

ENCLOSURE D-E**JOINT STAFF RECORD CASE CONTENT SHEET**

1. JOINT STAFF RECORD CASE NO. 165 (26JUL93)		2. DATE 22AUG93		3. SECTION NO.		4. PREPARED BY DSR	
5. SUBJECT HEARINGS OF 20JUL93 AND 21JUL93 BEFORE SASC AND HASC (RESPECTIVELY) WITH CJCS (POWELL) AND VCJCS (JEREMIAH) ON HOMOSEXUALS IN THE MILITARY							
6a. DATE	b. DOCUMENT TYPE/ORIGINATOR	c. CLASS	d. CY#	e. SUBJECT AND/OR REMARKS			
26JUL93	SJS 2591/192	U		HEARING ON HOMOSEXUALS IN MILITARY 20JUL93 BEFORE SASC WITH GEN POWELL AND ADM JEREMIAH AS WITNESSES			
26JUL93	OCJCS/LA FORM 149	U		HOMOSEXUALS IN MILITARY (SJS 2591/192)			
20JUL93	SASC HEARING TRANSCRIPT	U		SASC 20JUL93 HEARING (TRANSCRIPT) TO RECEIVE TESTIMONY OF DOD POLICY ON SERVICE OF GAY MEN AND LESBIANS IN ARMED FORCES (SJS 2591/192)			
30JUL93	SJS 2591/206	U		STATEMENT OF GEN POWELL BEFORE HASC 21JUL93 ON PLAN TO LIFT BAN ON HOMOSEXUALS IN MILITARY			
30JUL93	OCJCS/LA FORM 149	U		PLAN TO LIFT BAN ON HOMOSEXUALS IN MILITARY (SJS 2591/206)			
21JUL93	HASC HEARING TRANSCRIPT	U		HASC 21JUL93 HEARING (TRANSCRIPT) ON ASSESSMENT OF PLAN TO LIFT BAN ON HOMOSEXUALS IN MILITARY			
7. CLASSIFICATION SPECIAL ACCESS (SIOP, HOT BOX, ETC.)							

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PREPARATION INSTRUCTIONS

To Be Completed by originator.

1. **JOINT STAFF RECORDS CASE NO:** _____
2. **DATE:** Give date case file was created – 23 January 1990.
3. **SECTION NO:** Indicate the section number and any other additional identification information, i.e., Sec 1, Vol IV, Part A.
4. **PREPARED BY:** Name of the individual creating the initial case file.
5. **SUBJECT:** Reflect the appropriate subject – National Defense Budget Program. If subject is classified, reflect the appropriate classification after the subject – National Defense Budget Program (S).

To be completed by originator and anyone adding additional documents to the case file.

6a-e. Information on documents filed within the case file.

- 6a. **DATE:** Date of document contained in case file – 23 January 1990.
- 6b. **DOCUMENT TYPE/ORIGINATOR:** Description of the type of document and originator – SJS paper, CM, DJSM, SM, J-# Memo, OSD memorandum, CINCPAC OPLAN, 15AF/IG ltr, etc – i.e., SJS 2426/871-00, JCSM 145-89, SM 55-90. For SJS papers, reflect the Joint Staff OPR after the paper number – SJS 2416/871-00 (J-5).
- 6c. **CLASS:** Document classification, i.e., T, S, C, U.
- 6d. **CY#:** Document copy number, if appropriate – CY# 44.
- 6e. **SUBJECT AND/OR REMARKS:** Cite the document subject – Control Information on the National Defense Budget Program. If subject is classified, reflect the appropriate subject classification after the subject – Control Information on the National Defense Budget Program (S).
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SJS 2591/192-00

26 July 1993

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J-1(4), J-5(3),
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SECRETARY, JOINT STAFF DIRECTIVE

on

**HEARING ON HOMOSEXUALS IN THE MILITARY 20 JULY 1993, BEFORE THE SENATE
ARMED SERVICES COMMITTEE, GEN POWELL AND ADM JEREMIAH AS WITNESSES**

1. The attached is referred to J-1 for DJS reply in collaboration with J-5, OCJCS/LC and OCJCS/LA. Response should be forwarded via Form 136 to DJS for approval and forwarding to OCJCS/LA.
2. The suspense for this action is 30 July 1993, unless an extension is coordinated with the Secretary, Joint Staff.

