responsibilities. In addition to the mandate of Goldwater-Nichols, the dramatic changes we were designing for the Armed Forces demanded such a review.

Beginning in the summer of 1992, a comprehensive, "top-to-bottom" review of roles and missions was undertaken. This review, led by the Joint Staff, involved the Services and the CINCs at every step. Areas selected for examination were those in which

two or more Services perform similar tasks, where restructuring might generate significant cost savings, or where changes in strategy and force structure made a comprehensive review appropriate. One of the primary goals was the identification and elimination of *unnecessary* duplication of effort between the Services, recognizing that redundancy can be a good thing, especially in an emergency -- and that emergencies are less predictable today than at the height of the Cold War.

The 1993 *Report on Roles, Missions, and Functions* thus examines the US Armed Forces from a perspective entirely different from that of the 1989 report. It addresses many of the difficult questions being asked by Congress and the American people about their Armed Forces. In a number of areas, significant changes in the assignment of roles, missions, and functions are recommended. In others, the current division of labor makes the most sense. In still others, further study is needed before final recommendations can be made. The issues addressed and the resulting recommendations are highlighted below and in the table following this summary.

Significant Changes in the Unified Command Plan

A detailed review of roles, missions, and functions necessarily involves a review of the Unified Command Plan (UCP) because missions are assigned to CINCs, not to Services, and the UCP is the document that defines the CINCs' responsibilities. As mentioned, US Strategic Command already represents a major change to the UCP; nonetheless, we recommend one more major change and further review of another.

(1) A New CINC for US-Based Forces

During World War II, forces from all Services were assigned to theater CINCs who waged the war. We learned it was the best way to fight. The National Security Act of 1947, and subsequent congressional action in 1958, made this successful organization permanent. The Goldwater-Nichols Act put the finishing touches to this arrangement -- except for one major contingent of troops, those assigned to units in CONUS. By 1992, this exception had become all the more glaring because of the changes in our strategy, in our forward deployments, and in the structure of our forces.

With troop strength overseas reduced, our regionally-oriented strategy depends more on forces based in CONUS -- forces that must be trained to operate jointly as a way of life. Yet there is no CONUS-based CINC charged with this mission.

The lack of an appropriate joint headquarters to oversee Service forces based in CONUS has always been considered a problem. The Joint Chiefs of staff have tried twice to fix it.

US Strike Command was activated in 1961 to provide unified control over CONUS-based Army and Air Force units. Initially, Strike Command was given no regional responsibilities, but was assigned functional responsibilities to provide a general reserve for reinforcement of other unified commands, to train assigned forces, to develop joint doctrine, and to plan for and execute contingency operations as ordered. In attempting to fulfill its responsibilities as a trainer and provider of forces, Strike Command frequently collided with the Services' authority under Title X to organize, train and equip forces.

In 1971, Strike Command was replaced by US Readiness Command. It was given functional responsibility for training and providing forces, with no geographic area of responsibility. Readiness Command experienced some of the same Service resistance as its predecessor in fulfilling its assigned training responsibilities.

Over time, Readiness Command was given additional functional responsibilities, including a requirement to plan for and provide Joint Task Force headquarters and forces for contingency operations in areas not assigned to overseas CINCs. One of the Joint Task Force headquarters -- the Rapid Deployment Joint Task Force (RDJTF) -- eventually grew into a new combatant command, US Central Command (CENTCOM). Readiness Command was subsequently disestablished as a result of a combination of factors, not least of which was the fact that our strategy depended more on forward deployment and basing to contain Soviet expansion than on CONUS-based forces.

Today our strategy has changed, and we have reached a level of joint maturity that makes it possible to address once more the need for unified command over CONUS-based forces. Unified command would facilitate the training, preparation, and rapid response of CONUS-based forces currently under the Army's Forces Command, the Navy's Atlantic Fleet, the Air Force's Air Combat Command, and the Marine Corps' Marine Forces Atlantic. The time has come to merge these forces under a single CINC whose principal purpose will be to ensure their joint training and joint readiness. Units that are already accustomed to operating jointly will be easier to deploy. Overseas CINCs will be able to focus more on in-theater operations and less on deployment and readiness concerns.

This CINC could also be assigned certain other functional responsibilities, including:

- Undertaking principal responsibility for support to United Nations peacekeeping operations and training units for that

purpose.

- Assisting with the response to natural disasters in the United States and other requirements for military support to civil authorities, when requested by State Governors and as directed by the President.
- Improving joint tactics, techniques, and procedures.
- Recommending and testing joint doctrine.

After examining several approaches to setting up the required joint headquarters, we found US Atlantic Command (USLANTCOM) particularly well suited to assume this new mission:

- It is an existing CONUS-based joint headquarters.
- It already has a working relationship with the four commands that would become its permanent components.
- Its Cold War mission, to defend the Atlantic sea lanes and undertake offensive naval operations against the Soviet Union, has fundamentally changed. While continuing to perform a vital NATO mission, it has the capacity to undertake this additional responsibility in keeping with the revised military strategy.
- Its geographic area of responsibility, although large, presents only a modest warfighting challenge given the disappearance of the Soviet threat.
- It can continue to perform its vital NATO mission.

Under this arrangement, the present command in Norfolk, Virginia would shift from its predominately maritime orientation to a more balanced combatant command headquarters. We would probably rename the command so as to reflect more accurately its new focus. Its CINC would become a nominative position, which could be filled by any Service. The Army's Forces Command would no longer require "specified" status as a single-Service command reporting directly to the President and Secretary of Defense. With this change, the term "specified" would be retired, and all forces would belong to a joint team. While the Services would retain their Title X responsibilities, the training and deploying of CONUS-based forces as a joint team would be a new mission for this expanded CINC. Unification of the Armed Forces, which began in 1947, would at last be complete.

(2) Possible Consolidation of Space and Strategic Commands

The United States has developed a robust, highly capable, and complex framework for the launch and control of space vehicles and systems. Although the majority of space functions today reside within the Air Force, all the Services, plus US Space Command and several Defense Agencies and organizations, are involved in

space activities.

The Commander in Chief of US Space Command (CINCSPACE), headquartered in Colorado Springs, Colorado, is assigned combatant command of US forces providing warning and assessment of a bomber or missile attack on the United States. In addition, CINCSPACE supports other CINCs by ensuring that space operations and warning requirements are supported.

CINCSPACE is also Commander of the North American Aerospace Defense Command (NORAD), the US-Canadian command that provides air defense of the North American continent. CINCSPACE carries out his mission through three Service component commands: Air Force Space Command at Petersen Air Force Base, Colorado Springs, Colorado; Naval Space Command at Dahlgren, Virginia; and Army Space Command at Colorado Springs, Colorado.

Even with the end of the Cold War, our national security depends on a robust space capability. But we can no longer afford to allow multiple organizations to be involved in similar, independent, or duplicative space roles and functions.

A number of improvements are underway to streamline our space organization and systems and eliminate unnecessary overlap. Organizationally, the Joint Chiefs of Staff agreed in 1991 to "dual hat" CINCSPACE as Commander, Air Force Space Command. This led to a reduction in personnel and support costs. But these changes don't go far enough; it is time for an even bolder change to be examined.

The proposal we are evaluating would assign the space mission to the Commander in Chief of US Strategic Command (CINCSTRAT) and eliminate US Space Command.

Under this proposal, after appropriate consultation with the Canadians, the Commander of AFSPACECOM would assume command of NORAD in Colorado Springs. AFSPACECOM would also operate all space systems under CINCSTRAT's command. Small Army and Navy components would be assigned to CINCSTRAT to ensure space systems support for all Services' needs. All Services would also be represented in appropriate planning and requirements offices. The Air Force would be responsible for development of future military space systems. These actions would ensure Service-unique requirements for and uses of space are properly represented, and that Services and CINCs have trained personnel with the knowledge to exploit capabilities of space systems.

Other changes envisioned would include designating the Air Force as the lead Service to coordinate with NASA regarding LANDSAT remote earth sensing operations, and consolidating DOD's functions at NASA into a single organization under Air Force

Space Command. To streamline military satellite communications operations, all operational responsibilities for the Defense Satellite Communications System would transfer from the Defense Information Systems Agency to the Air Force. Responsibilities for the Navy's Fleet Satellite Communications system would also transfer to the Air Force. Both systems would remain under the combatant command of CINCSTRAT.

Under this proposed arrangement, requirements for space systems would continue to be submitted by the CINCs, Services, or agencies to the Joint Requirements Oversight Council for validation. Day-to-day requirements for operational space system support would be submitted to CINCSTRAT.

Such a consolidation would conserve scarce resources and eliminate a substantial number of positions. It is envisioned that this would improve warfighting support from space, allowing an increase in operational effectiveness, efficiency, and interoperability, while maintaining joint Service expertise and joint operational focus.

More analysis is needed before we assign the space mission to STRATCOM. This analysis will be done in the near future.

A Change in Depot Maintenance

Another change of significant proportions that does not involve the UCP is the proposal to consolidate all depot-level maintenance under a new joint command.

Over the years, all four Services established their own depot maintenance systems to perform complex mechanical and electronic work that includes overhauls, component rebuilds, and other operations beyond the technical ability of maintenance units in the field. These four Service maintenance networks, each independent of other Services' capabilities and sized to support a global war, can be reduced and restructured to reduce excess capacity and eliminate no-longer-needed facilities. A study group chartered by the Chairman of the Joint Chiefs of Staff has recommended closure of seven or eight of the military depots in order to reduce excess capacity. Savings of $400 million to $600 million per year are achievable when all these depots are closed. The group also recommended establishment of a Joint Depot Maintenance Command to oversee and administer all depot-level maintenance. This recommendation is still under review in the Department of Defense; meanwhile, the Services have been directed to identify and recommend depot closures and consolidations prior to the next deliberations of the Base Realignment and Closure Commission.

A Look at America's Air Power

The claim that America has "Four Air Forces," implying it has three more than it needs, makes a wonderful sound bite but distorts the facts. In fact, America has only one Air Force, the United States Air Force, whose role is prompt and sustained offensive and defensive air operations. The other Services have aviation arms essential to their specific roles and functions but which also work jointly to project America's air power.

It would make no more sense to assign all aircraft to the Air Force, as some would suggest, than it would to assign all items of any other militarily useful technology -- radios or trucks, for example -- to a single Service. The airplane and helicopter capabilities of the Army, Navy, Air Force, and Marine Corps are unique, complementary, and necessary. Together they constitute "America's Air Power," an indispensable ingredient in any situation where American lives are at risk. That said, it was recognized that the acquisition plan for major aviation programs would require more resources than might be available. Many issues associated with air power roles, missions, and functions were therefore examined, and a number of opportunities were identified to make the structure and systems that support and sustain America's Air Power more efficient. For example:

Continental Air Defense

Significant savings in manpower and operating costs can be achieved by eliminating or sharply reducing the 12 Air National Guard interceptor squadrons dedicated solely to this mission. General purpose and training forces from the Active and Reserve components of the Air Force, Navy, and Marine Corps can absorb this post-Cold War mission, perhaps in its entirety.

Theater Air Interdiction

Operations deep behind enemy lines are essential to any military campaign. The contributions of both bombers and attack aircraft should be considered when the total number of aircraft required for theater air interdiction is determined.

Close Air Support

The Key West Agreement has always been interpreted as limiting this support to fixed-wing aircraft. But this essential battlefield task can and should be performed routinely by attack helicopters as well. Service functions are being realigned to reflect this expanded definition. To ensure uniformity of execution by all Services that request and provide fixed- and rotary-wing close air support, standardized joint procedures are being developed.

Marine Corps Tactical Air

US Marines train and fight as a combined arms air-ground team, supported by organic aircraft that can operate from carrier decks and austere expeditionary sites ashore. Despite calls by some for its elimination, Marine Corps tactical air is a unique capability, essential to our military strategy. The number of aircraft types in the Marine Corps inventory will be reduced from nine to four, and Marine Corps squadrons will deploy more frequently aboard aircraft carriers.

Flight Training

To take advantage of the commonality of purpose and training programs among the Services for the primary phase of flight training, all Navy, Air Force, Marine Corps and Coast Guard flight students will begin training using a common fixed-wing training aircraft under joint development. Following primary flight training, student pilots will be selected for advanced training in one of four specific follow-on specialties or "tracks": Navy Fighter/Attack, Air Force Fighter/Bomber, Navy and Air Force Tanker/Transport/Maritime Patrol, or Helicopter.

Tanker/Transport/Maritime Patrol training consolidation is expected to begin in 1994, when the Navy plans to introduce advanced maritime training at Reese Air Force Base, Texas. A study will determine if it is cost-effective to move Navy, Marine Corps, and Coast Guard helicopter training -- currently conducted at Pensacola, Florida -- to Fort Rucker, Alabama, where Army and Air Force training is conducted.

Aircraft Requirements and Inventory Management

Each Service uses a different formula to determine how many aircraft it needs to buy, and different rules to account for aircraft once they're in the inventory. To ensure procurement and maintenance funds are not spent on unnecessary aircraft, standardized terminology and procedures will be developed to govern aircraft requirements and inventory management.

Common Aircraft

The 1993 review of roles, missions, and functions included a careful examination of aircraft common to more than one Service, looking for ways to do business more effectively or efficiently while preserving each Service's ability to perform required functions. The resulting recommendations are summarized below:

- Consolidate the two types of airplanes used for airborne command and control of strategic forces. Eliminate the Air Force EC-135 program. Use funds planned for EC-135 upgrade to pay for transition to the Navy's E-6A, and assign the function to the Navy.

- Continue to give each Service responsibility for its own Combat Search and Rescue. Use standard equipment to support interoperability while implementing joint doctrine to enhance training and operational effectiveness.

- Improve management of Operational Support Aircraft and reduce their numbers to only those required.

- Retain Attack Helicopters in the Army and the Marine Corps. Consolidate aircrew and maintenance training where practicable. The Army and Marine Corps pursue developing and procuring common airframes to fulfill future requirements.

- Consolidate maintenance training, simulator training and maintenance infrastructure for General Support Helicopters. Study the feasibility of consolidating overlapping Service support functions within certain geographic regions.

- Retain C-130 tactical airlift aircraft and KC-130 tanker support aircraft structures as currently configured. Review showed that consolidating these heavily-tasked aircraft under one Service would not be cost-effective, would degrade efficiency, and would greatly complicate their management and support.

- Retain and modernize the aircraft currently used by the Navy, Marine Corps and Air Force to jam enemy radar systems. The Navy/Marine EA-6B and the Air Force EF-111 airframes are optimized for the "from the sea" and "global reach" roles assigned to their respective Services. Both derive significant economies of scale from the fact that they share parts, support, and training procedures with the large fleets of A-6s and F-111s managed by the Navy and Air Force. Consolidating Jammer Aircraft into one airframe would degrade effectiveness and require purchase of additional aircraft.

- Retain current types of Electronic Surveillance Aircraft in the Navy and the Air Force. Existing quantities of Navy EP-3Es and Air Force RC-135s are barely sufficient to handle peacetime requirements for gathering electronic intelligence. Eliminating either type or replacing one with the other would be costly and would contribute nothing to effectiveness. Support structures already in place for the large fleets of Navy P-3s and Air Force KC-135s make the operation and maintenance of 12 EP-3Es and 14 RC-135s a small fraction of overall costs.

A Look at Other Key Questions

Forward Presence

Forward presence is the totality of US instruments of power and influence employed overseas. Forward stationing is one element of forward presence and is a key underpinning of US diplomacy. It contributes to conflict prevention and lends credibility to alliances. As the global security environment changes, additional reductions in forward stationed forces may be appropriate. However, as forward stationing decreases, other forward presence operations will increase in importance. A new concept is being developed which envisions using geographically and mission tailored joint forces to conduct forward presence operations. These "Adaptive Joint Force Packages" could contain a mix of air, land, special operations, space, and maritime forces tailored to meet the supported CINC's requirements, potentially at a lower cost than today's deployments.

Contingency and Expeditionary Forces

With its emphasis on rapid response to regional crises, the National Military Strategy places a premium on the expeditionary capabilities of the Marine Corps and the contingency capabilities of Army airborne and light infantry forces. Both types of forces should be retained; however, the review of requirements is continuous and may in the future include the possibility of further reductions in the Army's light infantry forces.

Tanks and MLRS for the Marine Corps

The Marine Corps is structured to integrate armor and artillery units into its maneuver elements. Severing armor from the organic structure of the Marines would markedly reduce unit cohesion and warfighting capability and produce negligible costs savings. The Marine Corps must retain enough tank battalions to support amphibious operations and outfit three Maritime Prepositioning Squadrons. Any requirement for additional tank support will be provided by Army armored units. There do appear to be advantages in making the Army responsible for all MLRS (Multiple Launch Rocket System) support; however, taking away the Marine Corps' organic general support artillery and having the Army take on the additional function of supporting the Marines is a major step that requires in-depth cost and effectiveness analysis before implementation can be considered. We will perform that in-depth analysis in the near future.

Theater Air Defense

All four Services currently operate theater air defense systems. Study showed there would be substantial near-term costs and personnel disruption associated with transferring these systems and associated

functions between Services. No long-term savings were identified. A comprehensive review of theater air defense is needed to ensure the planned mix and quantities of air and missile defense systems are appropriate. The Joint Staff will head a Joint Mission Area Analysis to review theater air defense requirements, capabilities, and deficiencies. The results of this analysis will determine if further refinements to Service roles and functions are appropriate.

Training, and Test and Evaluation Structures

The extensive array of training and test and evaluation facilities built for World War II and maintained throughout the Cold War can be restructured in keeping with the changed world. An integrated test and evaluation range structure will be developed under the management of an executive agent as part of the effort to lower costs and increase effectiveness. As an example, integration and electronic linking of the many Service training and testing ranges in six western states and off the California coast would provide a land, airspace, sea area and offshore supersonic operating domain to accommodate a large portion of our joint training, test and evaluation needs well into the next century.

Construction Engineers

Each Service has its own construction engineering capability, sized and structured over the years to support combat forces in a global war and maintain a worldwide array of bases and facilities. In view of the smaller requirements of our new military strategy, the Services are reducing their engineer structures -- the Army by 34 percent, the Air Force by 39, the Marine Corps by 20, and the Navy by 11 percent. The possibility of having one Service provide all wartime construction units was evaluated; however, such a consolidation was rejected because of the uniquely tailored support each Service's construction engineers provide to its operational units.

Operating Tempo

"OPTEMPO" is a term describing the pace of operations and training. OPTEMPO determines the rate at which funds are spent from the Operations and Maintenance (O&M) accounts to buy the fuel, repair parts, and supplies consumed during normal operations. When we examined whether additional O&M savings could be achieved through prudent reductions in OPTEMPO, we came to several conclusions. First, increased use of simulation helps train commanders and leaders in operational art and tactics, and weapons crews in engagement techniques. But the requirement to be ready to go on an instant's notice still demands that people be trained in the field,

at sea, and in the air on their weapons and support systems. Second, new forward presence concepts will reduce some OPTEMPO rates during routine peacetime operations. However, reduced overseas basing and increased emphasis on resource-intensive operations like peacekeeping and humanitarian assistance may mean an actual increase in OPTEMPO. Finally, for a smaller force, increasingly based in CONUS, keeping units fully trained is the only certain way to ensure they are ready to respond as part of a winning team when called.

Initial Skills Training

Current training establishments reflect Cold War training requirements -- they are big, expensive, and overlapping. While some training has already been consolidated, more training installations and facilities can probably be closed or consolidated to reduce costs. Toward that end, and as part of the continuous process of internal review and self-appraisal, the Services, with Joint Staff support, are conducting a comprehensive scrub of all military skills training.

Chaplain and Legal Corps

Chaplains and judge advocates are military officers, subject to the performance standards, regulations, policies, and particular customs of their parent Services. Consolidating all chaplains and lawyers under a single Service, which some have suggested, would result in insignificant cost savings and have a negative effect on the quality of pastoral care and legal support provided to the men and women of the Armed Forces and their families. Consolidation is therefore not recommended.

Intelligence

Despite steps taken to implement lessons learned in DESERT STORM and centralize management functions, the existing intelligence structure still largely reflects its Cold War origins. The Defense Intelligence Agency is assessing available intelligence resources with a view toward creating intelligence support units to provide Joint Task Force commanders a fully operational intelligence support organization. DIA is also nearing completion of a study that is examining additional consolidation of some Service-level intelligence production responsibilities.

Force Structure

As part of a continuing review, the Department of Defense will continue to work with Congress to determine the proper Active and Reserve force mix. As additional ways are sought to consolidate functions and reduce defense spending, a study of National Guard and Reserve headquarters and staffs should be conducted to identify duplication that may be unnecessary.

THE MAIN POINT

As US national security needs have changed, so has the US military. The recommendations in this report advocate the need to continue to reshape our military to address the challenges of the future, while recognizing that it must be done intelligently, prudently, and responsibly.

With the guiding premise of doing what's right for America, the tough issues facing the Army, Navy, Air Force, and Marine Corps have been addressed head-on. These thorough, frank, and frequently challenging appraisals have yielded concrete results. The 1993 *Report on the Roles, Missions, and Functions of the Armed Forces of the United States* outlines new approaches to how the Services intend to do business. The report represents a clear expression of our commitment to change. But above all, it documents the Armed Forces' firm recognition that the main purpose of assigning roles, missions, and functions is to protect America.

Table of Recommendations

ISSUE	RECOMMENDATION
Would a Joint Headquarters for US Based Forces improve the joint training, preparation, and rapid response of CONUS-based forces?	CONUS-based forces of FORSCOM, LANTFLT, ACC, and MARFORLANT should be combined into one joint command. LANTCOM will be responsible for: joint training, force packaging, and facilitating deployments during crises; supporting UN peacekeeping operations; and providing assistance during natural disasters.
Can efficiencies be achieved by assigning the Space mission to USSTRATCOM?	A review will be conducted to determine if the space mission should be assigned to STRATCOM, and if USSPACECOM should be eliminated.
Should the Services' Depot Maintenance facilities, which perform major maintenance on equipment, be restructured or reduced?	Consider establishing a Joint Depot Maintenance Command to reduce and restructure depot-level maintenance by 25-50%. Examine closing 7 or 8 of the 30 military depots which could achieve savings of $400M to $600M per year after these depots are closed. Services recommend depot closures and consolidations to the Base Realignment and Closure Commission.

ISSUE	RECOMMENDATION
Does America need four separate air forces; one each in the Army, Navy, Air Force, and Marine Corps?	America has only one air force, the United States Air Force. The Army, Navy, and Marine Corps each have aviation arms essential to their assigned warfighting roles. Each air arm provides unique but complementary capabilities. They work jointly to project America's Air Power.
Continental Air Defense, protecting the US from enemy air attack, is now performed by 12 Air National Guard interceptor squadrons dedicated solely to this mission. Is this dedicated force still necessary?	Eliminate or sharply reduce the force dedicated to this mission. Assign to existing Air Force, Navy, and Marine Corps general purpose and training squadrons.
Theater Air Interdiction (TAI), the destruction of enemy forces deep behind their lines, is currently done by attack aircraft and bombers. Is there an optimum mix of bombers and attack aircraft, with which to carry out this mission?	Sufficient numbers of land- and sea-based bombers and attack aircraft need to be forward-deployed or rapidly deployable to provide quick response to short-notice crises. Strategic bombers, previously dedicated to Cold War nuclear missions, are now available to support TAI. Therefore, in the determination of total aircraft required for TAI, it is necessary to consider the contributions of both bombers and attack aircraft.

ISSUE	RECOMMENDATION
Close Air Support (CAS) is the use of aircraft to directly support ground troops engaged in combat with the enemy. What types of aircraft should be included in the CAS mission?	Include attack helicopters as CAS assets and realign and clarify functions and doctrine to include CAS as a primary mission area for all Services.
Should Marine Corps Tactical Air wings be reduced or eliminated?	Marine Corps tactical aircraft are an integral part of the Marine air-ground team and should not be eliminated. Marine Corps aircraft will be reduced from nine to four aircraft types and deploy more frequently aboard aircraft carriers.
Fixed-wing Flight Training is now conducted by both the Navy and the Air Force; helicopter training is conducted by both the Army and Navy. Could flight training be consolidated?	Consolidate Navy, Marine Corps, Air Force, and Coast Guard initial fixed-wing training, and transition such training to a common primary training aircraft. Consolidate follow-on flight training into four training pipelines. (Navy Fighter/Attack, Air Force Fighter/Bomber, Navy and Air Force Tanker/Transport/Maritime Patrol, or Helicopter). Determine if it saves money to move Navy, Marine Corps, and Coast Guard helicopter training from Pensacola, Florida to Fort Rucker, Alabama.

ISSUE	RECOMMENDATION
The Services have different ways of calculating Aircraft Requirements and Inventory Management. Should this methodology be standardized?	Aircraft inventory terminology should be standardized. Common definitions among Services for all categories of aircraft will assure consistent rationale for requirements and ensure procurement and maintenance funds are only spent on necessary aircraft. This standardized approach will provide consistency in the number of airframes procured.

Should the Navy and the Air Force use a common airframe for Airborne Command and Control of strategic forces?	Consolidate the Navy and Air Force aircraft and functions into the Navy's E-6A program. The Air Force EC-135 program will be eliminated and cancellation of its planned upgrades will fund transition into the E-6A.

Should the Combat Search and Rescue (CSAR) mission belong to only one Service?	All four Services retain responsibility for CSAR operations. CSAR forces will be equipped to operate individually or together employing standardized joint doctrine, tactics, techniques, and procedures.

ISSUE	RECOMMENDATION
Should the Operational Support Aircraft (OSA) fleet be reduced and should management for all Services be consolidated to improve efficiency?	OSA aircraft are in excess of wartime needs and should be reduced. TRANSCOM will develop the capability to coordinate and schedule intratheater airlift.
Should the Army and Marine Corps both operate Attack Helicopters?	Army and Marine Corps continue to operate attack helicopters. Consolidate some aircrew maintenance and training. Develop and procure common airframes to fulfill future requirements.
Should some of the General Support Helicopter operations be consolidated?	Consolidate maintenance training, simulator training, and maintenance infrastructure. Study consolidation of overlapping Service support functions within certain geographic areas.
Should C-130 operations, management, and support be consolidated under one Service?	Consolidating C-130s under one Service would decrease operational effectiveness, complicate management and support, and would not save money.

ISSUE	RECOMMENDATION
Do the Navy, Air Force, and Marine Corps all need to operate Jammer Aircraft?	The similar but specialized capabilities of all Navy/Marine Corps EA-6B and Air Force EF-111 aircraft give military commanders options in combat to reduce aircraft attrition. Both aircraft should be retained and upgraded. Consolidating into one airframe would reduce effectiveness and require additional aircraft procurement.
Should the Navy EP-3E and Air Force RC-135 Electronic Surveillance Aircraft both be retained?	Navy EP-3E and Air Force RC-135 aircraft are fully committed and should be retained. Infrastructure is already in place to support the Navy P-3 and Air Force KC-135 fleets, of which the EP-3E and RC-135 are a small part.
As an element of Forward Presence, should forward stationing of US forces be further reduced?	Forward stationing is a key underpinning of US diplomacy. It contributes to conflict prevention and lends credibility to alliances. As the global security environment changes, additional reduction in forward stationed forces may be appropriate. However, as forward stationing decreases, forward presence operations will increase in importance. Continue to develop the concept of Adaptive Joint Force Packages.

ISSUE	RECOMMENDATION
Is it necessary to retain Contingency and Expeditionary Forces in both the Army and Marine Corps?	The capabilities of the contingency and expeditionary forces in the Army and Marine Corps provide decision makers with valuable alternatives and should be retained. The possibility of further decreases in the Army's light infantry will be studied as force structure is reduced.
Should the Army provide Tanks and MLRS to the Marine Corps?	Marine Corps will retain enough tank battalions to support amphibious operations and to outfit three Maritime Prepositioning Squadrons. The Army will provide any additional tank support required. There appears to be advantages in having the Army provide MLRS support for Marine Corps operations, however, an in-depth cost and operational effectiveness analysis is required before implementing this recommendation.
Should Theater Air Defense (TAD) responsibilities and systems be consolidated into one Service?	A review of Theater Air Defense is needed to ensure we have the appropriate mix and quantities of air and missile defense systems. The Joint Staff will head a Joint Mission Area Analysis to comprehensively review TAD requirements, capabilities, and deficiencies.

ISSUE	RECOMMENDATION
Should consolidations and reductions be made to the Services' Training, and Test, and Evaluation Infrastructure in order to focus investment to improve selected facilities and cut cost?	Designate an Executive Agent to streamline test and evaluation infrastructure. Using advanced data processing, electronically link test and evaluation, and training ranges, in broad geographic areas such as the Southwest US, to enhance joint testing needs and support joint training requirements.

Should Construction Engineers be consolidated in one service?	Consolidation of individual Service engineer units is not recommended because it would not save money and would provide no advantages. Reductions already underway decrease construction engineers in the Army by 34%, Air Force by 39%, Marines by 20%, and Navy by 11%.

Should Operating Tempo (OPTEMPO) be reduced as a result of the changes in the world security environment?	OPTEMPO cannot be reduced. The amount of warning time available before committing forces to combat is generally small; therefore, the need for a high state of readiness is increased. In addition, as forward stationing is reduced, forward deployments become more important in supporting US foreign policy.

ISSUE	RECOMMENDATION
Should the Services' Initial Skills Training be consolidated since the force structure is declining?	Some training is already being consolidated. Services are conducting a comprehensive review of all military initial skills training to identify additional areas for consolidation.
Should the Services' Chaplain and Legal Corps be consolidated?	Do not consolidate the Chaplain and Legal Corps. No savings are achieved.
Should Intelligence organizations be further reduced?	Further consolidation of intelligence production centers under a joint intelligence organization might reduce infrastructure and overhead. A nearly-complete DIA study will offer several options for additional consolidations.
Does the current and programmed Active Component and Reserve Component (AC/RC) mix meet the defense requirements for the 1990s?	Evaluate the RAND AC/RC study. As part of the ongoing review, determine the proper active and reserve force mix. A study of National Guard and Reserve headquarters and staffs should be conducted to identify any unnecessary duplication.

Chapter I

THE CHANGING STRATEGIC LANDSCAPE

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ABOUT THIS REPORT

As amended by the Goldwater-Nichols Department of Defense (DOD) Reorganization Act of 1986, Title X, United States Code requires the Chairman of the Joint Chiefs of Staff to submit a report not less than once every three years, recommending such changes in the assignment of functions (or roles and missions) as the Chairman considers necessary to achieve maximum effectiveness of the Armed Forces. The law specifies that in preparing such a report, the Chairman shall consider changes in the nature of the threats faced by the United States, unnecessary duplication of effort among the Armed Forces, and changes in technology that can be applied effectively to warfare.

Since the report responds to a DOD-oriented act, unless noted otherwise this report does not address roles and missions of the Coast Guard, which by law is a military service and a branch of the armed forces at all times.

This is the second such report submitted under provisions of the Goldwater-Nichols Act. More than just a report produced once every three years to satisfy a Congressional mandate, it is a status report on a process -- a process of internal review and self-appraisal that goes on in the Armed Forces every day. Our most recent objective in this process has been to transition from a strategy and a force designed for global war to a regionally-oriented strategy and a force capable of responding decisively anytime and anywhere US interests are threatened.

It will be clear from this report that the military is mindful of a changing world, aware the American people want their defense investment managed wisely, and committed to change that ensures our Armed Forces remain second to none.

"ROLES AND MISSIONS" . . . AND FUNCTIONS

The terms "roles and missions" and "functions" are often used almost interchangeably, even inside the Defense Department. But the distinctions between them are important, particularly in the context of this report.

For the first century-and-a-half of our nation's history, roles and missions were easy. The Army's role, and its mission, was fighting on land. The Navy's and Marine Corps' role, and their mission, was fighting on and from water. It was that simple.

Roles and missions began to get complicated when the Services discovered the military usefulness of air power. By the start of World War II, carrier-based aviation was a well-established branch of the Navy, and the Army Air Corps had so grown in size and stature that its full independence was largely a matter of time.

When we entered World War II, we agreed with our British allies to divide the globe into theaters, each containing both land and water. The Pacific was a US strategic responsibility, the Indian Ocean and Middle East a United Kingdom (UK) strategic responsibility, and the Atlantic and European Theater a combined US-UK strategic responsibility. Theater commanders were appointed by the nation responsible for the theater and were generally from the Service providing the preponderance of forces. In our first exercise in global military operations, therefore, the Navy was put in charge of the Pacific mission, the Army got the European mission, and air forces of both Services performed an air warfare role in all theaters. Directives to Admiral Nimitz in the Pacific were transmitted by the Chief of Naval Operations on behalf of the US Joint Chiefs of Staff (JCS), and directives to General Eisenhower in Europe were transmitted by the Chief of Staff of the Army on behalf of the US and UK Combined Chiefs of Staff.

After World War II, the Joint Chiefs of Staff were established as a permanent, formal body, with a joint staff; the Air Force was established as a separate Service; the Department of Defense was created; and the Armed Forces were unified by the National Security Act of 1947. The Commanders in Chief (CINCs) retained their Service identities, and the Chief of Naval Operations and Chief of Staff of the Army, respectively, continued to act as executive agents for the Pacific and European theaters.

In 1958, however, the Secretary of Defense was given direction authority over the CINCs. Services retained their roles, as established by law, but missions were assigned, on a geographical or functional basis, to the CINCs.

In 1987, the distinctions between roles and missions were further modified when Congress established, in law, a new combatant command, the US Special Operations Command (USSOCOM), and gave it a role.

Today, **ROLES** are the broad and enduring purposes for which the Services, and USSOCOM, were established by Congress in law. In broadest terms, the role of the Services today is to organize, train, and equip forces, the Army for prompt and sustained combat incident to operations on land; the Navy for prompt and sustained combat incident to operations on and from the sea; the Air Force for prompt and sustained offensive and defensive air

operations; the Marine Corps for service with the fleet in the seizure or defense of advanced naval bases, and the conduct of such land operations as may be essential to the prosecution of a naval campaign; and Special Operations Command for special operations activities or missions.

MISSIONS are the tasks assigned by the President or Secretary of Defense to the CINCs of combatant commands. The responsibilities of the combatant CINCs are spelled out in the Unified Command Plan, a document prepared by the Joint Staff, reviewed by the JCS and the Secretary of Defense, and approved by the President.

One other term is used, and often confused, in discussions of roles and missions: **FUNCTIONS** are specific responsibilities assigned by the President and Secretary of Defense to enable the Services to fulfill their legally established roles.

In simple terms, then, the primary function of the Services, and Special Operations Command, is to provide forces -- each organized, trained, and equipped to perform a role -- to be employed by the CINC of a combatant command in the accomplishment of a mission. The terms roles, missions, and functions are used in this sense throughout this document.

THE NATURE OF THREATS FACING THE UNITED STATES

Three years ago, when the last "roles and missions" report was prepared, the Berlin Wall still stood. American strategic bombers, missiles, and submarines were on constant alert, successfully deterring the Soviet Union from conducting a surprise nuclear attack against the United States. Conventional US forces -- two full Army corps, and eight Air Force tactical fighter wings -- stood with their NATO allies along the fortified border that divided Europe. Two numbered fleets patrolled the seas, and additional forces in the United States were prepared to rapidly deploy in response to any aggression by the Warsaw Pact.

Today the Cold War is over. The Warsaw Pact is dissolved. The Soviet Union has ceased to exist. Nuclear and conventional arms control agreements have been concluded. Entire classes of nuclear weapons are being eliminated, and thousands of tanks, armored combat vehicles, and artillery pieces are being destroyed on both sides of the former Iron Curtain.

Ongoing adjustments to our military posture reflect the enormous strategic changes of the past years. The overall size of our forces is being significantly reduced -- forces stationed in Europe are being cut in half. Strategic nuclear forces are being extensively reorganized; and the nuclear roles, missions, and functions of the Services

and CINCs are being dramatically altered. All these changes are possible only because the prospect of a major East-West conflict, which drove our defense programs for more than 40 years, has disappeared.

But elimination of the threat of global conflict has not meant an end to conflict, nor an end to the risks facing American citizens and interests around the world, nor an end to the need for ready military forces. The Cold War has given way to a new era of uncertainty and unrest.

Since the last report on roles, missions, and functions, American troops have been committed to armed conflict in Panama and the Persian Gulf. Our Armed Forces have been called upon repeatedly, at home and abroad, to accomplish missions ranging from disaster relief and humanitarian assistance, such as Hurricane Andrew relief efforts in Florida and Operation RESTORE HOPE in Somalia, to evacuation of non-combatants from areas where conflict threatened, or had already erupted.

On the Eurasian land mass, the end of bipolar confrontation has seen the resurgence of long-suppressed conflicts stemming from ancient animosities, religious differences, and ethnic rivalries. Names like Bosnia-Herzogovena and Nagorno-Karabakh, once unknown, are now all too familiar. The presence of vast stores of conventional weapons and ammunition greatly increases the potential for these local conflicts to spill over. While the huge nuclear arsenal built by the Soviet Union is being slowly dismantled, enough of it remains to leave Russia the one nation capable of literally destroying the United States. Russia may not, however, be the only Soviet nuclear heir; the question of who controls weapons on the territories of other former Soviet republics is still not settled. And other countries may acquire or develop their own capability to threaten nuclear, chemical, or biological mischief.

In the Middle East and Southwest Asia, radical politicized Islam and a politically and militarily resurgent Iran threaten regional stability and directly challenge a number of US interests, including access to Gulf oil, political reform and democratic development, and settlement of the Arab-Israeli dispute. Iraq continues to defy United Nations (UN) resolutions and menace its neighbors. There have been some signs of progress in the Middle East peace process, but the parties remain unreconciled to the status quo, and violence continues. Even if negotiations succeed, long-term contentious issues, such as water distribution, will continue to provide potential for conflict. DESERT STORM taught Persian Gulf states that the United States can be a reliable security partner, and they expect us to remain engaged in their region.

In Africa, economic and social disintegration challenges fledgling democracies, exposes entire populations to violence and misery, and threatens to ignite

ethnic strife and civil wars. We can expect that American military forces and logistics resources will continue to take a major part in international efforts to relieve human suffering, as we are now doing in Somalia.

Asia represents a remarkable US foreign policy success. American commitments to mutual defense treaties, forward military presence, security assistance and education programs -- for example -- have helped produce a region of stability. Democracy now blooms in areas where only a few years ago we wondered if the idea could ever take root. Newly empowered citizens are forcing governments to change in ways once unimaginable. Political and economic success in Asia make it possible for friends and allies like Japan to take on a larger share of regional security responsibilities. But challenges to American interests and ideals also exist across the Pacific. Communist regimes remain in power in China, North Korea, Laos, and Vietnam. While leadership and generational changes underway in these states offer grounds for optimism, the outcome of these transitions is far from certain. American involvement in Asia and the Pacific is essential for promoting stability and nurturing constructive change.

In our own hemisphere, the collapse of world communism has left the production and export of illegal drugs as the major threat to US interests. Other factors contributing to uncertainty and unrest include the growing disparity between "haves" and "have-nots;" territorial and boundary disputes; international debt; environmental destruction; ethnic prejudices; and disruptive insurgencies. As in other regions, US presence contributes to stability and encourages the spread of democratic values.

Another factor contributing to instability is weapons proliferation. The growing sophistication of weapons technology and the possible emigration of former Soviet scientists and armaments experts, coupled with regional instabilities and the presence of totalitarian governments, poses an increasing risk. By the end of the 1990s, many regional powers could possess nuclear, chemical, or biological weapons; the means to deliver them accurately over long distances; and, in the absence of an effective deterrent, the will to use them. Technology on the open market, such as high-resolution satellite imagery and space navigation and communications systems, may also give advanced capabilities to powers that could never afford to develop them on their own.

Politically and economically driven immigration and the flow of refugees escaping wars, disease, and famine will contribute to uncertainty and unrest in the years ahead. Other factors that may affect United States security interests include environmental and health issues and international economic competition.

While the world may be less predictable today than it was during what President Kennedy characterized as the "long twilight struggle" of the Cold War, it is a far more promising world. The United States is safer now than at any time in all the years that separated our airlift to Berlin from the fall of the wall which divided that city. The investment America made in all those decades -- in money and materiel and in the sacrifices of our sons and daughters who stood watch in freedom's outposts -- has paid off. The best peace dividend is peace. The Armed Forces are aware of the part they played in this historic change and are ready to make a similar contribution to peace in the hopeful years ahead.

DUPLICATION AND REDUNDANCY

For five decades, two major themes influenced and shaped the assignment of roles, missions, and functions among the Armed Forces of the United States.

The first was the legacy of World War II. During that war, the United States fielded military forces of unprecedented size and scope. In the rush to assemble those ultimately victorious forces, little thought was given to the question of Service roles and missions. The Executive Branch and the Congress allocated resources and raised forces based on the simple principle that "whatever can be done should be done." As we expanded, some overlaps and duplications of effort developed between the Army and the Navy. This situation was tolerable because the massive national mobilization, combined with the *de facto* geographic division of labor between the Services made hard choices unnecessary.

Post-war budget cutting made resource allocation an issue of paramount importance. Partly for this reason, Congress passed the National Security Act of 1947. Among its several provisions, the Act established the Air Force as a separate Service and attempted to clarify Service roles and missions to provide a framework for program and budget decisions. Some provisions specified in the Act sparked immediate disagreement among the Services, so Secretary of Defense James Forrestal convened a conference in Key West, Florida, where the Chiefs of the Services agreed on roles and functions.

Some argue that the Key West Agreement is flawed, that it failed to resolve redundancy and duplication. In fact, what the Chiefs recognized in 1947, and Congress has supported ever since, is that there are a number of advantages in having similar, complementary capabilities among the Services. The availability of similar but specialized capabilities allows the combatant commander to tailor a military response to any contingency, regardless of geographic location.

At the national command level, the existence of robust forces with complementary capabilities adds to the options available in a crisis, especially when the crisis is unexpected. The similar but specialized capabilities of the Armed Services are not unlike the safety features of modern automobiles, which come equipped with automatic shoulder restraints, lap safety belts, and airbags. Whether these complementary safety devices come standard or as options, they are redundant and do add to the purchase price of a car. If purchase price were the only factor, buyers would reject this built-in redundancy. But purchase price obviously is not the only factor, especially in an emergency. In fact, it may seem insignificant when compared to the far greater costs associated with medical care for unprotected drivers and passengers. Congress clearly understood this difference in cost, between an ounce of prevention and a pound of cure, when it made air bags mandatory. Congress had similar reasoning in mind when it directed the Chairman of the Joint Chiefs of Staff to consider, in making this report, not duplication of effort, but only the unnecessary duplication of effort among the Armed Forces. Time and time again in our nation's history -- including and perhaps especially our recent history -- the availability of similar but specialized capabilities has made all the difference. The purchase price has turned out to be a bargain.

The coordinated performance of all the Armed Forces in Panama and in the Persian Gulf attests to the essential wisdom of the civilian and military leaders who forged the original Key West Agreement. Our unrivaled ability to conduct joint and combined operations today is the logical conclusion of the process that began when Congress undertook to unify the nation's Armed Forces and established the Department of Defense. The hope expressed at Key West forty-five years ago, of unified Armed Forces operating efficiently and effectively without bickering or unproductive competition, has become routine reality.

The progress we've made was exemplified in combat operations in the Gulf War, when the Tiger Brigade of the Army's 2d Armored Division was placed under the 2d Marine Division, and its heavy tanks and self-propelled artillery provided additional punch for the more lightly equipped Marines. That kind of cooperation between two Services makes the best of the capabilities of both, and results in a force greater than the sum of its parts.

The vision of Key West was also evident in Operation "GTMO", providing humanitarian assistance to 30,000 Haitian refugees. What began as primarily a Marine Corps effort grew very quickly into a joint operation with a peak strength of more than 2,000 active duty and reserve troops from all Services and the Coast Guard. Though ultimately the preponderance of troops were

Army, everyone at Guantanamo Bay got behind the Marine one-star commanding, and the joint task force did an outstanding job.

Our ability to operate joint and combined was also illustrated in Operation PROVIDE COMFORT – humanitarian operations in northern Iraq. It too began small, but soon grew into a multinational force. The ease with which military forces from various Services of other nations were able to coalesce around the nucleus of a US Joint Task Force is further tribute to the clear vision of the DOD founders.

Another superb example was Operation EASTERN EXIT. When the American Embassy in Mogadishu, Somalia was threatened by rebel forces just as Operation DESERT STORM was about to break, options were needed for evacuating the embassy staff. Three days away, embarked on Navy amphibious ships, was a Marine force with the capability to get in, get our people, and get out. If the situation worsened in those three days, Army Rangers in Air Force transports, could have gotten there faster, but they'd have had less firepower on the ground and would have been harder to get out. As it happened, the situation did not deteriorate to the point where the Rangers were needed; the embassy staff was rescued by a daring naval operation. But the complementary capabilities of the Marines and Army gave the nation's leaders more than one option. As in so many other crisis situations, the nation was well served by the flexibility inherent in our Armed Forces.

The second major factor governing American force planning has been the Cold War. The Soviet Union was a formidable adversary in every respect, with large and technically sophisticated forces. Almost to the very end, the Soviet political leadership showed little restraint in allocating resources to its military or in using force to achieve its political goals.

To contain this Soviet military power, the United States fashioned a network of alliances. We maintained the largest peacetime force structure in our history, with land, sea, and air forces at forward bases in Europe and Asia. We opposed communist subversion and insurgencies throughout the world, with political and economic pressure and even with military force. We developed and sustained a large military-industrial complex, both to support our forces-in-being and to provide the means for emergency mobilization. And we invested billions of dollars in advanced technology in an effort to maintain a qualitative edge in the face of overwhelming numerical superiority.

THE IMPACT OF TECHNOLOGY

As new technologies have moved from the laboratory to the battlefield, they have been seized upon by the Armed Forces and adapted to the needs of air, land, and sea combat. One example of military technology that all Services have adapted to their specialized warfighting roles is the radio. Wireless communications were first used by the military in World War I and soon had a positive effect on the command, control, and communications capabilities of all Services. As technology advanced, radios increased in range and reliability, and we have come to rely on them in virtually every operation our forces undertake. Although in the past we have developed radios in one Service that could not communicate with radios developed by another Service, we have long since recognized and are fixing that problem. Today, interoperable communications capabilities are an indispensable part of our joint military operations.

The airplane is another example of technology that changed warfare. We began to see its effects in World War I. Following that war, the Navy embarked on one course leading to the fast carrier fleets that in World War II made victory possible in the Pacific. The Army embarked on a different course which led to the strategic bomber fleets that contributed significantly to the Normandy invasion and the liberation of Europe.

As radios and airplanes demonstrate, soldiers, sailors, airmen, and marines are always eager to get their hands on any new technology that promises to help them win wars. The advanced systems in which we invested so much national treasure during the Cold War years are no exception. Many of those systems had their baptism of fire in Operations JUST CAUSE and DESERT STORM.

The technologies that came of age in Panama and the Persian Gulf have clearly altered warfare, some in ways we have only begun to appreciate. Space systems, for example, were used extensively to provide early warning, intelligence, surveillance, navigation, command, control, and communications, and battle damage assessments to our coalition commanders in the Gulf. Satellites fed information to troops in their foxholes, aviators in their cockpits, seamen afloat, and missileers in their Patriot batteries. Information gathered from space supported every aspect of planning, controlling, and winning the war with Iraq.

The accelerating pace of technological development has implications for the division of labor among the Services, particularly the functions of developing and procuring new equipment. The nation that can most quickly incorporate technological innovations will have a decided edge on any future battlefield. To shorten the time between drawing board and operational availability, efficiencies and new measures of effectiveness must

continually be incorporated into the ways the Services go about equipping their forces.

The effect of new technologies on roles, missions, and functions will continue to be evolutionary. Technological breakthroughs will undoubtedly influence Service functions.

ADAPTING TO THREE YEARS OF BREATHTAKING CHANGE

The changes of the last three years led to a fundamental change in our strategy and our force structure. The military's task was spelled out by President Bush in a speech in Aspen, Colorado on August 2, 1990 -- the same day Saddam Hussein invaded Kuwait. Noting that the United States would be ill-served by forces representing nothing more than a scaled-back or shrunken-down version of the Cold War force, President Bush defined our task as one of shaping our capabilities to meet the needs of regional contingencies and peacetime presence.

Our response to the changing strategic landscape was further elaborated in the President's August 1991 National Security Strategy of the United States, which announced that by mid-decade, the military would be 25% smaller than the forces we maintained in the last days of the Cold War and described how planned reductions would cut forces to a minimum acceptable level -- the Base Force.

A few months later, in January 1992, the National Military Strategy of the United States was published. Reflecting the fundamental shift from a Cold War focus on containment to a regional orientation, it articulates a flexible new strategy designed to protect our interests and support our objectives worldwide, and it elaborates the strategic principles that underlie our force planning.

The Base Force was initially conceived as the minimum essential force required to meet the risks and uncertainties then prevalent. It was designed to maximize the capabilities of each Service and integrate their Active and Reserve components into an effective military team capable of responding across the full spectrum of conflict. But the Base Force has become a dynamic force. When the nation's military requirements change significantly, as they have with strategic nuclear weapons in the years since the Base Force was initially articulated, the Base Force can and should be adjusted.

As structured through 1995, the Base Force sets force levels appropriate to our national interests and the regional concerns we have around the world. It is a superbly trained, capable force, ready when called by the President to go to the scene of a developing crisis, go quickly, and go jointly.

RESHAPING THE MILITARY

With the end of the Cold War, the strategic threat that drove our planning, and upon which the division of labor among the Services was for so long predicated, has receded. Though we are still obligated to plan for the re-emergence of a global military threat, we are confident we would have sufficient time to reconstitute the forces required, and that we need not retain the forces necessary to fight a global war.

In the past we've been faced with similar opportunities to reduce the size of our military and cut defense spending. World War I was "the war to end wars," and when it was "over over there," we brought the troops home and settled into isolationism. Throughout the Roaring Twenties and the Great Depression that followed, maintaining a strong military was never a national priority. And we paid for it. We paid when totalitarian governments began their expansionist aggression, aggression that might have been deterred by the existence of strong US forces. We paid at Pearl Harbor, and at Kasserine Pass in North Africa.

When World War II ended in victory, we repeated our mistake. Again we failed to keep our forces ready, and we again paid the price in Korea, in the awful retreat to the Pusan perimeter. This time we are determined to get it right. With the Cold War's end, the great change in our strategy has been not only moving away from increasingly unlikely global warfare, but also making sure the force that remains is ready and able to deal decisively and successfully with regional crises -- the way we were ready for Operations JUST CAUSE in Panama, PROVIDE COMFORT in Turkey and northern Iraq, and RESTORE HOPE in Somalia. Being ready for crises like these means being ready with a total force, consisting of highly trained, come-as-you-are Active forces, augmented, and in some cases even preceded, by the specialized skills that reside in our Reserve components. When the crisis turns into something bigger, like Operation DESERT SHIELD/STORM, far greater numbers of National Guardsmen and Reservists must be called up. We simply cannot go to war without them.

We are confident we can maintain the capabilities we need for this new era of uncertainty and unrest, and that we can do so with fewer men and women in uniform; fewer Active forces in the Army, Navy, Air Force, and Marine Corps; fewer reserves; fewer defense civilians; and fewer defense industrial workers.

We can do it in a way that protects the nation from unacceptable risk, and that returns to the American people some of the treasure they've been devoting over the years to support a strong defense.

But we cannot maintain the necessary capability if we slash our operating and procurement accounts so severely that the

readiness of our superb forces is damaged.

We cannot preserve our military strength if we place perceived economy ahead of proven effectiveness, or if we place one Service or component ahead of others.

If we proceed too quickly, or impose changes so large they cannot be absorbed, the risk is that we may destroy the basic fabric of our fighting force. The superb balance demonstrated by our Armed Forces in their mastery of the air, sea, land, and space of the Persian Gulf must be maintained.

Over the past three years, the nation's military leaders have undertaken an exhaustive review of our strategy; our forces; and our roles, missions, and functions. We have sought areas for consolidation, streamlining, and outright reduction. Chapter II of this report highlights the changes we have already made to adapt our forces to the realities of a changing world. In the three years since the 1989 "Report on Roles and Functions of the Armed Forces," we have accomplished much toward building a force for an era of uncertainty. And so far we have gotten it right. In spite of reductions, reorganizations, and withdrawals, our forces have remained ready. They've proven their effectiveness time and again, by dealing decisively with sudden contingencies, large and small.

But not every restructuring proposal that sounds appealing stands up when carefully analyzed, and not every study we've commenced has been concluded. Chapter III of this report presents additional areas we've examined or continue to examine in our ongoing process of building Armed Forces that are right for America.

Chapter II

WHAT WE HAVE ACCOMPLISHED

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WHAT WE HAVE ACCOMPLISHED

More changes have occurred in the US military during the last three years than in any similar period since the National Security Act of 1947. Three key factors -- the end of the Cold War, increased budgetary constraints, and a revised Title X of the US Code which incorporates Goldwater-Nichols legislation -- have converged to provide the opportunity, necessity, and license to make changes. Indeed, these changes have already resulted in fundamental differences in the way we're structured, the way we train, and the way we fight. They have embraced all Services, affected all functional areas, and touched virtually every facet of the military.

This ongoing transition to a very different, post-Cold War military was not undertaken in a random or arbitrary fashion. Instead, we followed a deliberate approach, formulating a new National Military Strategy for today's security environment, establishing a "Base Force" structure specifically tailored to execute that strategy; concentrating our attention on a wide array of measures designed to improve capability and enhance efficiency; and finally, stepping back to specifically examine roles, missions, and functions in light of all the other changes we had implemented.

The Armed Forces of the United States are prepared to meet the challenges of the Nineties, not with a miniature version of the Cold War military, but with a new force designed for a new era. Lessons learned in our decisive victory in DESERT STORM and in successfully accomplishing a host of other military operations have contributed to the evolutionary process of organizing, training, and equipping our Armed Forces so they are ready to act decisively when called upon.

What follows in this chapter is a quick look at some of the major changes we have made since the last triennial review of roles, missions, and functions.

NATIONAL MILITARY STRATEGY

A dynamic and responsive military strategy is key to the effective employment of military forces. Our current strategy is spelled out for all the world to see in the National Military Strategy of the United States, an unclassified publication released in January 1992. This strategy takes into account the geopolitical environment of the post-Cold War era, contributes to the achievement of our national objectives, and focuses on protecting our vital interests during a period of reduced defense spending.

Deterring nuclear attack and containing communism — the cornerstones of our military strategy and planning for more than 45 years — have given way to a more diverse, flexible strategy which is regionally oriented and designed to respond decisively to the challenges of this decade. Built upon the four foundations of Strategic Deterrence and Defense, Forward Presence, Crisis Response, and Reconstitution, the strategy provides the basis for all US military activity. The principles which underlie the National Military Strategy have been embraced by the Services and incorporated in their respective papers, Army Focus 92; the Air Force Global Reach, Global Power; and the Navy and Marine Corps White Paper, ... From the Sea. It is against this strategic backdrop that the US Armed Forces are now organized, trained, and equipped.

THE "BASE FORCE"

As the world situation changed, the military undertook a thorough analysis of the force structure needed to accomplish the new military strategy. Today we have a force capable of deterring aggression, providing meaningful presence abroad, responding to regional crises, and, if ever necessary, reconstituting a global warfighting capability. As we continue our planned drawdown and contemplate additional changes, we must ensure the US Armed Forces retain these core capabilities.

The Base Force is a future force which anticipates continued progress and improvement in the strategic environment. It is a dynamic force which can respond to further favorable change. And it is a total force which includes all aspects of our Active and Reserve components.

Because it is smaller, the Base Force must also be more flexible, better trained, and able to adapt to changing circumstances. The new military strategy requires that units retain a high state of readiness, in order to respond to the dynamic challenges of the new world order, including rapid response to crises, natural disasters, and peacekeeping operations. It takes into consideration each Service's strengths and provides the greatest return from available resources.

The end of the Cold War and development of a new military strategy have affected more than just the size and structure

of our force. The past three years have also had a significant impact on the assignment of roles, missions, and functions among the Armed Forces and the combatant commands. Some of the significant changes we have already implemented are described below.

NUCLEAR FORCES

US Strategic Command (USSTRATCOM)

The end of the Cold War led the Joint Chiefs of Staff to conduct a comprehensive review of the Unified Command Plan, the document which establishes combatant commands and assigns their geographic and functional responsibilities. One key conclusion was that adjustments in command and control of the nation's strategic nuclear forces were necessary and appropriate.

As a result of this assessment, USSTRATCOM was created. For the first time in our history, all of America's strategic nuclear weapons are consolidated under one combatant CINC. Command of all strategic bombers, missiles, and submarines will alternate between an Air Force general and a Navy admiral -- an arrangement hard to imagine only a few years ago. This consolidation of the forces that truly do safeguard our way of life is perhaps the most dramatic and fundamental change in the assignment of roles and missions among the Armed Services of the United States since they first were established by law in 1947.

Establishment of USSTRATCOM also reduced costs, through consolidation of Airborne Command Posts and the disestablishment of the Strategic Air Command as a combatant command and as a major command within the Air Force. This restructuring not only centralized command and control of US strategic nuclear forces; it also eliminated over 1,100 staff positions, including more than half the associated general and flag officer billets.

President's Nuclear Initiatives

After the failed coup in Moscow in August 1991 and subsequent dissolution of the Soviet Union, long-stalled arms control negotiations were suddenly invigorated, and supplemented by unilateral initiatives and rapid bilateral and multilateral agreements. As a result of nuclear initiatives developed under the direction of the Joint Chiefs of Staff and the Secretary of Defense, and approved by President Bush and announced in September 1991 and January 1992, a wide range of unilateral actions has had a tremendous impact on every aspect of our land, sea, and air nuclear forces. Nuclear roles, missions, and functions have been fundamentally changed, commands reorganized, and entire classes of systems eliminated.

The President's nuclear initiatives included several measures to reduce the number of deployed nuclear weapons. Our entire worldwide inventory of ground-launched, short-range, tactical and theater nuclear weapons, including nuclear artillery shells and short-range nuclear ballistic missile warheads, has been withdrawn and is being eliminated. The Army and Marine Corps -- both of which had nuclear roles since the mid-1950s -- no longer have nuclear weapons, and instead rely on their sister Services for nuclear weapons support. The savings in force structure, equipment, materiel, and training from this measure are significant. Also at the President's direction, all tactical nuclear weapons were removed by July 1992 from aircraft carriers, surface ships, attack submarines, and land-based naval aircraft. Most of our tactical nuclear weapons have been returned to central storage locations on US territory. In addition to the obvious cost savings, this measure resulted in the "denuclearization" of our air forces in the Pacific.

For the first time since the 1950s, all US strategic bombers have been taken off alert, as have 450 Minuteman II Inter-Continental Ballistic Missiles (ICBMs).

Follow-on Agreements

On June 17, 1992 Presidents Bush and Yeltsin approved the framework of a new treaty intended to reduce US and Russian strategic forces even more radically. The resulting treaty, START II, was signed on January 3, 1993. When ratified and entered into force, START II will reduce strategic weapons to fewer than 3,500 warheads on either side. The treaty mandates that by 2003, no land-based ICBMs will have more than one warhead. The US agreed to reduce Submarine-Launched Ballistic Missile (SLBM) warheads by half. US Peacekeeper ICBMs will be eliminated and all Minuteman III missiles will become single-warhead.

These nuclear initiatives and their results illustrate clearly the dynamic nature of the Base Force. When we started developing our planned 1995 force, there were 21,000 strategic and tactical nuclear weapons in the US arsenal, including sea-based, air-delivered, and ground-launched systems. As our requirements for nuclear deterrence changed, the Department of Defense took the lead in recommending corresponding reductions in nuclear forces to a total of about 5,100 weapons -- a level representing one-quarter of the Cold War nuclear stockpile. These recommendations will eliminate every weapon and every unit that is no longer required for the nation's security. Reductions in our nuclear forces are also reflected in restructured roles, missions, and functions. As already noted, the Army and Marine Corps are without a nuclear role or function for the first time in four decades. Should they ever require nuclear weapons, they will call on the Navy or Air Force. The Armed Services of the

United States rely on one another for essential support: modern warfare is a team effort all the way.

CHEMICAL INITIATIVE

In September 1992, at the Conference on Disarmament in Geneva, 39 nations reached agreement on a total ban on lethal chemical weapons, and voted to forward the treaty text to the United Nations General Assembly, which approved the Chemical Weapons Convention (CWC) in November 1992. The United States signed the CWC in Paris on January 13, 1993, and in doing so renounced the use of chemical weapons for any reason, including retaliation.

The United States will retain countermeasures for chemical and biological warfare programs and deter an enemy's use of chemical and biological weapons by maintaining the military capabilities to deny an enemy a significant military advantage from such use. If US forces, facilities, or citizens, or those of our allies, come under chemical or biological attack, the US has the capability to respond with a wide range of military options. Any use of chemical or biological weapons would have the most severe consequences to the user. We may respond with all appropriate means consistent with our rights and obligations under international law.

US acceptance of the CWC results in the elimination of several functions for the Services. The Air Force and Marine Corps no longer have to certify aircraft for delivery of chemical weapons, and air and ground crews no longer train for this task. Army and Marine Corps artillery units are likewise relieved of these requirements. The Services are no longer required to maintain Personnel Reliability Programs or communication and security systems for control and release of chemical weapons. The Army does not have to maintain chemical stocks in a "ready-for-issue" status. This will produce monetary savings for the Services and reduce human risk due to decreased maintenance and surveillance requirements. The Army will be able to destroy the chemical stockpile in the safest and most cost effective and operationally efficient manner.

forward-deployed troops have been withdrawn. Further reductions of US forces stationed in South Korea are planned, but the Secretary of Defense suspended the drawdown in 1991 pending satisfactory resolution of certain concerns about North Korea. The changing strategic landscape also permitted us to close bases and facilities in the Pacific, particularly Clark Air Force Base and Subic Bay Naval Base in the Philippines.

The Armed Forces' continuing efforts to lower operating costs also resulted in streamlining and consolidating hundreds of Service activities. In Southern Europe, for example, our future basing concept envisions increasing the joint use of facilities, thereby reducing unnecessary duplication of bases and support functions. The Navy and the Air Force are planning to use the Naval Air Station at Sigonella, Italy for fighters, maritime patrol aircraft, and fleet support. The Naval Air Station at Souda Bay, Crete will host maritime patrol, fleet support, and surveillance aircraft for the Navy and Air Force. The air base at Incirlik, Turkey will be used for multi-Service contingency operations. In the Pacific, Navy and Air Force personnel in Singapore share legal; medical; housing; education; and Morale, Welfare, and Recreation services. And some Navy elements, displaced from the Philippines are now hosted by the Air Force at Andersen Air Force Base in Guam.

As we reduce the overall size of our forces and consolidate much of what remains in the United States, the potential exists for significant savings to be realized as a result of overseas base closures. Changes to the strategic landscape since the first report on roles, missions, and functions have allowed us to identify more than 500 facilities for consolidation among the Services or outright return to host nations. As restructuring continues, we will seek every opportunity to consolidate and close no-longer-needed military installations that supported our Cold War force structure.

Our plans for cutting costs while maintaining proven effectiveness include a new idea for forward presence operations. The concept explores the deployment of joint forces, configured to complement one another and meet peacetime and contingency operational needs. For example, a carrier battle group deploying to the Mediterranean without an amphibious ready group might rely upon the Army airborne task force in Italy to perform the ground tactical role in support of joint operations. Similarly, an amphibious ready group might deploy separately to "the Med," and rely on Air Force land-based air assets, rather than on carrier-based naval aviation. Future forward presence operations may thus consist of specially tailored joint task forces that can maintain essential forward presence at less overall cost.

Bringing an all-volunteer force home isn't easy. It requires detailed logistical planning and depends on the extraordinary efforts of our men and women in uniform, and their families. The troops we've brought home since 1990 had a proportionate share of husbands and wives, kids, pets, family cars, and prized possessions. Getting them home, whether to a Stateside assignment or to an unexpectedly early return to civilian life, without alienating their husbands and wives, traumatizing their kids, losing their pets, denting their cars, or damaging their personal property, is an immense task. We are bringing the troops home as fast as we can -- while continuing to maintain a forward presence that protects our vital interests, enhances stability, and reassures our allies. Once again, we emphasize that America must maintain its commitment to these superlative soldiers, sailors, airmen and marines -- and their families -- by bringing them home as fast as is reasonable, and no faster.

COUNTER - DRUG OPERATIONS

In 1989, the Department of Defense was given the mission to provide detection and monitoring support to help halt the aerial and maritime transport of illegal drugs into our country. Consequently, a comprehensive program has been established for attacking the flow of drugs -- at the source, in transit, and upon arrival in North America. Implementing this program requires the sustained employment of active duty and Reserve forces properly trained and equipped to perform a non-traditional role. We are developing new joint doctrine and using our pool of capabilities in new ways against threats we never had to confront in the Cold War. We are more involved with interagency organizations and host-nation police and military authorities in planning and executing the war against drugs. This campaign requires the involvement of several combatant commanders, who have worked closely together and shared joint lessons learned to improve their capability to perform this unprecedented mission.

With drug detection and interdiction efforts taking place in an area more than twice the size of the United States, coordination and cooperation are required among all branches of the Armed Forces and the Coast Guard. For example, special operations forces provide Active and Reserve components to theater CINCs for counter-drug missions and activities. In

addition, the Coast Guard provides law enforcement detachments as specialists aboard US Navy ships, enforcing counter-drug operations and UN resolutions on embargoed goods.

In Canada and the United States, Army, Navy, and Air Force mobile radars have been integrated into the North American Aerospace Defense Command (NORAD) surveillance system to provide real-time cueing and intercept information.

To increase efficiency and reduce costs in the war against drugs, the Navy is equipping three ships, originally designed and built for antisubmarine warfare, for continuous counter-drug surveillance. These smaller ships are able to provide equivalent capabilities at one-tenth the cost of combatants normally assigned the same mission.

The Navy is also reconfiguring maritime patrol aircraft to create a multi-mission aircraft better able to perform counter-drug missions than some of the shorter-endurance aircraft currently assigned the mission. And in the Pacific, reserve ships have been assigned to counter-drug operations, freeing active duty ships to support battle group deployments. Working closely with law enforcement agencies, the Coast Guard and National Guard support a full range of monitoring, detection, and seizure operations. The National Guard also operates the National Interagency Counterdrug Institute, training members of all Services, federal, state, and local enforcement personnel.

COMBAT LOGISTICS

Because our strategic focus has changed from planning for global war to planning for regional conflicts of shorter duration and less intensity, our logistics support requirements have also changed. Previously, our goal was to have enough stocks so that each theater command could fight its part of the anticipated global conflict simultaneously and without re-supply from the Continental United States (CONUS) for a considerable time. With a new strategy that envisions fighting, at most, two major regional contingencies concurrently, existing in-theater stocks are being reduced substantially. Only enough "starter" stocks are required to last until theater forces are resupplied from CONUS or from other prepositioned "swing" stocks that can be moved quickly from one region to another, as needed. To provide such flexibility, some stocks now based on land will be repositioned afloat.

In this way, inventories can be significantly reduced while maintaining peacetime materiel readiness and combat sustainability. The Army has estimated that a 50% reduction in war reserve requirements is achievable through this concept. DOD has already reduced overall inventories from $114 billion in FY 1989 to $80 billion by

FY 1992. The other goal is to provide commanders and logisticians with the information they need to plan ahead and to make sound decisions on materiel positioning and movement and on reducing inventories.

Each Service has efforts ongoing to improve logistics management and reduce its levels of stocks worldwide. For example, the Army has embarked on a major logistics initiative to reduce and withdraw its inventory of materiel and equipment from Europe. After a 40-year accumulation of materiel in Europe, the task is massive -- in a recent inspection an Army team identified some 42,000 items of equipment that must be withdrawn to the United States, sold to other countries, or eliminated.

Combat support has entered a new era with a new yardstick for defining combat logistics requirements. The emphasis is on being able to locate stocks on a regional basis so they best support our new strategy.

COMMUNICATIONS

An often-repeated, never-confirmed report from Operation URGENT FURY in Grenada tells how a young officer used his telephone credit card to call back to his base and asked them to relay his request for fire support to a nearby support unit. Whether true or not, the story illustrates how desperately we needed, in 1983, to improve communications among our forces. Operations JUST CAUSE and DESERT STORM showed how far we've come since Grenada, but they also demonstrated again how the coordination of multi-Service operations can stress the command-and-control communications structure.

We have continued to draw on the lessons of DESERT ONE and URGENT FURY, and we've incorporated new lessons learned in more recent joint and combined operations. We've made great advances in joint doctrine, joint training, and communications systems to improve our interoperability, responsiveness, and effectiveness.

A new concept, called "Command, Control, Communications, Computers, and Intelligence (C^4I) for the Warrior," sets forth an objective, guiding principles, and a road map for achieving global communications interoperability. This program is aimed at providing a responsive, reliable, secure, and affordable network that can provide an accurate and complete picture of the

battlefield, timely and detailed mission objectives, and clear target views. The program includes a "Quick Fix" phase to enable existing systems to communicate with one another; a "Mid-Term" phase to ensure inter-Service communications requirements are adequately evaluated during development, testing, and acquisition of new systems; and an enduring "Objective" phase during which evolving technologies and techniques will be continuously identified and assimilated. These program improvements add up to a giant step forward in our "communications jointness."

Today, our ability to talk and pass data between elements of the various Services is even better than it was when we launched the overwhelmingly successful air, sea, and land campaign that led to victory in Operation DESERT STORM.

INTELLIGENCE

Another critical area subjected to intense examination since the last triennial review is the defense intelligence structure. The dramatic changes in the nature of threats facing the United States required and permitted the Intelligence Community to analyze our future intelligence collection needs. As a result of this analysis, the Intelligence Community is modifying both its focus and its structure.

Two reports helped shape this shift in organization and focus. The first, initiated by the Director of Central Intelligence (DCI) at the direction of the President, was National Strategy Review-29. The second was a memorandum, Strengthening Defense Intelligence, issued by the Secretary of Defense.

National Security Review - 29

To ensure all elements of the Intelligence Community are prepared to meet the changing needs of intelligence consumers through 2005, a systematic review of anticipated collection and analysis requirements was conducted in 1991. This effort, which resulted in National Security Review-29 and the subsequent National Security Decision Directive 67, established intelligence priorities for the post-Cold War world. As part of this review, DOD identified and developed 12 specific areas of interest to serve as the focus for planning

future defense intelligence collection, analysis, and dissemination.

Strengthening Defense Intelligence

To capitalize on lessons learned from the Gulf War and continue adapting to a changing world, the Secretary of Defense in the spring of 1991 defined steps to be taken to centralize management and strengthen the performance of defense intelligence functions. Among the measures the Secretary directed were consolidation of Service component intelligence resources into a joint intelligence center (JIC) at each combatant command; consolidation of existing intelligence commands, agencies, and elements into a single intelligence command within each Service by Fiscal Year 1995; and reduction or elimination of no-longer required operating locations and intelligence units located overseas.

Some of the steps already taken to provide better intelligence for joint warfighting are outlined below. Others still under review are addressed in Chapter III.

Intelligence Support to Joint Warfighting

The intelligence support available to US and other Gulf coalition commanders during DESERT STORM was probably the best in military history. This success was partly due to measures implemented long before Iraq's invasion of Kuwait and partly due to innovations made on the spot.

Despite the overall intelligence success, some commanders at the theater and tactical level expressed frustration after the war over the lack of coordination and timeliness in dissemination of intelligence collected at the national level. In responding to lessons learned in the war, the Intelligence Community's aim was to institutionalize and enhance what worked well, and fix what didn't. Results of this post-war effort are outlined below.

Military Intelligence Board. A standing board comprised of senior Defense Intelligence Agency (DIA) and Service intelligence officials organized the full range of intelligence support for DESERT STORM. The board was such a success that its structure has been retained and expanded to include representatives from other DOD and Intelligence Community organizations. The Military Intelligence Board now serves as a key advisory body to the Director, DIA in recommending programming priorities and coordinating support for military operations.

Joint Intelligence Centers. Another success story from Operation DESERT STORM was the provisional establishment by US Central Command (USCENTCOM) of a forward-based Joint Intelligence Center. The CENTCOM JIC acted as the clearinghouse for intelligence requirements such as battle damage assessment, and production of unique intelligence for

CENTCOM; and served as the collection manager for theater-based intelligence assets. Created on an ad hoc basis during DESERT STORM, the JIC is now being institutionalized for all combatant commands.

In the US Pacific Command, for example, consolidation of all general intelligence production and analysis facilities in Hawaii into a single JIC resulted in a 25% manpower savings. US European Command has established a similar tri-Service organization to produce intelligence support for mission planning and operations by US and Allied commanders in peace, crisis, and war -- resulting in the elimination or reduction of about half the headquarters and component-level intelligence organizations. US Space Command and US Strategic Command plan to share the large intelligence infrastructure that was originally established to support the Strategic Air Command. This consolidation will eliminate the need for additional facilities and intelligence staff at Space Command headquarters.

A DIA assessment of command intelligence requirements enabled the JICs to optimize intelligence capabilities by specifying production responsibilities, facilitating information exchange among combatant command and national intelligence centers, and allowing Service intelligence organizations to focus on their own areas of expertise. In establishing a JIC at each combatant command, we have improved the quality of intelligence support to the warfighter while decreasing the resources required to produce such support.

National Military Joint Intelligence Center (NMJIC). Our difficulty at the start of the Gulf War in coordinating requests from multiple consumers to multiple producers of intelligence resulted in duplicative requirements that created costly and unnecessary confusion. To provide the needed coordination, the NMJIC was established in the Pentagon as the single fusion point for intelligence in support of DESERT STORM. The NMJIC performed so well that it is now manned by representatives of all military Services, the National Security Agency (NSA) and DIA. All Service current intelligence resources in the Washington DC area were consolidated at the NMJIC in 1992. The NMJIC serves as the focal point for support to the combatant commands and to Joint Task Forces by acting as a national clearing house for intelligence requests and by coordinating CIA, DIA, and NSA support.

National Security Agency. The area of signals intelligence also is being affected by significant reductions of overseas field stations and the consolidation of remaining overseas resources into regional operating facilities. The Director of NSA is working closely with the DIA and Service intelligence to tailor theater signals intelligence assets into a reduced intelligence structure that is focused on the combatant command JICs.

At the national level, NSA has expanded its presence in the NMJIC to allow for more effective management of collection operations and better support during periods of crisis.

Office of Military Affairs. In testimony after the Persian Gulf War, General Schwarzkopf expressed the frustration he'd experienced in getting intelligence products he wanted from the national level. In response, the DCI established an Office of Military Affairs within the CIA. Manned by a general or flag officer with a supporting staff that includes military officers, this office works with the CIA on a day-to-day basis to ensure national level intelligence capabilities are better integrated with the activities of military intelligence organizations in support of military operations.

Central Imagery Office. Another DESERT STORM intelligence shortfall was the insufficiency of imagery products for detecting and targeting enemy activities over a broad area. In May 1992, directives issued by the Secretary of Defense and the DCI established the Central Imagery Office (CIO), "to ensure that United States Government intelligence, mapping, geodesy, and other needs for imagery are met effectively and efficiently in a manner conducive to national security..." The CIO is a designated combat support agency under the overall supervision of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence. The office includes representatives from CIA and DIA, the Military Services, and other agencies with intelligence responsibilities.

Human Intelligence. Authority for tasking all DOD human intelligence (HUMINT) has been assigned to the DIA. This consolidation was accomplished to coordinate more effectively operations of valuable, limited HUMINT resources and optimize collection capabilities.

ACQUISITION

Despite the proven success of advanced weapons systems first used in Panama and the Persian Gulf, three factors -- a vastly different security environment, the ever-increasing cost of advanced technology, and the growing need for interoperability to support joint and combined operations -- have led to fundamental changes in the way the Services select and procure defense hardware.

Joint Requirements Oversight Council (JROC)

Joint application and interoperability considerations now pervade the entire acquisition process. Following the Goldwater-Nichols DOD Reorganization Act of 1986, the Chairman of the Joint Chiefs of Staff established the JROC to examine the requirements for every major Service acquisition program. An important JROC function is to identify programs for direct joint participation and joint technology spin-offs which may be applicable to other Service programs. To provide necessary muscle and experience, the JROC is chaired by the Vice Chairman of the Joint Chiefs of Staff, and its members are the Vice Chiefs of the Services.

Military acquisition actions (including major systems, subsystems, and components) that involve formal management or funding by more than one Service during any phase of a system's life-cycle are now designated as joint programs. This change has substantially reduced duplication of effort; increased our ability to provide the best technology options for force planners and senior decision makers; and enhanced supportability, interoperability, and warfighting effectiveness. As Admiral David Jeremiah, Vice Chairman of the Joint Chiefs of Staff, stated during testimony before the Senate Armed Services Committee, this "joint perspective focuses on the contribution each program makes to the overall joint warfighting capability and how that capability contributes to the execution of our National Military Strategy."

Program Initiatives

We've already realized immediate rewards as a result of this major change in the acquisition process. Four programs are of particular note. The Advanced Medium-Range Air-to-Air Missile (AMRAAM) initiative will provide the next generation, all-weather, all-environment, medium range, air-to-air missile system for the Navy, Air Force, and selected NATO allies.

Our Unmanned Aerial Vehicle (UAV) program will develop a family of UAVs with specific range and payload capabilities to accommodate a variety of needs from small unit, over-the-hill reconnaissance to much deeper, over-the-horizon surveillance.

The Navy's Mine Warfare Plan emphasizes research and development of systems such as the Magic Lantern mine detection system, SQQ-32 sonar upgrades, and a shallow water mine neutralization system to conduct efficient, effective, and speedy mine counter measure (MCM) operations in the very shallow water and surf zone environments in support of amphibious operations. As a result of lessons learned from Operation DESERT STORM, an MCM support ship is also being planned that will provide better command and control, logistics, and personnel support of our MCM ships and helicopters.

Finally, the MILSTAR Satellite Communication System will provide a survivable, jam-resistant, worldwide secure communications system for command and control of US forces in future conflicts.

As Cold War threats have receded, many of the systems that were being developed to counter those threats no longer carry the priority they once had. As a result, we've identified several programs where cost, schedule, or technical challenges have grown to unacceptable levels; and we've taken appropriate action to eliminate or curtail them. The following are prominent examples of how we've been able to save billions.

- Because of nuclear arms agreements, programs such as the B-2 Bomber and Trident II SLBM have been reduced, and the Small ICBM, Peacekeeper Rail Garrison, and Short Range Attack Missile have been terminated.
- The diminished threat from potential enemy submarines has resulted in the termination of two torpedo programs and an antisubmarine surveillance system, and a major reduction in procurement of the SEAWOLF attack submarine.
- The Naval Advanced Tactical Fighter, the Navy's A-12 medium attack aircraft, and the Navy's new antisubmarine patrol plane, the P-7, have been canceled; and several air-to-air and air-to-ground missile programs have been restructured.

When we determine that capabilities we have now need enhancement, we carefully study the trade-offs between new acquisition and modifying our existing systems. In many instances, requirements to replace existing US weaponry in order to maintain a significant technological advantage are not as urgent as they were a few years ago. As a result, we've reduced concurrency in development programs and are retaining existing equipment for longer periods. We increasingly incorporate technological advances through upgrades instead of through initiation of new systems. Upgrade of the Navy's F-14As into F-14Bs, by incorporating new engines and modest avionics changes, is one example of this philosophy.

We are procuring less and procuring smarter. We are eliminating duplication of effort and exploiting joint application wherever possible.

DOCTRINE

A joint force, synchronized and integrated into an overall campaign plan, provides a combatant commander with a wide range of capabilities that can pose multiple and complex problems for any enemy. But this kind of orchestrated employment is by no means easy to accomplish. Joint doctrine is the medium that deals with the fundamental issue of how best to employ the nation's military power to achieve strategic ends. Joint doctrine and training capture our collective experience with warfare, and ensure we are ready to fight the next war -- not the last one.

The Armed Forces have made great strides in the development of joint doctrine, particularly since our experiences in DESERT ONE and Grenada.

Service doctrine is now required to be consistent with joint doctrine. A recent series of publications more clearly articulates considerations for joint operations. The prime example is Joint Publication 1, Joint Warfare of the US Armed Forces, "Joint Warfare is Team Warfare", which serves as the focal point for further doctrinal dialogue and development.

As the biggest test of joint doctrine since the establishment of the Air Force and the formal creation of the Joint Chiefs of Staff, DESERT STORM demonstrated beyond doubt that our emphasis on jointness has yielded a more effective and efficient fighting force. Emerging doctrine and concepts were made available to General Schwarzkopf, his staff, and components throughout the planning and execution of the campaign to liberate Kuwait.

Of particular note during the war was the establishment and use of a single Joint Force Air Component Commander -- the JFACC -- to oversee and synchronize all air component operations under the CINC's campaign plan. The effectiveness of air operations in DESERT STORM can be directly attributed to our emphasis on joint doctrine as exemplified by the JFACC.

DESERT STORM joint air operations also demonstrated that we have room to improve. We quickly learned that the Services lacked an electronic means to pass the JFACC's daily Air Tasking Orders (ATOs) to all the wings and squadrons executing the air portion of the campaign plan. To get the order to Naval Aviators eager to attack the targets they were assigned by the JFACC, a lengthy document had to be picked up in Riyadh every day and flown via naval aircraft to each of the carriers in the Red Sea and the Persian Gulf.

We've given priority to rectifying this inter-Service dissemination shortfall since the Gulf War. There are now at least nine naval vessels with an ATO data link capability, which permits high data-rate exchanges between air and naval forces. Seven more vessels have been modified so they can be similarly equipped, in an emergency, in less than one day. This new inter-Service command-and-control communications capability will allow the Navy battle group commander at sea to function as the JFACC when required. During exercise TANDEM THRUST 92, in a demonstration of the transmission of an ATO from a ground-based terminal to a terminal afloat, the daily ATO was transmitted to the naval force commander in under five minutes. Work continues to further enhance ATO interoperability with all the Services.

TRAINING

Training and education are indispensable to the effective application of military power. We perform in combat with the knowledge, skills, and attitudes we've attained through education, training, and exercises; and the abilities of our leaders rest in large part on the quality of these tools. Significant improvements have been made since 1989 in the areas of professional military education, training, and exercises.

Our military education system is now organized around a framework centered on the tactical, operational, and strategic levels of war. It constitutes an integrated, "cradle-to-grave" approach to preparing our soldiers, sailors, airmen, and marines for the challenges of the nineties and beyond.

To foster an enhanced joint perspective among all the Services, a two-phase program for joint education has been fully implemented by intermediate and senior level Service colleges. As vividly demonstrated in DESERT STORM, military leaders today face operational challenges that can only be met by a deep appreciation of jointness. Knowledge of the capabilities and limitations of land, sea, air, space, and special operations forces -- including emphasis on organization, operations, planning systems, and integrated command-and-control communications and intelligence requirements -- will ensure our commanders have a clear advantage in responding to

contemporary and future challenges.

Simply stated, we fight as we train; so we must train and exercise as we intend to fight. We have demonstrated, in major joint and combined exercises, our ability to control air, ground, and naval forces from afloat or ashore through a Joint Task Force commander.

The Army and Marine Corps have developed what they call the "endless exercise." This concept is an acknowledgment that joint interaction, especially between complementary units, should be a permanent condition and credo for action. The two Services have established a periodic visit program to pursue and expand upon operational issues of mutual interest. Joint exercises provide the proving ground for refining joint warfighting, intelligence, command, control, communications, and logistics operations among conventional forces and between conventional and special operations forces. OCEAN VENTURE 92 and TANDEM THRUST 92 -- conducted off the Carolina coast and in California and the mid-Pacific, respectively -- saw thousands of soldiers, sailors, airmen, and marines training together on joint wartime tasks. These large annual exercises (TANDEM THRUST alone involved 20,000 troops) plus others like TEAM SPIRIT in Korea and DISPLAY DETERMINATION in Europe, bring major air, naval, and ground units together regularly to train jointly and to contribute, through lessons they learn together, to the development and refinement of joint doctrine, tactics, techniques, and procedures.

Large and expensive exercises are increasingly being replaced by computer assisted exercises of more modest scale. This use of modern modeling and simulation techniques enhances the training value of exercises for combatant commands and subordinate Joint Task Force staffs while driving down costs. Smaller-scale, carefully focused exercises are proving invaluable in training joint forces to meet combatant commanders' mission requirements. In recognition of the importance of this concept, the Joint Doctrine Training and Simulation Center is being established to support joint exercises, serve as the focal point for joint doctrine development, manage the joint lessons learned system, and support joint training initiatives.

Consolidation of education and training between Service schools also contributes to joint operations, and moreover has resulted in impressive savings. More than 20,000 marines attend the schools of other Services every year. Marine artillerymen, tankers, engineers, unmanned aerial vehicle crewmen, and military police are trained at Army schools. Every year, the Army trains more than 8,500 marines, 13,500 airmen, 12,000 sailors, and 60 Coast Guardsmen, resulting in an unprecedented commonalty of approach to basic battlefield skills and large savings.

The Army is not the only Service training people in other uniforms. Worldwide Military Command and Control System (WWMCCS) operators, imagery interpreters, and military police working dog handlers are trained by the Air Force. The Naval Postgraduate School in Monterey, California is attended by all four Services. The Navy also conducts cryptology training in Pensacola, Florida. The Marine Corps conducts the Scout Sniper Instructor Course, the Computer Science School, and the Aviation Weapons and Tactics Instructor Course. The emphasis is on identifying the Service with the preponderance of requirements in a particular career field or skill area, and achieving economics of scale by having people from all Services train under one Service's roof. Where no one Service has a monopoly, training and education are consolidated under DOD. Examples include the Defense Mapping School and the Defense Intelligence College. As part of the Department's continuing effort to reduce costs and increase effectiveness, all information specialists -- journalists, radio and television commentators -- will be trained, starting in 1995, at the DOD American Forces Information Service School at Fort Meade, Maryland.

INFRASTRUCTURE REDUCTIONS

Our drawdown to achieve the levels planned by 1995 requires a concurrent reduction in military infrastructure in the United States. More than 170 activities have been identified by the Services for elimination, consolidation, or realignment. Congressional support for these reductions is essential.

The commissary functions of all Services have already been combined into a single Defense Commissary Agency. Other examples include the consolidation of aircrew simulator and training development facilities, combination of several advanced tactical radio development programs, elimination of the Army Intelligence Agency, reassignment of the Armed Forces Medical Intelligence Center and the Missile and Space Intelligence Center to the Defense Intelligence Agency, consolidation of 34 separate Navy laboratory activities into five facilities, and consolidation of the Air Force's Systems and Logistics Commands into one Materiel Command. In addition, DOD is conducting a detailed review of the roles, missions, funding, and management of the Defense Nuclear Agency to determine if efficiencies and reductions can be made to eliminate any duplication in capabilities that may exist. This DOD review, which is in progress, is expected to be submitted to Congress in May 1993.

Another innovation to eliminate unnecessary duplication is the assignment of an executive agent to oversee common functions for several Services. This concept eliminates competition in contracting for the same resources. The clean-up of former DOD-owned hazardous waste sites; operation of common user ocean terminals; and support for medical materiel, military postal service, and domestic disaster relief are functions for which one or another Service has been designated as the executive agent.

Substantial savings in personnel and other resources are also being achieved through the reduction and reorganization of Service staffs. The Army is reducing headquarters functions by 23% and has eliminated 42 general officer billets of the 63 planned over the next several years. The Navy staff has reorganized to enhance coordination with the Joint Staff, the Unified Commanders and the other Service staffs. This reorganization will reduce the headquarters by 24% and the number of flag officers in the Navy by 34. A restructuring of Headquarters Air Force will result in a 23% decrease, including elimination of 59 general officer positions. A similar reorganization effort has reduced the Marine Corps Service Management Headquarters by 24% and will eliminate 9 general officers.

These reorganizations reflect the reality of significant budget cuts as well as dramatic changes in the international strategic landscape. They are designed to attain greater levels of peacetime efficiency while maintaining and enhancing the combat effectiveness required to respond to future regional challenges.

Innovative steps are also being taken to control the spiraling costs of military and dependent medical care. Responsibility for the preparation and submission of a unified medical budget for all Services has been consolidated under the Assistant Secretary of Defense (Health Affairs) in order to standardize programs and procedures and conserve resources.

In Europe, the Army medical materiel center has become a tri-Service organization, providing services such as spectacle fabrication, equipment maintenance, and medical supply distribution and requisition support for all military medical treatment facilities in the European Command's area of responsibility.

Similarly, the Army's regional medical center at Landstuhl, Germany -- a major military medical treatment facility in Europe -- will soon be jointly staffed by the Army and Air Force.

The Central Command has also moved significantly towards the consolidation of Service medical functions, using a single manager for all medical logistics to eliminate duplication by streamlining planning and purchasing.

CONCLUSION

Changes since the 1989 review of roles, missions, and functions have fundamentally altered the Armed Forces of the United States. We are well along on our planned reduction and restructuring. As part of the continuous process of assessment, adjustment, and reassessment, we have eliminated considerable duplication, improved jointness, restructured part of the force, and developed effective plans to complete our planned reshaping by 1995.

These efforts fully comply with the Congressional mandate to review critically our roles, missions, and functions. In so doing, they affirm the military's strong commitment to change.

CHAPTER III

WHERE WE ARE GOING

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Confronted with a drastically different world situation, the Armed Forces developed a new military strategy and began reshaping the force to orient it towards the demands of regional crisis and conflict. Even before the strategy and the force were finalized, however, they were put to the test in the Persian Gulf. The DESERT SHIELD and DESERT STORM experience confirmed the direction that had been taken, and as the troops came home, the lessons learned and experience gained were used to refine our course.

As Chapter II clearly depicts, much has already been done to improve the way the Armed Forces do their business. DESERT STORM demonstrated that Goldwater-Nichols reforms have changed the Service's warfighting roles by ensuring necessary inter-Service combat support is always available. The theater commander or his subordinate Joint Task Force Commanders now have the authority to decide how to allocate resources and employ the joint force. We've moved out with all deliberate speed to implement other important changes and give the American people a higher return on their defense investment.

But the process of examining how the Armed Forces organize, train, equip, and employ forces is continuous. Having developed a new National Military Strategy and begun reshaping the Cold War military to meet the challenges of the 1990s, we resolved to step back and take a specific look at roles, missions, and functions to verify that they are in tune with the strategy, that they foster no unnecessary duplication, and that they produce a joint force that maximizes military effectiveness per dollar spent on defense. Beginning last summer, a comprehensive, often painful, "top-to-bottom" review was undertaken.

The Joint Staff was directed to lead the study because a truly joint and collective effort would likely uncover options and offer perspectives not visible from a single Service's point of view. However, the Services were actively involved at every step, and the combatant commands also took part by examining their areas of interest and responsibility.

Areas selected for review were those where two or more Services perform similar tasks, where restructuring might generate significant cost savings, and where changes in our strategy and force structure made a comprehensive review appropriate. Study groups were formed to look at each issue,

each overseen by a Joint Staff general or flag officer with applicable operational experience or expertise on the issue. The groups met over a period of several months and prepared detailed assessments. This process formed the basis for much of the analysis and many of the recommendations presented in this chapter.

This fundamental reexamination of the Armed Forces' organization and structure involved many serious issues touching on the very existence of major communities within the Services. Disagreements were to be expected and, indeed, occurred. But the Chairman, the Joint Chiefs, and the CINCs took very seriously the challenge posed by Congress to conduct a "no holds barred" approach that had as its primary consideration not what is right for the Services or the Department of Defense, but what is right for America. While the study's results were discussed at length among the Joint Chiefs of Staff, it was the Chairman alone, as required by Title X, who ultimately decided what to recommend in this report.

Significant changes are recommended in a number of areas. In others, the current division of labor should remain as it is today. In still others, further study is needed before final recommendations can be made.

UNIFIED COMMAND PLAN

A detailed review of roles, missions, and functions necessarily involves a review of the Unified Command Plan (UCP) because MISSIONS are assigned to CINCs, not to Services. As discussed in Chapters I and II, the UCP is what prescribes the geographic and functional responsibilities of the combatant CINCs. Since it was first published in 1946, the UCP has been updated regularly. Under Title X, as revised by Goldwater-Nichols, the Chairman of the Joint Chiefs of Staff is required to review the UCP not less than every two years for missions, responsibilities, and force structure, and to recommend such changes as may be necessary in a report through the Secretary of Defense to the President.

Since the end of the Cold War, we have been reviewing the plan to ensure it provides the most effective and efficient command-and-control arrangements for a changing world. One recommendation, since approved by the President and discussed in Chapter II, was elimination of Strategic Air Command and establishment of USSTRATCOM as a new combatant command, consolidating command of all strategic nuclear forces under one CINC. This new joint Navy and Air Force command was a momentous UCP change and one which improved command and control of our entire strategic nuclear arsenal.

Additional changes to the UCP are being examined, including the possibility of assigning designated forces based in the United States to a single joint command and consolidating space responsibilities.

Joint Headquarters for US Based Forces

The unified command structure works well overseas, where CINCs with a geographic area of responsibility (AOR) effectively direct the forces assigned to them from the Services in accomplishing a wide range of missions. In exercising their combatant command authority, the overseas CINCs also have a major impact on the readiness of assigned forces in their theaters.

But unification has never been achieved in the United States to the same degree as overseas. While forces based in the United States are assigned, by law, to one CINC, many are assigned to overseas CINCs and have limited opportunities to train jointly with the overseas-based forces they would join for military operations in crisis or war.

This lack of an appropriate joint headquarters to oversee Service forces based in the Continental Unites States (CONUS) has always been considered a problem, and the Joint Chiefs of Staff have twice tried to fix it. US Strike Command (USSTRICOM) was activated in 1961 to provide unified control over CONUS-based Army and Air Force units. Initially, STRICOM was given no regional responsibilities but was assigned functional responsibilities to provide a general reserve for reinforcement of other unified commands, train assigned forces, develop joint doctrine, and plan for and execute contingency operations as ordered. Later, STRICOM was given geographic planning responsibility for the Middle East, South Asia, and Africa south of the Sahara. In attempting to fulfill its functional responsibilities as a trainer and provider of forces, STRICOM frequently collided with the Services' authority under Title X to organize, train, and equip forces.

In 1971, STRICOM was replaced by US Readiness Command (USREDCOM), whose mission was what STRICOM's had been originally: functional responsibility for training and providing forces, with no geographic area of responsibility. REDCOM experienced some of the same Service resistance as its predecessor in fulfilling its assigned training responsibilities.

Over time, REDCOM was given additional functional responsibilities, including a requirement to plan for and provide Joint Task Force headquarters and forces for contingency operations in areas not assigned to overseas CINCs. What began as the Rapid Deployment Joint Task Force (RDJTF) eventually grew into a new combatant command, US Central Command (CENTCOM). The Goldwater-Nichols Act of 1986 directed that REDCOM's missions and functions be reviewed in light of

CENTCOM's creation. REDCOM was subsequently disestablished as the result of a combination of factors, not least of which was that our strategy depended more on forward deployment and basing than on CONUS-based forces to contain Soviet expansion.

Today our strategy has changed, and we've reached a level of joint maturity that makes it possible to address once more the need for unified command over designated CONUS-based forces. As our forward presence declines, it is more important than ever that our forces be trained to operate jointly -- not just for occasional exercises, but as a way of life. Our new strategy demands forces that are highly skilled, rapidly deliverable, and fully capable of operating effectively as a joint team immediately upon arrival.

A joint headquarters would facilitate the identification, training, preparation, and rapid response of designated CONUS-based forces currently under the Army's Forces Command (FORSCOM), the Navy's Atlantic Fleet (LANTFLT), the Air Force's Air Combat Command (ACC), and the Marine Corps' Marine Forces Atlantic (MARFORLANT). The time has come to merge these forces into a combatant command whose principal purpose will be to ensure the joint training and joint readiness of our response forces. With force packages already accustomed to operating jointly, their deployment will be expedited. Overseas CINCs will be able to focus more on in-theater operations and less on deployment and readiness concerns.

In addition to developing joint force packages for overseas CINCs, this new combatant command could also be assigned certain other functional responsibilities, including:

- Undertaking principal responsibility for support to United Nations peacekeeping operations and training units for that purpose.
- Assisting with the response to natural disasters in the United States and other requirements for military support to civil authorities when requested by State Governors and as directed by the President.
- Planning for the land defense of CONUS.
- Improving joint tactics, techniques, and procedures.
- Recommending and testing joint doctrine.

After several approaches to constituting the required joint headquarters were examined, the conclusion was that US Atlantic Command (USLANTCOM) is particularly well suited to assume this new mission:

- It is an existing CONUS-based joint headquarters.
- It already has a component relationship with FORSCOM, LANTFLT, ACC, and

MARFORLANT.

- Its Cold War mission, to defend the Atlantic sea lanes and undertake offensive naval operations against the Soviet Union, has fundamentally changed. While continuing to perform a vital NATO mission, it has the capacity to undertake this additional responsibility in keeping with the revised military strategy.
- Its geographic AOR, although large, presents only a modest warfighting challenge. The command can probably handle additional functional responsibilities.

The Commander in Chief of LANTCOM (CINCLANT) also has NATO responsibilities in his dual role as Supreme Allied Commander Atlantic (SACLANT). Given responsibility for integrating joint force packages, LANTCOM would be better able to tailor forces to reinforce our European presence under any contingency that might arise.

Under this recommendation, LANTCOM would shift from a predominantly naval headquarters to a more balanced combatant command headquarters and might be renamed to reflect more fully its new focus. Its Commander in Chief would become a nominative position which could be filled by any Service.

The Army's FORSCOM would no longer require "specified" status as a single-Service command reporting directly to the President and Secretary of Defense. With this change, the term "specified" would be retired, and all forces would belong to a joint team. The Services would retain their Title X responsibilities, but training and deploying designated CONUS-based forces as a joint team would be the mission of this expanded CINC. Unification of the Armed Forces, which began in 1947, would at last be complete.

RECOMMENDATION: CONUS-based forces of FORSCOM, LANTFLT, ACC, and MARFORLANT should be combined into one joint command. LANTCOM will be responsible for: joint training, force packaging, and facilitating deployments during crises; supporting UN peacekeeping operations; and providing assistance during natural disasters.

Space

Since the 1950s, the United States has developed a highly capable and complex infrastructure for the launch and control of space vehicles and systems. The Army, Navy, and Air Force have all been involved in various aspects of the national space program. Air Force ICBM programs provided a number of the nation's early space launch vehicles, while the Army actively developed rocket motors and anti-ballistic missiles and the Navy orbited geophysical

and navigational satellites.

This broad-based Service involvement in space programs was largely a result of the urgency of the effort – the Soviet Union's launching of Sputnik in 1957 during the height of the Cold War threatened long-term Soviet dominance in space. In response, the United States brought together the capabilities of its military Services and other agencies and the US space program was able to move rapidly forward in the 1950s and 1960s, achieving dramatic advances in communications, intelligence gathering, and space exploration.

Although the majority of space functions today reside within the Air Force, all the Services, plus US Space Command and several Defense agencies and organizations, are involved in space activities, including research and development, acquisition, testing, training, and operations. USSPACECOM, headquartered in Colorado Springs, Colorado, is assigned combatant command of US forces providing warning and assessment of a bomber or missile attack on the United States. In addition, CINCSPACE supports other CINCs by ensuring that space operations and warning requirements are supported.

CINCSPACE is also Commander of the North American Aerospace Defense Command (NORAD), the US-Canadian command that provides air defense of the North American continent. CINCSPACE carries out his mission through three Service component commands: Air Force Space Command at Petersen Air Force Base, Colorado Springs, Colorado; Naval Space Command at Dahlgren, Virginia; and Army Space Command at Colorado Springs, Colorado.

Even with the Cold War over, our national security depends on a robust space capability. But we can no longer afford to allow multiple organizations to be involved in similar, independent space roles and functions.

A number of improvements are underway to streamline space organization and systems and eliminate unnecessary overlap. CINCSPACE recently consolidated selected SPACECOM, NORAD, and Air Force Space Command (AFSPACECOM) staff functions, and combined their operations centers. National system program offices, the Strategic Defense Initiative Organization (SDIO) and the Defense Advanced Research Projects Agency (DARPA), are working on a program to exchange information on various technology developments. The newest national space satellite system will consolidate two existing systems, permitting the closure of six ground stations and consolidation of operations at one site. Other near-term consolidations include combining existing space surveillance and space defense operations centers into a single control center at SPACECOM.

Organizationally, the Joint Chiefs of Staff agreed in 1991 to "dual hat" CINCSPACE as Commander, AFSPACECOM, which led to a reduction in personnel and support costs. However, it is time for an even bolder change to be evaluated: assignment of the space mission to STRATCOM and elimination of SPACECOM. As this concept is studied, several important issues must be addressed.

Under this proposal, after appropriate consultation with the Canadians, the Commander of AFSPACECOM would assume command of NORAD in Colorado Springs. AFSPACECOM would also operate all space systems under CINCSTRAT's command. Small Army and Navy components would be assigned to CINCSTRAT and would be represented in space program offices to ensure space systems were developed to support all Services' needs. Personnel from all Services would also be assigned to a Joint Space Planning Staff within STRATCOM. Under this plan, the Air Force would be responsible for development of future military space systems. Such an organization would ensure Service-unique requirements for, and uses of, space were properly represented and that Services and CINCs had trained personnel with the knowledge to fully exploit the capabilities of space systems.

Other changes would include designating the Air Force as the lead Service to coordinate with NASA on LANDSAT remote earth sensing operations, and consolidating DOD's functions at NASA into a single organization under AFSPACECOM. To streamline military satellite communications operations, all operational responsibilities for the Defense Satellite Communications System (DSCS) will transfer from the Defense Information Systems Agency to the Air Force. Responsibilities for the Navy's Fleet Satellite Communications (FLTSATCOM) system will also transfer to the Air Force. Both DSCS and FLTSATCOM will remain under the combatant command of CINCSTRAT.

Under this proposed arrangement, requirements for space systems would continue to be submitted by the CINCs, Services, or agencies to the JROC for validation. Day-to-day requirements for operational space system support would be submitted to CINCSTRAT.

Such a consolidation would conserve resources and eliminate a substantial number of positions. In addition, it could improve warfighting support from space, allowing an increase in operational effectiveness, efficiency, and interoperability while maintaining joint Service expertise and joint operational focus.

RECOMMENDATION: A review will be conducted to determine if the space mission should be assigned to STRATCOM, and if USSPACECOM should be eliminated.

DEPOT MAINTENANCE CONSOLIDATION

Most equipment purchased and operated by the Department of Defense requires maintenance throughout its useful life. The required maintenance may be as simple as a routine oil change. The most complex work involving overhauls; the complete rebuild of parts, assemblies or subassemblies for weapons systems and their components; and other jobs beyond the technical ability of individual units is the responsibility of each Service's depot maintenance system. Depot maintenance is a vast undertaking, employing about 130,000 civilians and 2,000 military personnel at 30 major facilities. The Services collectively spend about $13 billion a year to rebuild, refit, and maintain over 700,000 different major items of equipment.

Four separate systems have been sized and organized to meet four Services' needs in a global war, each largely independent of other Services' capabilities. With the shift in strategic focus to regional conflicts of shorter expected duration, and the accompanying reduction in the size of our military forces, the collective DOD depot maintenance system can be reduced and restructured. Significant savings are possible by eliminating excess capacity, and duplicate capability and investments.

In September 1992, the Chairman of the Joint Chiefs of Staff chartered a special group, consisting of retired senior officers from each Service and a senior representative from industry, to study the depot maintenance system and identify the best way to scale down excess capacity and reduce costs without degrading the ability to meet current or future peacetime and wartime needs.

The study concluded that:

- The current DOD depot management structure has not substantially reduced capabilities or capacity. There is currently 25 to 50 % more depot capacity than will be needed in the future.
- Unnecessary duplication exists throughout the individual Service depots, especially when viewed across Service boundaries.
- Closure of seven or eight of the thirty military depots is the first step in reducing excess capacity and substantially reducing long-term costs.
- The most effective way to close depots is through the overall DOD effort to close or consolidate excess military bases and facilities, a process overseen by the Base Realignment and Closure (BRAC) Commission.

Closure of depots involves substantial upfront expenses, but if the study proposals are implemented, savings of $400M to $600M per year are achievable when all eight depots are closed.

The study group also identified three options for consolidating management of depot maintenance: designation of a Service executive agent for each major commodity, consolidation of all depot maintenance activities under a single Defense Management Agency, or creation of a Joint Depot Maintenance Command to oversee and administer all depot-level maintenance. It was the study group's view that a Joint Depot Maintenance Command, with the full authority to organize current depots as approved by the Joint Chiefs of Staff, would produce the greatest opportunities for efficiency and matching depot capacity with future requirements.

The Chairman of the Joint Chiefs of Staff forwarded this recommendation to the Secretary of Defense. As a result, the Services were directed to prepare integrated assessments outlining their recommendations for depot closures and management consolidations in time for the BRAC Commission's deliberations which will occur early in 1993. Still under review is the group's recommendation to create a Joint Depot Maintenance Command.

The concept contained within the study group's recommendation could have broader applications. Currently, there are a number of combat support agencies, such as the Defense Information Systems Agency and Defense Nuclear Agency, that are subject to the direction and control of civilian officials within the Office of the Secretary of Defense but retain, under Title X, a principal task of providing operational support to the warfighting CINCs.

A case can be made that some of these combat support agencies, which are so vital to our warfighting needs, would work more effectively and efficiently as joint commands supervised by the Chairman of the Joint Chiefs of Staff and the Joint Staff. For example, the Defense Information Systems Agency could become a Joint Information Systems Command. This concept will be explored in more depth in the next report to Congress on combat support agencies due in 1993.

RECOMMENDATION: Consider establishing a Joint Depot Maintenance Command to reduce and restructure depot-level maintenance by 25-50%. Examine closing 7 or 8 of the 30 military depots which could achieve savings of $400M to $600M per year after these depots are closed. Services recommend depot closures and consolidations to the Base Realignment and Closure Commission.

AMERICA'S AIR POWER

Aviation has been an important part of America's military capabilities almost from the moment the Wright Brothers first achieved manned flight. Initially employed as a military instrument in World War I, by that war's end in 1918 aircraft were already being used both to support troops engaged in battle and to attack enemy targets in rear areas.

Between the wars, innovative thinkers in the Army began developing more advanced theories on the use of the airplane to attack enemy strategic and tactical targets. The Marine Corps refined its use of air power, and the Marines' combined air-ground team was born. Meanwhile, in the Navy a group of officers was arguing that naval aviation and carriers should supplant the battleship as the Navy's primary offensive arm. As a result of these and other efforts, by the time Pearl Harbor was attacked in December 1941, America had two forces built around the airplane -- the Army Air Corps and Navy-Marine Corps aviation.

Both proved indispensable to victory in World War II. The Army Air Corps assured our return to Europe and assisted in the breakout from the Normandy beaches. In the Pacific, the Navy's fast attack carriers helped win the war at sea and joined Marine Corps aviation and Army Air Corps units in supporting the arduous island-hopping campaign from ground air bases. By war's end, the effectiveness of strategic bombing and the advent of the atomic bomb made air power a front runner in the nuclear age.

After the war, the Navy invested in longer-range aircraft and larger aircraft carriers to provide world-wide range and nuclear capability from the sea. With the proven success of strategic and tactical air power and the development of the intercontinental-range bomber, the Air Force was established by Congress and took its place alongside the other Services in fulfilling the vital role of global strategic deterrence.

Shaped and broadened by dramatic technological advances, the importance of aviation expanded as the helicopter came of age. The American military first used the helicopter in Korea, both to get the wounded safely to treatment and to move small numbers of troops. Later, during the war in Vietnam, the Army and Marines significantly enhanced their combat flexibility as gunships and troop-carrying helicopters were integrated into airmobile units of up to division size.

During the Cold War, our technological superiority and the demonstrated quality of America's air power, both land and sea based, contributed immeasurably to effective nuclear deterrence. And had we been forced to defend against a conventional attack by numerically superior Warsaw Pact forces, our air power would have been key to the outcome.

The Services adapted aviation technology to their quite different warfighting domains, and in the process gave their fighting units the lethality, mobility, and sustainability necessary for the evolving nature of the modern battlefield. Today, the fact that all have airplanes and helicopters causes some to argue that America has "Four Air Forces," implying we have three more than we need. In fact, America has only one air force, the United States Air Force whose role is prompt and sustained offensive and defensive air operations. The other Services have aviation arms essential to their specific roles and functions but which also work jointly to project America's air power.

With its global reach and global power, the Air Force brings speed, range, and precise lethality to any planning equation. Our Navy and Marine Corps air bring power from the sea, providing ready, visible, lethal, sustainable, and responsive presence worldwide, unconstrained by the politics of access ashore. The aviation elements of Army and Marine Corps forces are an integral part of the unmatched mobility and lethality that figured so prominently in the success of our ground operations during Operation DESERT STORM and that characterize America's modern ground maneuver forces. America's air power makes the prospect of conflict a sobering consideration for any who would consider opposing us.

So while some argue that we have four air forces, in reality each is different, playing a unique but complementary role. Together, the aviation elements of the four Services constitute "America's Air Power." It is a potent combination, proven over and over in combat. It has been developed over the years through the cooperation and the far-ranging vision of the Department of Defense, the Services, and the Congress of the United States. By creating the US Air Force, codifying Marine Corps Tactical Air in law, and supporting carrier aviation and Army helicopter programs, Congress bestowed on America's fighting men and women a force that has paid for itself repeatedly. Any American who has ever faced an armed enemy is grateful for the robust capability we possess.

America's air power offers the nation tremendous flexibility in peace, during crises, and in war. However, in this period of changing threats and declining resources, the aviation force structure that was planned in years past must be reevaluated. Recognizing that the acquisition plan for major aviation programs requires more resources than will likely be available, a review was conducted to determine if some air missions could be reduced or deleted; if existing aircraft, such as strategic bombers, could also perform other assignments; and if certain missions, performed by more than one Service, could be combined.

While America's air power has made a magnificent contribution to our nation's security, we recognize that it will be smaller in the future. The Services, in reducing the types and numbers of aircraft, will emphasize only those programs which contribute the most to satisfying the national mandate for a decisive fighting force in the air at a minimum burden to the American taxpayer. With the necessary reductions in aircraft inventory, there are now also opportunities to make reductions in support systems, such as training, maintenance, and testing.

The following recommendations on shaping America's air power for the future reflect the realities of a new security environment, exploit opportunities offered by advancing technology, and preserve required capabilities. These recommendations cover broad areas of direct warfighting concern, such as continental air defense, close air support, and airborne command and control. They also address supporting capabilities such as flight training and inventory management.

Continental Air Defense

The air defense of the North American Continent is the responsibility of the North American Aerospace Defense Command (NORAD), a US-Canadian military organization whose mission is to control sovereign airspace, provide warning, and respond as required to enemy air or missile attack.

A dedicated force of more than 180 aircraft in twelve Air National Guard squadrons currently performs this NORAD mission. These F-15 and F-16 interceptor aircraft operate from 14 bases nationwide.

The mission emerged during the Cold War, and the force was sized to intercept the Soviet Union's long-range bomber force if it attacked from over the North Pole. Over the past several decades, the interceptor force has maintained a 24-hour-a-day vigil, which it continues to this day, superbly defending America against any potential threat from enemy aircraft. Now that the threat has largely disappeared, we simply no longer need such a large, dedicated continental air defense force.

Significant savings in manpower and operating costs can be achieved by eliminating or sharply reducing dedicated air defense forces and taking a new approach to the mission. Already, approximately 30 squadrons of general purpose fighters are leaving the Air Force due to the decreasing threat. In light of the US-Soviet agreement

to take long-range strategic bombers off alert and the reductions called for in the START I and II treaties, it is now possible to go further. General purpose and training forces from the Active and Reserve components of the Services can absorb today's continental air defense mission, perhaps in its entirety. Flying from approximately 60 air bases in the continental US (CONUS) and Alaska, intercept-capable aircraft can cover NORAD's 14 alert sites spread throughout the United States. This will provide an ample force for the day-to-day air sovereignty mission.

As part of the next budget deliberations, we will determine how best to implement this recommendation. The actual savings resulting from this initiative will depend on the disposition of affected units and bases. Options range from inactivating units dedicated to continental air defense to reassigning them to another part of the Air Force.

This recommendation encompasses a major change in the way we perform the important mission of providing for the nation's defense and air sovereignty. It recognizes and responds to changes in the threat in a way that exploits existing capabilities, yet reduces costs.

RECOMMENDATION: Eliminate or sharply reduce the force dedicated to this mission. Assign to existing Air Force, Navy, and Marine Corps general purpose and training squadrons.

Theater Air Interdiction

The US relies on land- and sea-based attack aircraft, long-range bombers, cruise missiles, and surface-to-surface missiles to conduct interdiction. Theater air interdiction (TAI) describes offensive aerial actions intended to attack enemy forces deep within their own territory before they can engage our forces. This section will address the attack aircraft and bomber portions of our TAI force. Attack aircraft are multi-mission and contribute high sortie rates and tactical agility to TAI as well as other mission areas. Coming from both land and sea, they complicate an enemy's air defense planning. Long-range bombers offer large payload and global reach. Both types of aircraft can carry a wide variety of weapons. Our forces are deliberately structured to overwhelm an adversary from all directions, day and night, ensuring decisive victory while minimizing our own losses. Responsive, effective air interdiction is a "must have" for America and its allies.

A number of factors can improve the effectiveness of TAI.

- First, deploying forces forward substantially reduces the cost of theater air interdiction.
- Second, "stealth" aircraft are essential to destroy critical, highly defended targets early in a conflict. An adequate force with stealth capabilities allows a smaller number of aircraft to attain a much

higher probability of mission success, with fewer losses.

- Third, advanced precision guided munitions (PGMs) have a dramatic impact on interdiction effectiveness. The number of aircraft required to achieve mission objectives increases markedly when adequate PGM inventories are not available.

- Finally, bombers with upgraded conventional systems offer advantages and capabilities that could reduce attack aircraft requirements in certain conflict scenarios.

There are a number of observations that have been made concerning the composition of the theater air interdiction force.

- Strategic bombers, previously dedicated to Cold War nuclear missions, are now available to support theater air interdiction operations.

- The long-range bomber force should be capable of delivering advanced conventional precision-guided munitions (PGMs).

- Bombers can be especially effective in the early days of a short-notice conflict where deployment of CONUS-based attack aircraft has yet to occur. In such cases, bombers can reduce aircraft requirements. In operations such as DESERT SHIELD/STORM, where adequate buildup of attack aircraft occurred prior to the commencement of hostilities, bombers may not be as critical to the TAI effort.

- Basing makes a critical difference. Sufficient numbers of land- and sea-based bomber and attack aircraft need to be forward-deployed or rapidly deployable to provide a quick response to short-notice crises.

- Stealth reduces aircraft losses. As these high technology aircraft are procured, a smaller total number of bombers and attack aircraft are required. Stealth also increases the likelihood of destroying critical targets during the early days of conflict when enemy air defenses are intact.

- PGMs reduce losses, and their remarkable accuracy drives down the number of aircraft required to achieve damage objectives during interdiction operations.

Theater air interdiction should continue to be carried out using a mix of bombers and attack aircraft and modernizing current systems or replacing them as necessary. The capability and survivability of attack aircraft should be improved through upgrades to sensors and weapons delivery systems. The bomber force should be modified to give it a more effective conventional capability for the air interdiction task. All manned aircraft would also benefit from more PGMs. In the determination of total aircraft required for

theater air interdiction, it is necessary to consider the contributions of both bombers and attack aircraft.

RECOMMENDATION: Sufficient numbers of land- and sea- based bombers and attack aircraft need to be forward-deployed or rapidly deployable to provide quick response to short-notice crises. Strategic bombers, previously dedicated to Cold War nuclear missions, are now available to support TAI. Therefore, in the determination of total aircraft required for TAI, it is necessary to consider the contributions of both bombers and attack aircraft.

Close Air Support

Perhaps no aspect of roles and missions has spawned more debate since the Key West Agreement than the question of close air support (CAS). Close air support, according to the definition agreed to among the Services at Key West, is "Air action against hostile targets which are in close proximity to friendly forces and which require detailed integration of each air mission with the fire and movement of those forces."

The most recent review of close air support reached many of the same conclusions as the 1989 Chairman's report on roles and missions. Of primary importance is the need to keep the issue of who provides CAS separate from which type of aircraft will perform the function.

As this review proceeded, it also became clear that close air support must be the business of all the Armed Forces -- all of America's aviation elements can and must be prepared to support troops on the ground. With these thoughts in mind, and with the intention of clarifying responsibilities and ending unproductive controversy, several changes are proposed.

When the Key West Agreement was signed, attack helicopters didn't exist; the CAS definition therefore applied only to fixed-wing aircraft, and it has always been so construed. Today's highly capable attack helicopters can provide timely and accurate fire support to ground troops engaged in battle, as they did in DESERT STORM.

While this robust capability in fact adds to the close air support fight, it has never been recognized in the CAS definition and is therefore not embedded in Service doctrine. By updating the definition of CAS in a way that captures all modern capabilities, a foundation for necessary doctrinal changes can be established. Basic joint publications will be changed to reflect this expanded definition and appropriate changes in Service doctrine will follow.

These doctrinal adjustments will ensure that CAS is available to ground commanders when needed, while allowing the theater commander the flexibility to employ the best platform for the mission theater-wide. The

integration of fixed-wing aircraft and helicopters for CAS will allow commanders at all levels to take advantage of the distinctly different, but complementary, capabilities of each type of platform. Each Service will be assigned a primary function for CAS, but will specialize in the type for which it is currently structured. To effect this change, recommend Service functions be realigned as follows:

- Air Force -- Primary: Provide fixed-wing CAS to the Army and other forces as directed. Collateral: Provide fixed-wing CAS to amphibious operations.
- Navy -- Primary: Provide fixed-wing CAS for the conduct of naval campaigns and amphibious operations. Collateral: Provide fixed-wing CAS for other land operations.
- Marine Corps -- Primary: Provide fixed- and rotary-wing CAS for the conduct of naval campaigns and amphibious operations. Collateral: Provide fixed- and rotary-wing CAS for other land operations.
- Army -- Primary: Provide rotary-wing CAS for land operations. Collateral: Provide rotary-wing CAS to naval campaigns and amphibious operations.

To get the most out of CAS-capable fixed-wing aircraft and helicopters, CAS procedures at the tactical level need to be standardized. Existing procedures for requesting and controlling CAS are predominantly Service-specialized. The command and control systems and associated terminology also vary greatly across Service and CINC lines. These procedural differences, spread throughout the command and control system, magnify doctrinal differences and contribute to misunderstandings about Service commitments to, and effectiveness of, CAS.

It is essential that CAS capable aircraft be fully incorporated into joint operations. To ensure uniformity of execution, a standardized, joint procedural and control system is being developed. An executive agent will be designated to create a centralized training program for all officer and enlisted specialists charged by Service doctrine with integration of all fire support, including CAS, naval gunfire, and artillery.

With these changes in doctrine, procedures and training, CAS issues will no longer center around which Service stands to gain or lose the most, or the doctrinal implications of changes to traditional roles, missions, and functions. Only one issue really counts, and that is how to ensure that American troops, locked in combat with the enemy, get all the fire support they need.

RECOMMENDATION: Include attack helicopters as CAS assets and realign and clarify functions and doctrine to include CAS as a primary mission area for all Services.

Marine Corps Tactical Air

Marine fixed-wing combat aircraft are an integral element of the MAGTF and perform four tasks: offensive air support, anti-air warfare, electronic warfare, and reconnaissance -- all of which have as their primary purpose the support and protection of Marines on the ground, whether independently or as part of a joint force. Marines train and fight as a combined arms air-ground team and rely heavily on the support these aircraft provide. In an expeditionary operation, once airfields are established ashore, most of the Marines' supporting firepower is provided by Marine Air. This "airborne artillery" provides critical firepower to the ground commander, giving him a powerful force multiplier in combat operations.

Support of Marines and other forces ashore is often only available from carrier-based air power. Marine aircraft are carrier-capable and share with Navy aircraft a common procurement system and common maintenance training. Additionally, Marine fixed-wing combat aircraft have been designed to allow them to operate from austere expeditionary sites in situations where Air Force units lack the required base infrastructure, where adequate sea-based support is unavailable, or where the combination of Navy and Marine combat air can increase the sortie rate for aircraft supporting ground forces.

Like other elements of "America's Air Power," Marine aviation is restructuring to meet the needs of the future. The fixed-wing aircraft inventory will drop from nine types of aircraft to four, simplifying maintenance and support. The number of F/A-18 squadrons is being reduced, and the number of AV-8Bs is being reduced by a quarter. These changes alone will result in significant savings in force structure, equipment, and operating costs.

Beyond reducing manpower and equipment, greater emphasis will be placed on joint and combined operations and on further developing capabilities required in the complex operating environment of the "littoral" or coastal regions. While the Marine Corps will retain its unique capability to operate from the sea and from austere sites ashore, and will continue to provide the primary aviation combat element of its combined arms team, Marine Corps squadrons will deploy more frequently aboard Navy ships. Navy squadrons will sharpen their focus on littoral warfare and tailor their force structure more toward power projection and the support of forces ashore.

The Marine Corps has always been at the forefront in integrating ground and air elements into an effective fighting force. The unique structure of the Marine Corps is an essential element of the National Military Strategy.

RECOMMENDATION: Marine Corps tactical aircraft are an integral part of the Marine air-ground team and should not be eliminated. Marine Corps aircraft will be reduced from nine to four aircraft types and deploy more frequently aboard aircraft carriers.

Flight Training

During the Cold War, America's national security requirements led to the development of several organizations to train flight crews for the four military Services and the Coast Guard. While some reduction of these training organizations has already occurred, significant capacity still exists beyond what is needed for the years ahead.

Reductions in excess capacity can be achieved when training is combined or consolidated, which is practical when Services can use the same type of aircraft in similar phases of training. Such consolidation reduces costs through use of common maintenance and training facilities, and management organizations. The advent of new training aircraft and helicopters to be used by all Services, together with planned reductions in pilot training requirements, means we now have an opportunity to consolidate our flight training programs further.

Currently the Army, Navy, and Air Force each operate their own initial or undergraduate flight training program using 12 bases and various types of aircraft. Because of commonality inherent in certain portions of this training, some consolidation has already taken place. Two Services (Navy and Air Force) provide all fixed-wing aircraft pilot and navigator training, and two Services (Army and Navy) provide all helicopter training. Two training bases, one Navy and one Air Force, were closed in 1992.

Flight training is divided into two major phases, an introductory or primary phase that teaches basic skills and an advanced phase that integrates these skills and introduces the student pilot to military flying techniques. For the primary phase, training goals are similar for all Services. To take advantage of this commonality of purpose, all Air Force, Navy, Marine Corps, and Coast Guard flight students will begin training using a common fixed-wing training aircraft that is being jointly developed. At a specified point, pilots will be selected for Service advanced training in one of four specific follow-on specialties or "tracks": Navy Fighter/Attack, Air Force Fighter/Bomber, Navy and Air Force Tanker/Transport/Maritime Patrol, or Helicopter. While the 1991 Joint Interservice Training Review Organization (ITRO) report provided analysis that helicopter training consolidation would not

provide cost savings, a workable alternative may be to provide a common helicopter for basic helicopter training for all services. Continued study is warranted for both consolidation of helicopter training and development of a common training helicopter.

This initiative will reduce costs by combining flight training at the minimum number of installations and by reducing the types of aircraft flown. Training advantages and cost reductions will be gained when all activities are collocated, while still affording the Services a means for selecting students for advanced flying tracks and teaching Service-unique skills such as shipboard landings.

The objective is to have this training consolidation plan fully implemented by the year 2000. Near-term objectives are as follows:

- A joint Service team will meet in early 1993 to plan this transition and determine both costs and savings. This team will also oversee the development of training curricula to support consolidation.
- Beginning in 1993, flight instructors from the Services will be exchanged to provide first-hand experience and identify factors that may impact training consolidation. A limited student exchange will follow after training curricula have been developed and implemented.
- Tanker/Transport/Maritime Patrol training consolidation is expected to begin in 1994 at Reese Air Force Base, Texas after transition planning is completed by the Joint Service team. Eventually, Navy students selected for Maritime Patrol training will complete their entire undergraduate training at one location.
- By the end of 1994, the Navy and Air Force will have developed joint primary training squadrons at two locations. If it is cost effective, Navy, Marine Corps, and Coast Guard helicopter training will be moved from Pensacola to Fort Rucker.

With these steps, quality flight crews will be trained at reduced cost. Further initiatives, beyond those outlined above, may also be possible.

Since curricula of the two existing test pilot schools are similar, the Services will also explore the possibility of joint test pilot training at a single location. Costs to operate this program might be reduced through collocation of training assets and consolidation of selected parts of the academic and flying programs.

By altering the traditional approach to those portions of flight training where the Services share similar goals, and by undertaking sensible changes in this area, the high quality of "America's Air Power" will be sustained at reduced cost to the American

taxpayer.

RECOMMENDATION: Consolidate Navy, Marine Corps, Air Force, and Coast Guard initial fixed-wing training, and transition such training to a common primary training aircraft. Consolidate follow-on flight training into four training pipelines. (Navy Fighter/Attack, Air Force Fighter/Bomber, Navy and Air Force Tanker/Transport/Maritime Patrol, or Helicopter). Determine if it saves money to move Navy, Marine Corps, and Coast Guard helicopter training from Pensacola, Florida to Fort Rucker, Alabama.

Aircraft Requirements and Inventory Management

All together, the Services have more than 24,000 fixed-wing aircraft and helicopters of various types in their inventories. Over the years, aircraft inventories grew with expanding force structure and increased budgets in response to the threat from a Soviet military machine bent on both quantitative and qualitative advantage. Each Service defined its aircraft requirements and calculated inventory using its own methodology, terminology, and philosophy. Now, confronted with a much different world, Service requirements for primary mission aircraft as well as support aircraft for backup, attrition, testing, and training are inconsistent, outdated, and in need of revision.

Two examples show why a new system is needed to better measure existing inventories against the requirements of our new military strategy. In procuring F-16 aircraft during the 1980s, the Air Force developed its requirements based on an expanding force structure and included estimates for attrition losses over the F-16's entire life cycle. By basing production on these estimates, the Air Force was able to lower the average "per unit" cost for the F-16, both for itself and for potential foreign buyers. However, with force structure coming down and with attrition rates lower than predicted, the Air Force finds itself with more F-16s than its force structure requires. Congress has contributed to this excess by continuing to fund F-16 production in recent defense budgets at rates beyond that which was requested. Operations and maintenance funds are based on a squadron's authorized aircraft. The Air Force maintains aircraft above a squadron's authorized level on the flight line as "attrition reserve" aircraft. Attrition reserve is a category that is not related to expected attrition and one which none of the other Services use. Keeping this large reserve of aircraft undercuts the logistics system because, when an F-16 breaks down, it is easier to simply substitute another aircraft than to procure spare parts and do repairs at the squadron or wing level.

Another example is the Army's AH-1/AH-64 program, where "ground maintenance" aircraft are kept in the active inventory even though these aircraft are incapable of flying. The total number of flyable aircraft, therefore, is less than perceived.

An assessment was conducted to determine cost savings achievable through the use of updated DOD terminology and inventory definitions. The conclusion was that with common definitions among the Services for support and backup categories of aircraft, we could more clearly define primary aircraft requirements and ensure that funds were not spent on maintenance or modification of unnecessary aircraft.

The Services are committed to developing such standard terminology and inventory definitions. To this end, an implementation plan will be developed, and the common methodologies will be used in upcoming budget, force structure, and acquisition management activities.

Adopting a standardized aircraft inventory system carries with it several problems. First, we may discover that on-hand quantities of certain aircraft types exceed current requirements, forcing us to place aircraft in storage and/or cease ongoing production. Storage and reclamation programs could require additional manpower and operating funds. Ceasing production of particular aircraft has implications for the health of the defense industrial base and for America's ability to compete in foreign markets. Second, changes in inventory could require more repair parts at unit level and change the way each Service's maintenance structure is organized.

Despite these cautions, standardizing DOD aircraft terminology and inventory definitions is a necessary step that will enable the Services to more accurately measure existing inventories against requirements.

RECOMMENDATION: Aircraft inventory terminology should be standardized. Common definitions among Services for all categories of aircraft will assure consistent rationale for requirements and ensure procurement and maintenance funds are only spent on necessary aircraft. This standardized approach will provide consistency in the number of airframes procured.

CONSOLIDATING COMMON AIRCRAFT

Throughout the Cold War period, the Services purchased a wide variety of aircraft designed to meet their requirements. In some cases the same, or very similar, aircraft were purchased by more than one Service because of an established requirement for the capability that aircraft type could provide.

We have carefully examined these aircraft common to more than one Service looking for ways to consolidate operations, maintenance, and training to save funds or do business more efficiently while preserving each Service's ability to perform its required functions. The results of these studies and recommendations for consolidation of common aircraft are presented in the section that follows.

Airborne Command and Control

The airborne command and control fleet of our strategic nuclear forces has long been one of the most visible symbols of the Cold War. These aircraft, with their battle staffs and sophisticated communications equipment, were for years regarded as part of the ultimate "doomsday machine" whose primary mission was to initiate the launch of a retaliatory nuclear strike. At the height of the Cold War, the Air Force operated a fleet of 39 airborne command post (ABNCP) EC-135 aircraft, specially-configured for control of the bomber and intercontinental ballistic missile legs of the strategic triad. The Navy had a similar fleet of specially-modified C-130 aircraft to relay launch commands to our fleet of ballistic missile submarines. These C-130s were commonly known as "TACAMO" aircraft, short for "Take Charge and Move Out."

Over the past two years, the Air Force has more than halved its ABNCP force structure. Currently, only 11 EC-135s support the command, control, and communications needs of the Commander in Chief of Strategic Command (CINCSTRAT). The Navy's C-130 TACAMO fleet has been retired, replaced by 16 modern E-6As.

A review of possible further force structure reductions in this area concluded that a total consolidation of Air Force and Navy functions is possible and appropriate. The Navy's E-6A has been chosen as the common airframe due to its extended service life, ability to accommodate a battle staff, and capacity to handle the communications upgrades required to provide command and control of all three legs of the strategic triad. Funds required for modification of the E-6A will be provided by retiring the Air Force's EC-135 and canceling programmed upgrades. The engineering phase of this modification program is currently underway.

This new joint-Service ABNCP will have all the capabilities of two airframes for the price of one. Current plans call for a joint battle staff to augment the Navy TACAMO crews on STRATCOM missions. This manning scheme promotes efficiency in aircrew training while preserving the essential jointness of the command, control, and communications element supporting CINCSTRAT and component commanders.

RECOMMENDATION: Consolidate the Navy and Air Force aircraft and functions into the Navy's E-6A program. The Air Force EC-135 program will be eliminated and cancellation of its planned upgrades will fund transition into the E-6A.

Combat Search and Rescue (CSAR)

Finding and rescuing downed flight crews or other forces trapped behind enemy lines is a task of the greatest importance. Our CSAR capability has improved substantially over the past several decades as helicopters became more capable and the Armed Forces began to use this newly-acquired vertical lift capability to rescue downed aircrews where extraction by other means was not possible.

First employed during the Korean War, helicopter rescue operations expanded in capability and complexity in Vietnam. Land- and sea-based helicopters, escorted by fighters and other support aircraft, recovered downed aircrews throughout the combat zone, in many cases snatching them away from certain capture. The importance of CSAR operations justified the formation of dedicated units trained and equipped for the task. Despite the success of this approach, after the war ended, dedicated CSAR units were absorbed by other tasks and virtually disappeared from the military force structure.

CSAR tasks were then taken up as a collateral function by the individual Services. The Air Force modernized its Air Rescue Service forces, but looked to its special operations aviation assets for CSAR. The Navy employed its anti-submarine warfare helicopter and carrier-based assets to conduct both peacetime and combat search and rescue. The Army and Marine Corps relied on their existing aviation forces to perform CSAR, as did the newly-formed Special Operations Command (SOCOM), which has specially modified helicopters and fixed-wing aircraft capable of covert or longer-range CSAR operations.

Combat search and rescue procedures have not kept up with joint operational doctrine as each Service independently developed its CSAR program. During the Persian Gulf war a CSAR capability was pieced together to meet battlefield requirements.

The remedy for these shortfalls is to develop and train joint CSAR forces using the highly capable equipment the Services have today or are programmed to buy.

CSAR capabilities will be created on the basis of each Service's structure, with land-based and sea-based elements organized, trained, and equipped to work individually or together, in accordance with joint doctrine, employing standardized joint tactics, techniques, and procedures. These forces will be tied together in wartime by a Joint Rescue Center that will control and coordinate the forces needed to meet the joint force commander's CSAR needs.

Implementation has already begun. A series of joint CSAR tactical exercises was recently completed at Naval Air Station Fallon, Nevada. Lessons learned from these exercises and from other recent joint exercises will yield important standardized procedures for all CSAR forces. To further improve procedures, future CSAR exercises will be developed by the Joint Staff and incorporated into our exercise program. The new jointly trained CSAR forces will emphasize joint capabilities postured to provide critical lifesaving service to our soldiers, sailors, airmen, and marines -- anywhere, anytime.

RECOMMENDATION: All four Services retain responsibility for CSAR operations. CSAR forces will be equipped to operate individually or together employing standardized joint doctrine, tactics, techniques, and procedures.

Operational Support Aircraft

Currently about 500 aircraft, operated by all four Services and the Coast Guard, are dedicated to Operational Support Airlift (OSA) -- the transport of military personnel and high-priority cargo. Over the past few years, the Services have saved money in this area by conducting joint aircrew training and consolidating unit-level and depot maintenance. However, the size of this aircraft fleet and the overlap in support functions compelled us to look for ways to achieve further cost-savings in the areas of operations, training, and logistic support.

The aircraft involved in troop and cargo transport and VIP movement include C-9s, C-12s, C-20s, C-21s, C-23s, C-26s, C-137s, P-180s, and others. Each Service has its own fleet, for a total of 500 OSA aircraft overall, including the Reserve components. These aircraft are predominantly CONUS-based and traditionally have been under the operational control of the individual Services.

The current inventory, built to support a global war, exceeds what is required for our regionally oriented strategy. The current excess is compounded by the fact that Congress continues to require the Services to purchase OSA aircraft neither requested or needed. In the last two years alone, Congress "added on" funds to the Defense Appropriations Bill for some 15 C-12s, 4 C-20s, 10 C-21s, 10 C-23s, 19 C-26s, and 12 P-180s not requested by DOD.

Several alternative operations and management schemes were proposed for operating these aircraft. Among them were: contracting out the entire mission to civilian contractors; consolidating the OSA fleet under a single command which would determine scheduling and assume operations responsibility; and consolidating all assets under a single Service which would assume procurement, logistic, and support responsibilities.

Further study is necessary to determine which alternative will provide the best balance of efficiency and effectiveness. In the interim, USTRANSCOM is improving its capability to schedule intratheater airlift in support of wartime taskings. The Joint Staff, the Services, and TRANSCOM will continue to examine this issue and make appropriate adjustments as circumstances warrant.

RECOMMENDATION: OSA aircraft are in excess of wartime needs and should be reduced. TRANSCOM will develop the capability to coordinate and schedule intratheater airlift.

Attack Helicopters

The rapid evolution of the attack helicopter as an integral element of the forces engaged in ground maneuver warfare was underscored during the Persian Gulf War. The omnipresent attack helicopter, advancing just above coalition ground forces, was one of the classic images of DESERT STORM.

The successful integration of the attack helicopter into modern ground operations can be attributed to two factors. First, tremendous technological advances have been made in modern helicopter weapons systems such as the APACHE (AH-64) and COBRA (AH-1). Second, the introduction of these advanced weapons into our aircraft inventories was accompanied by a revolution in battlefield tactics. The ground battlefield has become a three-dimensional battlespace where the attack helicopter's advanced features give the ground commander unprecedented battlefield vision, mobility, and striking power.

Both the Army and the Marine Corps operate attack helicopters as an organic element of their ground maneuver warfare. Today, there are 736 AH-64 APACHEs and 875 AH-1 COBRAs in the Army, and 124 AH-1W COBRAs in the Marine Corps. The Army is phasing out its older COBRAs as new APACHEs come off the assembly line, and plans a future inventory of 811 APACHEs and 412 COBRAs. The Marine Corps will retain the COBRA for the foreseeable future and has invested heavily in upgrading its airframe and avionics in order to keep the COBRA's capabilities as near state-of-the-art as possible until the next generation of attack helicopter is produced. The Army and Marine Corps are planning to develop and procure a common airframe to fulfill their future requirements.

After an extensive review of force structure and functional alternatives, it was found to be inadvisable and impractical to have one Service attempt to provide this organic combat capability for the other. The demand for constant and integrated training at the unit level in peacetime -- in order to be victorious in battle -- precludes alternative approaches. However, the Services can, should, and will consolidate aircrew and initial maintenance skill training, as described elsewhere in this report.

Additionally, the Chief of Naval Operations, the Commandant of the Marine Corps, and the Chief of Staff of the Army have been asked to review the emerging requirement for armed helicopters aboard Navy ships. Their review will examine their Services' existing force structures, training flow, and logistics infrastructures to determine the most effective, efficient and economical way to meet this new requirement.

RECOMMENDATION: Army and Marine Corps continue to operate attack helicopters. Consolidate some aircrew and maintenance training. Develop and procure common airframes to fulfill future requirements.

General Support Helicopters

Commensurate with advances in rotary-wing technology, the helicopter has grown in importance as an integral part of military organizations. Its functional utility and versatility allow our military forces to accomplish a wide variety of essential missions, such as air assault operations, anti-submarine warfare, electronic warfare and jamming, field artillery aerial observation, reconnaissance, command and control, medical evacuations, and logistics. Although classified as support helicopters, these are highly specialized airframes that are an integral part of ground maneuver warfare. Other general support helicopters are used for non-Service specific tasks, such as test range support, transportation, courier service, and logistic support. The Army operates the largest number, but all Services have general support helicopters.

Ways were examined to achieve further efficiencies in operations, training, and maintenance while preserving essential capabilities.

To this end, the Services will move toward consolidating maintenance training, simulator training, and maintenance infrastructure. In addition, overlapping multi-Service administrative support functions in the same geographic regions will be closely scrutinized. A good example of an area where consolidation may be possible is in the Washington DC area where the Services operate VIP helicopter

detachments. As part of this effort, a review will be conducted to consider if the Reserve components or civilian contractors should assume some or all of this responsibility.

These planned consolidations will preserve the capabilities we require from general support helicopters while achieving cost savings.

RECOMMENDATION: Consolidate maintenance training, simulator training, and maintenance infrastructure. Study consolidation of overlapping Service support functions within certain geographic areas.

Tactical Airlift/Tankers -- C-130s

The importance of C-130 tactical airlift and tanker support to the Armed Forces and their operations has not diminished in the current security environment. From Operation DESERT STORM to Operations PROVIDE COMFORT, PROVIDE RELIEF, and RESTORE HOPE, American C-130s have been and will continue to be called on in war and for humanitarian relief around the world.

While configurations and traditional Service-specific approaches to functional requirements have evolved over 30 years, there are two basic types of C-130s -- transports (some with special capabilities) and air-to-air refueling tankers.

To meet tactical airlift and tanker support requirements, the Air Force currently operates approximately 600 C-130s, the Marine Corps 68, the Navy 17, and the Coast Guard 26. Air Force C-130s deploy worldwide for tactical airlift, humanitarian airlift, aeromedical evacuation, special operations, refueling, and other functions and tasks. The primary job of Marine Corps KC-130 tankers, as part of the Marine Air-Ground team, is to refuel Navy and Marine tactical fixed-wing aircraft. They also have a secondary task of refueling Special Operations Forces (SOF) and CSAR helicopters. Navy C-130s provide fleet service and support to the National Aeronautic and Space Administration (NASA). The Coast Guard uses C-130s for command-and-control communications, search and rescue operations, law enforcement, ice operations, and airborne early warning. These C-130s are all heavily tasked.

In reviewing the C-130 force structure, the objective was to preserve its capability to perform its basic tasks while determining if efficiencies could be achieved by combining operations, management, and support under one Service. A DOD C-130 Systems Requirements Working Group had already directed that the Air Force remain the sole acquisition agent for all DOD/USCG C-130 aircraft and retain responsibility for all depot-level maintenance for CONUS-based C-130s. The review showed that consolidating all C-130s under one Service would not be cost effective, would degrade efficiency, and would greatly complicate

management and support of these heavily utilized assets. As a result, consolidation is not recommended.

RECOMMENDATION:
Consolidating C-130s under one Service would decrease operational effectiveness, complicate management and support, and would not save money.

Jammer Aircraft

The employment of active electronic countermeasures against enemy radar and command-and-control systems, commonly referred to as "jamming," has taken on much greater importance as air defense systems have become more sophisticated. This fact was amply demonstrated during the Persian Gulf conflict when Navy, Marine Corps and Air Force "jammers" severely degraded Iraq's air defenses. In DESERT STORM, the availability of jammer aircraft was a prerequisite for a strike package to proceed to the target -- no jammers, no air strike. The result was an exceptionally low level of coalition aircraft losses despite Iraq's modern and elaborate air defense network. As air defense technologies proliferate, this requirement for advanced electronic countermeasures to support air operations is likely to increase.

The responsibility for providing this capability is shared by Naval aviation and the Air Force. The Navy and Marine Corps operate 133 EA-6Bs and the Air Force operates 40 EF-111As. With no plans for a totally new jammer airframe until well into the next century, the capabilities of both the EA-6 and the EF-111 must be continuously upgraded to keep pace with the evolving air defense threat.

Differences in the basic capabilities of the EA-6 and the EF-111 are significant. The EA-6 is optimized for all weather operations in close support of carrier air wings and Marine Air-Ground Task Forces. It can also operate from expeditionary airfields ashore. Its performance characteristics are compatible with the Navy and Marine Corps tactical combat aircraft it escorts. In contrast, the EF-111 is a deep-penetrating, high-speed, long-loiter airframe with all-weather terrain-following capability that is designed for "stand-off" jamming. The similar but specialized capabilities of EA-6s and EF-111s give military commanders a range of options in combat, complicate any enemy's air defense planning, and reduce aircraft attrition.

If, for example, only EA-6Bs were in the inventory, Air Force bombers would be restricted in the way they could be employed to attack enemy targets as part of a "strike package." Similarly, if the EF-111 were the only jammer aircraft in the inventory, Naval carrier power projection capabilities and the ability to support certain long range Air Force bomber missions with essential jammer protection would be unacceptably degraded.

Several alternatives to the present operational arrangements were examined, with specific emphasis on combat capabilities, cost savings, mission responsibilities, ability to operate with other systems, peacetime training capabilities, aircrew training, maintenance training, and all levels of aircraft maintenance.

The EA-6 and the EF-111 both derive great "economies of scale" from the fact that they share many components and support and training procedures with the fleets of A-6s and F-111s managed by the Navy and Air Force, respectively. Where possible, efficiency will be improved by consolidating operations, basing, training, and logistics support. All jammer aircraft will soon be based at only three locations: Naval Air Station Whidbey Island, Washington; Marine Corps Air Station Cherry Point, North Carolina; and Cannon Air Force Base, New Mexico.

The feasibility of consolidating the currently programmed system upgrades to both aircraft was also examined. Because of the extensive engineering modifications that would be required, changing the EF-111 system to the upgraded EA-6 system would add more than $1 billion to current program costs. Replacing Air Force EF-111s with new EA-6s was also examined. Acquisition costs for additional EA-6 airframes to completely replace EF-111s would exceed $2 billion.

These critical combat support assets provide our air components added flexibility, survivability, and effectiveness -- qualities that will become more important than ever as overall force levels are reduced. Our plan is to retain both fleets of aircraft, modified as necessary to keep pace with technological advances in the defensive systems of potential adversaries worldwide.

RECOMMENDATION: The similar but specialized capabilities of all Navy/Marine Corps EA-6B and Air Force EF-111 aircraft give military commanders options in combat to reduce aircraft attrition. Both aircraft should be retained and upgraded . Consolidating into one airframe would reduce effectiveness and require additional aircraft procurement.

Electronic Surveillance Aircraft

Throughout the Cold War, the maintenance of robust signals intelligence (SIGINT) programs to help us understand the intent of an adversary as menacing as the Soviet Union was of paramount importance. This was especially true because Soviet doctrine called for a massive, short-notice invasion of Western Europe. Being able to detect preparations for such an attack well before it occurred dominated much of our intelligence-gathering hardware development. As a result, a capable fleet of surveillance aircraft was developed and purchased. Over time, as these aircraft were integrated into the Services, their unique

capabilities were found to be applicable to many types of crises and conflicts.

While the end of the Cold War has reduced the need for systems targeted specifically against Russia, it has actually intensified the need for the kinds of information these aircraft can provide. The uncertain nature of future military threats means that our leaders will have to be fully informed about the intentions of potential adversaries. The regional focus of our National Military Strategy has placed even greater emphasis on intelligence-gathering. The current situations in Bosnia, Iraq, and other regions of ethnic, religious, and social tension underscore the need for these types of systems.

Providing this information to senior decision-makers is the job of a small group of highly specialized aircraft and their crews. These unique airframes are the EP-3E ARIES operated by the Navy and the RC-135 RIVET JOINT operated by the Air Force. There are currently 12 EP-3Es and 14 RC-135s in the inventory. The EP-3Es are homebased at Naval Air Station Agana, Guam and Naval Air Station Rota, Spain. The RC-135s are homebased at Offut Air Force Base, Nebraska. Both Services have numerous forward operating bases and deployment sites around the world.

This force structure is barely sufficient to handle current peacetime requirements. During Operation DESERT STORM, all EP-3E and RC-135 aircraft were committed to the war. As a result, other theater CINCs had only limited electronic surveillance aircraft to cover their areas of interest. If another conflict had broken out, we would not have had sufficient assets to support our forces.

The distinctions between the EP-3E and the RC-135 are significant, yet their capabilities are complementary. The RC-135 is principally a strategic SIGINT asset with the capability to collect signals valuable to national intelligence agencies. The RC-135 flies at higher altitudes than the EP-3E, enabling it to collect certain signals at greater range. It can also be refueled while airborne, which gives it greater endurance.

The EP-3E is principally a tactical SIGINT asset configured to evaluate the battlefield electronic warfare threat, provide real-time threat warning, and conduct long-range radar targeting and analysis. The EP-3E can operate from shorter runways than the RC-135, with less ground support equipment and fewer personnel. Together, the two platforms provide military commanders and civilian leaders with unmatched airborne electronic surveillance flexibility and capability.

Several alternatives, including consolidating all RC-135 and EP-3E airframes under one Service, were examined. It was found that consolidation would actually cost more because each Service is able to draw on infrastructures already in place to support the Navy's large P-3 fleet

and the Air Force's sizable KC-135 fleet. These infrastructures make the operation and maintenance of these 26 airframes only a small fraction of the overall fleet costs.

Efforts will continue to streamline both programs where it makes sense to do so. For example, it is recommended that electronic warfare training and equipment maintenance be consolidated where feasible, pending the completion of a review by the DOD-sponsored Airborne Reconnaissance Support Program Steering Group. It is also anticipated that a DOD group will recommend a common electronic surveillance platform be developed and deployed early in the next century.

RECOMMENDATION: Navy EP-3E and Air Force RC-135 aircraft are fully committed and should be retained. Infrastructure is already in place to support the Navy P-3 and Air Force KC-135 fleets, of which the EP-3E and RC-135 are a small part.

Shaping Aviation for the 90s

We are justly proud of America's air power. When called upon, our aviation elements with their varied and complementary capabilities have performed brilliantly. To retain these strengths, America's aviation elements must continue to be shaped to face the challenges of the 90s.

This section has laid out some initial observations on how this restructuring should proceed. In some cases, significant changes in roles, missions, and functions have been recommended. In others, further review is required. To truly have an impact on resource allocation, these recommendations must be factored into current and future programmatic decisions.

All areas of aviation will continue to be examined for unnecessary duplication and potential cost savings. It is recognized that there remain a number of contentious issues that must be addressed -- that what has been provided here is only the beginning of the process. Recognizing that the acquisition plan for major aviation programs requires more resources than will likely be available, a review must be conducted to ensure they are brought into balance with the reduced threat and limited resources.

In the months and years ahead, we will continue to ask ourselves the hard questions about our aviation inventory, support infrastructure, training, and assignment of roles, missions, and functions. This will ensure that the aviation elements of the four Services remain a potent force in the future.

FORWARD PRESENCE

Since the end of World War II, the day-to-day presence of US forces in regions vital to US national interests has been key to averting crises and preventing war. American forces around the world demonstrate our commitment, lend credibility to our alliances, enhance regional stability, and provide a crisis-response capability while promoting US influence and access. In addition to forces stationed overseas and afloat, forward presence includes periodic and rotational deployments, access and storage agreements, combined exercises, security and humanitarian assistance, port visits, and military-to-military contacts.

Continued engagement in world affairs through forward presence remains essential to America's global interests. Forward presence is the totality of US instruments of power and influence employed overseas (both permanently and temporarily) to protect national interests, provide access, promote values, shape events in the best interest of the United States, and provide the leading edge of America's ability to respond to fast breaking crises in a region. Forward presence strengthens collective engagement through which the United States works with its allies and friends to protect its security interests, while reducing the burdens of defense spending and unnecessary arms competition. Additionally, the presence of a highly capable military force with a full range of combat power serves as a stabilizing factor in many regions.

We must also bear in mind that instability still exists throughout the world -- witness current events in the Balkans, parts of the former Soviet Union, and Somalia -- and our forward-based forces have been and remain a key underpinning to regional and world stability. During the Cold War, we executed a strategy of containment with large numbers of forward stationed forces and a permanent presence of rotationally deployed forces in fixed patterns. In the new security environment, we have shifted to a strategy of cooperative engagement with smaller levels of forward stationed forces, flexible deployment patterns, and using the totality of US capabilities deployed overseas to participate in forward presence operations that demonstrate our engagement in the world.

Forward presence operations include operational training and deployments, security assistance, peacekeeping operations, combating drugs and terrorism, humanitarian assistance, and protecting US citizens abroad through noncombatant evacuation operations. All of this contributes to regional stability, which supports US interests and promotes US values abroad. The challenge now is to meet forward presence goals with a smaller presence that is still sufficiently flexible and adaptive to satisfy enduring national security objectives.

An analysis of requirements reveals four major factors that may affect our forward presence posture. First, the changed strategic landscape permits a dramatic but carefully managed reduction in forward stationing, worldwide. Second, fiscal realities mean fewer resources will be available for defense. Third, post-Cold War geopolitical changes require a more regional forward presence capability. Fourth, the US Armed Forces have become a truly joint force and can complement one another in peace, crisis, and war.

These four factors led to a conclusion that further reductions in forward stationed forces can be made, but that the current rate of reduction should be maintained. We have already embarked on a plan to reduce to the Base Force levels by 1995. Going any faster would adversely affect the cohesion and readiness of the overall force structure. After 1995, if the situation warrants, further reductions in forward-stationed forces could be considered.

As forward stationing is reduced, the nature of our military-to-military contacts will also change. The European theater has the potential to be one of the most unstable areas in the world. As the likelihood of using unilateral military force declines in this decade and beyond, our influence will be exerted through existing multinational arrangements. In Europe, a place where US interests will continue to be focused, we have the most successful alliance ever devised. This alliance will continue to be the mechanism through which peace and stability are maintained, but only if we remain a part of the alliance, and only if we maintain a credible military presence within it. Even during times of peace, forward presence enables the United States to influence the emerging democratic process in Eastern Europe and the former Soviet Union in ways that would not be possible from a CONUS-based posture.

In the Pacific region, the key to our forward presence has been and will remain a network of largely bilateral security alliances with Japan, the Republic of Korea, Australia, the Philippines, and Thailand -- and cooperation with other friendly nations.

For example, Japan continues to be America's key Pacific ally and the cornerstone of US forward-deployed defense strategy in the Asia-Pacific region. Our relationship with Japan affords US forces geostrategically crucial naval, air, and ground bases on the periphery of the Asian land mass. Despite the breakup of the Soviet Union, our presence there remains a vital aspect of our forward deployed posture. Given the great distances associated with the Pacific theater, forces maintained in Japan could deal with a wide range of local and regional contingencies.

It should also be remembered that stationing forces in Japan is actually far less expensive than keeping them in the United States. The Japanese provide some 75% of

the cost for our forces and an average of over $3 billion in host nation support annually, more than any of our other allies.

While we maintain our long-standing overseas commitments, the nature of our forward presence operations can change significantly. In addition to forward stationed and rotationally deployed forces, smaller temporarily deployed forces, either joint or single Service, will take on increasing importance. These units will participate in small unit training, personnel exchanges, security assistance, seminars and conferences, medical support, humanitarian assistance, engineering assistance, disaster relief preparedness, and intelligence exchanges. These programs promote access and cooperation overseas with a small investment in resources.

As mentioned in Chapter II, a new concept is being developed to allow us to conduct forward presence operations at about the same pace but at lower cost. Forward presence operations will be conducted by deploying geographically and mission tailored joint forces. Tailored joint force packages will be employed whenever possible, sometimes in lieu of independent single-Service forward deployments, to complement existing in-theater capabilities and assist CINCs in achieving their regional goals and objectives. Joint Task Forces (JTFs) will become the common organization for peacetime forward presence operations, improving the ability to transition to joint command structures in response to regional crises. These JTFs will be built as adaptive joint force packages made up of both forces scheduled to deploy during a given period and designated units in CONUS and overseas. These packages could contain a mix of air, land, special operations, space, and maritime forces tailored to meet the supported CINC's geography and mission requirements. With new and planned upgrades aboard Navy ships, JTF commanders will also have the flexibility to be based afloat or ashore.

RECOMMENDATION: Forward stationing is a key underpinning of US diplomacy. It contributes to conflict prevention and lends credibility to alliances. As the global security environment changes, additional reduction in forward stationed forces may be appropriate. However, as forward stationing decreases, forward presence operations will increase in importance. Continue to develop concept of Adaptive Joint Force Packages.

CONTINGENCY AND EXPEDITIONARY FORCES

The capability to respond to regional crises is one of the key demands of our National Military Strategy. US forces must be prepared for differences in terrain, climate, and the nature of the threat, as well as for differing levels of support from host nations and other allies.

Both Army and Marine Corps forces possess the ability to respond to crises involving land combat. As outlined in Title X and amplified in DOD Directives, the Army's primary responsibility is "to organize, train, and equip forces for the conduct of prompt and sustained combat operations on land -- specifically, forces to defeat enemy land forces and to seize, occupy, and defend land areas." The Marine Corps' primary responsibility is to be organized, trained, and equipped "to provide Fleet Marine Forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of land operations as may be essential to the prosecution of a naval campaign."

The similarity of Army and Marine Corps capabilities provides alternatives to the President and the Secretary of Defense during a crisis. However, it leads to a question of why two Services have similar responsibilities for certain land operations. The answer lies in the unique, yet complementary capabilities of these two Services' capabilities that span both deployment and employment characteristics.

The role of Army forces is to defeat enemy land forces and occupy territory. Army contingency forces are organized and equipped for a full range of crises that require prompt and sustained land operations or presence. They include the following:

- Airborne forces capable of responding to a crisis within hours to show US resolve and to stabilize the situation.
- Light infantry forces specifically designed for rapid air deployment to provide sustained force in various types of terrain where maneuver and mobility are restricted.
- Air assault forces structured to hit hard and fast, using lift helicopters for rapid mobility over any terrain and attack helicopters to defeat even heavily armored targets.
- Armored and mechanized infantry forces capable of defeating the full range of enemy capabilities, including other heavy armored forces. Because their heavier equipment must be deployed by sealift, these forces take longer to deploy in response to a crisis.

In some situations, Army contingency forces can serve as the enabling force for additional contingency or expeditionary forces by establishing a secure lodgment and then transitioning into a sustained land

operation. A recent example of the Army in an enabling role occurred in DESERT SHIELD, when elements of the 82nd Airborne Division were inserted in the first days to secure lodgments at the ports of Dammam and Al Jubail in Saudi Arabia. These lodgments were then handed off to other Army and Marine Corps elements to develop into major bases of operation.

Marine Corps expeditionary forces are organized and equipped for a full range of crises that require operations from the sea. Marine forces are capable of seizing and defending lodgments in littoral areas, enabling the introduction of follow-on forces. They can deploy in two ways:

- As Marine expeditionary forces, they can use Navy amphibious shipping for crises requiring forcible entry by amphibious assault, conduct "show of force" operations coupled with the threat of US intervention, and conduct operations without sustained logistical support or host nation infrastructure.
- As Maritime Prepositioning Forces, which are Marine forces that have equipment and supplies staged aboard forward deployed Maritime Prepositioning Squadron ships, they can be airlifted to a crisis area, link-up with their equipment, and perform a variety of missions.

With the focus on regional crises and the increased uncertainties of the post-Cold War era, a mix of forces with distinct but complementary capabilities is essential. Situations will often demand that the two Services operate together. An example is the initial establishment of a lodgment area by the Marines, followed by a build-up of Army forces, or vice versa. Once Army forces expand the lodgment and begin sustained land operations, Marine forces can become the CINC's strategic reserve, threaten the enemy with an amphibious assault from another direction, or continue to fight on land -- as they did during DESERT STORM.

There are several advantages in having similar, complementary capabilities among the two Services. It allows the combatant commander to tailor a military response to any contingency, regardless of geographic location. At the national command level, it adds to the options available to senior decision-makers in a crisis, especially one that occurs unexpectedly.

In 1990, during Operation SHARP EDGE, Marines operating from Navy amphibious ships helped evacuate US citizens during a major upheaval in Liberia. The situation in Liberia steadily deteriorated over a period of days, permitting a Amphibious Ready Group to arrive on the scene and remain offshore for several months while continuing to monitor and evaluate events. Had the crisis erupted more quickly, Army airborne forces might have been more

appropriate. Another example, discussed in Chapter I, was the Somalian crisis. In January 1991, an amphibious force quickly shifted to assist in the evacuation of US embassy and other personnel. Again, had the situation required more rapid action, Army forces could have been used.

The comprehensive review that produced the Base Force in response to a changing world yielded significant reductions in our contingency and expeditionary forces. Accordingly, a number of Army heavy and light divisions and Marine Corps personnel were removed from the force structure. But our capabilities-based strategy demands the unique and complementary capabilities provided by the Army and Marine Corps. In fact, with its emphasis on rapid response to regional crises, the National Military Strategy puts a premium on these forces. Review of requirements is a continuous process, however, and may in the future produce additional areas of personnel and cost savings in contingency and expeditionary forces, to include the possibility of further reductions in the Army's light infantry forces.

RECOMMENDATION: The capabilities of the contingency and expeditionary forces in the Army and Marine Corps provide decision makers with valuable alternatives and should be retained. The possibility of further decreases in the Army's light infantry will be studied as force structure is reduced.

TANKS AND MLRS FOR THE MARINE CORPS

The Army and the Marine Corps both employ tanks and Multiple Launch Rocket Systems (MLRS) as integral parts of their doctrine for tactical operations. Both Services currently have tanks in their force structures, but only the Army currently has MLRS -- a system which saw its first combat service in DESERT STORM. The Marines have programmed to buy MLRS beginning in 1994.

The Marine Corps is structured to integrate armor and artillery units into its maneuver elements. Both are inextricably linked with the Marine infantryman. This connection is reflected in the Marines Corps' credo that "every Marine is a rifleman first." Armor and artillery are not separate units that simply support the infantry when necessary.

Tanks

In the Base Force, the Army has tanks in eight Active component heavy (armored and mechanized infantry) divisions and in two armored cavalry regiments and two separate brigades. In the Reserve components, the Army has tanks in five heavy divisions, two cadre divisions, three separate heavy brigades, six round-out and round-up brigades, and one armored cavalry regiment.

The Marine Corps Base Force armor structure consists of three tank battalions -- two active and one reserve -- to support the capability to employ two Marine Expeditionary Forces (MEFs) forward and outfit three Maritime Prepositioning Squadrons. This small tank force permits the Marine Corps to fulfill its role in the National Military Strategy. The Army conducts tank skills training for both the Services.

MLRS

Eight active Army heavy divisions each have one MLRS battery with nine launchers. Additional MLRS are located in corps artillery battalions. Marine Corps MLRS capability is programmed around a total of 42 launchers. MLRS systems are identical for both Services, and individual training for both would be combined at Army schools.

The Marines will rely on MLRS to provide general support field artillery to the Marine Air-Ground Task Force (MAGTF). In 1989, the Marine Corps selected MLRS to augment its general support artillery capability. In making that decision, the artillery force structure was realigned. Subsequent force planning decisions required additional artillery reductions. The Marine Corps gave up all self-propelled general support cannon artillery and retained the requirement for an MLRS battalion -- a decision based, in part, on the promise of projected savings in personnel and maintenance. The Marine Corps has argued that MLRS is essential to offset its 45% reduction in cannon artillery, the loss of self-propelled capability, and reductions in tactical aviation traditionally depended on to make up for shortfalls in artillery.

Acknowledging that armor and MLRS are necessary capabilities for enabling forces operating from the sea, the question of whether the Army can provide those capabilities to the Marines Corps was studied. Certainly, the Army possesses the tanks, MLRS launchers, and requisite crews to perform the mission. But the tougher question is whether separating tanks and MLRS from the MAGTF would have an unacceptable impact on the Marines' ability to fight as a cohesive team, and whether having to provide part of its structure to support the Marine Corps would leave the Army short of its warfighting requirements.

A range of alternatives was examined, from having the Army provide all tank and MLRS support to the Marine Corps to maintaining the current program. It was concluded that severing armor from the organic structure of the Marines would markedly reduce unit cohesion and warfighting capability and achieve negligible cost savings. The Marine Corps' unique role as an enabling force from the sea demands a force structure with enough armor to conduct its amphibious mission. Also examined was the related issue of how many tank battalions the Marine Corps should retain. There was consensus that the Marine

Corps must retain enough tank battalions to support amphibious operations and outfit three Maritime Prepositioning Squadrons.

A different conclusion was reached on MLRS. In keeping with the adage that "the artillery is never in the reserve," there are advantages in assigning the Army responsibility for all MLRS support. Because MLRS units are normally positioned in the rear and typically fire across maneuver unit boundaries, the impact on Marine unit cohesiveness for warfighting would not be as severe as losing armor. Adopting this course of action would result in significant savings -- preliminary estimates indicate on the order of $300 million over a six year period.

But eliminating the Marine Corps' organic general support artillery is a major step that warrants an in-depth cost and effectiveness analysis before being implemented. This study must also examine the impact on the Army if it is required to provide MLRS for the Marines, and whether tactical air and naval gunfire can provide sufficient fire support for Marines fighting ashore.

RECOMMENDATION: Marine Corps will retain enough tank battalions to support amphibious operations and to outfit three Maritime Prepositioning Squadrons. The Army will provide any additional tank support required. There appears to be advantages in having the Army provide MLRS support for Marine Corps operations, however, an in-depth cost and operational effectiveness analysis is required before implementing this recommendation.

THEATER AIR DEFENSE

Theater Air Defense (TAD) is a mission that includes "all defensive measures designed to destroy attacking enemy aircraft or missiles." TAD includes ground-, sea-, air-, and space-based systems with anti-aircraft and/or anti-missile capabilities. Since 1948, the Air Force has had the function "to develop, in coordination with the other Services, doctrine, procedures, and equipment for air defense from land areas." Likewise, the Navy provides sea-based air defense and the sea-based means for coordinating control of defense against air attack. All the Services have functions "to organize, train, equip and provide forces for appropriate air and missile defense operations in accordance with joint doctrine." All four Services currently operate TAD systems. The Army, Navy, and Air Force develop and acquire their own systems. Marine Corps systems are developed by the Army and the Navy.

During the Cold War, we developed robust ground-based theater air defenses to counter the significant threat to our ground forces posed by Warsaw Pact air forces and missiles. With that threat now gone, we have undertaken an evaluation of how much and what kind of theater air defense capability we need for the future.

Generally, we divide the TAD environment into high, medium, and low altitude threats. There will continue to be a threat from aircraft operating at high altitude (above 10,000 feet). However, the robust capability of our air forces leads us to believe that future ground-based systems need not focus on this threat. With our current air forces and ground-based TAD assets, we also possess a significant capability to counter any threat from manned aircraft operating at low and medium altitude.

In the near term, the primary threat will be from tactical ballistic missiles. In the longer term, cruise missiles will also become a threat. We expect potential adversaries to direct their ballistic and cruise missile attacks primarily against certain critical, high-value targets, such as maneuver force concentrations, command and control facilities, ports, and airfields.

To support the new regionally-oriented strategy, we must be able to rapidly concentrate mobile forces for decisive action. Forces must be able to conduct aggressive maneuver and offensive operations. Air and missile attacks against forces on land and at sea will remain of some, but considerably less, concern. Armed with chemical or biological warheads, enemy cruise or ballistic missiles can be a significant threat to maneuver forces and operations.

Advanced technologies are being aggressively pursued to counter theater ballistic missiles as part of the GPALS (Global Protection Against Limited Strikes) program. The Army is developing the High Altitude Theater Missile Defense system, modernizing the PATRIOT missile (PATRIOT-3) system, and developing the CORPS AIR DEFENSE (CORPS SAM) system to provide improved defense against theater ballistic missiles at long, medium, and short-ranges, respectively. The Air Force and SDIO are jointly developing a deployable airborne laser prototype to engage and destroy theater ballistic missiles in the boost phase. The Navy is developing a variety of sea based systems, most notably the sophisticated AEGIS system which incorporates netting of sensors with sea, air, and land forces. Emphasis is being placed on deployable and rapidly re-locatable advanced theater missile defenses. These, along with space based systems, will provide protection of our deployed forces, as well as our friends and allies, from ballistic missile attack.

Several steps have been taken to improve coordination between the Services as we procure new systems. Under the SDIO's leadership, a management structure was created to integrate acquisition efforts. The Joint Requirements Oversight Council (JROC) validated the Theater Missile Defense Mission Need Statement in 1991, and has reviewed or will review key TAD systems. The Joint Air Defense Operations/Joint Engagement Zone program office is working to integrate fighters and surface-to-air missiles in a more effective

way.

Operation DESERT SHIELD/STORM demonstrated the capability and the integration of our modern theater air defenses. Each Service brought unique and complementary capabilities to the battlefield. Aircraft provided the first and prime line of defense against enemy aircraft, while ground systems engaged the ballistic missile threat and were also prepared to counter enemy fixed-wing aircraft, helicopters, and cruise missiles.

During this review of Service roles, missions, and functions, several options were examined for the theater air defense function, ranging from full consolidation of the function into a single Service to maintaining the current functions.

The Air Force believed it should be responsible for the entire TAD function, but the joint working group concluded that full integration of ground-based TAD assets into Army maneuver forces was key to providing for their protection. Furthermore, making changes in TAD roles and missions did not significantly improve efficiency or the ability to address the emerging missile threat to critical assets. Finally, there would be substantial near-term costs and personnel disruption associated with transferring TAD systems or functions between Services and no long-term savings were identified. Therefore, the conclusion reached was that the current functions, with each Service providing TAD assets, gives the best protection to our forces. A change in functions would severely disrupt the current structure, provide little benefit, and spend taxpayer dollars unnecessarily.

Coordination and cooperation on TAD system development will be increased across Service lines. As one current example, the Army and Navy, with SDIO funding, are developing a cooperative engagement capability between the Army's PATRIOT and the Navy's AEGIS air defense systems. This will enable one system to communicate and coordinate its response to any threatening aircraft or missile with the other system.

It is also recognized that we must continue to review the total TAD area to ensure that all current systems and those in development complement each other without providing unneeded duplication. Toward this end, we plan to conduct a Joint Mission Area Analysis, headed by the Joint Staff, to review the TAD mission. Results of this analysis will determine if further refinements are required in roles, missions, and functions associated with TAD.

RECOMMENDATION: A review of Theater Air Defense is needed to ensure we have the appropriate mix and quantities of air and missile defense systems. The Joint Staff will head a Joint Mission Area Analysis to comprehensively review TAD requirements, capabilities, and deficiencies.

TRAINING, AND TEST AND EVALUATION INFRASTRUCTURE

The Department of Defense owns and operates an extensive array of training, and test and evaluation ranges and facilities spread throughout the United States. These were developed and sized over the past several decades in response to Cold War requirements and a modernization/acquisition pace driven by the need to retain technological superiority. Each Service approached training, and test and evaluation from its unique perspective and developed its own infrastructures, leading to DOD-wide overlaps and redundancy.

The end of the Cold War has provided the necessity and opportunity to reevaluate our weapons test and evaluation infrastructure and to examine the potential of electronically linking various ranges in order to create facilities to support joint training exercises. Late in 1990, a formal process was begun to integrate test and evaluation procedures and ranges. This process, called PROJECT RELIANCE, has already resulted in savings and consolidations throughout the Defense Department's test and evaluation infrastructure.

To better other technology research, efforts were begun to develop more efficient ties between operational field commanders' warfighting requirements, the Services, and the technology research community (including DARPA and the Strategic Defense Initiative). This initiative better relates test and evaluation planning with evolving research and development. Especially exciting in this area is the potential to take full advantage of cutting-edge computer modeling technology advances which enable very realistic substitutes for some testing.

Despite far ranging PROJECT RELIANCE agreements, there is still much room for innovation, consolidation, and savings. The dilemma is that DOD test and evaluation facilities are valuable national resources, unlikely to be replaced once eliminated. Therefore, a deliberate review must be conducted of the test and evaluation facilities as part of our commitment to a defense-wide reduction of unneeded infrastructure.

As part of a continuing effort to streamline test and evaluation range infrastructure, an executive agent would be designated to oversee the management and integration of activities currently conducted by the many independent test and evaluation ranges. This integration of existing facilities would provide a combination of land, sea, and air ranges to fulfill test and evaluation requirements.

As an example, in the Southwestern United States, all four Services have training, and test and evaluation ranges that provide a land, airspace, sea area, and offshore supersonic operating domain that could accommodate a major portion of our joint

test and evaluation needs. In addition, with proper electronic linking, this integrated facility could be used to support joint training exercises to augment training conducted on the Service training ranges.

The Services would retain their responsibilities for range maintenance and site operations. The executive agent, as single manager for the test and evaluation ranges, would be responsible for central scheduling of joint operations, validating range modernization needs, and developing advanced data processing to interactively tie the ranges together. This step would expand the availability and quality of joint weapon system testing and would also provide improved joint training opportunities. This combination of operationally-oriented management and advanced technology would create an unmatched, world-class infrastructure to meet training, and test and evaluation needs well into the next century. Equally important, it would provide the opportunity to divest ourselves of unnecessary infrastructure -- duplicative jobs, ranges, and installations. As a result, we see the potential for a test and evaluation infrastructure that is modern; meets our needs; promotes joint systems development, testing, and training; and reduces long-term costs.

Another proposal being reviewed is for the Army to have testing responsibility for surface-to-air missiles, the Air Force to test air-to-surface missiles, and the Navy to execute the air-to-air missile test program. In the Services, the guiding philosophy is to cooperate, eliminate, and consolidate. By the mid- to late-90s, the Services will have eliminated 4900 personnel involved in test and evaluation and will have saved over $1 billion. They are also cooperating on nearly 50 technology efforts that support testing and evaluation.

RECOMMENDATION: Designate an Executive Agent to streamline test and evaluation infrastructure. Using advanced data processing, electronically link test and evaluation, and training ranges, in broad geographic areas such as the Southwest US, to enhance joint testing needs and support joint training requirements.

CONSTRUCTION ENGINEERS

In the past 45 years, each Service developed a robust contingency construction engineering capability sized and shaped to provide construction support to combat forces and maintain bases and facilities around the world.

Construction Engineers provide construction skills and base operating services under combat conditions. In peacetime, these uniformed engineers, 70% of whom are in the Reserves, augment base maintenance personnel in areas technically beyond day-to-day, base-level capabilities. Often they are a key part of humanitarian assistance operations such as recent disaster relief operations in Florida, Hawaii, and Guam.

The option of having a single Service provide all wartime construction units was considered. However, consolidation was rejected because of the uniquely tailored support Army, Navy, Air Force, and Marine Corps construction engineers provide to combat units of their Services.

However, construction engineering manning is already being reduced as the force structure is cut back. Army engineer units are being reduced by 34%; Air Force units by 39%; Marine Corps units by 20%; and Navy units by 11%. Further engineer unit modifications will occur as requirements are refined.

The Services are also committed to eliminating redundant entry-level and advanced construction skill training by reducing to a minimum the number of training sites. This initiative is discussed in greater detail in the section on training consolidation contained elsewhere in this report.

The functional review also considered a wide range of management alternatives for consolidating engineering functions above the base level. These Service functions extend from headquarters, through regional offices, to the installation level for planning, technical services, and work performance. There are policy and programmatic differences between the Services in the resource levels dedicated to installation support, the mixture of contract versus in-house operations, military manpower use, and financing and budgeting methods.

We plan to evaluate consolidation of broad installation support responsibilities, currently provided by technical support units, both geographically and functionally, in programs such as environmental services, contract administration, engineering design, facility standards, technical guidance, processes and forms, civil engineering R&D, and automated management systems.

RECOMMENDATION:

Consolidation of individual Service engineer units is not recommended because it would not save money and would provide no advantages. Reductions already underway

decrease construction engineers in the Army by 34%, Air Force by 39%, Marines by 20%, and Navy by 11%.

OPERATING TEMPO (OPTEMPO)

Well-trained military units fight effectively and win. This nation's soldiers, sailors, airmen, and marines must go into combat believing in themselves, their equipment, and their units. Their lives and the success of the mission depend on proper preparation. OPTEMPO is the term used to describe those training and readiness programs that contribute to that preparation. OPTEMPO is specified in terms of average flying hours per aircrew per month, average days underway at sea per ship or submarine per quarter-year, or average operating miles per combat vehicle per year. It includes the maintenance and support of specific equipment as well as the operating crew. Thus, all activities associated with OPTEMPO contribute directly to the readiness of units.

The Services have aggressively pursued the use of new technology to reduce OPTEMPO costs. One example is the Navy's use of Battle Force In-port Simulator Training, where senior naval decision-makers can simulate moving ships and aircraft to train rather than involving the actual ships or expending the ammunition necessary to refine these skills at sea. Similarly, the Army and the Air Force have increasingly used simulations for major exercises such as REFORGER. Instead of deploying 114,000 troops and their equipment to Europe as was done in REFORGER 88, for REFORGER 92 sophisticated simulations were used and only 26,000 troops were actually moved. This saved an estimated $16 million in transport costs and $23 million in reimbursement costs for manuever damage to European roadways, forests, and fields.

The cost of introducing new weapons systems is also being reduced by increasing the use of simulators to improve the skills of our people before they enter the cockpit, tank, or get their ship underway. Rather than troops spending more time in the field training on these new systems, simulators provide operators a portion of the training they need to develop their skills. For some of our troops, simulators provided the only exposure to new weapons systems prior to DESERT STORM.

As forces are reduced, the overall aggregate cost of operations and maintenance will be reduced. Moreover, our new concepts for conducting forward presence operations, described earlier in this chapter, will have the added effect of reducing certain OPTEMPO rates. But because there will be fewer units forward-based near likely trouble-spots, and because resource-intensive missions such as humanitarian assistance will likely increase, OPTEMPO rates may increase for many units.

However, there is a limit to cutting back on field training. To maintain peak readiness, our troops must train often with other Services and with our allies. The new military strategy puts a premium on forces that are ready to respond to regional crises and can be rapidly integrated into a coalition force. We remember all too well how, after the Vietnam War ended, we severely cut OPTEMPO resulting in reduced readiness levels and the "hollow" military forces of the 1970s. We are determined not to allow that to happen again as our force structure is drawn down.

OPTEMPO is critical to readiness and combat capability. To cite one example, our aviators worked hard for nearly a decade and a half to increase OPTEMPO from its low point following the Vietnam War. Because operational aircraft fly more sorties per month, aircrews have achieved a higher state of readiness. In the opening days of DESERT SHIELD, this higher training readiness allowed us to have our first fighters in place in Saudi Arabia just 34 hours after receiving the order to deploy. In addition, two carrier battle groups already operating in the vicinity of the Gulf, as well as the naval forces of Joint Task Force Middle East, were fully ready for combat operations. In large measure it was peacetime training OPTEMPO that provided the combat skills to defeat rapidly and effectively one of the world's largest and best equipped militaries while suffering relatively few US or coalition casualties.

Higher OPTEMPO also translates into safer operations. For example, during the 1980s the ability of the Air Force's Tactical Air Command to sustain a higher training OPTEMPO led to a far lower mishap rate that saved the equivalent of 300 aircraft and 250 lives. Navy tactical aviation experienced similar safety improvements, where an 11% increase in flight hours resulted in a 45% decrease in aircraft mishaps.

With a smaller structure, all of America's Armed Forces must be ready to respond on short notice. Maintaining adequate OPTEMPO will enable these men and women to defend America's interests wherever in the world they are sent.

RECOMMENDATION: OPTEMPO cannot be reduced. The amount of warning time available before committing forces to combat is generally small; therefore, the need for a high state of readiness is increased. In addition, as forward stationing is reduced, forward deployments become more important in supporting US foreign policy.

INITIAL SKILLS TRAINING

Initial skills training in the military is the responsibility of Air Force Air Training Command, Naval Education and Training Command, Army Training and Doctrine Command, and Marine Corps Combat Development Command.

Current Service training establishments reflect Cold War training requirements -- they are big, expensive, and overlapping. Each Service trains annually a large number of personnel in a wide array of specialties and skills. As a result, there are a number of duplications in training performed at more than 100 military bases.

Steps have already been taken in some areas to eliminate redundant training. The Interservice Training Review Organization (ITRO), a voluntary, Service-chaired group, currently reviews proposed training consolidations and collocations for potential cost savings. During the past twenty years, ITRO studies have resulted in training course consolidations and collocations which have saved over $300 million. One example is the consolidation of much of DOD's intelligence instruction at Goodfellow Air Force Base, Texas and at the DOD Mapping School at Fort Belvoir, Virginia. ITRO also was of major assistance following the closure decision on two of the Air Force's six large technical training centers; Chanute Air Force Base, Illinois; and Lowry Air Force Base, Colorado; in determining where to move training courses affected by the closure.

The Services will also be conducting a comprehensive review, with Joint Staff support, of all military skill training, specialty by specialty, to identify potential training areas for further course collocations and/or consolidations. The review will begin by establishing firm training and facility standards and by identifying ways to use the best of the current infrastructure. An aggressive, phased review schedule will be developed along with solid ground rules for the review's conduct.

While the review will concentrate on initial skill training, it will cover all military skills. It is expected that the review will result in significant cost savings. Most importantly, the resulting training efficiencies will enable the Armed Forces to train more effectively, producing an even better and more capable fighting force.

RECOMMENDATION: Some training is already being consolidated. Services are conducting a comprehensive review of all military initial skills training to identify additional areas for consolidation.

CHAPLAIN AND LEGAL CORPS

Chaplain Corps

Each Service (except the Marine Corps) is responsible for recruiting and training its own chaplains. The functions of chaplains in each Service differ and are unique to the communities they serve. Accordingly, each Service has taken a different approach to these tasks. The Army and the Navy direct their pastoral care primarily to the soldiers, sailors, and marines assigned to operating forces. The Air Force concentrates more on community structure and family pastoral care.

While the chaplain corps takes up only a small part of the overall defense budget, it will be reduced as the overall force structure comes down over the next few years. Authorized active duty end strength for chaplains in FY 1997 is forecast at 2,755, a reduction of 565 or about 20% from today.

A number of alternatives for consolidating the chaplain corps were examined, but because the chaplaincy is in place and working well, there is no need to fix it. There would be insignificant cost savings from other alternatives, and they would have a negative effect on the provision of quality ministry to the men and women of the Armed Forces.

Legal Corps

The Army, Navy, Air Force, and Marine Corps all have uniformed judge advocates who provide a wide range of legal services to their Service. They work for the commander or head of activity under the technical supervision of the Judge Advocate General concerned or the Staff Judge Advocate to the Commandant of the Marine Corps. The DOD General Counsel, who is by law the chief counsel for the Department of Defense, renders opinions that are binding on all lawyers in DOD, including judge advocates. Day-to-day legal services are rendered to commanders, military members, and their families by judge advocate organizations that are part of the Service force structure. Although they serve in joint commands and DOD-level positions, judge advocates are primarily dedicated to serving their parent Service.

Eight areas of law are basic to all four Services: criminal law, administrative law, litigation, international law, acquisition law, labor law, claims, and legal assistance. While these areas of law practiced by judge advocates within each Service are similar, the actual practice of law varies significantly from Service to Service. Moreover, while judge advocates have common legal skills, they serve first as officers of their particular Services, subject to the same performance standards, regulations, policies, and procedures as all other officers of their Service. Their practice of law is predicated

upon, and intertwined with, the unique force structure, operational context, and policy decisions of their Service.

Each Military Department maintains a school for training its judge advocates and civilian attorneys in Service-unique and common areas of law. Many of the courses are open to attorneys from all the Armed Forces and other Federal agencies. Enlisted legal personnel are trained and assigned within the Service personnel system, with oversight by the Judge Advocates General. The Services have taken steps to increase efficiency and reduce costs through several cooperative efforts. These efforts are centered around professional development training, both at the officer and enlisted levels.

A range of alternatives was examined to consolidate or centralize legal services within DOD in order to eliminate duplication, improve quality, or reduce costs. Options included centralized training of all court reporters, consolidating claims functions, and combining all headquarters-level judge advocate functions. Some of these options had already been considered, and rejected, during the Defense Management Review process as not cost effective. Others would require significant statutory revisions and would disrupt the current statutory scheme envisioned by Congress. After careful analysis, it was decided to maintain the present DOD legal service system while continuing to investigate additional opportunities for cooperation among the Services, with a particular emphasis on consolidating legal training wherever possible.

RECOMMENDATION: Do not consolidate the Chaplain and Legal Corps. No savings are achieved.

INTELLIGENCE

Despite the efforts described in Chapter II to strengthen performance of intelligence functions and centralize management in response to the changing world situation, the existing intelligence structure largely reflects a focus on the Cold War Soviet threat. Therefore, the DIA is continuing to assess the intelligence resources available at combatant commands, Services, Joint Task Forces, and national and departmental levels to improve the utility and cost effectiveness of intelligence products.

Future operational requirements demand that intelligence systems interoperability be the first order of business. Several specific steps are being taken to improve the support the Intelligence Community provides to the country.

The success of the Joint Intelligence Center concept was well proven during the Gulf War and stimulated the development of a JIC to support each of the combatant commanders. However, as future crises or contingencies develop, the intelligence

system must be able to surge to provide planning and operations support to the commanders in the field. Although the JTF commander can receive intelligence support from the combatant CINC's JIC, such an organization doesn't provide the commander the ability to rapidly integrate intelligence information from the battlefield with information from national and Service intelligence units. This capability is necessary to assist timely decision-making during combat and other contingency operations.

Therefore, during future JTF deployments, intelligence support units will be drawn from the supporting JIC and assigned to the JTF commander to provide a fully operational intelligence support organization. This unit will be able to exchange information with all JICs, the National Military Joint Intelligence Center, and all Department of Defense agencies. In his capacity as senior uniformed military intelligence officer in DOD, the Director of DIA is conducting a study to determine the proper structure and organization for this new intelligence support unit.

Another area reviewed was the military intelligence production infrastructure. The Services each maintain distinct intelligence production organizations to support the intelligence requirements of the Service and component organizations and to support Service intelligence-related systems acquisition. Analysis of intelligence is conducted at six Service-level intelligence production centers, two of which are in the Washington, DC area. In addition, there are five intelligence production centers, located around the United States, that focus on analysis of scientific and technical information. DIA also has significant general military intelligence capabilities and is charged with providing specific intelligence products for the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the combatant commanders. DIA also manages the Service science and technology intelligence production centers.

Consolidation of some or all of these intelligence production centers under a joint intelligence organization would reduce infrastructure and overhead and could result in substantial savings. A DIA study, which is nearly complete, will offer several options for such a consolidation.

The collection of intelligence and production of intelligence products is a complex effort that has evolved as various threats have been identified and new technologies have been exploited to provide needed information. With the change in our security focus and in the nature of threats facing the United States, it is possible for the Intelligence Community to consolidate intelligence functions at the department level, while preserving separate Service intelligence branches to fulfill requirements unique to a particular Service. Traditional or artificial boundaries among Services and intelligence

organizations must not interfere with the ultimate mission of providing high quality, timely intelligence to operational forces, force planners, and defense policy makers. The maximum capability for the least cost must be vigorously pursued and unnecessary duplication rooted out.

RECOMMENDATION: Further consolidation of intelligence production centers under a joint intelligence organization might reduce infrastructure and overhead. A nearly-complete DIA study will offer several options for additional consolidations.

RESERVE FORCE STRUCTURE

The Reserve force structure is an essential part of our total force policy and of the Base Force. National Guard and Reserve forces were critical to the success of Operation DESERT SHIELD/STORM, just as they have been invaluable in other military operations before and since. As we reduce the active force structure, DOD has been working with the Congress to also reduce the Reserve force structure in a balanced way. The goal is to eliminate reserve elements, primarily Army, which are no longer required to face threats that have disappeared -- threats that led to the significant build-up in the 1980s in our Reserve forces.

Last year, Congress directed the Secretary of Defense to conduct an independent review of the Active component and Reserve component (AC/RC) mix of forces and submit a report assessing alternatives to the current and programmed AC/RC mix to meet the defense requirements of the 1990s.

This study was conducted by the RAND Corporation, a Federally-Funded Research and Development Center (FFRDC) independent of the Military Departments, with support provided by other FFRDCs. In its review, RAND assessed the existing total force policy, including the methodology used to determine how force reductions should be distributed within and among Active and

Reserve components. The study also examined several possible mixes of Active and Reserve forces, assuming a range of manning levels and declining budgets. Finally, the review considered possible revisions in the missions assigned to Active and Reserve units, training practices, and the organizational structure of Active and Reserve components.

DOD received the RAND Report on December 1, 1992 and is evaluating its findings and recommendations. Based on this evaluation, the Chairman of the Joint Chiefs of Staff and Secretary of Defense will identify the mix of Active and Reserve forces needed to carry out future military missions. DOD's analysis of the RAND report will be forwarded to Congress by February 15, 1993.

Preliminary review of the RAND Report found it to be a thoughtful treatment of the ongoing debate regarding the appropriate structure and mix of active and reserve military forces for the post Cold War era. The report acknowledges the careful preparation that went into construction of the Base Force and its plan to use reserve forces in crisis response operations, particularly in the areas of strategic airlift and combat service support forces.

The report identifies and assesses a number of innovative and potentially useful initiatives to improve training and, hence, increase the readiness and early deployability of reserve ground combat forces. Careful consideration will be given to proposed initiatives as the ongoing analysis and evaluation of force reductions are examined.

As we look for additional ways to save taxpayer dollars, a review of National Guard and Reserve headquarters and staffs should be conducted to identify any unnecessary duplication. Care must be taken to preserve the Reserve components' ability to fulfill their essential role in the Total Force policy and their other statutory obligations including the Guard's unique links to the state governors.

RECOMMENDATION: Evaluate the RAND AC/RC study. As part of the ongoing review, determine the proper active and reserve force mix. A study of National Guard and Reserve headquarters and staffs should be conducted to identify any unnecessary duplication.

CONCLUSION

As America's national security needs have changed, so has America's military. We have undertaken the largest restructuring in the last four decades while in the midst of the greatest force reductions since the end of World War II.

With the guiding premise of doing what is right for America, we have addressed head-on the tough issues facing the Services. We have reported on the numerous changes already accomplished in the past three years. We have conducted an across-the-board

examination of those areas where further change held the promise of increased efficiency or economy. These have been thorough, frank, and sometimes painful appraisals, and they have yielded concrete results.

We should also point out that this report represents but a single frame of a continuing movie. The changes featured here, the studies we are undertaking, and the directions in which we are moving are not the final steps in this process. We will continue to adapt our thinking, our processes, and our forces to stay on the leading edge of operational excellence and responsible fiscal stewardship.

This report represents the culmination of a period of intensive review that was undertaken to streamline the way we do business on a day to day basis. It documents a fundamental recognition within the Armed Forces of the United States that roles, missions, and functions are not cast in stone, but continue to evolve as circumstances warrant. Although many measures were used to evaluate whether to accept or reject a change, in the final analysis the decision was based on two criteria. First, was it smart? And second, did change increase the productivity, efficiency, and capability of our men and women in the Armed Forces?

The recommendations presented represent decisions on each issue, but these are not all the changes that will take place. During the upcoming budget deliberations, priorities will be established and decisions made that will affect all of the Services. The inherent shortcomings in conducting a review of one's own organization are also recognized. Therefore, individuals and organizations are encouraged to come forward with ideas and suggestions that might result in additional efficiencies or economies in our Armed Forces. These ideas must include real practical savings that do not detract from the readiness and capabilities that the American public demands from the military forces.

We have a superb military organization that has served our country well both at home and abroad. Although change is inevitable and necessary, we must guard against precipitous recommendations for changes that lack thorough and thoughtful analysis. We simply must provide the proper training, equipment, and support to all of the men and women in the Armed Forces, whom we ask, on a daily basis, to go in harm's way.

FILE
13

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON, D.C. 20350

IN REPLY REFER TO
OPNAVINST 9640.1
OP-436H
Ser 09/101373
13 October 1979

OPNAV INSTRUCTION 9640.1

From: Chief of Naval Operations

Subj: Shipboard Habitability Program

Ref: (a) OPNAVINST 9010.300 of 4 January 1974
(b) OPNAVINST 4720.2D of 9 July 1973
(c) OPNAVINST 4700.33 of 25 May 1978
(d) General Specifications for Ships of the U.S. Navy, NAVSHIPS 0902-001-5000

Encl: (1) Category I Standards: Habitability Standards for New Ship Designs
(2) Category II and III Standards: Minimum Habitability Standards and Habitability Improvement Standards for Existing Ships
(3) OPNAV Shipboard Habitability Steering Group

1. Purpose. The purpose of this directive is:

a. To enunciate the policy of the Chief of Naval Operations regarding U.S. Navy shipboard habitability.

b. To promulgate shipboard habitability standards, establish procedures for their attainment and assign responsibility for shipboard habitability program implementation.

c. To designate an Office of Chief of Naval Operations (OPNAV) Shipboard Habitability Manager, and establish an OPNAV Shipboard Habitability Steering Group.

2. Cancellation. OPNAVINST 9330.5A and OPNAVINST 9330.7.

3. Discussion

a. The Navy's primary mission is to be prepared to conduct prompt and sustained combat operations at sea in support of U.S. national interests and the national military strategy. The Navy is dependent upon shipboard personnel to accomplish this mission and therefore must provide them with living and working conditions which will result in levels of crew morale, safety, health and comfort, adequate to sustain maximum

personnel effectiveness and to support optimum personnel retention. Habitability is that military characteristic of U.S. Navy ships which is directed toward satisfying these personnel needs which are dependent upon the physical environment.

b. Many existing ships were designed prior to the establishment of 1960 and 1965 habitability standards and are constrained by original design parameters from fully meeting these standards or those which may more reasonably be attained in new ship designs. Additionally, the accumulation of equipment, system and personnel additions responsive to technological developments and redefinition of unit mission requirements during the long operational life span of most ships has frequently had a negative impact upon the spaces and facilities designed to support the personal needs of the crew.

c. The term "accommodations", with respect to habitability, denotes the number of personnel to be permanently supported in a given ship by the habitability spaces, systems, fixtures and equipment. In its broader definition, this "accommodation" figure is also critical to ship design from the weight and moment perspective, and critical to required endurance capability in terms of food and water stowage capacity. The manning level in some ships has exceeded the accommodation level for which original habitability facilities and mission statements were designed, and in some cases to the extent that physical hull constraints confine the remaining available space to less than that required to provide adequate habitability and to meet endurance requirements.

d. It is the objective of this instruction to preserve the shipboard facilities and space supportive of the personal needs of the crew, by: establishing reasonable habitability standards for new ship designs, reflecting the capabilities and needs of a modern U.S. Navy; optimizing habitability in existing ships upon which absolute attainment of all modern standards may be impossible and/or impractical; establishing procedures to compensate for potential impacts upon shipboard habitability incurred through addition of new systems, equipment and personnel; and, providing a firm base for habitability improvement by limiting billet growth to the level of physical accommodations.

4. <u>Policy</u>

a. General: Habitability is but one of many important factors included in the overall consideration of unit mission readiness. Each ship must be considered on an individual basis

to determine the optimum ratio of the many related factors. A warship cannot be designed around optimum habitability factors alone, but conversely, habitability factors cannot be progressively sacrificed to other readiness elements without eventual detriment to mission readiness. The habitability standards in enclosures (1) and (2) must be attained and maintained in order to preserve positive morale and the effectiveness of the mission readiness equation.

b. Definitions: For the purposes of this directive, the term "new ship designs" refers to those ship and submarine designs sufficiently early in the design process to incorporate the contents of enclosure (1) in the Top Level Requirements (TLR), and which have not yet completed "preliminary design". "Existing ship" refers to those active ships and submarines beyond the "preliminary design" stage as well as those accepted and commissioned. The term "hot bunking" refers to the practice of assigning more than one crewmember to one berth. The Deputy Chiefs of Naval Operations for Air, Surface and Submarine Warfare are referred to herein as "CNO Warfare Deputies".

c. [redacted] The standards herein apply to all U.S. Navy commissioned ships and submarines [redacted] in length or manned by 100 or more crewmembers. Smaller ships will be treated on a case basis, the standards herein providing a foundation for their habitability design, however with recognition that unique design constraints may preclude reasonable attainment of all larger ship standards.

d. Accommodation Limits: To increase the population of a ship beyond the capability of existing environmental control systems, habitability space and facilities (physical habitability elements) is tantamount to degradation of habitability. In new ship designs the physical habitability elements are provided for the number of accommodations derived from the Ships Manning Document (SMD) philosophy plus a growth factor. To provide a similar baseline for existing ships, permanent accommodation limits (peacetime) shall be established for each class/ship, as appropriate, within which shipboard manning shall be limited, and from which may be developed plans for fully attaining habitability standards. This shall be accomplished by separate directive and will include consideration of the standards established in this instruction, mission requirements, currently installed physical habitability elements, capacity for increasing physical habitability elements, and requirements to accommodate the crew, embarked troops, air wings, detachments, transients, short-term

temporary assignments, indoctrination personnel and official visitors and guests. The ultimate objective is the elimination of "hot bunking" and other habitability degradation caused by over-population. In pursuit thereof and recognizing the possibility of exceptions which may occur as a result of fluctuation inherent to the detailing process, the following general policy shall apply:

(1) Surface Ships

(a) Officers, CPOs and crewmembers shall not be permanently assigned (over 60 days) to any ship in numbers greater than the number of installed berths, except in cases of operational necessity as determined by the Fleet Commanders in Chief.

(b) Billets shall not be added to any ship in numbers greater than the number of installed berths, except in cases of operational necessity as determined by the appropriate CNO Warfare Deputy.

(2) [redacted] are exempt from this general policy by virtue of unique construction, employment and manning constraints, however, the philosophy of elimination of "hot bunking" where feasible, remains valid and all reasonable effort shall be made toward this end.

e. [redacted] Enclosures (1) and (2) contain the following:

[redacted] all new ship designs.

[redacted] standards for existing ships.

[redacted] standards for existing ships.

f. Deviations from Standards:

(1) [redacted] approval is required for:

[redacted]

[redacted] II Standards:

CATEGORY I STANDARDS: HABITABILITY STANDARDS FOR NEW SHIP DESIGNS

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Enclosure (1)

Potable Water

h. Fresh Water. All ships shall have a distilling capacity adequate to provide, in addition to boiler make-up feed and other non-habitability requirements, [redacted] of fresh water of satisfactory quality to support habitability (drinking, galley, scullery, sanitary spaces and laundry). [redacted] All ships [redacted] shall maintain a stowage capacity for a minimum of forty gallons per accommodation (crew plus troops) for habitability purposes.

[redacted]

(2) Ice making facilities shall be provided capable of furnishing [redacted] (crew plus troops) [redacted]

(3) Hot water heaters shall be provided in numbers sufficient to ensure an adequate supply of hot water at all washbasins and showers and shall include a system which insures a hot water supply to showers and washbasins within the 15 second time criteria of Section 532d of reference (d). Hot water heaters shall be provided for galley, pantry, scullery, laundry and medical spaces to insure capability of compliance with Section 532d of reference (d).

(4) Automatic potable water disinfection equipment in accordance with Section 532c of reference (d) shall be provided in surface ships.

2. Habitability Facility Standards. [redacted]

a. Berthing Standards. (Surface ships and submarines)

(1) There shall be one berth per accommodation (including troops).

(2) Type. Berths shall be of the pan bottom or locker-bottom type with the exception of those berths on amphibious ships designated as "surge berthing" in excess of designed accommodations. These berths shall be of a removable type to allow for expansion of recreation and lounge space during periods when not occupied.

(3) Personnel Grouping Standards

(a) Officers, CPOs and crew shall be accommodated in separate berthing compartments.

(b) On amphibious ships, embarked troop officers, SNCOs (E7-E9), and troops shall be accommodated in separate berthing compartments.

(c) Female officers, CPO and crew berthing accommodations shall be separate from those of their male counterparts.

[redacted]

[redacted]

(b) On all surface ships specifically configured to carry embarked flag officers and/or unit commanders requiring immediate access to bridge/control stations, such cabins shall be provided if staterooms are not in the immediate vicinity of the respective control station.

(5) Berthing Clearance Standards

(a) Minimum clearance requirements to insure freedom of rotation of individuals in their berths, access to berths and traffic flow between berths, are the following:

(1) Vertical unobstructed clearance above mattress top: 18 inches.

(2) Unobstructed passage width at berth tier ends: 24 inches (18 inches for submarines).

(3) Unobstructed passage width along accessible side of berth: 24 inches (18 inches for submarines).

(b) Distance of bunk bottoms from the deck shall be at least 2 inches, with the surface ship design goal being 6 inches.

(c) Access: Means for easy access to all spaces within bunk bottom lockers, shall be provided.

(d) The number of berths per tier shall not exceed three, except in amphibious ships, on which, in troop spaces, four-high berth tiers may be authorized if all other clearance and access standards are maintained.

[redacted] The following features shall be included in berthing spaces, including extended deployment troop berthing spaces:

(a) [redacted]

(b) [redacted] between berths and at ends of berth tiers where opening onto passageway.

(c) [redacted]

(d) [redacted]

(e) [redacted]ds.

(7) Space Considerations.

(a) Crew and CPO. Berthing spaces shall accommodate the fewest number of personnel, within the constraints of available berthing space and consistent with maintaining, as a minimum, the other berthing standards otherwise established in this instruction.

(b) Officer. Officers shall be accommodated in one or two man staterooms except in [redacted] in which [redacted] In this event, there shall be [redacted] Unobstructed walking and working areas in officer berthing spaces will conform, as a minimum, to Table 2. (Spaces assigned for commanding officer, commanding officer of troops, landing force commander, unit commanders and other senior operational commanders shall be commensurate with and appropriate to the rank of the individuals concerned.

TABLE 2

Unobstructed Area in Square Feet Per Officer Berth

OFFICERS ACCOMMO-DATIONS	SHIP LENGTH 150' to 300'	SHIP LENGTH 301' to 600'	SHIP LENGTH over 600'	TROOP OFFICERS	SUBMARINE OFFICERS
Single Stateroom	N/R	N/R-35*	35-50*	N/R-30*	N/R
Single (Exec. Off.) Stateroom	35-40*(1)	40-55*	45-70*	N/R	12 (1)
Single (Dept. Head) Stateroom	N/R-30*	30-45*	45-60*	N/R	N/R
Double Stateroom	20	22	35	18	6
Commanding Off. State-room	45-50*(2)	55-70*(2)	65-80*(2)	N/A	12
Officers Bunk Room	N/A	N/A	20	12	5

NOTES: N/R = Not required
N/A = Not applicable
* = The lower figure is the minimum limit. The higher figure is the design goal.

(1) When such spaces are provided. Optimum ship construction considerations may preclude provision in every case.

(2) Does not include sea cabin space, when provided.

h. Stowage for Personal Effects. The standards for personal stowage space displayed in Table 3 shall be provided.

TABLE 3

TYPE STOWAGE/TYPE SHIP	STOWAGE PER ACCOMMODATION				
	OFFICERS			ENLISTED	
	SINGLE STATE-ROOM	DOUBLE STATE-ROOM	BUNK ROOM	CPO (E7-E9)	CREW (E6 & BELOW)
Drawer volume (cubic feet)					
Surface Ship	20	15	15	N/R	N/R
Troops	18	10	6	N/R	N/R
Submarine	6	6	6	4	N/R
Locker Volume (cubic feet)					
Surface Ship	5.5	4.75	4.5	14	7.5
Troops	3.5	3.5	2.5	6.5	4
Submarine	9.0	8	8	6	3
Hanging Space (inches)					
Surface Ship	48	36	36	18	10
Troops	24	12	12	6	6
Submarine	24	18	12	6	3
Seabag Stowage (cu.ft.) (NOTE (1))					
Surface Ship	N/R	N/R	N/R	2	2
Troops	N/R	N/R	N/R	N/R	N/R
Submarine	N/R	N/R	N/R	N/R	N/R
Soiled Laundry Stowage (cu.ft.)					
Surface Ship	N/R	N/R	N/R	0.75	0.75
Troops	N/R	N/R	N/R	0.56	0.56
Submarine	N/R	N/R	N/R	N/R	N/R

NOTE (1): Seabag stowage need not be in or adjacent to berthing space.

N/R = Not required.

(1) In addition to the foregoing requirements, secure stowage for troop hand-carried weapons and field packs shall be provided on all applicable ships (not necessarily in or immediately adjacent to the berthing spaces).

(2) Clothing lockers capable of containing one change of working uniform/one set of coveralls and shoes shall be provided in each main engineering/machinery space on surface ships, sufficient to accommodate each watchstander in a watch section.

(3) On aircraft carriers and other ships designed to accommodate aviation personnel, stowage space in addition to that in Table 3, shall be provided for officer and enlisted aircrewmen, capable of accommodating individual flight equipment (helmet, flight suit, harness, survival equipment and boots). This shall take the form of hanging space or lockers within berthing spaces or briefing/ready rooms and/or additional locker rooms convenient to briefing/ready rooms.

c. Sanitary Spaces (Surface Ships and Submarines)

(1) General Standards.

(a) In sanitary facilities associated with living spaces, facilities for female crewmembers shall be separate from those for male crewmembers.

(b) Hot water heaters shall be located outside of sanitary and berthing spaces and provided adequate insulation and exhaust ventilation to prevent high space temperature in their location.

(c) [redacted] in surface ships (and in submarines when practicable) [redacted] to [redacted] passing through a water closet area [redacted] enroute to or from the washroom facility.

(d) On surface ships [redacted] sanitary spaces shall be located in the vicinity of and on the same deck level as the living space served.

~~(e) Access to sanitary spaces from berthing areas, on surface ships [redacted] shall be such that there is no need to traverse public areas.~~

(f) On amphibious ships, separate sanitary facilities shall be provided for SNCOs (E7-E9), and troops.

(g) Within each sanitary space, fixtures shall be arranged so as to allow for one section to be secured for cleaning while the other section is in use, if reasonably convenient alternate facilities do not exist.

~~(h) Sanitary facilities, [redacted] water closet and washbasin shall be provided in the immediate proximity of the bridge, combat information center and communications spaces for use by watchstanders.~~ On ships on which female accommodations/watchstanders are anticipated, an enclosed water closet shall be provided. If feasible, considering Collection Holding and Transfer (CHT) system limitations, ~~[redacted] shall be provided in, or adjacent to the [redacted] engineroom and other normally manned main machinery spaces.~~

(3) Major Sanitary Fixtures

(a) Lavatories (washbasins)

1. At least one lavatory shall be provided in each water closet space.

2. Lavatories in washrooms and washroom areas shall be spaced 24 inches center to center and shall be of the continuous counter top type. A mirror, toilet shelf and two electrical outlets shall be provided for each lavatory. Mirrors shall extend the full length of the counter top installation, but shall be segmented to facilitate replacement. Complete, easy access to lavatory plumbing for cleaning, maintenance and damage control, shall be provided.

3. On surface ships, [redacted] built-in toilet case, mirror, light, and receptacle shall be provided in each officer and troop officer stateroom which does not have a private bath. Equivalent lavatory units shall be provided in officer bunkrooms on a basis of one per four berths or increment thereof, and in troop officer bunkrooms on a basis of one per five berths or increment thereof.

4. On submarines, one lavatory unit with built-in toilet case, mirror, light and receptacle shall be provided in each stateroom.

(b) Urinals. Shall be spaced 27 inches center to center with privacy partitions between units and at the ends of each group (if not otherwise provided by permanent structure or bulkhead).

(c) Water Closets (Toilets). Shall be enclosed in cubicles, with a privacy door. On all surface ships and submarines the minimum cubicle size shall be 27 inches wide by 18 inches deep (door to front of water closet) for both single and double door installations. The design goal for surface ship installations shall be 30 inches wide by 30 inches deep (single door) and 30 inches wide by 21 inches deep (double door).

(d) Showers. Shall be of the individual stall type, with privacy door. Minimum size shall be 30 inches wide by 30 inches deep.

(4) Accommodations per Major Fixture. The numbers of accommodations to be served per major fixture, for surface ships and submarines, are shown in Table 4 and Table 5 respectively. (If the result, when the number of accommodations is divided by the 'accommodation per fixture' factor is not an integer, then the number of fixtures shall be the next highest integer.) (See Tables 4 and 5)

TABLE 4

NUMBER OF ACCOMMODATIONS PER FIXTURE
FOR SURFACE SHIPS
COMMUNITY SANITARY SPACES*

FIXTURE	SHIP OFFICER	TROOP OFFICER	CPO	SNCO	CREW	TROOP
Lavatories (1)	30-35	30-35	7-12	8-13	15-20	15-20
Urinals	20-25	30-35	30-35	30-35	40-45	50-55
Water Closets	8-13	10-15	10-15	10-15	23-28	25-30
Showers	10-15	20-25	12-17	20-25	25-30	40-50

* The higher number is the ratio limit not to be exceeded. The lower number is the design goal, for each category.

NOTE 1: Paper towel dispensers shall be provided in each space. These may be augmented by electric hand dryers, but not to the extent of exclusion of paper towel dispensers.

TABLE 5

NUMBER OF ACCOMMODATIONS PER FIXTURE
FOR SUBMARINES
COMMUNITY SANITARY SPACES

FIXTURE	OFFICER	CPO	CREW
Lavatories (1)	(2)	8	15
Urinals	(3)	(3)	(3)
Water Closets	10	12	20
Showers	10	20	50

NOTE 1: At least one electric hand dryer shall be provided in each community sanitary space.

NOTE 2: One lavatory unit with built in toilet case, mirror, light and receptacle shall be provided in each stateroom.

NOTE 3: No specific requirement. Constraints of individual ship design shall control this feature.

d. Food Service Spaces. (Surface Ships and Submarines)

(1) General

(a) Secondary Function. All dining facilities shall be designed to support recreation (including movies) and training, as well as their primary dining function.

(b) Mess Lines. Dining facility access shall be designed to prevent crewmembers in the mess line from standing on the weather decks, and from passing through visible garbage disposal areas while progressing through the serving line.

(c) Clearances in Dining Areas. As a minimum, the following unobstructed clearances within dining areas shall be provided:

1. Primary passages: On all surface ships and submarines, no less than 27 inches. The design goal for surface ships shall be 36 inches.

2. Secondary passages: On all surface ships and submarines, no less than 24 inches. The design goal for surface ships shall be 30 inches.

FILE
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Introduction

The First Presidency has issued the following statement on standards of morality and fidelity:

"We call upon members to renew their commitment to live the Lord's standard of moral conduct. Parents should teach their children the sacred nature of procreative powers and instill in them a desire to be chaste in thought and deed. A correct understanding of the divinely appointed roles of men and women will fortify all against sinful practices. Our only real safety, physically and spiritually, lies in keeping the Lord's commandments.

"The Lord's law of moral conduct is abstinence outside of lawful marriage and fidelity within marriage. Sexual relations are proper only between husband and wife appropriately expressed within the bonds of marriage. Any other sexual contact, including fornication, adultery, and homosexual and lesbian behavior, is sinful. Those who persist in such practices or who influence others to do so are subject to Church discipline.

"We remind you of scriptures that make clear the relationship between one's thoughts and actions (see Matthew 15:19; Mosiah 4:29–30; Alma 12:14; 3 Nephi 12:28; D&C 121:45). There is a distinction between immoral thoughts and feelings and participating in either immoral heterosexual or any homosexual behavior. However, such thoughts and feelings, regardless of their causes, can and should be overcome and sinful behavior should be eliminated. This can be achieved through faith in God, sincere repentance, and persistent effort. The help of others may be needed. We commend and encourage those who are overcoming inappropriate thoughts and feelings. We plead with those involved in such behavior to forsake it. We love them and pray for them. We are confident that through repentance and obtaining needed help, they can experience the peace that comes from conforming their lives to God's teachings.

"Individuals and their families desiring help with these matters should seek counsel from their bishop, branch president, stake or district president. We encourage Church leaders and members to reach out with love and understanding to those struggling with these issues. Many will respond to Christlike love and inspired counsel as they receive an invitation to come back and apply the atoning and healing power of the Savior (see Isaiah 53:4–5; Mosiah 4:2–3)" (First Presidency letter, 14 Nov. 1991).

This booklet will help Church leaders assist members, both men and women, who are troubled by homosexual problems. Participation in such behavior is of particular concern because it violates the commandments of God, is contrary to the purposes of human sexuality, distorts loving relationships, and deprives people of the blessings that can be found in family life and in the saving ordinances of the gospel.

Reading this booklet will help leaders understand the nature of homosexual problems and the steps they can take to assist those who want to bring their lives into harmony with the teachings of the Savior.

Understanding Homosexual Problems

Homosexual problems include erotic thoughts, feelings, and behavior directed toward persons of the same sex. These problems should not be confused with appropriate expressions of love and respect between members of the same sex.

Some people who seek help for homosexual problems may have concluded that experiences from their youth, such as perceived problems with a parent or some other older person, contributed to their inappropriate

feelings. Some may believe that they have not consciously chosen to have such feelings in the first place.

No general agreement exists about the causes of such problems. It is important for you as a Church leader to help members understand that regardless of the causes, these problems can be controlled and eventually overcome. Members can be helped to gain self-mastery, adhere to gospel standards of sexual purity, and develop meaningful, appropriate relationships with members of both sexes.

Helping Members Overcome Homosexual Problems

The guidance of the Spirit will be your most important resource in helping members. Prayerfully consider the impressions that come to you and the suggestions that follow. As much as possible, use the scriptures and the words of the living prophets in your efforts to help.

Teach Faith in Jesus Christ, Repentance, and Obedience

When members with homosexual problems come to you for help, they may feel guilty and in despair, having been unable to change their lives. You can instill hope in them. Help them to know that you and their Heavenly Father love them and that they can be healed from their afflictions through the atonement of the Savior. Help them to accept responsibility for their thoughts and feelings and to apply gospel principles that will enable them to change their behavior.

In most cases, these members need a better understanding of faith in Jesus Christ, the process of repentance, and the purpose of life on this earth. They need to understand the importance of praying, fasting, searching the scriptures, honoring their covenants, and obeying all of the commandments of God. Through his atoning sacrifice, the Lord Jesus Christ made repentance and forgiveness possible. Those who repent of their sins are cleansed and healed by the power of God. Help members understand the atoning and healing power of the Savior in their lives by reading with them and discussing Isaiah 53:4–5; 1 Corinthians 6:9–11; Mosiah 4:2–3; Moroni 10:32–33; and other relevant scriptures. Also read and discuss this statement by President Ezra Taft Benson: "The world would mold men by changing their environment. Christ changes men, who then change their environment. The world would shape human behavior, but Christ can change human nature" (in Conference Report, Oct. 1985, p. 5; or *Ensign*, Nov. 1985, p. 6).

In order to change homosexual behavior, a person must understand the seriousness of the transgression, feel deeply repentant, and have a firm commitment to change. These same elements will help a person overcome homosexual thoughts and feelings, which, although less serious, lead to deviant behavior.

To help members understand that the Lord will forgive their sins if they are fully repentant, read with them and discuss Ezekiel 33:14–16; Enos 1:1–8; Doctrine and Covenants 58:42–43; and other relevant scriptures. Also read and discuss this statement by President Ezra Taft Benson: "God's gifts are sufficient to help us overcome every sin and weakness if we will but turn to Him for help" ("A Mighty Change of Heart," *Ensign*, Oct. 1989, p. 5).

Help the troubled members to realize that these promises will become realities as they turn to the Savior and strive to cleanse their lives of all unrighteousness. As they do so, they will be healed through the grace and power of Christ.

Consider having the members read Spencer W. Kimball's book *The Miracle of Forgiveness* (Salt Lake City: Bookcraft, 1969).

Hold Regular, Effective Interviews

A member with homosexual problems often anticipates rejection from Church leaders. Therefore, the member needs to know that you genuinely want to help and that you can be trusted. It is particularly important that the member feel these things during the first interview. Be compassionate and encouraging as well as firm. Meet with the member regularly, especially during the early stages of repentance.

Ask the person whether family members, especially the spouse or parents, are aware of the problem. Ask how they have responded. If a good relationship exists and the family is a primary support system, discuss the possibility of including them in efforts to help. The family's support may be very important to the person's success.

Listen carefully to what the person says. Ask questions that will help you understand the person's feelings and intentions as well as the nature and seriousness of the problem. For example, you could ask: What difficulties are you having? How long have they existed? How deeply involved are you in homosexual thoughts, feelings, or behavior? What effect are these problems having in your life? What do you think can be done to improve the situation? How have you tried to overcome these problems? Answers to such questions will help you discern how to help.

It is essential that you keep confidential the information given to you by the member. Breaches of confidence may cause the member to lose trust in you, and rumors may cause others in the ward or community to react negatively toward the member, making repentance and change more difficult.

Be careful not to label the person as "homosexual" or "gay." Such labels can undermine the person's belief that change is possible and may communicate the mistaken notion that a man or woman is born with a homosexual identity that cannot be changed. It is more appropriate to speak of homosexual thoughts, feelings, and behavior.

If the person is deeply depressed or is talking of suicide, you should *immediately* contact a professional therapist for help (see p. 5, "Obtaining Professional Assistance").

Emphasize the Need to Control Thoughts and Feelings

A person may be troubled by homosexual thoughts and feelings even though there has been no homosexual behavior or such behavior has been eliminated. These thoughts and feelings need to be overcome. Members of the Church are commanded to control their sexual thoughts and desires. They are expected to obey the Lord's law of sexual purity.

You can help members understand the importance of controlling their thoughts and feelings by reading with them and discussing Romans 12:2; Mosiah 4:29–30; Alma 12:14; Doctrine and Covenants 121:45; and other relevant scriptures.

Self-mastery in all aspects of one's life requires physical and emotional energy. A man or woman who has a healthy life-style will more likely have the energy and self-discipline needed to change. If the person does not already have a program of regular self-improvement including exercise, a healthy diet, and setting and achieving goals, encourage him or her to establish such a program.

Overcome Rationalizations

Help the troubled member recognize and overcome common rationalizations such as the following:

"I am not responsible for my behavior because I was born this way." Although some struggle with unwanted homosexual thoughts and feelings, there is no conclusive evidence that anyone is born with a homosexual orientation.

Many people face difficult challenges. Whatever the causes of problems, each person is ultimately responsible for how he or she deals with life's challenges. (See Boyd K. Packer, "Covenants," in Conference Report, Oct. 1990, pp. 107–10; or *Ensign*, Nov. 1990, pp. 84–86.)

"I cannot change my sexual orientation." Change is possible. There are those who have ceased their homosexual behavior and overcome such thoughts and feelings. God has promised to help those who earnestly strive to live his commandments: "There hath no temptation taken you but such as is common to man: but God is faithful, who will not suffer you to be tempted above that ye are able; but will with the temptation also make a way to escape, that ye may be able to bear it" (1 Corinthians 10:13).

Overcome Deviant Practices

Pornography and masturbation almost always accompany homosexual transgressions. These deviant practices must be overcome before homosexual problems can be resolved.

Pornography is very dangerous and addictive. It includes all forms of entertainment that are vulgar, immoral, or perverse in any way. It may be present in movies, videocassettes, concerts, books, magazines, and other types of media. Viewing or reading pornography arouses sexual fantasies and urges that lead to deviant behavior.

Although masturbation is accepted by many in the world, this practice has been condemned by the Lord (see "President Kimball Speaks Out on Morality," *Ensign*, Nov. 1980, p. 97). Indulgence in this practice intensifies sexual urges, making it difficult for the person to overcome homosexual problems.

Overcoming the addiction to pornography and masturbation is seldom easy. The more frequently a person engages in these practices, the more difficult they are to overcome. You can help a person identify the sequence of events that leads to either of these practices. Encourage the person to interrupt the sequence at the earliest possible stage by substituting desirable thoughts and activities. Fasting, praying, listening to inspirational music, and avoiding locations where previous transgressions occurred are all helpful.

Overcoming these deviant practices may take time. There may be relapses. Focus on the progress the person is making. Continue to provide encouragement and support until the problems are conquered.

Encourage Appropriate Relationships

People who are trying to overcome personal problems will be strengthened by good relationships with others. Encourage members who are repenting of homosexual transgressions to live righteously and develop appropriate relationships.

Many people try to repent while clinging to unhealthy relationships with others who have similar problems. Members who are repenting must free themselves from these relationships.

Marriage should not be viewed as a way to resolve homosexual problems. The lives of others should not be damaged by entering a marriage where such concerns exist. Encouraging members to cultivate heterosexual feelings as a way to resolve homosexual problems generally leads them to frustration and discouragement. However, some people have reported that once they are freed from homosexual problems, heterosexual feelings have gradually emerged.

Enlist the Help of Others

While the bishop is responsible for helping a member to repent, others may assist as well. The bishop should obtain permission from the member before disclosing confidential

information to others. The family is a person's first line of support and should help when possible. The bishop may ask ward members to provide needed friendship and support, but he should not break confidences or create circumstances in which the repentant member or other members could be exposed to temptation.

Obtaining Professional Assistance

In addition to the inspired guidance and assistance of Church leaders, members often need professional help from qualified therapists who understand and honor gospel principles. When adequate professional help is not available in the ward or stake, an LDS Social Services agency may provide consultation, therapy, or referral to therapists in the community. To obtain information about these services, contact your local LDS Social Services office or write to LDS Social Services, 50 East North Temple Street, Salt Lake City, Utah 84150.

Helping the Spouse and Family Members

It is important to understand and help the spouse and family of those who have homosexual problems. Sometimes family members may be hesitant to ask for help because they fear rejection, misunderstanding, or blame. There are some instances when a spouse or family member may need help through professional therapy.

If a person with homosexual problems chooses not to change, family members may have difficulty maintaining feelings of love and acceptance toward the person. Encourage them to continue loving the person and hoping that he or she may repent. For specific suggestions on how family members can help, see Elder Richard G. Scott's address entitled "To Help a Loved One in Need," *Ensign*, May 1988, pages 60–61.

If the troubled person has sexually abused a child, child abuse reporting laws may apply, and the child may need professional therapy. Please refer to the booklet *Child Abuse: Helps for Ecclesiastical Leaders* (32248) for additional guidelines.

To protect the well-being of a spouse, future offspring, and other family members, encourage those who have engaged in homosexual behavior to obtain testing for the AIDS virus and to seek competent medical help. (See "First Presidency Statement on AIDS," *Ensign*, July 1988, p. 79.)

Be careful not to blame family members for choices made by a person with homosexual problems. Parents are especially inclined to blame themselves for the problems of a son or daughter. The following statement by President Spencer W. Kimball may help to console and encourage family members:

"I have sometimes seen children of good families rebel, resist, stray, sin, and even actually fight God. In this they bring sorrow to their parents, who have done their best to set in movement a current and to teach and live as examples. But I have repeatedly seen many of these same children, after years of wandering, mellow, realize what they have been missing, repent, and make great contribution to the spiritual life of their community. The reason I believe this can take place is that, despite all the adverse winds to which these people have been subjected, they have been influenced still more, and much more than they realized, by the current of life in the homes in which they were reared. . . .

" . . . Righteous parents who strive to develop wholesome influences for their children will be held blameless at the last day, and . . . they will succeed in saving most of their children, if not all" (in Conference Report, Oct. 1974, p. 160; or *Ensign*, Nov. 1974, pp. 111–12).

Church Discipline and Activity

Stake presidents and bishops should use their inspired judgment in deciding when to convene a Church disciplinary council for a member who has committed a homosexual transgression. The purposes of Church discipline and instructions for convening disciplinary councils are explained in the *General Handbook of Instructions*, section 10.

Activity and service in the Church are privileges as well as responsibilities. When people have repented and are worthy, bishops may extend appropriate Church callings to them. Bishops should make certain that men and women who are called to work with youth are above reproach in living the Lord's law of sexual purity.

Fostering Healthy Sexual Development

Spouses, family members, and friends of those with homosexual problems may come to you for counsel about how to prevent problems in the lives of other family members. Teach them that each person can be fortified against sinful practices by obtaining a testimony of God the Father and his Son, Jesus Christ; understanding his or her relationship to God; and obeying gospel principles. Each person also needs to understand the divinely appointed relationship between men and women.

A secure family environment helps children develop healthy sexual attitudes. Love, effective communication, and appropriate expressions of affection among family members are vital. Each person also needs the security that comes from spending individual, quality time with parents, friends, and role models.

Conclusion

There is hope for those who desire to be free of homosexual problems. Though the process of repentance is often long and difficult, members can overcome these problems by turning to the Lord, following the inspired guidance of his servants, and committing themselves to a program of change. Repentance leads to healing, peace of conscience, and joy. Added strength and comfort come through service in the Church. In some cases, heterosexual feelings emerge leading to happy, eternal marriage relationships.

Additional Resources

Ezra Taft Benson, "Born of God," in Conference Report, Oct. 1985, pp. 4–6; or *Ensign*, Nov. 1985, pp. 5–7.

Spencer W. Kimball, *The Miracle of Forgiveness* (Salt Lake City: Bookcraft, 1969).

Spencer W. Kimball, "President Kimball Speaks Out on Morality," *Ensign*, Nov. 1980, pp. 94–98.

Boyd K. Packer, "Covenants," in Conference Report, Oct. 1990, pp. 107–10; or *Ensign*, Nov. 1990, pp. 84–86.

Richard G. Scott, "To Help a Loved One in Need," in Conference Report, Apr. 1988, pp. 69–71; or *Ensign*, May 1988, pp. 60–61.

For the Strength of Youth (34285).

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MILITARY POLICY TOWARD HOMOSEXUALS: SCIENTIFIC, HISTORICAL, AND LEGAL PERSPECTIVES

The Judge Advocate General's School

Winter, 1991

Jeffrey S. Davis [FNa]

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I. INTRODUCTION

Department of Defense Directive 1332.14 states that homosexuality is incompatible with military service. [FN1] Accordingly, current policy prohibits homosexuals from entering military service. [FN2] If a homosexual manages to enter the service in spite of this prohibition, the service will separate that individual as soon as possible. [FN3] To facilitate this process, current policy allows separation based on homosexual tendencies alone, without requiring proof of any homosexual acts. [FN4] Many military homosexuals, however, have resisted their separations from the military by strenuously defending their positions at administrative elimination hearings and by vigorously litigating their causes.

These cases often involve a soldier, sailor, or airman who, but for being a homosexual, is outstanding in every respect. [FN5] Using the testimony of supervisors and co-workers, these service members try to demonstrate the inapplicability of each of the policy reasons the military uses to justify their exclusion. [FN6] The current policy, however, contains no exceptions. [FN7] Commanders have no discretion to retain homosexuals and are themselves derelict if they do not initiate separation action. [FN8] Should commanders have this discretion? Can the retention policy be altered without altering the accession policy?

Separating people from the military solely because of their sexual orientation or status may lead to a successful legal challenge under the fundamental rights prong of equal protection. [FN9] Although the Supreme Court recently declined to hear Ben-Shalom v. Marsh, a case raising a challenge under the suspect/quasi-suspect class prong of equal protection, the Court never has squarely addressed either prong of equal protection in a homosexuality case. [FN10]

The policy also may lead to problems if the Selective Service System is ever reactivated. The draft could be avoided by anyone claiming to be a homosexual. Should the military modify this policy, which is based on sexual orientation?

Sodomy, whether heterosexual or homosexual, is against the law for members of the armed services. [FN11] The Supreme Court has determined that sodomy

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statutes are constitutional. [FN12] Nevertheless, is sodomy the real problem, or is the problem sexual activity in general? Should the Uniform Code of Military Justice continue to prohibit sodomy?

Some people do not realize they have homosexual tendencies until after they have enlisted or have been commissioned. [FN13] Should they be treated differently than people who lie about their sexual orientation to enter military service?

This article contends that current policy on accession of homosexuals should be altered so that homosexuality becomes a waivable disqualification. As to separation, Service Secretaries and commanders should have the discretion to retain homosexuals who meet certain criteria. Finally, the military should not separate personnel based solely on statements of sexual orientation, but should require evidence of prejudice to good order and discipline.

A multidisciplinary approach is used to reach these conclusions. Part II relies on science to explain why homosexuals exist, in what numbers, and the relationship of homosexuality to concerns other than sexual orientation. Part III is a history of the treatment of homosexuals in the Armed Forces, with emphasis on treatment in the United States Army. National and international trends also are addressed. Part IV is an analysis of the legal arguments that have been made for and against allowing homosexuals to serve in the Armed Forces. Emphasis is placed on equal protection analysis, as the fundamental rights prong of that analysis seems to be the homosexuals' best remaining argument. Part V is a critical appraisal of current policy, with suggestions for improvement.

II. SCIENTIFIC PERSPECTIVES

A. HOMOSEXUALITY DEFINED AND THEORIES ON CAUSATION

The military has its own definitions for "homosexual," "bisexual," and "homosexual act." A homosexual is defined as "a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts." A bisexual is defined as "a person who engages in, desires to engage in, or intends to engage in homosexual and heterosexual acts." A homosexual act is defined as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires." [FN14]

Homosexuality is a topic that often leads to heated discussion of divergent views. Science lends objectivity to the discussion. A great deal of scientific research has been conducted on the possible causes and effects of homosexuality.

1. The Kinsey Model

In 1948, Dr. Alfred C. Kinsey and two research associates at Indiana University published a nine-year case history study on human sexual behavior. [FN15] Their sample, intended to represent a cross section of the population of the United States, consisted of about 5300 white males from across the country. [FN16]

Kinsey did not adopt the common practice of labeling people as heterosexuals, homosexuals, or bisexuals. He developed a seven-point continuum based on psychologic reactions (specific arousal by same or opposite sex stimuli) and overt heterosexual and homosexual experience. The scale ranges

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from exclusively heterosexual (rate 0) to exclusively homosexual (rate 6). The middle (rate 3) is equally heterosexual and homosexual. Individuals can be assigned a different position on the scale for each age period of their lives. [FN17]

Kinsey used the term homosexual in connection with human behavior to mean sexual relations, either overt or psychic, between persons of the same sex. [FN18] He did not attempt to demonstrate what caused homosexuality. He believed that questions generated from data that he had gathered should be addressed by those scientists attempting to discover biologic, psychologic, social, or hereditary bases of homosexuality. [FN19]

2. Causation

Causation is of interest because it relates to the notion of fault, which relates to conscious choices. "Many homosexuals claim that their sexual orientation is the result of biological forces over which they have no control or choice." [FN20]

Sexual orientation refers to a consistent preference or ambivalence in regard to the gender of a sexual partner. Heterosexuals consistently prefer the opposite sex, homosexuals consistently prefer the same sex, and bisexuals have varying degrees of ambivalence. [FN21] The question is: What factor or combination of factors causes or leads to sexual preference?

Throughout the twentieth century, scientists have attempted to discover what causes sexual orientation. Most have taken heterosexuality as the norm and tried to explain why a minority of people deviate from it. [FN22] Some scientists have focused on personal experience and environment, while others have considered genetic and physiological explanations. [FN23]

Researchers recently have proposed a theory of how the entire spectrum of human sexual orientation is determined. [FN24] The theory is that hormonal and neurological variables operating during gestation are the main determinants of sexual orientation. Activation of the sexual orientation does not occur until puberty and may not stabilize until early adulthood. Personal experience and environment may be involved in sexual orientation, but it would be very unusual for such variables to overcome a strong predisposition to either heterosexuality or homosexuality.

a. Normal Development

From conception, females have two of the same sex chromosomes (XX), while males have two different sex chromosomes (XY). A fetus naturally will develop into a female unless certain events occur. Soon after conception of a male, genes in the Y chromosome trigger the production of biochemicals, such as testosterone, that cause male sex organs to appear. Other cells (called sertoli cells) also form and prevent the formation of structures that would otherwise become the uterus and fallopian tubes of a female. [FN25]

For fetuses being masculinized, testosterone creates hormone receptor sites within cells. During puberty, testosterone is produced in large quantities and bonds to the receptor sites formed during gestation. [FN26]

Separate areas of the brain control masculine and feminine behavior, and the masculine areas normally develop at the expense of the feminine areas. For example, the preoptic anterior nucleus of the hypothalamus generally is over twice as large in men as it is in women. This area appears to regulate the

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masculine sexual orientation tendency to mount in response to various feminine cues. Neurological organization for this area occurs during the third and fourth months of gestation. [FN27]

The norm is for males and females to develop a heterosexual orientation after a complex series of biochemical reactions that occur during gestation. A bisexual or homosexual orientation may result if these reactions are modified because of genetic variations, biochemicals produced in response to stressful situations, drugs taken by the pregnant mother, or other variables. [FN28]

b. Deviations From the Norm

Scientists have modified the above-described variables in laboratory experiments. Male rats with testes removed and female rats that have received testosterone injections, both prior to completion of neuro-organization, have been induced to display homosexual behavior. Similar work has been done with rhesus monkeys. [FN29]

Drugs called antiandrogens block the effects of testosterone and other sex hormones. Administration of antiandrogens to a pregnant rat often will result in homosexual behavior among the offspring after they reach puberty. Barbiturates, marijuana, and other drugs also can partially divert or block masculinization of the nervous system during neuro-organization. [FN30] Alcohol has been found to have both demasculinizing and defeminizing effects on the brains of both sexes of rats. [FN31]

Severe stress to a mother during neuro-organization of a fetus can lead to bisexual and homosexual male offspring. Stress causes depressed testosterone production in many species of mammals. The stress hormones such as adrenalin appear to inhibit production of testosterone. The hormones from the mother then pass through the placenta and affect the fetus. [FN32]

The only behavioral variable found to induce homosexual activity is total sexual segregation. Rhesus monkeys in this situation have displayed homosexual behavior. When later integrated with members of the opposite sex, however, most monkeys have displayed heterosexual behavior. [FN33]

Though scientists cannot conduct sexual orientation experiments on humans, evidence exists that many of the methods used to induce homosexual behavior in lab animals would have similar effects on humans. [FN34]

Four types of genetic mutations have been identified as probably causing homosexual or bisexual traits in humans. They all seem to involve chromosomes other than the sex chromosomes. Only one of the four types affects genetic females (XX). [FN35] These are not situations in which a person simply has a different sexual orientation. Depending on the type of mutation, a genetic male may have the physical appearance of a female, or a genetic female may have male genitalia.

A drug used to lessen the risk of miscarriage, the synthetic estrogen diethylstilbesterol (DES), has been linked to lesbian daughters of mothers who took the drug during pregnancy. One study found lesbianism to be more common among women whose mothers had taken DES than among women whose mothers had not. [FN36]

Stress on the mother also has been linked to homosexuals and bisexuals. A study of males born in Germany between 1934 and 1953 indicated an unusually high proportion of homosexuals were born during and immediately after World War

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II (from 1941 to 1946). [FN37] Another study involved asking mothers to recall any stressful episodes they experienced during pregnancy, such as deaths of close relatives, divorces, separations, traumatic financial or sexual experiences, or feelings of severe anxiety. The mothers who could recall such episodes included nearly two-thirds of the mothers of male homosexuals, one-third of the mothers of bisexuals, and less than ten percent of the mothers of heterosexuals. [FN38]

Several hypotheses follow from the prenatal neurohormone theory, and many have been tested. For example, homosexuality primarily should be a male phenomenon. [FN39] This is because mammals are fundamentally female and become male only when all the genetic and biochemical reactions associated with the addition of the Y chromosome work in the normal manner. Natural selection also would tend to favor fewer deviations in females, because only females can gestate offspring. Evidence from humans worldwide and from all other mammals studied supports the idea that homosexuality is more common among males than among females. [FN40]

Another hypothesis is that homosexuality should be an inherited trait, because there are likely to be many genetic factors that increase the chance of a deviation from the biochemical norm. "Support for this deduction can be found in studies reporting considerably higher concordance rates for homosexuality among identical twins than among fraternal twins... [S]everal studies have found that close relatives of homosexuals have higher incidences of homosexuality than the general population." [FN41] One study, for example, found "that nearly one-quarter of all brothers of male homosexuals also were homosexuals, a much higher rate than the 3-7% typically reported among human males generally." [FN42]

The prenatal hormone theory also "implies that efforts to change sexual orientation should be essentially confined to modifying where, when, and how sexual orientation is expressed; the orientation itself should not change." [FN43] This is because

> sexual orientation appears to be largely determined by hypothalamic-limbic system brain functioning, and most conditioning procedures, and certainly all counseling methods, gear their corrective efforts at neocortical functioning ("rational thought"). Although the neocortex's ability to learn ways to override and circumvent lower brain functioning should never be underestimated, basically a homosexual's neocortex would have to learn how to prevent hypothalamic-limbic areas of the brain from functioning as they were organized to function. [FN44]

The vast majority of homosexuals never seek treatment. [FN45] Of those who have, there have been some reports of successfully changing homosexuals into heterosexuals, but the criteria for success often have been "either vague or considerably less than exclusive heterosexual behavior." [FN46] The best predictor of whether a homosexual will respond to treatment is the amount of heterosexual experience the individual had prior to treatment. [FN47] Those who seek treatment are thus more likely to be bisexuals than homosexuals. At any rate, the reports on treatment of homosexuality seem consistent with the hypothesis that efforts to change sexual orientation should be minimally effective. [FN48]

The prenatal neurohormone theory, if correct, would indicate that those homosexuals who attribute their sexual orientation to biological forces beyond

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their control are right. Many social scientists, however, do not share this view. For example, many behavioral scientists favor experiential explanations for sexual orientation, [FN49] and some psychoanalysts maintain that homosexuality is a neurosis that can be cured. [FN50] Still, the prevailing view among psychologists is that "the diversity among sexual orientations is likely to be understood from a combination of sociological, cultural, and biological factors." [FN51] The prenatal hormone theory combines these factors and makes sense.

B. THE INCIDENCE OF HOMOSEXUALITY

1. Homosexuals in Society

The sexual histories of the 5300 subjects in the Kinsey study revealed a surprising incidence of homosexual experience in the general population. [FN52] For the purpose of reporting incidence, Kinsey defined a homosexual experience as physical contact to the point of orgasm with another male. [FN53] Kinsey's data indicated that:

> [A]t least 37% of the male population has some homosexual experience between the beginning of adolescence and old age.... Some of these persons have but a single experience, and some of them have much more or even a lifetime of experience; but all of them have at least some experience to the point of orgasm. [FN54]

Kinsey made generalizations from his data with his seven-point heterosexual/homosexual scale. [FN55] The generalizations all pertained to white males after the onset of adolescence up to age fifty-five, and included the following: sixty-three percent never have an overt homosexual experience to the point of orgasm; approximately thirteen percent react erotically to other males without having overt homosexual contacts; twenty-five percent have more than incidental homosexual experience or reactions (rates 2-6) for at least three years; eighteen percent have at least as much homosexual as heterosexual in their histories (rates 3-6) for at least three years; thirteen percent have more of the homosexual than the heterosexual (rates 4-6) for at least three years, ten percent are more or less exclusively homosexual (rates 5 or 6) for at least three years, eight percent are exclusively homosexual (rate 6) for at least three years, and four percent are exclusively homosexual throughout their lives. [FN56]

> Since only 50 per cent of the population is exclusively heterosexual throughout its adult life, and since only 4 per cent of the population is exclusively homosexual throughout its life, it appears that nearly half (46%) of the population engages in both heterosexual and homosexual activities, or reacts to persons of both sexes, in the course of their adult lives. [FN57]

Kinsey was looking at American white males in the 1940's. Worldwide, as of the 1980's, the incidence of exclusively homosexual males was estimated at three to five percent, regardless of varying degrees of social tolerance, intolerance, or repression. [FN58]

The incidence of "feminized males" or "queens," who are often caricatured, is estimated at about ten percent of the male homosexual population. [FN59] Evidence also exists that homosexuality is more common among males than among females, both in humans worldwide and in all other mammals that have been studied. [FN60] Kinsey found that only two or three percent of women were

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mostly or exclusively homosexual on a lifelong basis. [FN61]

2. Homosexuals in the Military Homosexuals Military Homosexuals

If the incidence of homosexuals in the military is the same as the incidence in the general population, about three to five percent of the military is exclusively homosexual. Data that impact upon incidence include separations for homosexuality and studies of known homosexuals who report military service in their histories.

There were few discharges for homosexuality during World War II. [FN62] Data for separations because of homosexuality in the post-war 1940's through the 1950's can only be estimated because of the nature of military recordkeeping during those periods. [FN63] The Army, for example, did not record the number of enlisted personnel separated for homosexuality until mid-1960. [FN64] Nevertheless, data reviewed by Williams and Weinberg (1971) suggest that about 2000 persons per year, or one out of every 1500 servicemen (.066%), were separated from the Armed Forces for homosexuality between the late forties and mid-fifties. [FN65]

Even in the 1960's, the services did not have uniform data collection on homosexual separations. The Army separated 6139 enlisted soldiers for homosexua homosexuality during a seven and one-half year period from 1960-1967 (averaging 1 818 per year). [FN66] From 1957 to 1965, the Army allowed an average of thirty officers per year to resign in lieu of administrative elimination action for homosexuality. [FN67] From 1950 to 1965, the Navy separated a total of 17,392 enlisted men for homosexuality for an average of 1087 per year. [FN68] No statistics are available for naval officers during this period. [FN69]

When similar data for the Marine Corps and Air Force are considered, the average estimate of personnel separated from all Armed Forces for homosexuality from the mid-fifties through the sixties is between 2000 and 3000 per year. [FN70] The Navy accounted for the highest percentage of separations, and in 1961 the Navy stated that homosexuality and other sexual abnormalities accounted for approximately forty percent of all its Undesirable Discharges. [FN71]

More recent and complete data of administrative separations for homosexuality for all services are available for fiscal years 1985 to 1987. [FN72] The reported categories include enlisted and officer personnel by gender.

The Army had 1197 separations, which included 829 enlisted males (.05%, or 5 in 10,000), 354 enlisted women (.17%), 11 male officers (.004%), and 3 female officers (.007%). The Navy had 2241, which included 1825 enlisted males (.13%), 382 enlisted females (.27%), 30 male officers (.02%), and 4 female officers (.02%). Two of the Navy personnel were separated judicially rather than administratively. The Marine Corps had 309 separations, which included 213 enlisted males (.04%), 90 enlisted females (.33%), 6 male officers (.01%), and no female officers. The Air Force had 912, which included 644 enlisted males (.043%), 220 enlisted females (.1%), 41 male officers (.01%), and 7 female officers (.02%).

The data from fiscal years 1985 to 1987 show that all of the services except the Navy were separating about 4 or 5 enlisted men per 10,000 for homosexuality, while the Navy was separating 13 enlisted men per 10,000. Naval officers of both sexes also have higher separation rates than are found in the other services. The Marine Corps has the highest rate of separations for

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enlisted women at 33 per 10,000, followed by the Navy at 27 per 10,000.

The important finding is the relatively small number of separations for homosexuality in all services (from 1:10,000 to 33:10,000) in relation to the incidence of exclusive homosexual orientation in the general population (from 300:10,000 to 500:10,000). [FN73] This raises the question of how many homosexuals serve in the military without ever being identified.

One study from the World War II era addresses this question. [FN74] It traced 183 men known to be homosexual prior to entering the military. Of these, 51 were rejected at induction, and 14 were admitted but later discharged. The remaining 118 served from 1 to 5 years, and 68 of them served as officers. Two studies with results similar to the World War II study were reported in 1967. [FN75] In one, 550 white homosexual males who had served in the military indicated that 80% experienced no difficulties. The other study included 214 male homosexuals who had served, with 77% receiving honorable discharges. In 1971, Williams and Weinberg reported that 76% of the 136 homosexuals in their study received honorable discharges. [FN76]

Dr. Joseph Harry, in a study of 1456 men and women interviewed in 1969 and 1970, found that homosexual and heterosexual men seemed equally likely to have served in the military, while lesbians were more likely than heterosexual women to have served. [FN77] Sexual orientation was determined using the Kinsey heterosexual-homosexual rating scale, with homosexuals being defined at those he scoring four or higher. [FN78] No findings explained why higher numbers of lesbians entered the service. [FN79]

Harry reported that one-third of the homosexual males who did not serve in the military avoided service by declaring their homosexuality. This figure represented fourteen percent of all homosexuals (those who did not serve and those who did serve), and raised the question of why more homosexuals did not declare their homosexuality. [FN80] One explanation was that many did not know they were homosexuals at the time they volunteered or were drafted. ho

Harry found that the median age of fully realizing one's homosexuality and becoming socially and sexually active was approximately nineteen or twenty, and that most men realize their homosexuality by their mid-twenties. [FN81] Kinsey earlier had found homosexual behavior patterns in males to be "largely established" by age sixteen, with only a small portion of men materially modifying their sexual behavior patterns upon entering military service. [FN82] Harry found:

> Those who defined themselves as homosexual at later ages were more likely to have had military service. Similarly, those who became socially active homosexuals after the age of 22 were a good deal more likely to have homosex served in the military. Those who came to an early realization of their homosexuality, and those who came out earlier, are more likely to have homos declared their homosexuality to the military. [FN83] homosexu

Some support for Harry's findings comes from a study of homosexuals living in the Chicago area conducted by the Institute for Sex Research in 1967. Of those with prior military service, twenty-seven of eighty, or thirty-four percent, reported that they did not consider themselves homosexual before induction. [FN84]

From this data it appears that the incidence of homosexual men in the general population may approximate the incidence of homosexual men in the military, and the incidence of homosexual women may be greater in the military m

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than in the general population. It appears that seventy-five percent or more of the homosexuals who serve in the military are never identified, and a significant percentage may not realize they have a homosexual orientation until after entering the military. military. mil

Homosexuals are identified by the military in three main ways: discovery Hom through another person (sometimes related to jealousy, a lovers' argument, or blackmail); voluntary admissions (usually for the purpose of getting out of the military); and the homosexual's own indiscretion. [FN85] Variables related to m detection include frequency of homosexual behavior prior to entering the military, sexual behavior in the military, and status of partner (military or mi nonmilitary). [FN86]

The following conclusions result from the Williams and Weinberg study: Those engaging in more frequent homosexual activity prior to entering the military are more likely to be identified, as are those who do the same while in the military. Homosexuals who have a military as opposed to a nonmilitary sex milit partner also are more likely to be detected. Even more interesting, however, is that those who engage in more frequent sex prior to entering the military and use nonmilitary partners are the least likely to be identified. Those who engage in sex more frequently upon entering the military are more likely to come to the attention of the military voluntarily, whereas those who engage in sex less frequently upon entry are more likely to be discovered through their own indiscretion. [FN87]

Still, it appears that the great majority of homosexuals who serve in the military are never detected at all. military

C. NONSEXUAL DIFFERENCES BETWEEN HOMOSEXUALS ANDHETEROSEXUALS

"The vast majority of homosexual men and women never consult with a mental health professional of any sort." [FN88] In 1973 the American Psychiatric Association voted to stop classifying homosexuality as a mental disorder. [FN89] Nevertheless, some homosexuals still seek the assistance of psychiatrists because they do not want to be homosexual. [FN90] Homosexuality unwanted by a patient is called ego dystonic homosexuality. [FN91] These patients range from those wishing to increase their heterosexual responsiveness to those with low self-esteem who want to adjust to a homosexual orientation. [FN92] Either way, the psychological baggage carried by ego dystonic homosexuals sets them apart from heterosexuals and most homosexuals. homosexuals

The important question is whether the majority of homosexuals have more emotional and psychological problems than heterosexuals. The bottom line is that they do not.

> For the last fifteen years, many research studies have evaluated the performance of homosexuals and heterosexuals on a variety of psychological tests. A recent review of data from dozens of these studies concluded that there are no psychological tests that can distinguish between homosexuals and heterosexuals and there is no evidence of higher rates of emotional instability or psychiatric illness among homosexuals than among heterosexuals. [FN93]

The two problem areas in which homosexuals are over-represented are alcohol abuse [FN94] and the acquired immune deficiency syndrome (AIDS). [FN95] In a 1980 report of problems surfaced by homosexuals during contacts with family physicians, alcoholism was found to be slightly more

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prevalent in the homosexual population. [FN96] A study of the lifetime drinking histories of homosexual and heterosexual women interviewed in the late 1960's suggested significantly more problem drinking in the lesbian sample. [FN97]

A 1978 study of four urban areas in the Midwest reported that about one-third of male homosexuals surveyed were alcoholics. [FN98] More recently, in a study comparing the preservice adjustment of homosexual and heterosexual military accessions tested in 1983, homosexuals who had been discovered and discharged did as well or better than heterosexuals in most tested areas, except in preservice drug and alcohol use. [FN99]

The acquired immune deficiency syndrome (AIDS) is a fatal disease with no known cure. The virus that causes the disease, the human immunodeficiency virus (HIV), is transmitted by body fluids such as blood and semen. By February 1990, sixty percent of the 119,590 known cases of AIDS in the United States were homosexual or bisexual men, twenty-one percent were female and heterosexual male intravenous drug users, seven percent were homosexual or bisexual men who were also intravenous drug users, and five percent were attributed to heterosexual contacts. [FN100]

Anyone can get AIDS. Homosexual and bisexual men are particularly susceptible because often they have multiple sex partners, thereby increasing the risk of contact with an infected person, and because anal sodomy lends itself to transmission of the disease. The military has an active program to screen personnel and potential accessions for HIV. [FN101] This screening program probably keeps some homosexuals out of the military. Ironically, it also makes the military one of the safest places to engage in sodomy-at least medically speaking.

III. HISTORICAL PERSPECTIVES

> Don't talk to me about naval tradition. It's nothing but rum, sodomy, and the lash.

-Winston Churchill

A. HISTORICAL ANTECEDENTS

Homosexuality and bisexuality are nothing new. Forms of each were accepted widely in ancient Greece. [FN102] The poet Sappho lived circa 600 B.C. on the Isle of Lesbos, from which the term lesbian is derived. [FN103]

Plato lived from about 427-347 B.C. [FN104] His Symposium praised the virtues of male homosexuality and suggested that pairs of homosexual lovers would make the best soldiers. [FN105] One Greek bisexual known to have done well was Alexander the Great, who lived from 356-323 B.C. and conquered an empire that stretched from present-day Yugoslavia to the Himalayas. [FN106]

Jewish homosexuals presumably were not doing so well. The Old Testament has some of the earliest writings on the subject, such as Leviticus 20:13: "If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them." [FN107] Most historians have written that Christianity embraced the persecution and condemnation of homosexuals from its beginnings as well, but there is also evidence that Catholic Europe more or less tolerated homosexuality until the Middle Ages. [FN108]

The primary ammunition for the Church's position against

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homosexuality came from the writings of Saints Augustine and Thomas Aquinas, who both suggested that any sexual acts that could not lead to conception were unnatural and therefor sinful. Using this line of reasoning, the Church became a potent force in the regulation (and punishment) of sexual behavior. While some homosexuals were mildly rebuked and given prayer as penitence, others were tortured or burned at the stake. [FN109]

In England, the ecclesiastical law against buggery (anal intercourse) became established as the criminal law of the state in 1563. [FN110] What had been one of the sins against nature became one of the "crimes against nature." This terminology still is used to describe sodomy in many jurisdictions. [FN111]

Ecclesiastical law served as the basis for punishing homosexual behavior in Europe until the nineteenth century, when the Napoleonic Code led to a liberalization of attitudes. [FN112] The nineteenth century also saw homosexuality take on the status of a sickness to be treated by the medical community. [FN113]

The history of anti-sodomy laws in America was stated succinctly in Bowers v. Hardwick, the Supreme Court case holding anti-sodomy statutes constitutional:

> Sodomy was a criminal offense at common law and was forbidden by the laws of the original thirteen States when they ratified the Bill of Rights. In 1868, when the Fourteenth Amendment was ratified, all but 5 of the 37 States in the Union had criminal sodomy laws. In fact, until 1961, all 50 states outlawed sodomy, and today, 24 states and the District of Columbia continue to provide criminal penalties for sodomy performed in private and between consenting adults. [FN114]

B. MILITARY LAW

Military law, as applied to homosexuals and homosexual acts, can be divided into statutes used to prosecute and regulations used to exclude or remove homosexuals from the service. Both have evolved over the years.

1. Sodomy Statutes

The Articles of War of 1916 became effective March 1, 1917, and were the first complete revision of military law since the Articles of War of 1806. [FN115] The ninety-third article of this revision, which addressed "miscellaneous crimes and offenses," proscribed assault with intent to commit any felony, including assault with intent to commit sodomy. [FN116] This was the first mention of sodomy in military law. It did not proscribe sodomy-only assault with intent to commit sodomy. The Manual for Courts-Martial, 1917, provided the following guidance:

> Sodomy consists in sexual connection with any brute animal, or in sexual connection, per anum, by a man with any man or woman. (Wharton, vol. 2, p. 538.) Penetration of the mouth of the person does not constitute this offense. Both parties are liable as principals if each is adult and consents; but if either be a boy of tender age the adult alone is liable, and although the boy consent the act is still by force. Penetration alone is sufficient. An assault with intent to commit this offense consists of an assault on a human being with intent to penetrate his or her person per anum. [FN117]

This rather narrowly drafted statute, proscribing only assault with

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the intent to commit anal sodomy, did not last long. Following World War I, Congress enacted new Articles of War in 1920. [FN118] For the first time, sodomy was included as a separate offense among the "miscellaneous crimes and offenses." [FN119] The definition was expanded to include oral sodomy; it read, "Penetration of the mouth of the person also constitutes this offense." [FN120] Curiously, though, assault with intent to commit sodomy was still limited to assault "with intent to penetrate his or her person per anum." [FN121] This remained the law through World War II. The sodomy statute did not change again until 1951, with the adoption of article 125 of the Uniform Code of Military Justice. [FN122] Article 125 states: "Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense." [FN123] The Manual for Courts-Martial, 1951, provided the following discussion:

> It is unnatural carnal copulation for a person to take into his or her mouth or anus the sexual organ of another person or of an animal; or to place his or her sexual organ in the mouth or anus of another person or of an animal; or to have carnal copulation in any opening of the body, except the sexual parts, with another person; or to have carnal copulation in any opening of the body of an animal. [FN124]

Assault with intent to commit sodomy became part of article 134, UCMJ, and was not limited to any particular variety of sodomy. [FN125] These laws have remained substantially unchanged except for altering the maximum punishments for certain forms of the offenses. [FN126]

The courts-martial cases tend to have aggravating factors such as assaultive conduct, coercion, involvement of a minor, or abuse of rank. Though a court-martial offense since 1920, consensual sodomy without aggravating factors, when detected, historically has led to administrative separation. [FN127]

2. Regulations

Regulations pertaining to homosexuality or homosexual acts are generally of three interrelated varieties: accession, reenlistment, and separation. The rules for officers are the same as the rules for enlisted personnel, although they are found in different regulations. The different services have substantially similar regulations, because they are all derived from the same Department of Defense directives. [FN128]

Both the Army and the Navy announced at the beginning of World War II that they intended to exclude all persons with homosexual histories. [FN129] The social climate being as it was, however, "few men with any common sense would admit their homosexual experience to draft boards or to psychiatrists at induction centers or in the services." [FN130]

From 1922 to 1945, Army enlisted personnel suspected or charged with homosexual attempts or acts faced the prospect of a "Section VIII" discharge. [FN131] The general heading for Section VIII was "inaptness or undesirable habits or traits of character." Specific traits, such as homosexual behavior, were not listed. Most soldiers discharged under Section VIII received an honorable discharge. In cases of psychopathic behavior, chronic alcoholism, or sexual perversion including homosexuality, the discharge was without honor. [FN132]

In 1945 War Department policy concerning homosexuals was either to

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court-martial them or to hospitalize those deemed to be"reclaimable." Hospitalization was to be followed by return to duty, separation, or court-martial. Mere confession of homosexual tendencies to a psychiatrist was not sufficient cause for discharge. Hospitalization was required, to be followed by return to duty or separation. [FN133]

The postwar homosexual policy reached its most liberal point on March 23, 1946, with the publication of War Department Circular No. 85.

> This order made it clear that enlisted personnel who were to be discharged because of homosexual tendencies, yet had not committed any sexual offense while in the service, could be discharged honorably. For officers in this category, it was further provided that they be permitted to resign under honorable conditions. [FN134]

The pendulum began to swing the other way in 1948. The provision for honorable discharge was deleted. Homosexuals were to be tried by court-martial or separated as unfit with an undesirable discharge. The category of those "unfit" at this time included criminals, pathological liars, homosexuals, drug addicts, individuals committing misconduct, and sexual perverts. In those cases in which there had been a long period of good service, however, a homosexual could be separated as "unsuitable" (with a general discharge) rather than as unfit. [FN135]

In 1949 the newly created Department of Defense issued a directive outlining a harsher policy on homosexuality for all branches of the service. [FN136] The 1950 Army Regulation implementing this policy divided homosexuals into three classes.

Class I homosexuals were those whose homosexual offenses involved assault or coercion as characterized by force, fraud, intimidation, or the seduction of a minor (regardless of the minor's cooperation). A general court-martial was mandatory for this category. Class II homosexuals were those who either engaged in or attempted to engage in homosexual acts. Preferral of court-martial charges was mandatory, but a resignation in lieu of court-martial could be accepted from officers, or a statement accepting a dishonorable discharge could be accepted from enlisted soldiers. Class III homosexuals were personnel who exhibited, professed, or admitted homosexual tendencies, but who had not committed any provable acts or offenses. Class III also included personnel who committed homosexual acts outside military jurisdiction. Class III homosexuals could receive either an honorable or a general discharge. [FN137]

In 1955 a Class III homosexual could get an honorable discharge if he or she had admitted to homosexual tendencies at induction but was inducted anyway, or if there was "heroic service" indicated in the soldier's record. Provisions were made to retain personnel who became involved in homosexual acts but were not "true, confirmed, or habitual" homosexuals. [FN138] By 1958 an honorable discharge was mandatory for Class III homosexuals. Convening authorities also could approve an honorable or general discharge for Class II homosexuals if it would be in the best interests of the service and if the individual concerned disclosed his or her homosexual tendencies upon entering the service, had performed outstanding or heroic service, or had performed service over an extended period. [FN139]

In 1966 the Army required a psychiatric examination prior to separation for homosexuality. [FN140] In 1970 the homosexuality regulation was

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superseded and was integrated into regulations that covered all types of unfitness and unsuitability discharges. [FN141] Unsuitability could be demonstrated by evidence of homosexual "tendencies, desires, or interests" (language later found to be unconstitutional). [FN142] In 1972 the unfitness and unsuitability provisions for enlisted personnel became chapters 14 and 13 of Army Regulation 635-200 (AR 635-200), the regulation pertaining to all types of enlisted personnel separations. [FN143]

This regulatory scheme was significant because separation boards convened pursuant to AR 635-200 generally had the authority to recommend retention of soldiers being processed for elimination, and commanders could disapprove a board's recommendation to separate. This provided two loopholes for some homosexuals, even though the Army policy was that homosexuality is incompatible with military service. A similar situation developed with officer separations, because the officer elimination regulation implied that separation was discretionary. [FN144] Indeed, prior to February 1977, the Army's litigation posture was that there was discretion to retain homosexuals. [FN145]

Meanwhile, the Air Force and the Navy were suffering some setbacks with their homosexuality regulations. The Navy regulation on homosexuality, dated July 31, 1972, did not provide any terms of exception to the general policy of separating homosexuals. [FN146] In litigation in 1974, however, the Navy argued that the regulation did not require mandatory discharge of homosexuals. [FN147]

The application of the Navy regulation became an issue in Berg v. Claytor, a case involving a homosexual officer. [FN148] The separation board deciding Ensign Berg's case was instructed that it had discretion to recommend retention. The court reviewing the case on appeal could not find in the record any indication of "the actual considerations which went into the Navy's ultimate decision not to retain Berg." [FN149] The court remanded the case to the Secretary of the Navy for a fuller articulation of the Navy policy on retention of homosexuals. Subsequent case history does not indicate whether such matters ever were presented.

In Matlovich v. Secretary of the Air Force, [FN150] a companion case to Berg v. Claytor, application of the Air Force regulation on discharge of homosexuals was at issue. [FN151] Technical Sergeant Matlovich, after twelve years of service, applied in 1975 for an exception to the policy of discharging homosexuals. The Air Force regulation expressly provided for exceptions when "the most unusual circumstances exist and provided the airman's ability to perform military service has not been compromised," and added that "an exception is not warranted simply because the airman has extensive service." [FN152]

Matlovich's request was denied, and discharge proceedings were initiated. During judicial review following his discharge, the Air Force stipulated that other homosexuals had been retained in the past. [FN153] Despite Matlovich's outstanding record, the Air Force said his case lacked the "unusual circumstances" that existed in some other cases. The Air Force did not articulate what constituted "unusual circumstances." The court remanded the case for the Air Force to clarify its policy on retention of homosexuals. [FN154] Subsequent case history does not indicate whether such matters ever were presented.

In Ben-Shalom v. Secretary of Army (Ben-Shalom I), [FN155] the Army in 1980 was told that the language it had been using since 1970 to define unsuitability

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because of homosexual "tendencies, desires, and interests" was unconstitutional. The court held that the language violated the first amendment and the constitutional right to privacy. [FN156] The Army had been using this language in several different regulations concerning active duty and reserve officer and enlisted accessions, reenlistments, and separations. [FN157] The definition was changed after Ben-Shalom I so that discharge for homosexual tendencies included those "admitted homosexuals, but as to whom there is no evidence that they engaged in homosexual acts either before or during military service. A homosexual is an individual, regardless of sex, who desires bodily contact ...." [FN158]

In 1981 the Army revised the enlisted separations regulation, AR 635-200, to create a separate chapter for separations due to homosexuality. [FN159] The policy made it clear that all personnel fitting the definition definition of a homosexual were to be separated, with no exceptions. In the area of homosexual acts, an exception could be made if a soldier met five criteria that essentially meant the soldier was not really a homosexual. [FN160] The Department of Defense issued a directive in 1982 that made this total exclusion policy uniform throughout all the services. [FN161] There have been no major changes to regulations that address homosexuality since 1982.

C. NATIONAL AND INTERNATIONAL TRENDS

During the 1950's, the American Law Institute recommended that states adopt a Model Penal Code that decriminalized all non-violent consensual sexual activity between adults in private, but retained a prohibition on public solicitation to engage in deviate sexual activity. [FN162] As of 1987, twenty-four states either had adopted the Model Penal Code or had otherwise removed criminal penalties for consensual sodomy. [FN163] Attempts to get other states to repeal sodomy statutes have not been successful since the June 1986 Bowers v. Hardwick decision. [FN164]

Internationally, the status of laws concerning homosexual behavior as of 1988 was:

> In 5 countries (and in some parts of the USA, Canada, and Australia) the law protects gays and lesbians against discrimination. In 64 countries homosexual behavior is not illegal (although different ages of consent for homo- and heterosexual behavior may exist), but there is no protection against discrimination on the basis of sexual orientation. In 55 countries homosexual behavior is illegal (in most cases between men, but that doesn't mean that the situation of lesbians is any better), and in 58 countries no information is yet available. Legally speaking, the situation is ... worst in Africa and rather better in Europe. [FN165]

A number of countries have tackled the issue of whether homosexuals should be allowed in the military. Many countries do not allow homosexuals to serve, in spite of the fact that they consider homosexual acts between consenting adults to be legal. These countries include Canada, Peru, Venezuela, New Zealand, Italy, Great Britain, and Northern Ireland. [FN166]

Some countries proscribe homosexual acts without addressing homosexual status. Brazil does not outlaw homosexual acts outside the military, but criminalizes "indecent acts, homosexual or not" between soldiers. [FN167] In Spain, homosexual acts have not been illegal since 1978, but sexual acts between soldiers on duty inside barracks are illegal. [FN168]

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At least five countries in addition to Brazil and Spain allow homosexuals in the military. In Israel, homosexuality has not been a reason for dismissal from the Armed Forces since 1988, but homosexuals are not allowed to have security-related jobs. [FN169] It has been legal for homosexuals to serve in the Armed Forces of Denmark since 1979. [FN170] Homosexuals were permitted to serve in the Armed Forces of the Federal Republic of Germany, but they were not considered to be suitable for senior positions. [FN171] In the Netherlands, the Dutch have allowed homosexuals to serve since 1974. [FN172] Sweden has allowed homosexuals in the Armed Forces since 1979. [FN173] homosexuals

IV. LEGAL PERSPECTIVES

> It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past. [FN174]

-O.W. Holmes

For a number of years, most of the litigation in this area involved former military personnel who had been discharged for homosexuality suing to get their records amended because they were not really homosexuals. [FN175] These attacks proceeded mostly on procedural grounds, and many involved claims that the military did not follow its own regulations. [FN176] In the 1970's the focus changed, and more of the litigation was from homosexuals who admitted their homosexuality, but were attacking military policy and regulations on constitutional grounds. [FN177] Some of the cases were decided on the constitutional issues. Others never got that far. This section reviews some of the legal theories advocated for and against these efforts.

A. SODOMY STATUTES

The statutory proscription of sodomy provides the moral bedrock on which the military builds its policy against homosexuals. The military statute, article 125, UCMJ, proscribes both homosexual and heterosexual sodomy. In Hatheway v. Secretary of the Army [FN178] Lieutenant Hatheway claimed that selective prosecution of homosexual sodomy under article 125 violated equal protection and that article 125 was unconstitutional as to private heterosexual acts. He also claimed that article 125 violated the first amendment prohibition respecting establishment of religion and that article 125 unconstitutionally violated his right to personal autonomy.

Hatheway lost. The Ninth Circuit Court of Appeals held that the convening authority selectively could prosecute those cases most likely to undermine military order and discipline, that Hatheway lacked standing as to private heterosexual acts, that article 125 has a legitimate secular purpose and effect, and that Hatheway's personal autonomy argument carried less weight than the government interests, especially because Hatheway's acts with a subordinate enlisted soldier had been viewed in a barracks by other enlisted soldiers.

The Supreme Court squarely addressed the constitutionality of a state's sodomy statute in 1986 in Bowers v. Hardwick. Framing the issue as "whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal and have done so for a very long time," the Court held

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that it did not. [FN179] Hardwick had challenged the Georgia sodomy statute, which prohibited all sodomy-both homosexual and heterosexual [FN180]-and which had been the law in Georgia since 1816. [FN181]

The Eleventh Circuit had held "that the Georgia statute violated Hardwick's fundamental rights because his homosexual activity is a private and intimate association that is beyond the reach of state regulation by reason of the Ninth Amendment and the Due Process Clause of the Fourteenth Amendment." [FN182]

Had the Supreme Court agreed to recognize a fundamental right to engage in sodomy, any law affecting the exercise of that right would have to be supported by a compelling government interest. [FN183] In deciding against Hardwick, the Court stated that there should be great resistance to expanding the substantive reach of the due process clause, particularly if it required redefining the category of fundamental rights. [FN184] Although Hardwick did not defend at the Supreme Court on the basis of the ninth amendment, the equal protection clause, or the eighth amendment, a four-justice dissent observed that those theories should have been considered anyway. [FN185]

B. LITIGATION ISSUES CONCERNING HOMOSEXUALITY REGULATIONS

1. Judicial Review of Military Discharge Determinations

Some litigation has involved homosexuals trying to get back into the military, and some has involved those trying legally to prevent their separation. In the latter category, personnel have sought declaratory and injunctive relief to preclude their discharge. Two such cases were Berg v. Claytor [FN186] and Matlovich v. Secretary of the Air Force. [FN187] Berg and Matlovich each raised the issue of whether private consensual homosexual activity between adults is protected constitutionally, but that issue was never resolved.

Judicial review of discretionary military administrative determinations generally is limited to ensuring that the action complained of is supported by substantial evidence and that it is not arbitrary, capricious, or unlawful. [FN188] The military enjoys a long history of judicial deference to military affairs. [FN189] One area in which the military is scrutinized closely is the application of its own regulations. The government lost both Berg and Matlovich because neither the Navy nor the Air Force could explain what criteria were used to determine whether to retain homosexual personnel. The court took the position that it could not provide review of either case until the services provided standards on which to base the review. [FN190]

Matlovich and Berg are the exceptions. The government ultimately has prevailed in most requests by homosexuals to preclude discharge. [FN191] Rich v. Secretary of the Army [FN192] illustrates the dilemma homosexuals sometimes face. In Rich an Army medical specialist challenged his involuntary discharge for fraudulent enlistment. The Army had determined that Rich falsely represented that he was not a homosexual on his reenlistment documents.

After noting that "the composition and qualifications of the armed forces is a matter for Congress and the military," the court held that "concealing or failing to disclose homosexuality in the enlistment process is material, and one doing so may be discharged for fraudulent enlistment." [FN193] Even though Rich claimed that he was not sure of his homosexuality until after he reenlisted, the court found enough evidence from a number of

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Rich's admissions to conclude that the Army's conclusions were not arbitrary, capricious, or unsupported by substantial evidence.

2. Fighting a War of Attrition: Exhaustion of Administrative Remedies as a Government Defense

Sometimes the constitutional issues never are reached because the homosexual plaintiff fails to exhaust administrative remedies, which usually means review by one of the various boards for correction of military or naval records. [FN194] Although that process can take from months to years, [FN195] it is favored because it gives the administrative agency an opportunity to correct the problem, possibly eliminating the need for judicial action, and because it develops a factual record upon which a court later can rely. An incidental benefit to the government is that during this process plaintiffs sometimes fail to pursue their claims and never are heard from again.

Courts will not require exhaustion of administrative remedies if the plaintiff can demonstrate that exhaustion would be a futile exercise. Elimination of the exhaustion requirement sometimes is seen in the homosexual cases, such as when a known homosexual faces an absolute prohibition against reenlisting. [FN196]

3. Constitutional Issues

a. Due Process

Homosexual litigants have raised a number of issues in their attempts to remain in the military. Two issues of historical interest are fifth amendment procedural and substantive due process. Both of these issues were raised in Beller v. Middendorf, [FN197] a consolidation of three Navy cases.

The procedural due process issue requires inquiry into whether military discharge procedures deprive homosexuals of property or liberty interests without due process. [FN198] The property interest is the expectation of continued employment. In Beller all three plaintiffs had committed homosexual acts, which provided cause for dismissal under the Navy regulations. Once cause for dismissal existed, there could be no expectation of continued employment. "Therefore, unless the Navy as a substantive matter may not discharge all homosexuals, or unless it must consider factors in addition to homosexuality in its decision ... we see no basis for inferring any expectation of continued service sufficient to constitute a constitutional property interest." [FN199]

Deprivation of a liberty interest could occur if military charges of homosexuality were false, made public, and followed by discharge. These actions might damage standing and associations within the community. They also might impose a stigma or disability affecting employment opportunities. [FN200] The Beller court found that liberty interests were protected by the military practice of conducting predischarge hearings at which respondents could present evidence to support their arguments that they should be retained. [FN201]

Substantive due process requires that laws be at least rationally related to some legitimate government interest. If the law in question impacts on what the Supreme Court has described as fundamental rights-such as procreation, choice of a marriage partner, or family planning-the law is given heightened scrutiny. [FN202] In these cases, the law must further a compelling state

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interest and provide the least restrictive way to meet that interest. Prior to Bowers v. Hardwick, homosexuals often argued that private, consensual, adult homosexual activity should be protected as an aspect of the fundamental right of privacy.

The Beller court avoided the issue of whether consensual private homosexual conduct was a fundamental right, and instead focused on whether the military regulation violated due process. In doing so, the court abandoned the rational basis and compelling state interest tests used in equal protection analysis. It chose instead a "case-by-case balancing of the nature of the individual interest allegedly infringed, the importance of the government interests furthered, the degree of infringement, and the sensitivity of the government entity responsible for the regulation to more carefully tailored alternative means of achieving its goals." [FN203]

In this balance, the court was more impressed with the weight of the Navy arguments. The Navy provided several reasons for its policy.

> The Navy "perceive[s] that homosexuality adversely impacts on the effective and efficient performance of the mission ... in several particulars." The Navy is concerned about tensions between known homosexuals and other members who "despise/detest homosexuality"; undue influence in various contexts caused by an emotional relationship between two members; doubts concerning a homosexual officer's ability to command the respect and trust of the personnel he or she commands; and possible adverse impact on recruiting. These concerns are especially serious, says the Navy, where enlisted personnel must on occasion be in confined situations for long periods. [FN204]

The court concluded that the regulation was a reasonable effort to accommodate the needs of the government with the interests of the individual. [FN205] The court also noted that "[t]he due process clause does not require the Government to show with particularity that the reasons for the general policy of discharging homosexuals from the Navy exist in a particular case before discharge is permitted," and that discharge of the plaintiffs "would be rational, under minimal scrutiny, not because their particular cases present the dangers which justify Navy policy, but instead because the general policy of discharging all homosexuals is rational." [FN206]

b. The First Amendment

The government has not won all of the homosexuality cases. In Ben-Shalom v. Secretary of the Army, a case involving a homosexual Army reservist, Army regulations promulgated in the 1970's were held to be unconstitutional insofar as they allowed discharge for homosexual tendencies, desire, or interest. [FN207] The issue had been framed as "whether petitioner can be discharged from the Army (even if the discharge is 'honorable') simply because she is a homosexual, although there is no showing that her sexual preferences interfered with her abilities as a soldier or adversely affected other members of the Service." [FN208]

All prior military homosexual litigation had involved homosexual acts. Miriam Ben-Shalom admitted she was a homosexual, but the Army had no proof that she had engaged in homosexual acts or had made homosexual advances. After being discharged as unsuitable because of her homosexuality, Ben-Shalom brought a mandamus action to compel her reinstatement.

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The problematic word in the regulation was "interest." The court found the regulation to be overbroad because it substantially impinged upon the first amendment rights of every soldier to free association, expression, and speech. [FN209]

The Army's interests in protecting the national defense, maintaining discipline and upholding the law of obedience under the "peculiar" conditions of military life, are time-honored and given great respect by all courts, including this one. They are, however, substantially outweighed by the "chill" imposed on the First Amendment liberties of its soldiers by this regulation. The court can see no detrimental effect on any legitimate military interest caused by a soldier who merely "evidences" a "tendency, desire, or interest" in most anything, including homosexuality. [FN210]

The court found violations of the constitutionally protected right of personal privacy at two different levels. On one level, the regulation chilled the right of soldiers to associate freely with known or suspected homosexuals (the court having found the right of association in the penumbral zone of privacy created by the first amendment). [FN211] On a different level, the regulation was defective insofar as personnel could be discharged for having a homosexual personality.

Certainly, the "peculiar" nature of military life and the need for discipline gives the Army substantial leeway in exercising control over the sexual conduct of its soldiers, at least while on duty and at the barracks. This court, however, will not defer to the Army's attempt to control a soldier's sexual preferences, absent a showing of actual deviant conduct and absent proof of a nexus between the sexual preference and the soldier's military capabilities. [FN212]

The writ of mandamus was issued, the Army did not appeal, and the Army changed its regulations. [FN213] Soon after, the Department of Defense directed all the services to implement new regulations. [FN214] The issue of the homosexual personality, however, keeps coming back.

Consider Reverend (former Captain) Dusty Pruitt. [FN215] The Army had no evidence that she had committed any homosexual acts, but learned of her homosexual status after the Los Angeles Times article, Pastor Resolves Gay, God Conflict, described her as a lesbian. [FN216] Captain Pruitt admitted to her commander that she was a homosexual, and she was discharged. She claimed that the regulation under which she was discharged from the Army reserve violated the first amendment because it called for punishment solely on the basis of her assertion of homosexual status. [FN217]

The court did not question the constitutionality of the Army policy. Nor did it find the regulation to be overly broad. It noted that the Army "understandably would be apprehensive of the prospect that desire would ripen into attempt or actual performance." [FN218]

Miriam Ben-Shalom raised the issue again in 1988 after the Army refused to reenlist her into the Army reserve under its new policy. [FN219] She argued "that the new regulation had the effect of chilling her freedom of expression as she would no longer be able to make statements regarding her sexual orientation, statements that she would otherwise be free to make." [FN220] The district court agreed, but the Seventh Circuit Court of Appeals did not.

Ben-Shalom is free under the regulation to say anything she pleases about

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homosexuality and about the Army's policy toward homosexuality. She is free to advocate that the Army change its stance; she is free to know and talk to homosexuals if she wishes. What Ben-Shalom cannot do, and remain in the Army, is to declare herself to be a homosexual. [FN221]

Exclusion based on being a homosexual, as opposed to talking about homosexuality or committing homosexual acts, raises the issue of equal protection.

c. Equal Protection

The equal protection clause requires that all persons similarly situated be treated alike. [FN222] The Supreme Court has found an implied equal protection component in the fifth amendment due process clause, [FN223] and the Court has treated federal equal protection claims under the fifth amendment the same as state equal protection claims under the fourteenth amendment. [FN224]

1. Levels of Scrutiny Under Equal Protection Analysis

The highest level of equal protection scrutiny is strict scrutiny. At this level, legislation (and, by extension, regulations) burdening a class unequally will be sustained only if tailored to serve a compelling governmental interest. Two categories of legislation are subject to strict scrutiny: statutes that classify by race, alienage, or national origin (often called suspect classes); and statutes that impinge on personal rights protected by the Constitution. [FN225]

The Supreme Court also has recognized a middle area of somewhat heightened scrutiny when legislation burdening a class unequally fails unless it is substantially related to a sufficiently important governmental interest. Classifications based on gender and illegitimacy (often called quasi-suspect classes) are given such review. [FN226] The Court has not extended suspect or quasi-suspect class status beyond the categories mentioned. [FN227]

If legislation does not qualify for strict or heightened scrutiny, it must pass the rational basis test.

> The general rule is that legislation is presumed valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate interest. When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes. [FN228]

Under this deferential standard of scrutiny, it does not matter if an individual member of the burdened class is an exception. [FN229] Therefore, if regulations pertaining to homosexual service members need only meet the rational basis test, the fact that a homosexual service member might be outstanding in every respect is irrelevant. The inquiry is directed at the regulation, not the service member.

2. The Two Prongs of Equal Protection

As Justice Brennan once wrote, "discrimination against homosexuals or bisexuals based solely on their sexual preference raises significant constitutional questions under both prongs of our settled equal protection analysis." [FN230] The prongs, which require different analysis, are whether the regulation burdening a class unequally does so by 1) impinging on a

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fundamental right protected by the Constitution, or 2) affecting a class entitled to heightened scrutiny or suspect class status. [FN231]

a. Fundamental Rights

The "fundamental rights" prong of equal protection easily is confused with substantive due process fundamental rights analysis, but it involves a different inquiry. Bowers v. Hardwick illustrates this. [FN232] The Supreme Court held that there is no fundamental right to engage in sodomy. Applying substantive due process analysis, the Court refused to invalidate a longstanding law that presumably reflected the will of the Georgia citizenry. It is tempting to leap to the conclusion that because homosexuals traditionally have been defined by their acts (engaging in sodomy), and because those acts are not protected, then there cannot be a fundamental right to be a homosexual.

The equal protection focus should not be on whether a homosexual has the fundamental right to engage in sodomy; it should be on whether a homosexual has the fundamental right to be a homosexual. Clearly, since Bowers v. Hardwick, there is no constitutional right to engage in homosexual sodomy. Still, a person can have a homosexual orientation without engaging in proscribed homosexual acts, just as a person can have a heterosexual orientation without engaging in proscribed heterosexual acts.

The question of whether a person has a fundamental right to have the sexual orientation that he or she develops through forces beyond personal control is far different from the question of whether there is a right to commit sodomy. Laws and regulations can and do change. While anyone can refrain from doing an act proscribed by law or regulation, however, no one can refrain from being who he or she is.

Bowers v. Hardwick did not foreclose either branch of the equal protection analysis as to homosexual orientation. [FN233] It was a due process case, and the Court explicitly did not decide it on the basis of the equal protection clause. [FN234] The only reference to equal protection analysis was in a footnote of the dissent. Justice Blackmun, after referring to the possible equal protection issue of discriminatory enforcement of gender-neutral sodomy statutes, said "a claim under the Equal Protection Clause may well be available without having to reach the more controversial question whether homosexuals are a suspect class." [FN235]

Under the fundamental rights prong of equal protection, regulations that burden a particular class by impinging on a fundamental right must meet strict scrutiny. To the extent that homosexuality regulations impinge upon the right to be homosexual, as opposed to the commission of an illegal act, these regulations should be required to meet a compelling state interest. Future litigation should focus on this prong. [FN236]

But, given the Court's disinclination to take a more expansive view of its authority to discover new fundamental rights imbedded in the due process clause, it seems unlikely that the Court will be inclined to discover new fundamental rights based on equal protection. [FN237] That is unfortunate for homosexuals because, regardless of the Constitution, their homosexual orientation is a fundamental aspect of their lives. The remaining inquiry, raised by Watkins v. United States Army, is whether the other prong of equal protection analysis applies. [FN238]

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b. Suspect/Quasi-Suspect Class

The Supreme Court has identified a number of factors for deciding whether a statute burdens a suspect or quasi-suspect class. These include the following: whether the class in question has suffered a history of purposeful discrimination; [FN239] whether it is defined by a trait that frequently bears no relation to ability to perform or contribute to society; [FN240] whether the class has been saddled with unique disabilities because of prejudice or inaccurate stereotypes; [FN241] whether the trait defining the class is immutable; [FN242] and whether the class has the political power necessary to obtain redress from the political branches of government. [FN243]

Judge Norris, concurring in Watkins, found all of these factors applicable to homosexuals. Nevertheless, there is room for disagreement with some of his conclusions. [FN244] There is no doubt that homosexuals have suffered a history of purposeful discrimination. In Watkins, the Army conceded this point. [FN245] Likewise, the trait of homosexual orientation does not correlate with ability to perform or contribute to society. Not only is history replete with accounts of homosexuals who have contributed a great deal to society, [FN246] but aside from sexual orientation, researchers cannot distinguish between homosexuals and heterosexuals. [FN247]

The question of whether homosexuals have been saddled with unique disabilities because of prejudice or inaccurate stereotypes is more difficult. Asking the question begs the issue. The criminalization of some of the behavior that identifies a homosexual as such is a unique disability, but it is also constitutional. In the military context, the unique disability is not being allowed to serve, which also has been upheld as constitutional. The law often is based on notions of morality that may be prejudicial and based on inaccurate stereotypes. Judge Norris suggests that the "irrelevance of sexual orientation to the quality of a person's contribution to society also suggests that classifications based on sexual orientation reflect prejudice and inaccurate stereotypes." [FN248]

Homosexual orientation is immutable. While it is not a visible manifestation like skin color or gender, as Justice Blackmun wrote in Bowers v. Hardwick, "neither is it simply a matter of deliberate personal election. Homosexual orientation may well form part of the very fiber of an individual's personality." [FN249] If homosexual orientation is mutable, it is only so with great difficulty, and the likelihood of it truly being changed is very low. [FN250]

The final factor is whether the class has the political power necessary to obtain redress from the political branches of government. About half the states have repealed their sodomy laws, and as of 1990 there were two openly homosexual members of Congress. [FN251] California and Wisconsin have passed statutes prohibiting discrimination against homosexuals. [FN252] The Civil Service Reform Act of 1978 has been interpreted to mean that homosexuality by itself is not a disqualification for federal e ployment. [FN253] The most significant display of homosexual political power has been in the cities:

> In many major cities with significant gay populations, political organization of the gay community has advanced far enough to secure the enactment of local ordinances prohibiting such [anti-gay] discrimination. Since the early 1970s, more than fifty cities or other political

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subdivisions (counties or districts) have passed such ordinances, including most of the major centers of gay life in America, such as Boston, New York, Los Angeles, San Francisco, Atlanta, the District of Columbia (Washington, D.C.) and Philadelphia. [FN254]

Judge Norris noted that the relevant political level for seeking protection from military discrimination is the national level, "where homosexuals have been wholly unsuccessful in getting legislation passed that protects them from discrimination." [FN255] He stated that "homosexuals as a group cannot protect their right to be free from invidious discrimination by appealing to the political branches." [FN256] There is much evidence to the contrary, however, and it is unlikely that the Supreme Court would hold that homosexuals are such a politically powerless group.

Homosexuals should not get suspect class status under this prong of equal protection analysis because they are not politically powerless. Because they have suffered purposeful discrimination and are defined by an immutable trait unrelated to their contributions to society, homosexuals may yet achieve quasi-suspect status. Without this status, regulations impinging upon homosexuals need only be rationally related to a legitimate government interest.

3. Equal Protection Applied to Homosexuality Regulations

The fifth amendment equal protection issue, as framed in Ben-Shalom III, is "whether homosexuals, defined by the status of having a particular sexual orientation and absent any allegations of sexual misconduct, constitute a suspect or quasi-suspect class." [FN257] The same issue was raised in Watkins. [FN258]

The appellate courts in both Watkins and Ben-Shalom III declined to extend suspect or quasi-suspect class status to homosexuals. These cases were not argued on the basis of the fundamental rights prong of equal protection. In Watkins a panel of the Ninth Circuit found that homosexuals were a suspect class and that the Army failed to provide a compelling reason for its homosexuality regulations. [FN259] The Ninth Circuit, en banc, then decided the case in favor of Watkins on an estoppel theory, and withdrew the earlier Watkins opinion. [FN260] The equal protection issues were addressed only in the en banc concurring opinion of Judge Norris, joined by Judge Canby.

The Ben-Shalom III court reasoned that if "homosexual conduct may constitutionally be criminalized, then homosexuals do not constitute a suspect or quasi-suspect class entitled to greater than rational basis scrutiny for equal protection purposes." [FN261] The court applied rational basis scrutiny and found that the Army met that standard without difficulty. [FN262]

The Supreme Court declined to hear Ben-Shalom III without comment. A denial of certiorari does not carry the weight of an affirmance, nor does it mean that the Supreme Court agreed with the decision of the Court of Appeals. [FN263] Nevertheless, it does signal that the Court is not likely to hear similar cases any time soon unless a split develops among the circuits.

Judge Norris, concurring in Watkins, evaluated the equal protection claim with a three-stage inquiry. [FN264] First, do the regulations actually discriminate based on sexual orientation? Second, which level of judicial scrutiny applies? Third, do the regulations survive the applicable level of scrutiny?

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a. Do Regulations Discriminate Based on Homosexual Orientation?

Equal protection requires that people be treated equally. If a regulation affects everyone equally, there should be no equal protection problem. Everyone in the military is capable of committing homosexual acts, and there is little disagreement that the military lawfully can proscribe these acts by its personnel. Everyone in the military does not have a homosexual orientation, however, and there is much disagreement over regulating what a person is, as opposed to what a person does. To the extent that a regulation affects or burdens only one class of the population-those with the homosexual orientation-the threshold inquiry is met.

Military homosexuality regulations since 1982 uniformly have emphasized the unsuitability for military purposes of people with homosexual orientations. [FN265] In contrast, the military has exceptions allowing accession and retention of people who have committed homosexual acts, but they only apply to people who do not have a homosexual orientation. There are no exceptions for people with homosexual orientations.

Judge Wood, writing for the Ben-Shalom III court, resolve the issue by finding that homosexuals are likely to commit prohibited homosexual acts. He found that the regulation classified upon reasonable inferences of probable conduct in the past and in the future. "The Army need not shut its eyes to the practical realities of this situation, nor be compelled to engage in the sleuthing of soldiers' personal relationships for evidence of homosexual conduct in order to enforce its ban on homosexual acts, a ban not challenged here." [FN266]

Whether the military decides to go sleuthing after the class most likely to commit the proscribed acts, the inquiry still is whether the regulations affect or burden everyone equally. The answer is that they do not. At least as far as this threshold question is concerned, Judge Norris provided the correct analysis in his concurring opinion in Watkins. [FN267]

> On their face, these regulations discriminate against homosexuals on the basis of their sexual orientation. Under the regulations any homosexual act or statement of homosexuality gives rise to a presumption of homosexual orientation, and anyone who fails to rebut that presumption is conclusively barred from Army service. In other words, the regulations target homosexual orientation itself. The homosexual acts and statements are merely relevant, and rebuttable, indicators of that orientation. [FN268]

b. Which Level of Judicial Scrutiny Applies?

The question of whether a regulation affecting homosexuals as a class should be given strict scrutiny, heightened scrutiny, or rational basis scrutiny depends on whether the regulation is more like one affecting the following: 1) race, alienage, or national origin; 2) gender or legitimacy; or 3) a legitimate government interest.

Almost all courts that have considered this issue have applied rational basis scrutiny. Those not applying rational basis scrutiny have been overruled. [FN269] Judge Norris, concurring in Watkins, supported strict scrutiny, [FN270] but he believed homosexuals are a politically powerless group. Homosexual regulations may one day be judged with heightened scrutiny because homosexuals have several of the characteristics of a suspect class. [FN271]

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c. Do the Regulations Survive the Applicable Level of Scrutiny?

If the strict scrutiny standard applied, the homosexuality regulations would have to be tailored to meet a compelling government interest. Even under a standard of review deferential to the military, it is unlikely that the current regulations could withstand this scrutiny. The government has won only one compelling state interest case-the World War II era national origin case of Korematsu v. United States. [FN272] A review of homosexuality regulations is not likely to succeed under the equal protection suspect class theory, but it could with a fundamental rights theory.

If heightened scrutiny applied, the regulation would have to be substantially related to a sufficiently important government interest. The government interest is articulated in Department of Defense Directive 1332.14:

> Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among service members; to ensure the 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. [FN273]

The military mission is an important government interest. The question is whether the military policy of excluding all homosexuals is substantially related to accomplishment of the mission. This inquiry first requires an examination of whether the presence of homosexuals prevents or hinders the military from accomplishing the mission. During this examination, the military m gets deferential treatment. In military affairs, a court should not substitute its views for the "considered professional judgment" of the military. [FN274]

Because there always have been and probably always will be homosexuals in the military, it cannot tenably be argued that homosexuals prevent the military mili from accomplishing its mission. Nevertheless, any disruption to military affairs arguably hinders the military mission. Given the deference normally accorded the military, an assault on the regulations under heightened scrutiny probably would be resolved in the military's favor.

The remaining question is similar to the one raised by Justice Brennan in Rowland:

> Finally, even if adverse state action based on homosexual conduct were held valid under application of traditional equal protection principles, such approval would not answer the question, posed here, whether the mere nondisruptive expression of homosexual preference can pass muster even under a minimum rationality standard as the basis for discharge from public employment. [FN275]

Is there such thing as "nondisruptive expression of homosexual preference" in the military setting? The minimum rationality standard requires only that the classification drawn by the government regulation rationally further some legitimate, articulated governmental purpose. [FN276]

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The first question is whether the purpose of military homosexuality policy constitutes a legitimate governmental purpose. The stated purpose is preventing the impairment of the military mission. It would be difficult to attack such a broad statement of purpose. The government clearly has an interest in the accomplishment of the military mission. military

The second question is whether the regulation rationally furthers the stated purpose. To the extent that homosexual activity is regulated, it does. In the military environment, any sexual activity tends to be disruptive. To the extent that homosexual orientation is regulated, it does not. A person's sexual orientation has nothing to do with the military mission. With the issues commingled, the regulation has so far passed minimum scrutiny. [FN277]

The fact that military homosexuality regulations have survived legal attacks does not mean that they cannot or should not be improved. It means only that the courts are not going to make it happen. It is up to the military to come up with the best policy without court intervention.

V. POLICY PERSPECTIVES

In January 1982 the Department of Defense issued new guidelines stating that homosexual offenses did not actually have to be committed to separate military h personnel from the service; intent was what mattered. [FN278]

A. BASIS FOR CURRENT POLICY

"Homosexuality is incompatible with military service. The presence in the " military environment of persons who engage in homosexual conduct or who, by mili their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission." [FN279] These opening sentences of the policy refer to both conduct and speech that seriously impair the mission.

A person, whether homosexual or heterosexual, engaging in sexual conduct in a military environment, may well distract or detract from the mission. There are also situations in which the statements of a person with homosexual tendencies could create a problem for the mission, such as if a homosexual soldier were to solicit another soldier to engage in homosexual acts. Presumably, this is what the drafters of the policy had in mind. What is not clear is how missions are impaired by statements not involving solicitation, but which still demonstrate a propensity to engage in homosexual conduct. homosexu

"The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale ...." [FN280] There is little argument as to personnel who commit homosexual acts in barracks, aircraft, on board ship, or on duty. Similar problems would be expected with personnel who commit heterosexual acts in such places or situations. Even with homosexual acts, though, it becomes difficult to see how these discipline homose problems occur when the acts are off government property with non-military personnel. These cases often involve an act of sodomy, which, if discovered, can be prosecuted or dealt with administratively. The real effect on discipline is negligible. Outside those with an official need to know, few military personnel even will be aware of these acts until the military military initiates adverse action.

It also is difficult to see how the presence of personnel who admit to a homosexual orientation adversely affects the maintenance of good order. About h

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seventy-five percent of the homosexual personnel never are discovered at all, so they are not causing these problems. [FN281] Of course, neither are they talking about the fact of their homosexual orientation. If they had the freedom to discuss it openly, it is doubtful that they would choose to do so in a hostile environment. If such a person does cause a problem with order, morale, or discipline, and it can be articulated and proven, then he or she should be separated. Conversely, if a real problem cannot be articulated or proven, there should be no separation.

"The presence of such members adversely affects the ability of the Military Services to ... foster mutual trust and confidence among servicemembers4)4B"B" [FN282] Here the military position is that the great majority of service members "despise/detest homosexuality." [FN283] Even if that is so, it does not necessarily follow that the great majority despise homosexuals. Personnel who work hard and make an effort to get along foster mutual trust and confidence. Those who do not tend to be despised and detested and are bid good riddance if they can be separated for any reason.

There also have been times when the "great majority" was not took keen on the idea of allowing minorities and women in the military. "The peculiar nature of Army life has always required the melding together of disparate personalities. For much of our history, the military's fear of racial tension kept black soldiers segregated from whites. Fear of sexual tensions, until very recently, kept the participation of female soldiers to a minimum." [FN284]

The military should not allow the fear of prejudice to drive its personnel policy. Even if the basic homosexuality policy does not change, the supporting rationale should be purged of arguments based on prejudice.

"The presence of such members adversely affects the ability of the Military Services to...ensure the integrity of the system of rank and command3)4B"B" [FN2 85] The fear is that openly homosexual supervisors could not command respect. [FN286] This problem, however, is solved best by leadership training and by rating supervisors on their leadership abilities. Cases such as those of Technical Sergeant Leonard Matlovich and Staff Sergeant Perry Watkins-homosexual personnel who received outstanding ratings in all aspects of performance-demonstrate that even openly homosexual supervisors can do well in the military. [FN287] Perhaps the ability to command respect is more a function of leadership than sexual orientation. "The presence of such members adversely affects the ability of the Military Services to...facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy4)4B"B" [FN288] Even in a sexually integrated military, men and women do not share showers and close living quarters because of basic privacy considerations. These privacy considerations are just as applicable to heterosexuals and homosexuals of the same gender. Nevertheless, that appears to be a unit level management problem, not an "assignment and worldwide deployment problem."

"The presence of such members adversely affects the ability of the Military Services to...recruit and retain members of the Military Services4)4B"B" [FN289] As the American military historically has excluded homosexuals, it is difficult to understand what leads to this conclusion other than conjecture. It is just as easy to surmise that a more limited policy to exclude or punish personnel who commit homosexual acts in barracks or on ship would be sufficient to meet these concerns.

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"The presence of such members adversely affects the ability of the Military Services to...maintain the public acceptability of military service4)4B"B" [FN2 90] There always will be some people for whom military service will not be acceptable under any policies or circumstances. Assuming the fears are legitimate, they arguably culd be assuaged with a focus on acts rather than orientation.

"The presence of such members adversely affects the ability of the Military Services to...prevent breaches of security." [FN291] A breach of security could occur if a homosexual or bisexual with access to classified information was blackmailed with the threat of disclosure to his family or superiors. Judge Norris addressed this issue in Watkins.

> It is evident, however, that homosexuality poses a special risk of blackmail only if a homosexual is secretive about his or her sexual orientation. The Army's regulations do nothing to lessen this problem. Quite the opposite, the regulations ban homosexuals only after they have declared their homosexuality or have engaged in known homosexual acts. The Army's concern about security risks among gays could be addressed in a more sensible and less restrictive manner by adopting a regulation banning only those gays who had lied about or failed to admit their sexual orientation. In that way the Army would encourage, rather than discourage, declarations of homosexuality, thereby reducing the number of closet homosexuals who might indeed pose a security risk. [FN292]

Or, as stated by Representative Gerry Studds in 1989: "The question is not whether gay men and women will serve. The only question is will they be compelled by Defense Department policy to hide." [FN293]

B. PROBLEMS WITH CURRENT POLICY

Is the current policy in need of adjustment? Yes. The military views a person who admits to a homosexual orientation as a crime waiting to happen who should be expelled immediately.

A policy that deprives people of opportunity because of what they are, as opposed to what they do, is contrary to American ideals. The letter of the law may not be violated, but the spirit is. In equating admissions of homosexual orientation with illegal homosexual conduct, military policy turns the presumption of innocence on its head.

Does the policy work? It is taken as a given that people with a homosexual orientation simply are incompatible with military service. Yet, the incidence of homosexual men is about the same in the military as it is in the general population, and the incidence of homosexual women is greater in the military than in the general population. [FN294] While seventy-five percent never are detected, a portion of the twenty-five percent who are detected simply turn themselves in when they decide they want to get out. [FN295] The system is not broken; it never worked to begin with.

People who know they have a homosexual orientation and who want to serve in the military are faced with a dilemma: disclose and be excluded, or lie and hide. The policy excludes those who are truthful, while accepting those who choose to lie. Personnel who do not discover their orientation until after they are on active duty face a similar dilemma. If they are troubled by their discovery, they cannot seek help without being separated. The people needing help the most, therefore, are discouraged from seeking it, but they still will

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be operating our multi-million dollar weapon systems while they try to sort out their sexuality.

None of this is to say that personnel who are disruptive should be admitted or retained on active duty. Some homosexual personnel are and will be disruptive, just as some heterosexual personnel are and will be disruptive. Policy should be crafted to allow the exclusion of disruptive personnel, but it should be crafted so it does not create as many problems as it solves.

C. PROPOSALS FOR MODIFICATION

1. Statutory

The military sodomy statute, article 125, UCMJ, is overbroad. [FN296] The real problem for the military is not the service member who engages in sexual activity on his or her own time, away from the military installation or vessel. The problem is the service member who disrupts the military mission through an inappropriate choice of the place or partner for the sexual activity. Sexual intercourse, whether of the homosexual or heterosexual variety, should be prohibited on duty, in the barracks, on board ships or aircraft, or in situations that would create the appearance or prospect of favoritism within a chain of command.

2. Regulatory

a. Accessions

Homosexuality currently is a nonwaivable disqualification for service in the military. [FN297] It should be a waivable disqualification. To qualify for a waiver, an applicant should be required to sign a statement that explains the sodomy statute and the fact that violations may lead to either an adverse administrative separation or a court-martial. Personnel with a homosexual orientation would know the rules, and those who gain entry after disclosing their orientation would be less likely to become security risks. A waiver provision also would help in the event that the Selective Service System has to be used for national mobilization.

b. Separations

The current separation policy includes a list of questionable conclusions about how the presence of homosexuals adversely affects the military. [FN298] The policy is not all bad, it just says too much. The military has a legitimate interest in keeping disruptive activity to a minimum. The basis for separation should be homosexual activity, not homosexual orientation. Sexual activity on duty, in barracks, on ship or aircraft, or between members of the same chain of command can be disruptive, whether it is homosexual or heterosexual.

The administrative proscription of homosexual acts also is justified to the extent that these acts are illegal when they involve sodomy. [FN299] Even if Congress repeals the military sodomy statute-which does not appear likely anytime soon-sodomy still will be illegal for military personnel in about half of the fifty states via the Assimilated Crimes Act. [FN300] The basis for the policy should say this, and should refrain from using a laundry list that

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easily is assailed as reminiscent of old arguments used to exclude minorities from the military. [FN301]

The bases for separation of homosexuals may include preservice, prior service, or current service conduct or statements. [FN302] This goes too far only in the situation of personnel who acknowledge a homosexual orientation, but for whom there is no evidence of any proscribed homosexual activity. Personnel who lie by failing to disclose prior homosexual acts or a known homosexual orientation should face separation for fraudulent entry. Personnel who commit homosexual acts that are prejudicial to good order and discipline should face separation for that conduct. Nevertheless, personnel who admit their homosexual orientation and for whom there is no evidence of homosexual activity should not be separated without proof of real prejudice to good order and discipline.

Commanders and Service Secretaries should have the discretion to retain homosexuals. Commanders are in the best position to judge whether a person has value to the military. This discretion existed once before, but it was taken away when the current policy was promulgated in 1982. [FN303] For example, Staff Sergeant Perry Watkins was retained in 1975 (as a Specialist Five) after a board of officers unanimously recommended "that SP5 Perry J. Watkins be retained in the military service because there is no evidence suggesting that his behavior has had either a degrading effect upon unit performance, morale or discipline, or upon his own job performance." [FN304]

If the discretion to retain homosexuals is returned to commanders and Service Secretaries, homosexual personnel should be retained only if they meet standards consistent with military interests. Retention should be authorized for anyone with a homosexual orientation who has not engaged in homosexual acts that are prejudicial to good order and discipline. Retention should be authorized for personnel who commit homosexual acts, as long as they do not occur on duty, in the barracks, on board ship or aircraft, in a situation that would create the appearance or prospect of favoritism within a chain of command, or in a situation that otherwise causes actual prejudice to good order and discipline.

VI. CONCLUSION

A policy must be legally sound, but it also should reflect an understanding of historical and scientific facts. There are going to be personnel with homosexual orientations in the military regardless of the policy. Some will come in knowing that they are homosexual, and some will not discover their sexual orientation until after they are on active duty. The policy should reflect that reality.

People who identify themselves as heterosexuals, bisexuals, and homosexuals exist on all points of the continuum of human sexual behavior. While the majority is exclusively heterosexual, a significant segment is exclusively homosexual, and even more could be considered bisexual during different periods of adult life.

There seem to be a number of causes for the continuum of sexual orientation, almost all of which occur prior to birth. People do not choose their place on the continuum of sexual preference, but they can choose whether, when, and how they are going to act. It is logical to assume that most are going to act in accordance with their preference.

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One of the acts associated with the homosexual and bisexual preference is sodomy, which is illegal in the military. Other homosexual acts, while not illegal, provide a basis for administrative separation from the military.

Other than sexual preference, there are no discernible differences between those who are exclusively heterosexual and everyone else. In terms of behavior, a small percentage of homosexual men will exhibit effeminate characteristics. There is some evidence that homosexuals as a class may be more prone to alcoholism than the general population, but that could be because more of them may have reason to drink. People who engage in anal sodomy also are at greater risk of acquiring AIDS than any other group.

As homosexuals have become politically organized, many states and countries have become more tolerant and have repealed many anti-sodomy laws. Some countries, such as Great Britain and Canada, have legalized homosexual acts between consenting adults, but still prohibit homosexuals from serving in the military. A number of countries, such as Israel and Spain, now allow homosexuals to serve in the military.

American homosexual military personnel have advanced a number of legal arguments to stay in the military. They have won a few battles, but for the most part, they have lost the war. Since Bowers v. Hardwick was decided in 1986-establishing conclusively that there is no fundamental right to engage in sodomy-homosexuals have had an uphill battle on all fronts.

The equal protection theory is the best remaining argument for homosexuals attempting to remain in the military. Though the suspect class prong of equal protection appears to be a lost cause because the Supreme Court declined to issue a writ of certiorari in Ben-Shalom v. Marsh, the fundamental rights prong still may prove to be successful. To succeed, a homosexual litigant will have to prevail on the issue of whether there is a fundamental right to be a homosexual. Even the Supreme Court would have a difficult time trying to decree homosexuals out of existence.

If the right case gets before the Court under the fundamental rights prong of equal protection, homosexuality legislation and regulations could be subject to strict scrutiny, even without a fundamental right to engage in sodomy. If that happens with the current regulations, the military almost certainly will lose the challenge. In the meantime, the rational basis test is the appropriate level of scrutiny, and the current regulations pass such scrutiny. The fact that the current policy is constitutional, however, does not mean that it works, that it is wise, or that the military cannot improve upon it.

The policy should advance and protect true military interests. It should not be crafted so that entry is denied those who are truthful, while granted for those who are untruthful. It should not discourage those in need of help from seeking it. The current policy is easy to administer, but it is ineffective at keeping homosexuals out of the military. It creates a number of problems that could be avoided by a few modifications. If homosexuals are going to be in the military regardless of all efforts to keep them out-a point reinforced by history-the military should adjust to that reality.

Current policy on accession of homosexuals should be altered so that homosexuality becomes a waivable disqualification. Service Secretaries and commanders should have the discretion to retain homosexuals who meet certain criteria. Finally, the military should not separate personnel based on statements of sexual orientation alone, but should require evidence of

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prejudice to good order and discipline.

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FN1 Dep't of Defense Directive 1332.14, Enlisted Administrative Separations (Jan. 28, 1982) [hereinafter DOD Dir. 1332.14].

FN2 See, e.g., Army Reg. 601-210, Regular Army and Army Reserve Enlistment Program, para. 4-4 (1 Dec. 1988).

FN3 DOD Dir. 1332.14.

FN4 Id.

FN5 See, e.g., Watkins v. United States Army, 875 F.2d 699, 702-04 (9th Cir. 1989) (en banc); Matlovich v. Secretary of the Air Force, 591 F.2d 852, 854 n.4, 856 (D.C. Cir. 1978).

FN6 See, e.g., cases cited supra note 5.

FN7 DOD Dir. 1332.14. There is a limited exception. Enclosure 3, Standards and Procedures, para. H.3.g.(2) authorizes retention of a member for a limited period of time in the interests of national security as authorized by the Secretary concerned.

FN8 Uniform Code of Military Justice art. 92, 10 U.S.C. s 892 (1982) [hereinafter UCMJ].

FN9 See infra text accompanying notes 232-38.

FN10 See Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989), cert. denied, 110 S. Ct. 1296 (1990) [hereinafter Ben-Shalom III]. Ben-Shalom II involved procedural issues not relevant to this article. Ben-Shalom v. Secretary of the Army, 826 F.2d 722 (7th Cir. 1987) [hereinafter Ben-Shalom II]. Ben-Shalom I was a 1980 case in which the Eastern District of Wisconsin determined that the homosexual regulation violated the first amendment. Ben-Shalom v. Secretary of the Army, 489 F. Supp. 964 (E.D. Wis. 1980) [hereinafter Ben-Shalom I].

FN11 UCMJ art. 125.

FN12 Bowers v. Hardwick, 478 U.S. 186 (1986), reh'g denied, 478 U.S.

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1039 (1986).

FN13 Harry, Homosexual Men and Women Who Have Served Their Country, 10 J. Homosexuality 117, 121 (1984).

FN14 DOD Dir. 1332.14.

FN15 A. Kinsey, W. Pomeroy, and C. Martin, Sexual Behavior in the Human Male (1948) [hereinafter A. Kinsey].

FN16 Id. at 3-9.

FN17 Id. at 636-47. The other rates are: 1) predominantly heterosexual, only incidentally homosexual; 2) predominantly heterosexual, but more than incidentally homosexual; 3) predominantly homosexual, but more than incidentally heterosexual; and 4) predominantly homosexual, but incidentally heterosexual.

FN18 Id. at 612.

FN19 Id. at 660-66.

FN20 W. Masters, V. Johnson, and R. Kolodny, Masters and Johnson on Sex and Human Loving 349 (1986).

FN21 Ellis & Ames, Neurohormonal Functioning and Sexual Orientation: A Theory of Homosexuality-Heterosexuality, 101 Psychological Bull. 233 (1987).

FN22 Id.

FN23 Id.

FN24 Id.

FN25 Id. at 236-37.

FN26 Id. at 237-38.

FN27 Id. at 239.

FN28 Id. at 243-48.

FN29 Id. at 240-41.

FN30 Id. at 241. Other drugs include chlorimipramine, diazepam, diethylstilbesterol (DES), pargyline, and reserpine.

FN31 Id. at 242.

FN32 Id.

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FN33 Id. at 243.

FN34 Id.

FN35 Id. at 244-47. The four types are alphareductase deficiency, androgen insensitivity syndrome, faulty testosterone synthesis, and congenital adrenal hyperplasia syndrome (which affects females).

FN36 Id. at 247.

FN37 Id.

FN38 Id.

FN39 Id. at 249.

FN40 Id.

FN41 Id. at 250.

FN42 Id.

FN43 Id. at 251.

FN44 Id.

FN45 Sultan, Elsner & Smith, Ego-Dystonic Homosexuality and Treatment Alternatives, in Male and Female Homosexuality: Psychological Approaches 192 (L. Diamant, ed. 1987).

FN46 Ellis and Ames, supra note 21, at 251.

FN47 Id.

FN48 Id.

FN49 Id.

FN50 Fine, Psychoanalytic Theory, in Male and Female Homosexuality: Psychological Approaches 86-87 (L. Diamant, ed. 1987).

FN51 Gladue, Psychobiological Contributions, in Male and Female Homosexuality: Psychological Approaches 130 (L. Diamant, ed. 1987).

FN52 A. Kinsey, supra note 15, at 625.

FN53 Id. at 623.

FN54 Id.

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FN55 See supra text accompanying notes 15-19.

FN56 A. Kinsey, supra note 15, at 650-51.

FN57 Id. at 656.

FN58 T. Sarbin & K. Karols, Nonconforming Sexual Orientations and Military Suitability 8-9 (1988) (draft study of the Defense Personnel Security Research and Education Center).

FN59 Id. at 26.

FN60 Ellis & Ames, supra note 21, at 249.

FN61 W. Masters, V. Johnson & R. Kolodny, supra note 20, at 345.

FN62 W. Menninger, Psychiatry in a Troubled World: Yesterday's War and Today's Challenge 225 (1948) (of 20,620 soldiers diagnosed as constitutional psychopaths by the Army in 1943, 1625 were of the homosexual type).

FN63 C. Williams & M. Weinberg, Homosexuals and the Military 45-46 (1971).

FN64 Id. at 47.

FN65 Id. at 46-47.

FN66 Id. at 47-48.

FN67 Id. at 48.

FN68 Id. at 49.

FN69 Id.

FN70 Id. at 53.

FN71 Military Justice: Hearings Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary, 89th Cong., 2d Sess. 1006 (1966), quoted in Williams and Weinberg, supra note 63, at 50.

FN72 T. Sarbin & K. Karols, supra note 58, at 21, app. B.

FN73 Id. at 22.

FN74 W. Menninger, supra note 62, at 227, quoted in C. Williams & M. Weinberg, supra note 63, at 60 (interim report by C. Fry and E. Rostow reported by W. Menninger).

FN75 C. Williams & M. Weinberg, supra note 63, at 60.

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FN76 Id.

FN77 Harry, supra note 13, at 119.

FN78 Id.; see supra note 17 and accompanying text.

FN79 Harry, supra note 13, at 119.

FN80 Id. at 121.

FN81 Id. at 121, 124.

FN82 A. Kinsey, supra note 15, at 416.

FN83 Harry, supra note 13, at 122.

FN84 C. Williams & M. Weinberg, supra note 63, at 92.

FN85 Id. at 88-91.

FN86 Id. at 91-99.

FN87 Id.

FN88 Sultan, Elsner & Smith, supra note 45, at 192.

FN89 L. Diamant, Male and Female Homosexuality: Psychological Approaches 13 (1987).

FN90 Id.

FN91 Id.

FN92 Sultan, Elsner & Smith, supra note 45, at 195.

FN93 W. Masters, V. Johnson & R. Kolodny, supra note 20, at 354.

FN94 Diamant & Simono, The Relationship of Homosexuality to Mental Disorders, in Male and Female Homosexuality: Psychological Approaches 174-78 (L. Diamant, ed. (1987).

FN95 W. Masters, V. Johnson & R. Kolodny, supra note 20, at 543.

FN96 Diamant & Simono, supra note 94, at 175.

FN97 Id. at 176.

FN98 Id. at 177.

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FN99 M. McDaniel, Preservice Adjustment of Homosexual and Heterosexual Military Accessions: Implications for Security Clearance Suitability (1989) (draft study PERSTR-89-004 of the Defense Personnel Security Research and Education Center).

FN100 Centers for Disease Control, HIV/AIDS Surveillance Report, February 1990, at 8.

FN101 See, e.g., Army Reg. 600-110, Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV), para. 1-14 (11 Mar. 1988).

FN102 W. Masters, V. Johnson & R. Kolodny, supra note 20, at 346.

FN103 L. Diamant, supra note 89, at 4.

FN104 T. Cowan, Gay Men & Women Who Enriched the World 17 (1988).

FN105 W. Masters, V. Johnson & R. Kolodny, supra note 20, at 346.

FN106. T. Cowan, supra note 104, at 11-16.

FN107 L. Diamant, supra note 89, at 5. Other Biblical references to homosexual conduct include Genesis 9, Genesis 19, and Romans 1:26, 27.

FN108 W. Masters, V. Johnson & R. Kolodny, supra note 20, at 346.

FN109 Id. at 347.

FN110 Sarbin & Karols, supra note 58, at 14.

FN111 Id.

FN112 L. Diamant, supra note 89, at 6.

FN113 Id. at 15.

FN114 Bowers, 478 U.S. at 192-94.

FN115 W. Aycock & S. Wurfel, Military Law Under the Uniform Code of Military Justice 14 (1955).

FN116 Manual for Courts-Martial, United States, 1917, para. 443 [hereinafter MCM, 1917].

FN117 Id.

FN118 Act of June 4, 1920, ch. II, 41 Stat. 787.

FN119 Manual for Courts-Martial, United States, 1921, para. 443 [hereinafter MCM, 1921].

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FN120 Id.

FN121 Id.

FN122 UCMJ art. 125 (1951).

FN123 Id.

FN124 MCM, 1951, para. 204.

FN125 UCMJ art. 134.

FN126 For example, the Manual for Courts-Martial, 1984, increased the maximum punishment for forcible sodomy to dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

FN127 See generally C. Williams & M. Weinberg, supra note 63, at 33, 38-53 (explaining that few homosexuals receive punitive discharges from courts-martial; most are separated administratively).

FN128 DOD Dir. 1332.14; Dep't of Defense Directive 1332.30, Separation of Regular Commissioned Officers for Cause (Feb. 12, 1986).

FN129 A. Kinsey, supra note 15, at 621.

FN130 Id. at 622.

FN131 Army Reg. 615-360, Enlisted Men, Discharge; Release From Active Duty, para. 51-56 (26 Nov. 1942); para. 51-56 (4 Apr. 1935); para. 49-54 (14 Sep. 1927); para. 49-54 (6 Dec. 1922).

FN132 Honorable discharges were characterized as "white" and discharges without honor were characterized as "blue." L. West & A. Glass, Sexual Behavior and the Military Law 252 (R. Slovenko, ed. 1965); see also Note, Homosexuals in the Military, 37 Fordham L. Rev. 465 (1969).

FN133 Army Reg. 615-368, Enlisted Men, Discharge, Undesirable Habits or Traits of Character, para. 2.b. (7 Mar. 1945) (C1, 10 Apr. 1945) [hereinafter AR 615-368].

FN134 C. Williams & M. Weinberg, supra note 63, at 27. This policy later was published in AR 615-368, para. 3 (14 May 1947).

FN135 AR 615-368, para. 2 (27 Oct. 1948).

FN136 C. Williams & M. Weinberg, supra note 63, at 27.

FN137 Army Regulation 600-443, Personnel, Separation of Homosexuals, para. 3 (12 Jan. 1950) [hereinafter AR 600-443].

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FN138 Army Regulation 635-89, Personnel Separations, Homosexuals, para. 3 (21 Jan. 1955) [hereinafter AR 635-89].

FN139 AR 635-89, para. 3 (8 Sep. 1955).

FN140 AR 635-89, para. 5 (15 Jul. 1966).

FN141 Army Reg. 635-212, Personnel Separations, Discharge, Unfitness and Unsuitability, para. 6 (15 Jul. 1966) (C8, 21 Jan. 1970); Army Reg. 635-100, Personnel Separations, Officer Personnel, para. 5-5 (19 Feb. 1969)(C4, 21 Jan. 1970) [hereinafter AR 635-100].

FN142 Ben-Shalom, 489 F. Supp. 964.

FN143 Army Reg. 635-200, Personnel Separations, Enlisted Personnel, paras. 13, 14 (15 Jul. 1966) (C39, 23 Nov. 1972) [hereinafter AR 635-200].

FN144 AR 635-100, para. 5.

FN145 DAJA-AL 1978/4168, 2 Jan. 1979.

FN146 SECNAV INSTR. 1900.9A (31 Jul. 1972).

FN147 Champagne v. Schlesinger, 506 F.2d 979, 983-84, (7th Cir. 1974).

FN148 Berg v. Claytor, 591 F.2d 849 (D.C. Cir. 1978).

FN149 Id. at851.

FN150 Matlovich v. Secretary of the Air Force, 591 F.2d 852 (D.C. Cir. 1978).

FN151 Id. at 855. The regulation was Air Force Manual 39-12, para. 2-103 (C4, 21 Oct. 1970).

FN152 Id.

FN153 Id. at 854.

FN154 Id.

FN155 Ben-Shalom, 489 F. Supp. 964.

FN156 Id. at 972-77.

FN157 DAJA-AL 1980-2213 (7 Jul. 1980) (enclosing proposed changes to AR 135-178, AR 635-100, AR 635-200, AR 140-111, and AR 601- 210).

FN158 AR 635-200, para. 13 (21 Nov. 1977) (IO2, 28 Nov. 1980).

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FN159 AR 635-200, para. 15 (21 Nov. 1977) (C4, 10 Mar. 1981).

FN160 A soldier will be separated ... unless there are approved further findings that (1) Such conduct is a departure from the soldier's usual and customary behavior; and (2) Such conduct is unlikely to recur because it is shown, for example, that the act occurred because of immaturity, intoxication, coercion, or a desire to avoid military service; and (3) Such conduct was not accomplished by use of force, coercion, or intimidation by the soldier during a period of military service; and (4) Under the particular circumstances of the case, the soldier's continued presence in the Army is consistent with the interest of the Army in proper discipline, good order, and morale; and (5) The soldier does not desire to engage in or intend to engage in homosexual acts.

FN161 DOD Dir. 1332.14.

FN162 See American Law Institute, Model Penal Code s 213.2 (Proposed Official Draft 1962), noted in Leonard, The Legal Position of Lesbians and Gay Men in the United States, in Second ILGA Pink Book 104 (1988).

FN163 Leonard, supra note 162, at 104.

FN164 Id. at 105.

FN165 Tielman and de Jonge, Country-by-Country Survey, in Second ILGA Pink Book 186 (1988).

FN166 Id. at 188-242.

FN167 Id. at 199.

FN168 Id. at 240.

FN169 Id. at 213.

FN170 Id. at 228.

FN171 Id. at 230.

FN172 Id. at 237.

FN173 Id. at 240.

FN174 Holmes, The Path of the Law, 10 Harv. L. Rev. 457, 469 (1897), quoted in Bowers, 478 U.S. at 199.

FN175 See Rivera, Our Straight-Laced Judges: The Legal Position of Homosexuals in the United States, 30 Hastings L.J. 799, 841 (1979).

FN176 Id.

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FN177 Id.

FN178 Hatheway v. Secretary of the Army, 641 F.2d 1376 (9th Cir. 1981), cert. denied, 454 U.S. 864 (1981).

FN179 Bowers, 478 U.S. at 190, 196.

FN180 Id. at 188 n.1.

FN181 Id. at 197.

FN182 Id. at 189. The Eleventh Circuit had relied on decisions in Roe v. Wade, 410 U.S. 113 (1973) (abortion case); Eisenstadt v. Baird, 405 U.S. 438 (1972) (contraception case); Stanley v. Georgia, 394 U.S. 557 (1969) (obscene material in privacy of home); and Griswold v. Connecticut, 381 U.S. 479 (1965) (contraception case).

FN183 See cases cited infra note 200 and accompanying text.

FN184 Bowers, 478 U.S. at 195.

FN185 Id. at 197 n.8, 201-03.

FN186 591 F.2d 849 (D.C. Cir. 1978).

FN187 Matlovich, 591 F.2d 852; see supra text accompanying notes 150-58.

FN188 See, e.g., Miller v. Lehman, 801 F.2d 492, 496 (D.C. Cir. 1986) (decision of Board of Correction of Naval Records to deny relief); Smith v. Marsh, 787 F.2d 510, 512 (10th Cir. 1986) (decision of Army Board for Correction of Military Records to deny relief).

FN189 See, e.g., Goldman v. Weinberger, 475 U.S. 503 (1986); Brown v. Glines, 444 U.S. 348 (1980); Orloff v. Willoughby, 345 U.S. 83 (1953).

FN190 Berg v. Claytor, 591 F.2d at 851, 857; see also Martinez v. Brown, 449 F. Supp. 207, 211 (N.D.Cal. 1978) (district court seeking articulation of factors used by Navy to retain homosexuals).

FN191 See, e.g., Beller v. Middendorf, 632 F.2d 788, 792, 798-99 (9th Cir. 1980), cert. denied, 452 U.S. 905 (1980) (plaintiff Beller), 454 U.S. 855 (1981) (plaintiff Miller) (three cases consolidated).

FN192 Rich v. Secretary of the Army, 735 F.2d 1220 (10th Cir. 1984).

FN193 Id. at 1224 n.1, 1225.

FN194 E.g., Lauritzen v. Lehman, 736 F.2d 550 (9th Cir. 1984) (district court ordered plaintiff to seek review of discharge order from Board of

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Correction of Naval records, which granted plaintiff's request for relief); Von Hoffburg v. Alexander, 615 F.2d 633 (5th Cir. 1980) (female enlistee discharged after marrying a transsexual); Champagne v. Schlesinger, 506 F.2d 979 (7th Cir. 1974) (two Navy enlisted women appealing discharge for homosexuality); Krugler v. United States Army, 594 F. Supp. 565 (N.D. Ill. 1984) (dismissed for failure to exhaust).

FN195 E.g., Von Hoffburg, 615 F.2d at 642 n.17 (expressing concern that plaintiff's case had been pending before the ABCMR for two years).

FN196 E.g., Beller, 632 F.2d at 801.

FN197 Id.

FN198 Id. at 805 (citing Board of Regents v. Roth, 408 U.S. 564 (1972)).

FN199 Id.

FN200 Id. at 806 (citing Roth, 408 U.S. at 573).

FN201 Id.

FN202 See, e.g., Griswold v. Connecticut, 381 U.S. 479 (1965) (contraceptive statute infringed on fundamental right of privacy); Loving v. Virginia, 388 U.S. 1 (1967) (miscegenation statute infringed on fundamental right to marry); Roe v. Wade, 410 U.S. 113 (1973) (concerning abortion statute); Eisenstadt v. Baird, 405 U.S. 438 (1972) (statute prohibiting distribution of contraceptives to unmarried persons infringed on fundamental right of privacy).

FN203 Beller, 632 F.2d at 807.

FN204 Id. at 811.

FN205 Id. at 812.

FN206 Id. at 808 n.20.

FN207 Ben-Shalom, 489 F. Supp. 964; see supra text accompanying notes 155-58.

FN208 Ben-Shalom, 489 F. Supp. at 969.

FN209 Id. at 973-74.

FN210 Id. at 974.

FN211 Id. at 975-76 (citing Griswold, 381 U.S. at 484-85).

FN212 Id. at 976.

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FN213 See supra text accompanying notes 155-58.

FN214 Id.

FN215 Pruitt v. Weinberger, 659 F. Supp. 625 (C.D. Cal. 1987), appeal filed, No. 83-2035 (9th Cir. 1989).

FN216 Id. at 627.

FN217 Id.

FN218 Id.

FN219 Ben-Shalom, 881 F.2d 454.

FN220 Id. at 457.

FN221 Id. at 462.

FN222 Plyler v. Doe, 457 U.S. 202, 216 (1982).

FN223 See Bolling v. Sharpe, 347 U.S. 497, 499 (1954).

FN224 See, e.g., Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975).

FN225 Id.

FN226 Id. at 440-41.

FN227 The suspect class cases include: Graham v. Richardson, 403 U.S. 365, 372 (1971) (alienage); Loving v. Virginia, 388 U.S. 1, 11 (1967) (race); and Korematsu v. United States, 323 U.S. 214, 216 (1944) (national origin). The quasi-suspect class cases include: Mississippi University for Women v. Hogan, 458 U.S. 718, 723-24 (1982) (gender); Lalli v. Lalli, 439 U.S. 259, 265 (1978) (illegitimacy).

FN228 City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440 (1984).

FN229 Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 310-11 (1976).

FN230 Rowland v. Mad River Local School Dist., 470 U.S. 1009, 1014 (1985) (Brennan, J., dissenting from denial of cert.).

FN231 See, e.g., Plyler v. Doe, 457 U.S. 202, 216-17 (1982).

FN232 Bowers, 478 U.S. 186.

FN233 Contra Padula v. Webster, 822 F.2d 97 (D.C. Cir. 1987) (holding that homosexuality could not be a suspect classification because conduct that

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defines the class is not constitutionally protected).

FN234 478 U.S. at 196 n.8.

FN235 Id. at 202 n.2.

FN236 But see Rich v. Secretary of the Army, 735 F.2d 1220, 1229 (10th Cir. 1984) (homosexuality classification not suspect, but valid even under heightened scrutiny in light of Army's demonstration of a compelling government interest).

FN237 See 478 U.S. at 194.

FN238 Watkins v. United States Army, 875 F.2d 699 (9th Cir. 1989) (en banc).

FN239 See, e.g., Cleburne, 473 U.S. at 441; Murgia, 427 U.S. at 307; San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 28 (1973).

FN240 Mathews v. Lucas, 427 U.S. 495, 505 (1976) (illegitimacy); Frontiero v. Richardson, 411 U.S. 677, 686 (1973) (gender).

FN241 See Cleburne, 473 U.S. at 440-41.

FN242 See Plyler, 457 U.S. at 216 n.14, 219 n.19, 220, 223; Frontiero, 411 U.S. at 685-87. But see Cleburne, 473 U.S. at 440-41 (defining characteristics of suspect classes without mentioning immutability); Murgia, 427 U.S. at 313 (same); Rodriguez, 411 U.S. at 28 (same).

FN243 See, e.g., Cleburne, 473 U.S. at 441; Plyler, 457 U.S. at 216 n.14; Rodriguez, 411 U.S. at 28.

FN244 Watkins, 875 F.2d at 724-28.

FN245 Id. at 724.

FN246 See, e.g., T. Cowan, supra note 104.

FN247 See supra text accompanying note 93.

FN248 875 F.2d at 725.

FN249 Bowers, 478 U.S. at 202 n.2. Contra Woodward v. United States, 871 F.2d 1068, 1076 (Fed. Cir. 1989) (homosexuality not immutable because primarily behavioral in nature).

FN250 See supra text accompanying notes 43-44.

FN251 A. Leonard, supra note 162, at 103-04.

FN252 Watkins, 875 F.2d at 727 n.30.

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FN253 A. Leonard, supra note 162, at 102.

FN254 Id. at 106.

FN255 Watkins, 875 F.2d at 727 n.30.

FN256 Id. at 727.

FN257 Ben-Shalom, 881 F.2d at 463.

FN258 Watkins, 875 F.2d at 699.

FN259 Watkins v. United States Army, 847 F.2d 1329 (9th Cir. 1988).

FN260 Watkins, 875 F.2d at 711.

FN261 Ben-Shalom, 881 F.2d at 464.

FN262 Id.

FN263 36 C.J.S. Federal Courts s 204 (1960).

FN264 Watkins, 875 F.2d at 712.

FN265 See sources cited supra notes 14, 158-61.

FN266 Ben-Shalom, 881 F.2d at 464.

FN267 Watkins, 875 F.2d at 712-16.

FN268 Id. at 714.

FN269 See, e.g., Ben-Shalom, 881 F.2d at 454; Watkins, 875 F.2d at 699.

FN270 Watkins, 875 F.2d at 724-28.

FN271 See supra text accompanying notes 240-57.

FN272 Korematsu v. United States, 323 U.S. 214 (1944).

FN273 DOD Dir. 1332.14.

FN274 Goldman v. Weinberger, 475 U.S. 503, 508 (1986); Rostker v. Goldberg, 453 U.S. 57, 65-66 (1981); Orloff v. Willoughby, 345 U.S. 83, 93, 94 (1953).

FN275 Rowland v. Mad River Local School Dist., 470 U.S. 1009, 1016 (1985) (Brennan, J., dissenting from denial of cert.).

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FN276 McGinnis v. Royster, 410 U.S. 268, 270 (1973).

FN277 E.g., Ben-Shalom, 881 F.2d at 464; Woodward, 871 F.2d at 1076; Dronenburg v. Zech, 741 F.2d 1388, 1398 (D.C. Cir. 1984).

FN278 DOD Dir. 1332.14.

FN279 Id.

FN280 Id.

FN281 See supra text accompanying notes 73-85.

FN282 DOD Dir. 1332.14.

FN283 See, e.g., Watkins, 875 F.2d at 728; Beller, 632 F.2d at 811 n.22.

FN284 Ben-Shalom, 489 F. Supp. at 976.

FN285 DOD Dir. 1332.14.

FN286 See, e.g., Watkins, 875 F.2d at 729; Beller, 632 F.2d at 811 n.22.

FN287 Matlovich, 591 F.2d at 854; Watkins, 875 F.2d at 704.

FN288 DOD Dir. 1332.14.

FN289 Id.

FN290 Id.

FN291 Id.

FN292 Watkins, 875 F.2d at 731.

FN293 Rethinking DOD Policy on Gays, The Washington Post, Nov. 6, 1989, at A 11, col. 1.

FN294 See supra text accompanying notes 73-85.

FN295 See supra text accompanying notes 88-96.

FN296 UCMJ art. 125.

FN297 See, e.g., Army Reg. 601-210, Regular Army and Army Reserve Enlistment Program, para. 4-4 (1 Dec. 1988).

FN298 DOD Dir. 1332.14.

FN299 UCMJ art. 125.

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FN300 18 U.S.C. s 13 (1982).

FN301 E.g., Watkins, 875 F.2d at 729.

FN302 DOD Dir. 1332.14.

FN303 See supra text accompanying notes 139-45.

FN304 Watkins, 875 F.2d at 702.

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END OF DOCUMENT

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FILE
16

SUPERSEDED
600-443
10 April 1953

*AR 600-443
C 1

PERSONNEL

SEPARATION OF HOMOSEXUALS

CHANGES No. 1

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., *14 June 1951*

AR 600-443, 12 January 50, is changed as follows:

3. Classification.—Homosexual personnel coming * * * classified as follows:

a. Class I is * * * cooperates or not. For the purposes of these regulations, a child under the age of consent is interpreted to apply to all persons under the age of 16.

* * * * * * *

8. Class III.—*a. Documentation and forwarding of case.*—When the investigation * * * will be taken:

(1) (Superseded) A detailed signed statement will be obtained from each individual concerned relative to his tendencies and any past homosexual actions. *See Uniform Code of Military Justice, Article 31.*

* * * * * * *

9. Reports.—(Superseded) All class II and class III cases processed under these regulations will be forwarded to the commander exercising general court-martial jurisdiction who will indorse his recommendation by the most expeditious means available to The Adjutant General, Washington 25, D. C., ATTN: AGPO, with an information copy of the case sent through normal channels to the major command concerned. It is essential that all facts indicating homosexual tendencies or acts be recorded properly and that signed statements of all witnesses be obtained, except when individuals are brought to trial by general court martial. In all cases the reports will include the date of the individual's birth; the amount of active service of the individual concerned; the statement required in paragraph 8a(1) from the officer or enlisted person concerned, or his statement to the effect that he does not desire to make a statement; statements of witnesses; copy of the general court-martial charge and specifications, where indicated; resignation of the officer or agreement by the enlisted person to accept discharge, as worded in paragraph 7 or 8, where appropriate, and the commanding officer's detailed comments and recommendations. The report also will include a medical evaluation and, when feasible, a psychiatric study of the person concerned. An adequate psychiatric study will include as a minimum a—

a. Personal history, including detailed account of development of homosexuality, if any.

b. Report of mental status examination.

c. Psychiatric diagnosis, if any.

d. Statement regarding the existence or not of homosexuality, its degree and type.

e. Statement regarding the mental responsibility of the individual.

f. Medical recommendation regarding the disposition of the case, including comment as to reclaimability of the individual, and advisability of restoration to duty, or separation from service, and

g. Statement as to whether there are any medical contraindications to administrative disposition.

[AG 220.8 (4 Jun 51)]

*These changes supersede DA messages 31515, 4 April 1951, 35847, 17 April 1951, and 40927, 3 May 1951.

AGO 4519B—June 900698*—51

PERSONNEL

BY ORDER OF THE SECRETARY OF THE ARMY:

J. LAWTON COLLINS
Chief of Staff, United States Army

OFFICIAL:
Wm. E. BERGIN
Major General, USA
Acting The Adjutant General

DISTRIBUTION:
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AGO 4519B

U. S. GOVERNMENT PRINTING OFFICE: 1951

SUPERS

ARMY REGULATIONS
No. 600-443

SEPA

SECTION I. General.
Purpose
Separation man
Classification
Character of se
Responsibility
II. Disposition.
Class I
Class II
Class III
Reports
Availability of
Evaluation

1. Purpose.—The purpo
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2. Separation mandator
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3. Classification.—Hom
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SUPERSEDED by 600-443 10 apr 1953

*AR 600-443

ARMY REGULATIONS No. 600-443

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., *12 January 1950*

PERSONNEL

SEPARATION OF HOMOSEXUALS

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SECTION I

GENERAL

1. Purpose.—The purpose of these regulations is to prescribe procedures whereby homosexual personnel will be investigated and discharged from the Army.

2. Separation mandatory.—True, confirmed, or habitual homosexual personnel, irrespective of sex, will not be permitted to serve in the Army in any capacity and prompt separation of known homosexuals from the Army is mandatory.

3. Classification.—Homosexual personnel coming within the purview of Department of the Army policy fall into several categories which may or may not overlap and will be more or less complicated by the facts and circumstances peculiar to the individual cases. Cases, however, are generally classified as follows:

a. Class I is defined as those cases accompanied by assault or coercion, as characterized by any act in or to which the other person involved did not willingly cooperate or consent or where the consent was obtained through force, fraud, or actual intimidation, thereby constituting the invasion of the rights of another; or any homosexual action with a child under the age of consent whether the child cooperates or not.

b. Class II is defined as those cases wherein true or confirmed homosexual personnel have engaged in one or more homosexual acts or where evidence supports proposal or attempt to perform an act of homosexuality and which does not fall into the category of class I. It is emphasized that no distinction is made in the administrative handling of the cases of alleged participation in homosexual acts while a member of the Army based upon whether the role of a person in any particular action was *active or passive.*

c. Class III is defined as those rare cases wherein personnel only exhibit, profess, or admit homosexual tendencies and wherein there are no specific, provable acts or offenses, or court-martial jurisdiction does not exist. All persons who confess homosexual tendencies shall not necessarily be discharged merely on the basis of confession of homosexuality. It is essential to distinguish between those who have uncontrollable, perverse tendencies in fact

*These regulations supersede so much of AR 615-368, 27 October 1948, including C 1, 17 May 1949, as pertains to homosexuals.

AGO 1360B—Jan 851726*—50

and those who claim such for the purpose of avoiding military service. Evidence of existing psychological or other maladjustment resulting from such tendencies, or other circumstances which render the individual inadaptable for military services, will be evaluated carefully in making a decision.

4. Character of separation.—The character of separation normally to be effected for all classes of homosexuals arising among personnel of the Army shall be similar and without distinction as to sex (male or female) or status (officers or enlisted) in all components.

5. Responsibility.—It is the duty of every member of the military service to report to his commanding officer any facts which may come to his attention concerning overt acts of homosexuality. Commanding officers receiving information indicating that a person in the Army possesses homosexual tendencies or has engaged in an act of homosexuality shall inquire thoroughly and comprehensively into the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges.

SECTION II

DISPOSITION

6. Class I.—When the investigation clearly indicates that the accused falls within the provisions which classify an individual as class I, trial by general court martial is mandatory. Charges will be preferred and forwarded to the commander having general court-martial jurisdiction.

7. Class II.—When the investigation clearly indicates that the accused falls within the provisions which classify an individual as class II, charges and specification(s) for trial by general court martial will be prepared and the accused will be confronted with them. The accused then will be offered the following alternatives:

a. Officers.

(1) *Resignation.*—The accused will be informed that a resignation may be submitted for the good of the service in lieu of trial by court martial. Such resignation will be tendered in accordance with the provisions of paragraph 4, AR 605-275, employing form B contained in paragraph 12, AR 605-275.

(2) *General court martial.*—If the accused officer refuses to submit a suitable resignation, he will be brought to trial by general court martial. Charges will be preferred and submitted to the commander having general court-martial jurisdiction.

(3) *Referral to Headquarters, Department of the Army.*—When the accused submits a resignation in accordance with (1) above, or when the evidence indicates that trial by court martial may not result in conviction of the accused, the tender of resignation together with supporting documents, or a complete report of the case, as outlined in paragraph 9 will be forwarded to The Adjutant General, Washington 25, D. C., for referral to the Army Personnel Board. The Army Personnel Board may direct that one of the following actions be taken:

(*a*) Acceptance of the resignation in accordance with the provisions of paragraph 4, AR 605-275.

(*b*) Initiate action with a view to trial by general court martial.

(*c*) When the evidence in the case indicates that trial by court martial is not warranted, or that conviction by court martial is unlikely, change the classification of the case to class III and direct disposition in accordance with the instructions contained in paragraph 8.

b. Enlisted personnel.

(1) *Submission of signed statement.*—Enlisted persons will be informed that a signed statement in tenor as follows may be submitted:

I hereby accept an undesirable discharge for the good of the service and to escape trial by general court martial. I understand that my separation from the Army effected by undesirable discharge will be under conditions other than honorable; that I may be deprived of many rights as a veteran under both Federal and State legislation, and that I

may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the armed forces or the character of discharge received therefrom may have a bearing.

(2) *Refusal to submit signed statement.*—If the accused enlisted person refuses to sign a statement as worded above and if the evidence so indicates, he will be brought to trial by general court martial.

(3) *Referral to Headquarters, Department of the Army.*—When the accused signs a statement in accordance with (1) above, or when the evidence indicates that trial by court martial may not result in conviction of the accused, the signed statement together with supporting documents, or a complete report of the case, as outlined in paragraph 9 will be forwarded to The Adjutant General, Washington 25, D. C. for referral to the Army Personnel Board. The Army Personnel Board may direct one of the following actions be taken:

(*a*) Acceptance of the signed statement under conditions recommended.

(*b*) Initiate action with a view to trial by general court martial.

(*c*) When the evidence in the case indicates that trial by court martial is not warranted, or that conviction by court martial is unlikely, change the classification of the case to class III and direct disposition in accordance with the instructions contained in paragraph 8.

8. Class III. *a. Documentation and forwarding of case.*—When the investigation clearly indicates that the accused falls within the provisions which classify a person as class III, the following actions will be taken:

(1) A detailed signed statement will be obtained from each individual concerned, relative to his tendencies and any past homosexual actions after complying with the twenty-fourth article of war.

(2) A written report will be obtained from a psychiatrist, or other medical officer, based upon his study and evaluation of the individual.

(3) The individual concerned will be afforded the opportunity of submitting, in the case of officer personnel, an unqualified resignation or, in the case of enlisted personnel, a signed statement accepting a discharge, either general or honorable, as determined to be appropriate by the Army Personnel Board.

(4) All papers in the case will be forwarded to The Adjutant General, Washington 25, D. C., together with detailed comment and recommendation of the commanding officer, for referral to the Army Personnel Board.

b. Action by the Army Personnel Board:

(1) *When separation is warranted.*—When the Army Personnel Board directs separation, The Adjutant General will—

(*a*) Accept resignation of an officer in accordance with the provisions of the appropriate regulation governing the submission of resignations, if such resignation is tendered; or

(*b*) Direct that elimination action be initiated under the provisions of section III or IV, AR 605-200, as applicable.

(*c*) Direct an enlisted person to be administratively discharged from the service and furnished, based upon instructions of the Army Personnel Board, either an honorable or a general discharge certificate. The specific reason for discharge shown on these discharge certificates will be "Convenience of the Government, AR 615-365 and AR 600-443."

(2) *When separation is not warranted.*—When the Army Personnel Board determines that separation is not warranted, The Adjutant General will so notify the appropriate field commander and will transmit such special instructions as may be required in each case.

9. Reports.—It is essential that all facts indicating homosexual tendencies or acts be properly recorded and that signed statements of all witnesses be obtained except where individuals are brought to trial by general courts martial, and a complete report of the recorded facts will be made to The Adjutant General, Washington 25, D. C., by the most expeditious means available. In all cases the report will include the statement required in paragraph 8 *a* (1) from the officer or enlisted person concerned, or his statement to the effect that he does not desire

to make a statement; statements of witnesses; copy of the general court-martial charge and specifications, where indicated; resignation of the officer or agreement by the enlisted person to accept discharge, as worded in paragraph 7 or 8, where appropriate, and the commanding officer's detailed comments and recommendations. The report will include also a medical evaluation and, when feasible, a psychiatric study of the person concerned.

10. Availability of witnesses.—All information concerning any other homosexuals involved will be forwarded to The Adjutant General, Washington 25, D. C., for information and further evaluation. In order to guarantee the availability of essential military witnesses in subsequent proceedings, the appropriate commander will ascertain promptly the termination or transfer status of each witness. No witness shall be transferred or separated from the service before the proceedings commence except those whose terms of enlistment expire, in which case, instructions will be requested from The Adjutant General, with allowance being made for sufficient time for an answer to be received. No person held solely as a witness will be confined.

11. Evaluation.—The Army Personnel Board will give full consideration to all the facts in the case and will direct The Adjutant General as to the disposition to be made. When the accused is a female officer or enlisted woman, the membership of the board will include a female officer as an advisor without vote. Psychiatric or other medical advice will be utilized by the board when indicated in arriving at a final decision. The board will be guided by the policy outlined in paragraphs 3 and 4. In every case not resulting in trial by court martial the disposition and type of discharge to be furnished will be determined on the basis of the facts in the case and will be discretionary with the Department of the Army.

[AG 220.8 (13 Dec 49)]

BY ORDER OF THE SECRETARY OF THE ARMY:

J. LAWTON COLLINS
Chief of Staff, United States Army

OFFICIAL:
EDWARD F. WITSELL
Major General, USA
The Adjutant General

DISTRIBUTION:
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AGO 1360B

U. S. GOVERNMENT PRINTING OFFICE: 1950

SUPERSEDED

SEPARA

CHANGES No. 5

AR 600-450, 7 Nove

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[AG 210.8 (2 Jun 54

FILE
17

Supersedes AR 615-220 dated 1948

*AR 615-367

ARMY REGULATIONS
No. 615-367

DEPARTMENT OF THE ARMY
WASHINGTON, D. C., 27 February 1953

ENLISTED PERSONNEL

DISCHARGE

RESIGNATION

(For general provisions see AR 615-360)

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1. Statutory authority.—Section 27, National Defense Act, as amended (10 U. S. C. 628; sec. VII, Bul. 13, WD, 1947) provides, in part, that persons of the three highest enlisted grades may be reenlisted for unspecified periods of time on a career basis under such regulations as the Secretary of the Army may prescribe. It further provides that anyone who serves three or more years of an enlistment for an unspecified period of time may submit his resignation to the Secretary of the Army, and such resignation shall be accepted by the Secretary of the Army and such person shall be discharged from his enlistment within 3 months after the submission of his resignation. However, if an enlisted person, other than an enlisted member of a Regular Army Puerto Rican unit, submits his resignation while stationed overseas or after embarking for an oversea station, the Secretary of the Army shall not be required to accept such resignation until a total of 2 years of oversea service shall have been completed in the current oversea assignment. Further, in the case of anyone who has completed any course of instruction pursuant to paragraph 13, section 127a, National Defense Act, as amended (10 U. S. C. 535), or pursuant to section 2, Act of 3 April 1939 (53 Stat. 556), as amended (10 U. S. C. 298a), the Secretary of the Army shall not be required to accept such resignation until 2 years subsequent to the completion of such course. The Secretary of the Army may refuse to accept such resignation in time of war or national emergency declared by the President or by the Congress, or while the person concerned is absent without leave or serving a sentence of court martial. The Secretary of the Army may refuse to accept a resignation for a period not to exceed 6 months following the submission thereof, if the individual is under investigation or in default with respect to public property or public funds.

2. General provisions.—*a. Applicability.—These regulations apply only to individuals who have served three or more years of an enlistment for an unspecified period of time.* An individual may tender a resignation under the conditions specified herein, provided he meets the foregoing requirement at the time of sub-

*These regulations supersede AR 615-367, 13 September 1948, including C 1, 26 October 1951; DA message 338016, 23 June 1952; DA message 348623, 1 August 1952; DA message 377853, 25 November 1952; DA message 382491, 15 December 1952; and DA message 389782, 16 January 1953.

mitting a resignation for any reason. Other individuals will not submit resignations.

b. How resignation submitted.—The resignation will be tendered in letter form, through the individual's immediate commander, and will contain a complete statement of reasons for which submitted.

3. Unconditional resignation.—*a.* An unconditional resignation will not be accepted until the individual has completed 3 years of an enlistment for an unspecified period of time plus a period of time equal to any involuntary extension of a specified period of enlistment in effect under Department of the Army policy or regulations at the time of submission of such resignation.

b. The resignation will be forwarded through channels to the officer who has discharge authority over the enlisted person concerned (see par. 14*a*, AR 615-360), and who is authorized to accept or, under conditions set forth in paragraph 10*e*, to recommend refusal to accept the resignation.

c. Indorsing commanders may recommend refusal to accept an unconditional resignation only under conditions set forth in paragraph 10*e*.

d. The tender of an unconditional resignation may be withdrawn at any time before notification of acceptance. After notification of acceptance, but before effect has been given to the acceptance by discharge of the individual concerned, no resignation may be withdrawn or materially modified without the consent of the officer who accepted the resignation, or his successor, or the Secretary of the Army.

e. An unconditional resignation, if accepted, will be accepted under honorable conditions. The individual will be furnished an Honorable Discharge Certificate (DD Form 256A) or a General Discharge Certificate (DD Form 257A), depending upon the character of service rendered, as described in section III, AR 615-360. The reason and authority for discharge shown in item 8, DD Form 214 (Report of Separation from the Armed Forces of the United States) will be "Resignation par. 3, AR 615-367."

f. An individual whose unconditional resignation is accepted under this paragraph will not be eligible to reenlist in the Regular Army at a later date in the grade held at time of separation, even though reenlistment is effected within 90 days from date of separation. See paragraph 15, SR 615-105-1.

4. Resignation in lieu of board action.—An individual who is to appear before a board of officers under the provisions of AR 615-368 or AR 615-369 may tender a resignation in lieu of board action.

a. When the recommendation for board action is based upon inaptitude or unsuitability under AR 615-369, the resignation will be forwarded through channels to the officer who has discharge authority over the individual (see par. 14*a*, AR 615-360) and who is authorized to accept or, under conditions set forth in paragraph 10*e*, to recommend refusal to accept the resignation. The resignation, if accepted, will be accepted under honorable conditions and the individual will be furnished a General Discharge Certificate (DD Form 257A). The reason and authority for discharge shown in item 8, DD Form 214, will be "Resignation par. 4*a*, AR 615-367."

b. When the recommendation for board action is based upon unfitness under AR 615-368, the resignation will be forwarded through channels to the officer who has general court-martial jurisdiction over the individual (see par. 14*b*, AR 615-360) and who is authorized to accept or, under conditions set forth in paragraph 10*e*, to recommend refusal to accept the resignation. The resignation, if

accepted, will be accepted under conditions other than honorable, and the individual will be furnished an Undesirable Discharge Certificate (DD Form 258A). The reason and authority for discharge shown in item 8, DD Form 214, will be "Resignation par. 4*b*, AR 615-367."

c. When a resignation is tendered in lieu of board action, the immediate commanding officer of the individual concerned will append thereto a copy of the report required in paragraph 1, AR 615-368 or paragraph 4, AR 615-369, as appropriate, together with a report of any medical or psychiatric examination and all other pertinent information available.

d. A request for withdrawal of a resignation tendered in lieu of board action may be submitted to the officer authorized to accept the resignation in accordance with paragraph 10*b*.

5. Resignation in lieu of reduction for misconduct or inefficiency.—*a.* An individual may tender his resignation in lieu of accepting punishment under the Uniform Code of Military Justice, Article 15, or in lieu of reduction for inefficiency under SR 615-25-55. In such cases, the individual will not be required to appear before a board convened under the provisions of SR 615-25-55 or a reclassification board. The commanding officer of the individual concerned will prepare and add as an inclosure to the resignation a complete summary of all facts which relate to the alleged misconduct or inefficiency, and will attach to the summary signed statements of witnesses having knowledge of the alleged misconduct or inefficiency. The resignation will be forwarded through channels to the officer who has discharge authority over the individual concerned (see par. 14*a*, AR 615-360) and who is authorized to accept or, under conditions set forth in paragraph 10*e*, to recommend refusal to accept the resignation. If accepted, the resignation will be accepted under honorable conditions, and the individual will be furnished a General Discharge Certificate (DD Form 257A). In meritorious cases an Honorable Discharge Certificate (DD Form 256A) may be furnished. The reason and authority for discharge shown in item 8, DD Form 214, will be, "Resignation par. 5, AR 615-367."

b. A request for withdrawal of a resignation tendered in lieu of reduction for misconduct or inefficiency may be submitted to the officer authorized to accept the resignation in accordance with paragraph 10*b*.

6. Resignation for good of service.—*a.* An individual whose conduct has rendered him triable by court-martial for an offense punishable by dishonorable or bad conduct discharge may tender his resignation for the good of the service in lieu of trial by court-martial. The resignation will be forwarded through channels to the officer who has general court-martial jurisdiction over the individual and who is authorized to accept the resignation, or to refuse to accept the resignation and direct trial. The resignation, if accepted, will be accepted under conditions other than honorable, and the individual will be furnished an Undesirable Discharge Certificate (DD Form 258A). The reason and authority for discharge shown in item 8, DD Form 214, will be "Resignation par. 6*a*, AR 615-367."

(1) The appropriate commanding officer of an individual who tenders his resignation in lieu of trial by court-martial will prepare a complete summary of all facts which relate to the conduct upon which the resignation is predicated. This summary, with the following statements attached, will be added as an inclosure to the resignation:

(*a*) Signed statements of the substance of testimony of witnesses who have been examined;

(*b*) Any statements, documents, or evidence of other factors considered by the commanding officer in arriving at his conclusion and making his recommendation; and

(*c*) A statement of any reasonable ground for the belief that the accused is, or was at the time of his misconduct, mentally defective, deranged, or otherwise abnormal.

(2) The officer having general court-martial jurisdiction will determine whether the case should be resolved by acceptance of the resignation or by trial by court martial. The final decision will be made within 3 months of the submission of such resignation, and the mentioned officer will take appropriate action within such period of time.

(3) A resignation for the good of the service tendered under *a* above ordinarily will not be accepted when the offense or offenses with which the individual is, or may be, charged would warrant imposition by a general court-martial of punishment more severe than dishonorable discharge from the service.

b. An individual who is under suspended sentence of bad conduct or dishonorable discharge may tender his resignation for the good of the service. The resignation will be forwarded through channels to the officer who has general court-martial jurisdiction over the individual and who is authorized to accept or, under conditions set forth in paragraph 10*e*, to recommend refusal to accept the resignation. The resignation, if accepted, will be accepted under conditions other than honorable, and the individual will be furnished an Undesirable Discharge Certificate (DD Form 258A). The reason and authority for discharge shown in item 8, DD Form 214, will be "Resignation par. 6*b*, AR 615-367."

c. A request for withdrawal of a resignation tendered for the good of the service may be submitted to the officer having general court-martial jurisdiction over the enlisted person concerned in accordance with paragraph 10*b*.

7. Resignation in lieu of separation for disloyalty or subversion.—Any resignation submitted in lieu of separation under the provisions of AR 615-370 will be forwarded through channels to The Adjutant General, Department of the Army, Washington 25, D. C., ATTN: AGPO-XD, for final disposition by the Secretary of the Army.

8. Resignation in lieu of separation for homosexuality.—Enlisted personnel serving in an enlistment for an unspecified period who have served at least 3 years therein may tender a resignation for the good of the service in lieu of trial by court-martial for homosexuality. Such resignations will be forwarded to The Adjutant General, Department of the Army, Washington 25, D. C., ATTN: AGPO-XD, for final disposition by the Secretary of the Army.

a. Resignations submitted by personnel alleged to be class I or II homosexuals will read as follows:

I hereby tender my resignation for the good of the service and in lieu of trial by court-martial for homosexuality. I understand that my resignation ordinarily will be accepted under other than honorable conditions, that an undesirable discharge may be furnished, that I may be deprived of many rights as a veteran under both Federal and State statutes, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the armed forces or character of discharge received therefrom may have a bearing.

b. Resignations submitted by individuals alleged to be class III homosexuals will read as follows:

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I hereby tender my resignation. I understand that this resignation, if accepted, will be accepted under honorable conditions, and that I will be furnished an honorable or general discharge, as may be determined by appropriate authority.

9. Effect of disability upon resignation.—An individual whose resignation normally would be accepted under honorable conditions as specified above and who is found to be physically disabled to the extent that he is eligible for separation by reason of physical disability under the provisions of the AR and SR 600-450-series may, at any time prior to discharge, request that such resignation be withdrawn and further request that he be processed for separation because of disability. Such request will be forwarded to the officer authorized to accept the resignation. The request for withdrawal will be approved, and action will be taken under the provisions of the AR and SR 600-450-series.

10. General procedures.—*a. Authority to accept resignations.*

(1) Officers designated in paragraph 14*a*, AR 615-360, are authorized to accept or recommend refusal to accept resignations tendered under the provisions of paragraphs 3, 4*a*, or 5.

(2) Officers designated in paragraph 14*b*, AR 615-360 are authorized to accept or recommend refusal to accept resignations tendered under the provisions of paragraph 4*b*; and may either accept resignations tendered under the provisions of paragraph 6, or refuse to accept such resignations and direct trial.

(3) Resignations tendered under the provisions of paragraphs 7 or 8 will be forwarded to The Adjutant General, Department of the Army, Washington 25, D. C., ATTN: AGPO-XD, for final disposition by the Secretary of the Army.

b. Requests for withdrawal.—The tender of an unconditional resignation may be withdrawn at any time prior to acceptance. After acceptance, and before effect has been given to the acceptance by discharge of the enlisted person concerned, such requests will be forwarded, through the same channels by which the tender of resignation was forwarded, to the officer authorized to accept the resignation. Normally, consent to withdraw the accepted resignation will be given only if extenuating circumstances are presented which clearly indicate that such action is in the best interest of the service. No accepted resignation may be withdrawn or materially modified without the consent of the officer authorized to accept the resignation. Conditional resignations may be withdrawn, whether or not accepted, only with the consent of the officer empowered to accept it.

c. Forwarding.—The commander who forwards the resignation will recommend acceptance of the resignation or, under conditions set forth in *e* below, refusal to accept it, and will include, if appropriate, a recommendation regarding the type of discharge certificate to which he believes the enlisted person is entitled. Each succeeding commander who forwards the resignation will review the case carefully and either concur in the recommendations or note any difference in opinion with reasons therefor. The forwarding indorsement will include a statement that the enlisted person has no time lost to be made good, or if time has been lost, the total amount thereof to be made good, together with a statement regarding whether the enlisted person concerned has been alerted, or orders issued, for oversea assignment, and if so the date of the alert, or orders, whichever is earlier. Each commander who forwards the resignation will determine whether any of the items mentioned in *e* below apply to the individual concerned, and shall set forth in his indorsement any facts known to him with

respect to the application of those items which have not been presented previously.

d. Change in eligibility for resignation.—Any serious misconduct on the part of the individual which is committed or discovered subsequent to the forwarding of a resignation will be reported immediately by the most expeditious means to the officer authorized to accept the resignation.

e. Factors affecting acceptance of resignation.

(1) Officers authorized to accept resignations under *a* above may recommend refusal only if one or more of the following conditions exist:

(*a*) When the individual, other than an enlisted member of a Regular Army Puerto Rican unit, submits his resignation while stationed overseas, or after having been alerted or receiving orders for oversea movement, whichever is earlier, until a total of 2 years of oversea service shall have been completed in the current oversea assignment.

(*b*) When the individual has completed any course of instruction at a technical, professional, or other educational institution, pursuant to paragraph 13 of section 127a of the National Defense Act, as amended (10 U. S. C. 535), or pursuant to section 2 of the Act of 3 April 1939 (53 Stat. 556), as amended (10 U. S. C. 298a), until 2 years subsequent to the completion of such course.

(*c*) When there exists a state of war or national emergency declared by the President or by the Congress and the individual has attended a service school wherein a requisite to selection for such attendance was a period of service subsequent to graduation, in making such recommendation, the commander will furnish complete details concerning such course, or courses, attended, the amount of service required subsequent to graduation, and whether the enlisted person signed a voluntary statement that he would not make an application for resignation prior to the completion of such required service.

(2) The officer exercising general court-martial jurisdiction may refuse to accept a resignation submitted for the good of the service and direct trial.

(3) If a resignation is refused because of the existence of one or more of the conditions set forth in (1) above, the officer authorized to accept resignations under *a* above will forward the resignation, with a statement of his reasons for refusal, to The Adjutant General, Department of the Army, Washington 25, D. C., ATTN: AGPO-XD, for final disposition by the Secretary of the Army. Unless one or more of the above-stated conditions exist, officers authorized under *a* above to accept resignations must do so within 3 months of the submission thereof.

f. Not to be transferred.—Enlisted personnel serving in an indefinite enlistment who, on the date of tender of resignation, have completed the required period of service, and who have not been alerted or placed on orders for oversea movement, will not be applied against any levy for shipment overseas, or otherwise transferred from their current assignments until final action is taken on the resignation.

g. Expeditious handling of resignations required.—All commanders forwarding or taking action upon a resignation will do so with the least practicable delay in order that all action, including processing for separation, will be completed not later than 3 months after tender of the resignation, except as specifically provided in *e* above.

11. Date resignatio
effective only upon th
concerned. See parag
[AG 220.8 (13 Oct 52)

BY ORDER OF T

OFFICIAL:
WM. E. BERGIN
Major General, U
The Adjutant Ge

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DISCHARGE—RESIGNATION

11. Date resignation becomes effective.—Acceptance of a resignation will be effective only upon the discharge, actual or constructive, of the enlisted person concerned. See paragraph 13, AR 615-360.

[AG 220.8 (13 Oct 52) AGPO]

BY ORDER OF THE SECRETARY OF THE ARMY:

J. LAWTON COLLINS
Chief of Staff, United States Army

OFFICIAL:
WM. E. BERGIN
Major General, USA
The Adjutant General

DISTRIBUTION:
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U. S. GOVERNMENT PRINTING OFFICE: 1953

FILE
18

ENLISTED PERSONNEL

DISCHARGE

GENERAL PROVISIONS

CHANGES No. 5 } DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., *1 December 1954*

AR 615-360, 24 June 1953, is changed as follows:

7. General considerations.

* * * * * * *

b. (Superseded) An enlisted person below the grade of corporal (E-4) who has completed 9 or more years of active Federal service and who, upon separation, is to receive an honorable or general discharge certificate, will be presented a statement signed by the company, detachment, or similar unit commander as set forth in paragraph 5*a* (3) (*c*) and 16*a* (2) (*d*), AR 615-120, when such commander is willing to have the individual reassigned to his command if he enlists or reenlists in the Regular Army. The statement will be prepared in duplicate substantially as shown below. The original will be presented to the individual concerned before he departs from his home unit for the separation activity, and the duplicate will be placed in the service record and forwarded to The Adjutant General with the service record and allied papers when separation processing is completed.

The (enlistment) (reenlistment) in the Regular Army of
_____ is recommended.
(Name, grade, service number, organization)
Should he reenlist, I am willing for him to be assigned to my command.

JOHN D. DOE, 1st Lt, Inf
Commanding

* * * * * * *

10. Substandard personnel.

* * * * * * *

b. When separation under * * * an honorable discharge:

* * * * * * *

(4) Commanders of transfer stations and transfer points will examine each service record of personnel being separated and when the remark prescribed in (2) above appears in the service record and an honorable discharge is not warranted will enter in item 38, DD Form 214, the remark, "Paragraph 9 (or paragraph 20, as applicable), AR 615-120 applies—AR 600-186 complied with." When the remark prescribed in (2) above, entered in the remarks section of the service record has been deleted, the commander effecting separation will

examine the records and ascertain if proper authorization was granted to make the deletion. If the deletion is not properly substantiated as prescribed in (3) above, the individual will be separated and the remark, "Paragraph 9 (or paragraph 20, as applicable), AR 615-120 applies—AR 600-186 complied with," will be entered in item 38, DD Form 214. If the deletion is properly substantiated, separation will be effected and no entry will be made in item 38, DD Form 214.

11. Separation upon expiration of term of enlistment or period for which inducted or ordered into the active military service.— The periods of * * * active military service. However, individuals whose term of service expires or who otherwise become eligible for separation on a Saturday, Sunday, or legal holiday, will be discharged, or released to or transferred to the Army Reserve on the last working day prior to normal date of separation. Enlisted personnel who are eligible for early release on a Saturday, Sunday, or a legal holiday under SR 615-360-5 or other early separation criteria which may be established, will not be separated or released from active duty on the last working day prior to the Saturday, Sunday, or legal holiday, unless the basic service requirements of the particular early separation authority concerned are met. Release from active duty will be dated as of the actual date of release or discharge. Personnel released from * * * term of service.

a. Personnel inducted, enlisted, or appointed between 25 June 1948 and 19 June 1951.

* * * * * * *

(3) Except as provided * * * Act, as amended

(*a*) Inducted personnel who desire to enlist in the Regular Army may be discharged for the convenience of the Government as provided in paragraph 3*b* (2), AR 615-365, and enlisted the following day for one of the periods specified in AR 615-120.

(*b*) Personnel who enlisted in the Regular Army during this period, and who desire to reenlist in the Regular Army may, if eligible for separation under AR 615-360 or AR 615-365, be discharged and reenlisted the following day for one of the periods specified in AR 615-120.

(*c*) Individuals inducted or * * * separated as follows:

1. (Superseded) Upon completion of at least 21 months of active military service, plus a voluntary extension of at least 12 months, the individual is deemed to have satis-

fied the Reserve obligation imposed by the Universal Military Training and Service Act, and will be discharged.

* * * * * * *

b. *Individuals who entered service on or after 20 June 1951.*—Individuals enlisted or * * * DA Bul. 12, 1951).

(1) Inducted personnel who desire to reenlist in the Regular Army may be discharged for the convenience of the Government as provided in paragraph 3*b* (2), AR 615-365, and enlisted the following day for one of the periods specified in AR 615-120.

(2) Personnel who enlisted in the Regular Army on or after 20 June 1951 and who desire to reenlist in the Regular Army may, if eligible for separation under AR 615-360 or AR 615-365, be discharged and reenlisted the following day for one of the periods specified in AR 615-120.

* * * * * * *

12. Separation after expiration of period of service.—*a.* (Superseded) *Time lost to be made good.*—Every individual in active Federal service who renders himself unable for more than 1 day to perform duty shall be liable, after a return to full duty status, to serve for such period as is necessary to complete his full term of service or obligation, exclusive of such lost time.

(1) Lost time in the sense of this regulation is through—

(*a*) Desertion, or

(*b*) Absence without proper authority, or

(*c*) Confinement under sentence, or

(*d*) Confinement while awaiting trial or disposition of individual's case, if the trial results in conviction, or

(*e*) Intemperate use of drugs or alcoholic liquor, or

(*f*) Disease or injury the result of individual's own misconduct.

(2) Time lost during an enlistment will be made good at the end of the enlistment period, except that, when an enlistment is extended by law, time lost will be made good at the end of the extension. If an individual who lost time during an enlistment prior to its extension by law wishes, and is eligible for, reenlistment in the Regular Army, he may be discharged (ETS) and reenlisted when the amount of time served in the extension equals the period required to be made good.

(3) Enlisted members of the National Guard of the United States and the Army Reserve who are being released from

active duty because the unit in which they were ordered to active duty is being returned as a unit to inactive status will not be retained on active duty to make good time lost.

b. Awaiting trial or result of trial by court-martial.—An individual who * * * see paragraph 14. **Enlisted personnel under sentence to dishonorable discharge or bad conduct discharge will not be separated prior to the completion of appellate review unless so directed by the Department of the Army.**

* * * * * * *

14. Effective date of discharge.

b. Mentally incompetent.—The effective date of discharge of a mentally incompetent individual may also be constructive, as when he has been placed in an institution. See SR 600-450-5 and SR 600-450-25.

* * * * * * *

16.1 (Added) Reason and authority for separation.—The reason and authority for separation (item 8, DD Form 214) will be entered as "AR 615-360 SPN 38".

[AG 220.8 (18 Nov 54) AGPO)]

BY ORDER OF THE SECRETARY OF THE ARMY:

M. B. RIDGWAY,
General, United States Army,
Chief of Staff.

OFFICIAL:

JOHN A. KLEIN,
Major General, United States Army,
The Adjutant General.

DISTRIBUTION:

Active Army: B

To be distributed to all units and headquarters down to and including separate battalions (administrative) and to units and headquarters of comparable size and responsibility.

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U. S. GOVERNMENT PRINTING OFFICE: 1964

CHANGES No. 4

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ENLISTED PERSONNEL

DISCHARGE

GENERAL PROVISIONS

CHANGES No. 4

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., *18 July 1954*

AR 615-360, 24 June 1953, is changed as follows:

13. Separation prior to expiration of period of service.—*a.* Except as indicated * * * in section V:

* * * * * * *

(13) (Superseded) Military Personnel Security Program ---------- SR 600-220-1.

* * * * * * *

[AG 220.8 (1 Jul 54) AGPO]

BY ORDER OF THE SECRETARY OF THE ARMY:

M. B. RIDGWAY,
General, United States Army,
Chief of Staff.

OFFICIAL:
JOHN A. KLEIN,
Major General, United States Army,
The Adjutant General.

DISTRIBUTION:
Active Army: B.
NG: Same as Active Army.
USAR: Same as Active Army.

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U. S. GOVERNMENT PRINTING OFFICE: 1954

Superseded by AR 635-200

AGO Library

*AR 615-360

ARMY REGULATIONS
No. 615-360

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., 24 June 1953

ENLISTED PERSONNEL

DISCHARGE

GENERAL PROVISIONS

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SECTION I
GENERAL

1. Purpose.—These regulations provide for the discharge of enlisted personnel upon expiration of term of enlistment and set forth the general provisions governing the separation from the service of enlisted and inducted persons prior to

*These regulations supersede AR 615-360, 23 January 1952, including C 2, 14 May 1952, C 3, [illegible] 1952, C 4, 26 September 1952, and DA message 895592, 10 February 1953.

expiration of their terms of service under the regulations listed in paragraph 13.

2. Scope.—These regulations grant authority to certain commanders to order the discharge or release from active military service of enlisted and inducted persons prior to expiration of their terms of service; set forth criteria governing the issuance of honorable and general discharge certificates; and provide reference to all other regulations governing the separation from the service of persons enlisted, inducted, or ordered into the active military service.

3. Definitions.—*a.* The terms "enlisted person" and "individual" as used herein include all persons enlisted or inducted in any component of the Army in active Federal service. Whenever the above terms are used in these regulations, they will be construed to include enlisted women of the Women's Army Corps unless obviously inappropriate.

b. "Discharge certificates" are those forms listed in paragraph 4. They are issued under conditions set forth in these regulations and regulations listed in paragraph 13 in accordance with AR 615-375.

c. The "Certificate of Service" is a 2¼ x 3½ inch card issued in accordance with paragraph 5. The Certificate of Service is designed for carrying in a billfold, and is impregnated in plastic whenever possible before presentation to the individual.

d. The word "separation" as used in these regulations means discharge or release from active military service.

SECTION II

SEPARATION CERTIFICATES

4. Discharge certificates.—Discharge certificates are furnished enlisted and inducted personnel when they are discharged. Instructions for the completion of the various types of discharge certificates are in SR 615-360-1. The five types of discharge certificates, the issuance of which is governed by these regulations and those listed in paragraph 13, are as follows:

Form No.	*Type of discharge*	*Character of discharge*	*Given by—*
DD Form 256A	Honorable	Honorable	Administrative action.
DD Form 257A	General	Under honorable conditions.	Administrative action.
DD Form 258A	Undesirable	Under conditions other than honorable.	Administrative action.
DD Form 259A	Bad conduct	Under conditions other than honorable.	Sentence of special or general court-martial.
DD Form 260A	Dishonorable	Dishonorable	Sentence of general court-martial.

5. Certificate of Service.—*a.* A Certificate of Service (DD Form 217A) is furnished each enlisted person who is released from the active military service and—

(1) Transferred to the Army Reserve to complete a reserve obligation incurred under the Universal Military Training and Service Act, as amended (including persons released from the active military service under AR 615-362 or AR 615-365),

(2) Reverts to former Army Reserve or State National Guard status to complete the unexpired portion of an enlistment contract in such component, or

(3) Placed on the temporary disability retired list under the provisions of the AR and SR 600-450 series.

b. Instructions for the completion of DD Form 217A are in SR 615-360-1.

6. Report of separation from the Armed Forces of the United States (DD Form 214).—With the exception of Regular Army enlisted personnel who intend to reenlist the day following discharge at the place of discharge, and enlisted members of reserve components (Army Reserve and National Guard of the United States) who enlist in the Regular Army from their current period of active duty, individuals who are separated from the Armed Forces of the United States will, in addition to a separation certificate as provided in paragraphs 4 and 5, be furnished a factual record of military service rendered, the character and duration thereof, and the type of separation on DD Form 214 (Report of Separation from the Armed Forces of the United States). Detailed instructions relative to the completion and distribution of DD Form 214 are in SR 615-360-1.

SECTION III

FACTORS GOVERNING ISSUANCE OF HONORABLE AND GENERAL DISCHARGE CERTIFICATES

7. General considerations.—Because the type of discharge may significantly influence the individual's civilian rights and eligibility for benefits provided by law, it is essential that all pertinent factors be considered so that the type of discharge will reflect accurately the nature of service rendered. It is the policy of the Department of the Army to base evaluation of an individual's service and character on his over-all enlistment period rather than on any disqualifying entries in his service record during a particular portion of his current service. The effects of an honorable discharge and a general discharge are identical and entitle an individual so discharged to full rights and benefits. The undesirable discharge may or may not deprive the individual of veteran's benefits administered by the Veterans Administration and a determination by that agency is required in each individual case to fix the individual's rights. A dishonorable discharge deprives the individual of all veteran's benefits and may operate to deprive him of civil rights.

8. Honorable discharge.—*a.* Except as provided in these regulations and pertinent regulations listed in paragraph 13, an honorable discharge certificate will be furnished when the individual meets the following qualifications:

(1) Has character ratings of at least "very good."

(2) Has efficiency ratings of at least "excellent."

(3) Has not been convicted by a general court-martial.

(4) Has not been convicted more than once by a special court-martial.

b. Notwithstanding the foregoing criteria, when disqualifying entries in the individual's service record during current service are outweighed by subsequent honest and faithful service over a greater period of time, an honorable discharge may be furnished. Ratings of "unknown" and ratings for periods of less than 2 months are not disqualifying. (See par. 37*b* (2), SR 615-20-1.) In addition, careful consideration will be given to the nature of the offense and sentence adjudged by a court-martial in applying the provisions of *a* (3) and (4) above, and when, in the opinion of the officer effecting discharge, these have

been not too serious and severe, and the remainder of the service in the enlistment has been such that an honorable discharge would have been granted had the conviction not occurred, an honorable discharge certificate may be awarded.

9. General discharge.—Individuals discharged under honorable conditions which do not qualify them for an honorable discharge will be furnished a general discharge, except as provided below. Officers effecting discharge are authorized and required to deviate from this criteria and furnish an honorable discharge when, after considering all aspects of the individual's service, it appears that furnishing a general discharge would not be in the best interest of the service or the individual. Specifically, the above criteria may be deviated from in the following instances:

a. Regardless of previous record, an individual who has received a decoration or award, including a commendation ribbon or a lifesaving medal, will, provided his record subsequent to the act for which he was decorated, awarded, or commended would so entitle him, be furnished an honorable discharge.

b. An individual being separated with severance pay under the AR and SR 600-450 series will normally be furnished an honorable discharge.

c. When it is apparent from inconsistent entries in the service record that furnishing a general discharge is not warranted, an honorable discharge may be furnished (i. e., when ratings given are disqualifying but promotion with no subsequent reduction was given during period covered or when disqualifying ratings were given but individual was favorably considered for Good Conduct Medal at the same time).

10. Sub-standard personnel.—*a.* Continued effort and attention will be given to the early detection of individuals who are in fact inapt, untrainable, or unsuitable for military service. Those individuals who are found to be so lacking in abilities and aptitudes as to require frequent or continued special instruction or supervision, and those individuals whose interests and/or habits frequently require corrective or disciplinary action, will be identified as soon as possible after acceptance for service in the Army with the view toward disposition in accordance with regulations listed in paragraph 13.

b. When separation under the above procedures is not warranted, the following action will be taken to bar the enlistment or reenlistment of individuals with records of habitual minor misconduct whose character and efficiency ratings warrant a general discharge but do not warrant an honorable discharge:

(1) In each applicable case, the unit commander of the individual will prepare a certificate signed in duplicate summarizing the basis for the actions which ensue. He will refer the certificate to the enlisted man concerned for a statement as required by paragraph 3, AR 600-186. The certificate will be indorsed by the regimental or separate battalion commander, and approved or disapproved by the major commander concerned.

(2) When the certificate is approved, the commander with custody of the soldier's personnel records will include a signed copy in the soldier's field 201 file where it will remain a permanent part of the file. He will also enter the remark, "Not recommended for further service", in the enlisted person's service record in section 9 (Remarks Administrative) WD AGO Form 24A, or section 14 (Remarks) DD Form 230.

(3) Subsequent to placing an approved certificate in the enlisted person's file under the foregoing procedure, any company or detachment commander under whom the individual services for at least 6 months may

submit a recommendation to have the certificate voided. Approval to void such certificate may be granted by the same authority that approved the certificate originally or, if the individual has moved to another jurisdiction, by the major commander thereof. If approval to void the certificate is granted, a signed copy of such approval will be placed in and become a permanent part of the individual's field 201 file and the entry, "Not recommended for further service" in the Remarks or Remarks Administrative section of the Service Record will be deleted and authenticated by signature followed by the name, grade, branch, and unit of the deleting officer typewritten or printed.

(4) Commanders of separation centers and separation points will examine each service record of personnel being separated and when the remark prescribed in (2) above appears in the service record and an honorable discharge is not warranted will enter in item 38, DD Form 214, the remark, "Paragraph 11, SR 615-105-1, applies—AR 600-186 complied with." When the remark prescribed in (2) above, entered in section 9 of the Service Record, has been deleted, the commander effecting separation will examine the records and ascertain if proper authorization was granted to make the deletion. If the deletion is not properly substantiated as prescribed in (3) above, the individual will be separated and the remark "Paragraph 11, SR 615-105-1 applies" will be entered in item 38, DD Form 214. If the deletion is properly substantiated, separation will be effected and no entry will be made in item 38.

SECTION IV

WHEN DISCHARGED

11. Separation upon expiration of term of enlistment or period for which inducted or ordered into the active military service.—The periods of military service, now or hereafter required of all members of the Army, will be prescribed by the Department of the Army in accordance with applicable laws. Periods for which enlistment is authorized are set forth in SR 130-15-5, SR 140-107-1, and SR 615-105-1. Periods for which individuals are inducted or ordered into the active military service are prescribed by law. Subject to the provisions of paragraph 12, an individual enlisted, inducted, or ordered into the active military service will normally be discharged, or released from the active military service, on the date upon which he completes the period for which enlisted, inducted, or ordered into the active military service. Personnel released from active military service and transferred to the Army Reserve upon completion of the term of service for which inducted or ordered into the active Federal service, or released to an inactive status in their Reserve component upon completion of active military service, will not be discharged until completion of their Reserve obligation (SR 615-363-5). Paragraph 16 contains information relative to authority to effect discharge by reason of expiration of term of service.

a. Personnel inducted, enlisted or appointed between 25 June 1948 and 19 June 1951.

(1) The following categories of personnel who entered the active military service between 25 June 1948 and 19 June 1951, both dates inclusive, and who complete less than 3 years active duty in such period of service, incurred a Reserve obligation under section 4 (d) (1) or (2), Universal Military Training and Service Act (PL 759—80th Cong.; JAAF Bul. 22,

1948), as amended by the act of 19 June 1951 (PL 51—82d Cong.; DA Bul. 12, 1951):

(*a*) Personnel who were inducted during the period, and

(*b*) Personnel NOT exempt from induction who were enlisted or appointed during the period and who had not attained the 26th anniversary of the date of birth on the day of enlistment or appointment.

(2) The period of Reserve obligation is set forth in SR 615-363-5.

(3) Except as provided below, individuals in the categories mentioned in (1) above will not be discharged by reason of expiration of term of service until they have completed the period of service in the Army Reserve as required by the Universal Military Training and Service Act, as amended.

(*a*) Inducted personnel who desire to enlist in the Regular Army may be discharged for the convenience of the Government as provided in paragraph 3*b* (2), AR 615-365, and enlisted the following day for one of the periods specified in SR 615-105-1.

(*b*) Personnel who enlisted in the Regular Army during this period, and who desire to reenlist in the Regular Army may, if eligible for separation under AR 615-360 or AR 615-365, be discharged and reenlisted the following day for one of the periods specified in SR 615-105-1.

(*c*) Individuals inducted or enlisted for 21 months under the Universal Military Training and Service Act, as amended, during the period, had their periods of service increased to 24 months. Such persons will be separated as follows:

1. Upon completion of at least 21 months of active military service, plus a voluntary extension of at least 12 months, the individual is deemed to have satisfied the Reserve obligation imposed by the Universal Military Training and Service Act, as amended, and will be discharged. (Extension procedures are contained in AR 615-190.)

2. Individuals separated prior to the completion of at least 33 months active military service will be released from the active military service and transferred to the Army Reserve for 5 or 6 years, as appropriate. (See SR 615-363-5.)

(*d*) Any 5- or 6-year reservist ordered into the active military service, voluntarily or involuntarily, individually or as a member of a unit, who completes a combined total of 33 months active military service (active service performed in induction or enlistment entered into between 25 June 1948 and 19 June 1951, both dates inclusive, plus active service performed after recall) is deemed to have satisfied the Reserve obligation imposed by the Universal Military Training and Service Act, as amended, and when eligible for separation under any current criteria, will not revert to Army Reserve status, but will be discharged.

b. Individuals who entered service on or after 20 June 1951.—Individuals enlisted or inducted on or after 20 June 1951 who have not previously incurred or been relieved of a Reserve obligation pursuant to subsections 4d (1) and (2) of the Universal Military Training and Service Act, as amended, and who had not attained the 26th anniversary of the date of birth on the day of enlistment or induction will, upon release from active military service, be transferred to the Army Reserve for a period which, when added to the period of active military

service performed pursuant to such enlistment or induction, totals 8 years. Except as provided in (1) and (2) below, such individuals will not be discharged by reason of expiration of term of service until they have completed the 8 years of service (active or combined active and Reserve service) required by the Universal Military Training and Service Act (62 Stat. 604; 50 U. S. C. app., sup. IV, 451 et seq.) as amended by the act of 23 June 1950 (64 Stat. 254); the act of 30 June 1950 (64 Stat. 318); and further amended by the act of 19 June 1951 (Title I, PL 51, 82d Cong.; DA Bul. 12, 1951).

(1) Inducted personnel who desire to enlist in the Regular Army may be discharged for the convenience of the Government as provided in paragraph 3b (2), AR 615-365, and enlisted the following day for one of the periods specified in SR 615-105-1.

(2) Personnel who enlisted in the Regular Army on or after 20 June 1951 and who desire to reenlist in the Regular Army may, if eligible for separation under AR 615-360 or AR 615-365, be discharged and reenlisted the following day for one of the periods specified in SR 615-105-1.

(3) The discharges authorized in (1) and (2) above do not terminate the 8-year Reserve obligation, unless 8 years' service, active and inactive, have been rendered subsequent to the first enlistment described in paragraph 11b above.

n. Individuals ordered into the active military service from the Army Reserve or the National Guard.—Individuals who enlisted in the Army Reserve or the National Guard and National Guard of the United States and who subsequently were ordered into the active military service for a period in excess of 90 days will be discharged or released from active military service and revert to control of the appropriate civilian component under SR 615-363-5.

12. Separation after expiration of period of service.—*a. Time lost to be made good.*—Every individual who, in an existing or subsequent enlistment, induction or other period of active military service, deserts the service of the United States, or without proper authority absents himself from his organization, station, or duty for more than 1 day, or who is confined for more than 1 day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or through the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than 1 day to perform duty, shall be liable to serve, after his return to a full duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement or inability to perform duty, amount to the full term of that part of his period of service which he is required to serve with his organization before being discharged or released from active military service. He cannot begin to make good such time until restored to a full duty status.

(1) Time lost during an enlistment will be made good at the end of the enlistment period, *except* that, when an enlistment is extended by law, time lost will be made good at the end of the extension. If an individual who lost time during an enlistment prior to its extension by law wishes, and is eligible for, reenlistment in the Regular Army, he may be discharged (ETS) and reenlisted when the amount of time served in the extension equals the period required to be made good.

(2) Inductees will be required to make good, prior to release from active duty, any time lost during the period of active duty.

(3) Enlisted members of the National Guard of the United States and the Army Reserve, prior to being released from active duty as individuals because of completion of period of service for which ordered to active military service, will be required to make good any time lost during such period of active duty.

(4) Enlisted members of the National Guard of the United States and the Army Reserve who are being released from active duty because the unit in which they were ordered to active duty is being returned as a unit to inactive status will not be retained on active duty to make good time lost.

b. Awaiting trial or result of trial by court-martial.—An individual who, on the date on which he would otherwise be eligible for separation, is awaiting trial or result of trial by court-martial will not be discharged or released from active military service until final disposition of the court-martial charges is made. For the effective date of discharge, see paragraph 14.

c. En route to United States or to territory of origin.—Whenever an individual is held in service after the expiration of his period of service under the conditions set forth in (1) and (2) below, he will be regarded as having been so retained for the convenience of the Government.

(1) *As casual for discharge.*—An individual en route as a casual to the United States from overseas (including Alaska) will not under any circumstances be discharged prior to arrival in the United States. An individual returning as a casual to the territory of origin in accordance with paragraph 4*b* (1), SR 55-120-15, will not be discharged until he has arrived at his destination.

(2) *As a member of an organization.*—An individual whose period of service expires while at sea en route to the United States with his organization and who signifies his intention to reenlist for the same organization on the day following discharge will be discharged and reenlisted at sea. Those who do not signify their intention to reenlist will be held in the service until they arrive in the United States.

d. Sick in hospital when period of service expires.—Any enlisted person whose period of service will expire during the course of hospitalization and who is in need of further medical care and hospitalization may, *with his consent*, be retained in service beyond the expiration of his period of service in order that he may complete hospitalization and, if required, be brought before a physical evaluation board (see SR 600-450-5). Any enlisted person so retained will receive, at Government expense, medical care, hospitalization, pay and allowances (including expense money authorized by law and credit for longevity), and will be subject to forfeiture in the same manner and to the same extent as if the period of service had not expired. See paragraph 17, AR 35-1320.

(1) Any individual whose period of service will expire during the course of hospitalization may be held in service *without his consent* to make good time lost under the act of 4 June 1920, as amended (64 Stat. 145; 10 U. S. C. 1579).

(2) No enlisted person may be held in service beyond the normal expiration of his term of service without his consent solely to effect his further hospitalization and subsequent separation or retirement for physical disability. Every effort will be made to explain to the individual concerned the advantages of continued hospitalization and possible subsequent separation or retirement for physical disability under the Career Compensation Act of 1949 (AR and SR 600-450-series).

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Individuals who do not consent to further hospitalization will be required to accomplish an affidavit to the effect that they do not desire retention in the service for continued hospitalization and possible separation or retirement for physical disability. The affidavit will be filed with the individual's service record and forwarded to The Adjutant General, Department of the Army, Washington 25, D. C., when separation processing has been completed. In the event the individual refuses to accomplish the affidavit, a written report of such refusal will be made by the appropriate commander and filed with the individual's service record as provided above. In either case, the individual will be separated on the date of expiration of term of service. If the condition of a patient who declines further hospitalization as provided above is such that he is physically unable to leave the hospital at the time of separation from the service, he will be discharged and may be permitted to remain in the hospital as provided in AR 40-680 as a pay patient at his own expense without military status, except in those cases in which the individual is eligible for authorized hospitalization as a beneficiary of the Veterans Administration or when the patient elects transfer to a State, county, municipal, or private institution. In such cases the hospital commander will take appropriate action to arrange for the transfer.

e. Retained to undergo treatment for class 4 or 5 dental defects.—Any enlisted person whose period of service will expire during the time he is in need of or is receiving treatment for class 4 or 5 dental defects (SR 40-1010-10) which are incapacitating or likely to interfere with duties in military or civilian life may, with his consent, be retained in the service beyond expiration of his period of service until he has received appropriate treatment or prosthetic dental appliances. The provisions of paragraph 11, AR 35-1320 will apply in each instance where a person is so retained in the service.

f. Indebtedness.—An individual who is otherwise eligible for separation will not be retained in the service to satisfy an indebtedness to the Government or to an individual, or for the purpose of obtaining remission of indebtedness. When practicable and justifiable, action toward remission (AR 35-1820) will be taken in advance of the date on which the individual is eligible for separation.

g. Retained in service under authority of the Secretary of the Army.—Authority for retention under this subparagraph must be secured from The Adjutant General.

13. Separation prior to expiration of period of service.—When discharge or release from active military service is to be effected prior to expiration of enlistment, induction, or period for which ordered into the active military service, it will be accomplished under whichever is appropriate of the following regulations:

a. Homosexuals	AR 600-443.
b. Disability	AR and SR 600-450-series.
c. Disability existing prior to entry on active service.	SR 600-450-10.
d. Marriage and pregnancy	AR 615-361.
e. Purchase, minority, and dependency or hardship.	AR 615-362.
f. Release to National Guard and Army Reserve.	SR 615-363-5.

g. Dishonorable and bad conduct ..... AR 615-364.
h. Convenience of Government ..... AR 615-365.
i. Misconduct ..... AR 615-366.
j. Resignation ..... AR 615-367.
k. Unfitness ..... AR 615-368.
l. Inaptitude or unsuitability ..... AR 615-369.
m. Disloyal or subversive ..... AR 615-370.
n. Discharge and reenlistment in National Guard of United States while in active military service ..... SR 130-15-5.
o. Army Reserve—enlistment and reenlistment ..... SR 140-107-1.

14. Effective date of discharge.—*a. Time discharge and release from the active military service is effective.*

(1) The discharge of an enlisted person separated by reason of expiration of term of service, or for the purpose of continuing active military service in the same or another status, is effective at 2400 hours on the date of notice of discharge, and the enlisted person will be so notified upon delivery to him of his discharge certificate.

(2) Release from the active military service of an enlisted person is effective at 2400 hours on the date of release when the individual—

(*a*) Is transferred to the Army Reserve for the purpose of completing a reserve obligation incurred under the Universal Military Training and Service Act, as amended,

(*b*) Reverts to the jurisdiction of the Army Reserve or the State National Guard to complete the unexpired portion of an enlistment contract in such component, or

(*c*) Is transferred to the temporary disability retired list under the AR and SR 600-450 series.

(3) Discharge for all reasons other than those set forth in (1) above is effective at time of notice to the enlisted person of discharge.

(4) Notice of discharge may be either—

(*a*) Actual, as by delivery to the individual of the discharge certificate, or

(*b*) Constructive, when actual delivery of the discharge certificate cannot be accomplished owing to the absence of the individual to be discharged. For example, such a situation would arise if the individual were on leave or in the hands of civil authorities. Receipt by the individual's organization at his proper station of the order directing his discharge will be deemed sufficient notice. Except when the individual was on leave when discharged, the date of receipt of the order and the reason why actual notice thereof was not given will be entered, by indorsement, on the back of the discharge certificate. In the event delivery of the discharge certificate cannot be made, it will be forwarded to The Adjutant General, together with a statement of reasons therefor.

b. Mentally incompetent.—The effective date of discharge of a mentally incompetent individual may also be constructive, as when he has been placed in an institution. See SR 600-440-1.

c. When retained in service awaiting trial or result of trial.—When an individual is retained in service as prescribed in paragraph 12*b*, the effective date of

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his discharge depends upon the result of his trial or the disposition made of the case.

Example.—An individual who has previously lost no time which he is required to make good under the act of 4 June 1920 as amended (64 Stat. 145; 10 U. S. C. 1579), is confined awaiting trial 30 days prior to the date on which he would otherwise have been discharged and the result is not announced until 10 days subsequent to the date. He will—

(1) If acquitted, be discharged within 5 days after date of announcement of acquittal, and will be regarded as having been retained in service for the convenience of the Government.

(2) If convicted and sentenced to either confinement only, or confinement and forfeiture only, be discharged 30 days after the expiration of his term of confinement.

d. Absent without leave.—Discharge of an individual who is absent without leave is governed by the provisions of AR 600-120 and SR 600-120-1, *except* when the individual comes within the category of those described in section III, AR 615-366, or when in the hands of civil authorities and—

(1) An authority competent to order the execution of a discharge under AR 615-364 directs the execution of a discharge authorized thereunder notwithstanding such absence, or

(2) The authority who orders a discharge under section IV, AR 615-366, directs the execution thereof notwithstanding such absence.

SECTION V

AUTHORITY TO ORDER DISCHARGE

15. Discharge prior to expiration of term of service.—Authority is granted to the following commanders to order the discharge or release from active military service of enlisted individuals prior to expiration of enlistment, induction, or period for which ordered into the active military service:

a. Discharge not involving general court-martial authority.—Commanders of all units and installations (including class II installations) which are commanded by, or are the normal command of, general officers; commanding officers of named Army hospitals, personnel centers, training centers, oversea replacement depots, ports of embarkation, and all active installations having an authorized military strength of 4,000 or more personnel. The above commanders are not authorized to delegate discharge authority to subordinate commanders without prior approval of the Secretary of the Army.

b. Discharge involving general court-martial authority.—Commanders exercising general court-martial jurisdiction are authorized to order discharge under AR 615-368 and sections I, II, and IV, AR 615-366. The discharge of individuals prior to expiration of their period of service under section III, AR 615-366, will be ordered by the Secretary of the Army.

c. Authority to order discharge of enlisted women for pregnancy.—See section III, AR 615-361.

d. Authority to order the discharge of personnel at class II installations.—The Army commander has discharge authority over enlisted personnel assigned to class II installations and activities located within the geographical limits of the Army area. See paragraph 4*z*, SR 10-500-1.

16. Expiration of term of service.—When no Reserve obligation remains, discharge of an enlisted person by reason of expiration of term of service (ETS)

may be accomplished at any installation having the facilities required for separation processing. Discharge under the provisions of paragraph 3b, AR 615-365, may also be accomplished at such installations.

17. Action by commanders having discharge authority.—*a.* Commanders having discharge authority normally will direct that action necessary to effect actual discharge or release from active military service of an enlisted person be effected by the commanding officer of his parent organization if he is stationed at a place where adequate facilities exist for separation processing. Information regarding procedures to be followed in effecting discharge or release from active military service is in SR 130-15-5, SR 140-107-1, SR 615-360-1, and SR 615-363-5.

b. If the individual is stationed at a place where medical facilities necessary to complete final type physical examination are not available, and/or where there is no officer provided with funds to make final payment, he will be transferred (PCS) to the nearest installation in the direction of his home of record at which separation processing facilities are available. See SR 615-360-1.

18. Separation of AFWA personnel.—When separation of Air Force personnel on duty with the Army is contemplated, the following instructions will prevail:

a. Air Force personnel who are to be processed under the provisions of regulations requiring action by an officer exercising general court-martial jurisdiction or who are to be processed under action such as contained in AR 600-443 and AR 615-368.

(1) Army boards of officers will be utilized.

(2) Completed proceedings of the board will be forwarded to the nearest Air Force commander having general court-martial jurisdiction.

(3) In the event discharge is directed, the discharge certificate will be signed by an Air Force officer, but the individual concerned will be processed for separation at the Army installation to which assigned at the time such action took place.

b. Air Force personnel who are to be processed under AR 615-369.

(1) Army boards of officers will be utilized.

(2) Completed proceedings of the board will be forwarded to the nearest Air Force commander having discharge authority for final action on the board.

(3) In the event discharge is directed, the discharge certificate will be signed by an Air Force officer, but the individual concerned will be processed for separation at the Army installation to which assigned at the time such action took place.

c. Air Force personnel who are to be separated by reason of disability.—The individual will be transferred for the purpose of disability processing to a named Army hospital at which Air Force personnel are stationed, or to an Air Force hospital, if nearer.

d. Air Force personnel on duty with the Army who are to be processed for separation for reasons other than in a, b, and c above.—Request for discharge or release from active military service will be forwarded for necessary action to the nearest Air Force commander having discharge authority. If discharge is directed, the discharge certificate or certificate of service will be signed by an Air Force officer, but the individual concerned will be processed for separation at the Army installation to which assigned at the time.

19. Separation of SCARWAF personnel.—When separation of Army personnel on duty with the Air Force is contemplated, the following instructions will prevail:

a. Army personnel who are to be processed under the provisions of regulations requiring action by an officer exercising general court-martial jurisdiction or who are to be processed under action such as contained in AFR 35-66 (equivalent to AR 600-443) and AFR 39-17 (equivalent to AR 615-368).

(1) Air Force boards of officers will be utilized.

(2) Completed proceedings of the board will be forwarded to the nearest Army commander having general court-martial jurisdiction.

(3) In the event discharge is directed, the discharge certificate will be signed by an Army officer, but the individual concerned will be processed for separation at the Air Force installation to which assigned at the time such action took place.

b. Army personnel who are to be processed under AFR 39-16 (equivalent to AR 615-369).

(1) Air Force boards of officers will be utilized.

(2) Completed proceedings of the board will be forwarded to the nearest Army commander having discharge authority for final action on the board.

(3) In the event discharge is directed, the discharge certificate will be signed by an Army officer, but the individual concerned will be processed for separation at the Air Force installation to which assigned at the time action took place.

c. Army personnel who are to be separated by reason of disability.—The individual will be transferred for the purpose of disability processing to a named Air Force hospital at which Army personnel are stationed, or to an Army hospital, if nearer.

d. Army personnel on duty with the Air Force who are to be processed for separation for reasons other than a, b, and c above.—Requests for discharge or release from active military service will be forwarded for necessary action to the nearest Army commander. If discharge is directed, the discharge certificate or certificate of service will be signed by an Army officer, but the individual will be processed for separation at the Air Force installation to which assigned at the time.

SECTION VI

TRANSPORTATION

20. Personnel overseas who are eligible for separation in United States.—*a.* Individuals serving in oversea commands who are eligible for separation, and who do not intend to reenlist, normally will be returned to the United States for separation in accordance with current directives. Prior to the individual's departure his records will be reviewed to insure that they are current, complete, and accurate.

b. Individuals serving in oversea commands who desire, and are eligible for, separation in the command in which serving may be discharged by the oversea commander, provided the consent of the Government of the foreign country involved has been obtained and the laws of the country have been complied with. See paragraph 5, SR 55-120-15 regarding waiver of Government transportation.

21. Personnel stationed in the United States who are eligible for separation overseas.—Enlisted persons stationed within the continental limits of the United States who were accepted for service at a place outside the continental limits

of the United States, normally will be returned to the place of acceptance for separation. Exceptions may be made in accordance with SR 55-120-15.

[AG 220.8 (3 Dec 52) AGPO]

BY ORDER OF THE SECRETARY OF THE ARMY:

J. LAWTON COLLINS
Chief of Staff, United States Army

OFFICIAL:
WM. E. BERGIN
Major General, USA
The Adjutant General

DISTRIBUTION:
B

U. S. GOVERNMENT PRINTING OFFICE: 1953

CHANGES No. 4

AR 615-360, 23 January

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DEPARTMENT OF THE ARMY PAMPHLET DA PAM 21-44
DEPARTMENT OF THE NAVY PUBLICATION NAVMED P-5060
DEPARTMENT OF THE AIR FORCE MANUAL AFM 160-44

S/S TC 86
76077

Hygiene Educational Guide For Women Officers And Women Officer Candidates Of The Armed Forces

DEPARTMENTS OF THE ARMY, THE NAVY, AND THE AIR FORCE

APRIL 1958

Section VI

HOMOSEXUALITY

12. Characteristics

a. Modern psychiatry considers as homosexual any individual, regardless of sex, who, after adolescence, demonstrates by behavior a repeated or exclusive preference for sexual activity with persons of the same sex. A homosexual act is defined as any bodily contact between persons of the same sex actively undertaken or passively permitted with the intent of obtaining sexual gratification.

b. While occasionally homosexuals are readily identifiable by their grotesque assumption of the dress or mannerisms of the opposite sex, most such people are not readily identifiable except when apprehended in obvious homosexual activity. Most homosexual acts are considered criminal offenses under the Uniform Code of Military Justice, and all of the services require the mandatory separation of confirmed homosexuals when this condition becomes manifest. Individuals who participate in isolated homosexual acts out of curiosity, immaturity or intoxication, while legally responsible, actually may not be homosexuals in their basic personality orientation, and may be retained in the service. Occasional homosexual acts may occur in any setting in which a large number of people of the same sex are in close and constant association.

c. Homosexuality in women is usually difficult to detect because its manifestations are far more diffuse in women than in men. The mores of present day society accept the fact that women kiss and embrace each other on meeting and may live together and occupy the same bed without any connotation of homosexuality, under circumstances where similar acts on the part of males would be immediately branding. Actual genital activity between women is far more rare than in men. It is quite possible for a naive, young woman to be involved in the initial stages of a homosexual affair without knowing it, although this is not usually found in the case of men. It is also possible for a woman who commits homosexual acts to participate in normal sexual relationships with men. On the other hand, the fact that a woman does not seem to

enjoy male companionship does not necessarily denote homosexuality.

d. The confirmed, "way of life" female homosexual is usually a woman who is acting out her hostility on herself and her environment. The well-known tendency of such homosexuals to inform on each other and the extreme instability of most of their relationships are indices of their immaturity. The chief reasons, however, that homosexuals are undesirable personnel in the Armed Services lies in their usual lack of emotional stability and personal or group loyalty, their continual immoral efforts to seduce other younger individuals into their own self-destructive pattern of behavior, and in the necessity to maintain the good order, reputation and honor of the Armed Services.

e. The concept of homosexuality as a clinical entity has been discarded. Homosexual behavior now is considered symptomatic behavior, with the underlying disorders ranging from personality disorder to psychosis, either fully developed or incipient. It may occur as a passing phase of psychosexual development without any gross disturbance of personality. While most homosexuals are acting out character and behavior disorders, some are neurotics and a few are apparently "normal" in all other but this area of conduct. Except for the occasional seriously mentally ill individual in whom homosexual acts are but one manifestation of psychiatric disease, homosexuals are not considered ill from an administrative standpoint and are held legally responsible for their acts. Excluding those instances in which homosexual behavior occurs as a manifestation of serious illness, as outlined above, it is now possible to understand the meaning of homosexual behavior in other individuals. This has come about by the recent abandonment, by many psychiatrists and psychoanalysts of the concept that there are constitutional defects or an inherent personality quality in those who exhibit homosexual behavior.

f. Basically, all behavior can be looked upon as the resultant of two forces, (1) the needs of the individual, and (2) the demands of society. Thus, an individual's behavior constitutes the means by which she adapts to her social environment, seeks to insure her survival, and gratifies her needs. To this struggle, the individual brings her assets, such as intelligence and training, and her liabilities, such as various emotional problems created during her early life development. Because of the customs and mores of our society, sexual behavior is perhaps the most delicately balanced area of adjustment and, hence, the one most likely to be disturbed in the adaptational process and by disturbances in interpersonal relations. Thus, as in any other behavioral disturbance, homosexual behavior can be seen to contain not only the elements of sexual gratification but also completely nonsexual elaborations which

arise from unconscious problems in dependency, aggression, and competition. In these instances the proper focus of attention should be on the underlying problem which has become incorporated in the sexual act. Through psychotherapy, resolution of the underlying problem causes the disappearance of the homosexual behavior. It must be pointed out that basic emotional conflicts are out of the individual's awareness, and only the homosexual urges are felt.

g. Many homosexual acts obviously have other motivational goals than orgastic satisfaction. In these, the sexual component is of secondary importance and the primary component arises out of the individual's efforts to adapt to the social structure and, at the same time, obtain gratification for her basic needs. Commonly involved are the very deep-seated dependency needs which arise from early childhood. At a more superficial level are the needs for friendship and affection from other persons. Since basic forces underlying a homosexual can run the gamut of emotional problems, such an individual should be given a careful psychiatric evaluation if the case is to be properly handled.

h. Aside from the adaptational struggle with dependency conflicts, the factor which is probably of greatest significance in homosexual behavior in the younger age group is immaturity. Immaturity, combined with adolescent experimentation, undoubtedly accounts for many cases in the group below age twenty. Just as the curiosity of youth may lead a young woman to become grossly inebriated in order to "see what it is like," she may also succumb to a homosexual advance. Homosexual behavior in these cases constitutes a phase of psychological development, rather than confirmed sexual deviancy. Such individuals may actually participate in several rather than a single homosexual act. However, the fact which distinguishes them from confirmed homosexuals is the psychological meaning of the activity. Experience has shown that when the homosexual behavior is not the primary source of sexual satisfaction, or symptomatic of a significant emotional disturbance, the individual normally will pass on to a heterosexual level of adjustment.

13. Management

a. It is the duty of every female member of the military service to report to her commanding officer any facts which may come to her attention concerning overt acts of homosexuality. Commanding officers receiving information indicating that a person under her jurisdiction or command is a homosexual, or has engaged in homosexual acts, shall inquire thoroughly and comprehensively into the matter and ascertain all the facts in the case,

bearing in mind the peculiar susceptibility of such cases to possible malicious charges.

b. Allegations of homosexuality among women must be carefully evaluated to ensure that a pattern representative of confirmed homosexual conduct is present, as distinguished from normal, socially acceptable behavior, immaturity, or mental illness. Since it is often very difficult to distinguish between malicious, unfounded slander; honest mistaken inferences; and valid observations in regard to homosexuality, the woman officer must seek authoritative guidance if confronted with this problem in her unit. In this connection, it is considered mandatory that, as an integral part of the investigation, the individual be referred for psychiatric examination. This examination should be as extensive as possible in order to eliminate the possibility that the overt homosexuality is symptomatic of a mental illness. If upon examination it is determined that the party suffers from either a psychosis or a neurosis, prompt action should be taken to insure that full consideration is given to the medical aspects of the case. Extreme care must also be utilized in dealing with cases of immaturity or adolescent experimentation in view of the strong and life-long stigma which may be unjustly attached to these individuals. In such cases, it may be in the best interest both of the service and the individual that the woman not be discharged. However, in all cases of confirmed, habitual homosexuality, whether male or female, active or passive, the individual must be promptly separated from the service.

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AR 635-100

ARMY REGULATION

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FEBRUARY 1969

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(1) Specifically requested by the officer;

(2) Deemed appropriate by the examining physician; or

(3) Specifically requested by the commander who recommended separation or by the selection board or board of inquiry, as applicable.

(4) Psychiatric diagnosis, including an opinion whether the officer was able to distinguish right from wrong and adhere to the right at the time of the conduct under investigation, and whether he currently has the mental capacity to understand board and judicial proceedings and participate in his own defense. If it is determined that the member is suffering from an incapacitating mental illness, the examiner should indicate whether the illness was probably the cause of the homosexual conduct under investigation.

★*b.* A copy of the medical evaluation, to include the psychiatric study (if any), will be filed with the individual's health record. The medical treatment facility commander will forward the original of this evaluation report to the unit commander.

Section IV. REASONS WHICH AUTHORIZE ELIMINATION

5-10. General. Retention of officers who are substandard in performance of duty or conduct, deficient in character, wanting in professional qualifications or status, or otherwise unsuited for military service cannot be justified in peace or war. The same standards of efficiency and conduct are applicable to officers regardless of component.

5-11. Substandard performance of duty. While not all-inclusive, existence of one of the following or similar conditions, unless sucessfully rebutted, authorizes elimination of an officer due to substandard performance of duty:

a. Downward trend in overall performance resulting in an unacceptable record of efficiency or a consistent record of mediocre service indicating officer has reached his zenith of potential.

b. Failure to keep pace or to progress with contemporaries, such as successive promotion failure or a low record of efficiency when compared with other officers of the same grade, branch, and length of service.

c. Failure to exercise necessary leadership or command expected of an officer of his grade.

d. Failure to assimilate technical proficiency required of his grade.

e. Failure to discharge properly assignments commensurate with his grade and experience.

f. Apathy, defective attitudes, or other character disorders to include inability or unwillingness to expend effort.

g. Failure to respond to rehabilitation efforts regarding an alcohol or other drug problem in a reasonable length of time.

h. Failure to conform to prescribed standards of dress, personal appearance, and military deportment.

i. Failure to achieve satisfactory progress after at least six months in a medically established weight control program (see AR 600-9).

★**5-12. Misconduct, moral or professional dereliction or in interests of national security.** ★*a.* While not all inclusive, existence of one of the following or similar conditions, unless successful rebutted, authorizes elimination of an officer due to misconduct, moral or professional dereliction or in the interests of national security:

(1) Discreditable or intentional failure to meet personal financial obligation.

(2) Mismanagement of personal affairs detrimentally affecting the performance of duty of the officer concerned.

(3) Mismanagement of personal affairs to the discredit of the service.

(4) Intentional omission or misstatement of fact in official statements or records, for the purpose of misrepresentation.

(5) Rescinded.

(6) Acts of personal misconduct (including, but not limited to, acts committed while in a drunken or drug intoxicated state).

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★(7) Homosexuality (see sec XIV).

★(8) Rescinded.

(9) Intentional neglect of or failure to perform duties.

(10) Conduct unbecoming an officer.

★(11) Conduct or actions resulting in the loss or a professional status, such as withdrawal, suspension of abandonment of professional license, endorsement, or certification which is directly or indirectly connected with the performance of one's military duties and necessary for the performance thereof, including withdrawal of clinical privileges for Army Medical Department (AMEDD) officers.

(12) Acts or behavior not clearly consistent with the interests of national security (see AR 604-10 for substantive criteria).

★(13) Conduct or actions by a warrant officer resulting in the loss of special qualifications (such as withdrawal/revocation of CID accreditation, revocation of marine qualification license, removal from the Personnel Reliability Program (PRP), withdrawal of clinical privileges or loss of flying status) which directly or indirectly precludes a warrant officer from performing in his MOS and is necessary for the performance thereof. Elimination based on these reasons may not be utilized if reclassification action is feasible and in the best interest of the service or if loss of special qualifications was due to medical reasons beyond the control of the warrant officer.

★(14) Failure to respond to rehabilitation efforts regarding repeated acts of child/spouse maltreatment or abuse and/or other acts of family violence in a reasonable length of time.

b. When one or more of the reasons enumerated in *a*(1) through (7) or (9) above is alleged, if the circumstances which form the basis thereof indicate that the reason in item (10) also is involved, it will constitute additional reason for requiring elimination.

5-13. Derogatory information. *a.* Any one of the following or similar reasons gives rise to serious doubt as to the advisability of permitting the officer concerned to retain a commission or warrant and requires a review of his overall record. This is to determine if such derogatory information, when viewed in conjunction with other aspects of his record, warrants recommendation for elimination.

(1) Punishment under Uniform Code of Military Justice, Article 15.

(2) Conviction by court-martial.

(3) Denial of security clearance (see para 5-31*b*).

★(4) An officer evaluation report (OER) under paragraph 5-18 or 5-25, AR 623-105.

★(5) Adverse information filed in the OMPF in accordance with AR 600-37.

(6) Failure by a Regular Army officer of a course at a service school. For failure by a Reserve Component officer, see section II, chapter 3.

b. Standing alone, one of these conditions may not support elimination. On the other hand, it may combine with other known deficiencies to form a pattern which, when viewed in relation to an individual's overall record, requires elimination.

Section V. INITIATION OF ELIMINATION ACTION

5-14. Recommendation for elimination. *a.* Elimination action may be originated by an appropriate agency at Headquarters, Department of the Army, regardless of an officer's assignment or station, or by a commander with respect to a member of his command.

★*b.* Headquarters, Department of the Army, agencies will forward their recommendations direct to HQDA(DAPC-OPP-MA). Commanders will forward their recommendations for elimination through channels to the first commander exercising general court-martial jurisdiction over the officer. The following actions will be taken prior to forwarding:

★(1) Notify the officer that a recommendation for elimination has been initiated, advising him of the reasons supporting the recommenda-

tion (para 5-11 and 5-12 above) and the factual allegations supporting the reasons (see fig 5-1).

★(2) Provide the officer a period not to exceed 7 days (the officer may request additional time for good cause) in which to acknowledge receipt in writing and to prepare a written statement, with the assistance of either an officer of The Judge Advocate General's Corps or civilian counsel of his own selection obtained by him at no expense to the Government, indicating any pertinent facts or submitting any rebuttal bearing on the question of his elimination (see fig 5-2). This statement may be sworn or unsworn and will be forwarded with the recommendation for elimination to HQDA(DAPC-OPP-MA) or the officer exercising general court-martial jurisdiction as appropriate (see fig 5-3).

c. Upon receiving the recommendation for elimination and officer's statement in those cases forwarded to the commander exercising general court-martial jurisdiction, he will—

★(1) Return the case with recommendations as to appropriate action (see para 5-52 and 5-53 for homosexuality cases).

★(2) Disapprove the recommendation and close the case (see para 5-52 and 5-53 for homosexuality cases); or

★(3) Approve the recommendation, offer the officer the options in paragraph 5-19*b*(1), (2) or (3), (see fig 5-5), and personally sign this action.

★*(a)* If the officer elects one of the options, the option and all elimination papers will be forwarded directly and expeditiously by the officer exercising general court-martial jurisdiction to HQDA(DAPC-OPP-MA). Forwarding indorsement will include direct point of contact to include name and telephone number. The major commander will be informed of this action by the most expeditious means.

★*(b)* If the officer declines to elect an option, forward the case directly to HQDA (DAPC-OPP-MA) in four complete copies. Forwarding indorsement will include direct point of contact to include name and telephone number. The major commander will be furnished an information copy of the recommendation and supporting facts. CG MILPERCEN will correspond directly with the commander originating the a tion when the correspondence requests additio al information for processing the case.

★*d.* In those commands authorized to deal d rectly with Department of the Army on routir personnel matters and whose administrativ channels do not include a headquarters that e ercises general court-martial jurisdiction, th commander may designate the subordinate unit of activities in his command which may forwar these elimination actions directly to HQD (DAPC-OPP-MA) in four complete copies. Th headquarters designated should have the admin istrative capability to ensure that the case i complete and correct. As a guideline, it shoul be on a level comparable to a headquarter which exercises general court-martial jurisdic tion. Designations under this paragraph will b in writing and an information copy of the desig nation will be furnished HQDA (DAPC-OPP-MA).

★*e.* All recommendations will clearly state the reasons (para 5-11 and 5-12 above) therefor, and such reasons will be based on factual allegations which are supported by all documentary evidence available and that physical evidence which can be reasonably included. With the exception of business entries and official records and reports, such as evaluation reports, health records, and CID investigation reports, all statements submitted, including reports of the investigation, will be under oath or affirmation, unless the witness is dead, insane, missing, or the exigencies of the service preclude obtaining his statement in affidavit form. Unsworn documents will cause a delay in processing the recommendation for elimination due to the documents being returned to the command to be sworn. Evidence to support a recommendation for elimination must be able to stand on its own merits. Documents must be legible and must lend themselves to reproduction. Copies reproduced by the thermography process or other means which are barely legible will not be used. The statement submitted by the officer will be made part of the record and forwarded with the recommendation.

f. Commanders have the discretion to initiate

disciplinary action under the Uniform Code of Military Justice or elimination proceedings pursuant to this regulation. The fact that elimination proceedings were initiated when disciplinary action could have been taken will not affect the validity of the elimination proceedings; however, elimination action will not be used in lieu of disciplinary action solely to spare a member, who may have committed serious misconduct, the harsher penalties which may be imposed under the Uniform Code of Military Justice. Conduct which was the subject of judicial or nonjudicial punishment may be the basis of elimination proceedings under this regulation; however, elimination proceedings will not be initiated with respect to conduct which is the subject of charges unless the charges are dismissed or appellate review has been completed.

g. The recommendations for elimination received from commanders and Headquarters, Department of the Army, agencies will be reviewed in Headquarters, Department of the Army. The following action may be taken:

(1) The case may be returned for further evidence or with a recommendation as to further actions:

★(2) Except in homosexuality cases, the factual allegations, reasons for elimination, and recommendation for elimination, may be disapproved, in whole or in part, and if appropriate, close the case. In homosexuality cases, only factual allegations and reasons for elimination which do not involve homosexuality may be disapproved in whole or in part. CG, MILPERCEN will notify those concerned of any action taken;

★(3) The factual allegations, reasons and recommendation for elimination may then be referred to an appropriate selection board. The selection board will consider the recommendation for elimination and all supporting evidence, the overall record of the officer, and the officer's statement to determine whether he should be required to show cause for retention in the Army. The selection board will refer to paragraph 5-54 for homosexuality cases. In all other cases the selection board may disapprove the factual allegations, the reasons for elimination, or the recommendation for elimination, in whole or in part.

h. New allegations received in Headquarters, Department of the Army, supporting a recommendation for elimination which has already been considered by a selection board will, if the case has not been closed, be referred to a selection board for consideration. If the case has already been closed, appropriate action to initiate new proceedings may be undertaken, subject to paragraph 5-4.

i. Regardless of who initiates a recommendation for elimination, the general court-martial authority will ascertain the identity and whereabouts of Government witnesses and make reasonable efforts to ensure their availability to appear before a board of inquiry.

5-15. Investigation of homosexuality. ★*a.* A commanding officer receiving information that an individual under his command may require separation under criteria contained in paragraph 5-49, will inquire thoroughly and comprehensively into the matter and ascertain all the facts in the case, bearing in mind the peculiar susceptibility of such cases to possible malicious charges. Any investigation required, normally, should be referred to the local provost marshal for investigation and recording on DA Form 2800 (CID Report of Investigation (Military Police)). The facts and circumstances of each case will govern the commander's decision as to the appropriate agency of investigation. If the information available is of sufficient stature to warrant investigation the commander will take necessary action to protect the security of his command to include suspension of security clearance, if any, and denial of access to classified defense information pending completion of actions on the case. When the report of investigation substantiates such allegations, the commanding officer will refer the individual for medical evaluation, revoke his security clearance, if any, and prepare a letter report outlining action taken and forward it with the officer's revoked Certificate of Clearance and/or Security Determination Under EO 10450 (DA Form 873) to the Cdr, US Army Intelligence Agency, ATTN: IACI-CAR, Fort George G. Meade, MD 20755. Revocation of security will be in accordance with chapter 4, AR 604-5.

★ *b.* It is essential that all facts indicating homosexuality be recorded properly. The file will consist of the following documents in addition to that required by AR 635-120.

(1) Report of investigation will include but not be limited to—

(a) Statement of date and place of birth.

(b) Amount of active service.

(c) Date and current period of service.

(2) Statements of witnesses (see UCMJ, Art. 31).

(3) Medical evaluation reports as speci in paragraph 5-9.

(4) An individual's statement in his own half, if it is desired.

★ **5-16. Prompt action.** Subsequent to origi initiation of elimination action, succeeding tions required to dispose of the case will be tended to vigorously. Except for delays requi to protect the rights of respondents, prompt tention and expeditious handling will be give elimination cases.

Section VI. ACTIONS SUBSEQUENT TO SELECTION BOARD DETERMINATION

5-17. Action by The CG MILPERCEN. *a.* If an officer recommended for elimination is not designated by the selection board to show cause, The CG MILPERCEN will close the case and notify the commander who so recommended.

b. If an officer is required to show cause for retention, The CG, MILPERCEN will notify the appropriate major commander and furnish copies of the selection board's findings and recommendations, and of documents pertinent to the case.

5-18. Actions by major commander. *a.* Refer the letter of notification and all inclosures to the first commander exercising general court-martial jurisdiction over the officer concerned.

★ *b.* Process election for a board of inquiry. (See para 5-19*c*(4) below.)

★ *c.* Appoint boards of inquiry. Authority is delegated to the major commander to appoint boards of inquiry within his command. The major commander may utilize any eligible (10 USC 1187) Army officer on duty within the geographic limits of his command to compose the board (see table 5-1). Concurrence will be obtained from appropriate major commander when officers assigned to a different major command are utilized on a board of inquiry. (Functions and composition of boards of inquiry are contained in sections X, XI, XII, XIII, this chapter.)

d. Advise members of the board of inquiry that duty on the board takes priority over all other duties unless exigencies of the service or other circumstances preclude such duty.

e. Furnish written report personally sig by the major commander to Cdr, MILPERC whenever a case is delayed beyond the time tablished by this chapter, giving reasons the for. All exceptions must be approved by He quarters, Department of the Army.

5-19. Actions by first commander exercisi general court-martial jurisdiction. ★ *a. Not the officer.* The first commander exercising g eral court-martial jurisdiction will notify the ficer concerned that he is required to show ca for retention and will furnish him a copy of selection board's findings and recommendatio and of releasable documents pertinent to case. (See para 5-20*d* below.) The officer will notified in writing of the least favorable char terization of discharge for which he may recommended.

b. Secure acknowledgement from the offic Within 5 days of receipt of notification, the o cer will be required to acknowledge receipt such notice and elect an option from (1) throu (4) below:

(1) Tender resignation (chap. 4 635-120); or

(2) Request discharge (applicable only Regular Army commissioned officers) (chap. AR 635-120); or

(3) Apply for retirement in lieu of elimi tion, if otherwise eligible for voluntary reti ment (format for voluntary retirement is fig. 4 and will be amended to specifically state that a plication is submitted in lieu of elimination); o