OTB

(26 Jul 93)

Joint Secretariat

SJS 2591/192-00

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HEARING TO RECEIVE TESTIMONY
ON DEPARTMENT OF DEFENSE POLICY ON THE
SERVICE OF GAY MEN AND LESBIANS
IN THE ARMED FORCES

Tuesday, July 20, 1993

U.S. Senate
Committee on Armed Services
Washington, D.C.

The committee met, pursuant to notice, at 11:05 a.m. in Room SD-106, Dirksen Senate Office Building, Hon. Sam Nunn, chairman, presiding.

Present: Senators Nunn, Exon, Levin, Bingaman, Shelby, Graham, Robb, Lieberman, Bryan, Thurmond, Warner, Cohen, McCain, Lott, Coats, Smith, Faircloth, and Hutchison.

Committee Staff Members Present: Arnold J. Punaro, Staff Director, Andrew S. Effron, General Counsel, Marie Fabrizio Dickinson, Assistant Chief Clerk, Richard D. DeBobes, Counsel, Elizabeth I. Solomon, Research Assistant, Julie W. Kemp, Research Assistant, and Daniel B. Ginsberg, Research Assistant.

Professional Staff Members Present: David S. Lyles, and Frederick F. Y. Pang.

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1 Minority Staff Members Present: Richard L. Reynard,
2 Minority Staff Director, Romie L. Brownlee, Deputy Staff
3 Director for the Minority, Charles S. Abell, Professional
4 Staff Member, Ronald P. Kelly, Professional Staff Member, and
5 George W. Lauffer, Professional Staff Member.

6 Staff Assistants Present: Megan E. Connor, Kelli J.
7 Corts, and Camden Jones Flick.

8 Committee Members' Assistants Present: Andrew W.
9 Johnson, Assistant to Senator Exon, David A. Lewis, Assistant
10 to Senator Levin, Phillip P. Upschulte, Assistant to Senator
11 Glenn, Terence M. Lynch, Assistant to Senator Shelby, C.
12 Richard D'Amato and Melvin G. Dubee, Assistants to Senator
13 Byrd, Kevin Monroe, Assistant to Senator Graham, Dale F.
14 Gerry, Assistant to Senator Cohen, Anthony H. Cordesman, and
15 Christopher J. Paul, Assistants to Senator McCain, Samuel D.
16 Adcock, Assistant to Senator Lott, Pamela G. D. Sellars and
17 Richard F. Schwab, Assistants to Senator Coats, Glen E. Tait,
18 Assistant to Senator Kempthorne, and David S. Sullivan,
19 Assistant to Senator Faircloth.

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1 OPENING STATEMENT OF HON. SAM NUNN, U.S. SENATOR FROM
2 GEORGIA

3 Chairman Nunn: The committee will come to order.

4 During the 1992 campaign, presidential candidate Bill
5 Clinton said that, if elected, he would take action to change
6 the current policy restricting the service of gay men and
7 lesbians in the Armed Forces.

8 Early in his administration an amendment was offered to
9 President Clinton's first major legislative initiative, which
10 was the Family & Medical Leave Act, that would have precluded
11 him from making any change in the DOD policy on gays and
12 lesbians in the Armed Forces. I opposed that amendment
13 because I believe that neither the executive branch nor the
14 Congress should have changed the current policy prior to
15 making and undertaking a comprehensive review.

16 The Senate defeated that amendment, and adopted instead
17 an amendment proposed by Senator Mitchell and myself. This
18 amendment, which was enacted into law, directed the Secretary
19 of Defense to conduct a review and submit recommendations to
20 the President and the Congress by July 15th of this year. The
21 amendment also directed the Armed Services Committee to hold
22 comprehensive hearings on both the current policy and on the
23 Secretary's recommendations, and that is why we are here
24 today.

25 In addition, the Senate agreed to an order that

1 effectively precluded consideration of any further amendments
2 on this subject in the Senate until July 15th, and that
3 procedure has been followed.

4 This procedure permitted the Department of Defense and
5 the committee to conduct their reviews prior to taking
6 legislative action on any amendments. It also permitted the
7 President to proceed with the rest of his legislative program,
8 which was clearly his priority, without the constant threat of
9 amendments on this issue on every bill. I think often people
10 forget the background of why this has taken some time, but
11 that is the background.

12 Our committee held six hearings as part of our review of
13 the current policy. We heard from experts in law, military
14 history, and military sociology. We heard from Members of the
15 Senate on both sides of the issue, and we heard from current
16 and former military personnel here in Washington as well as in
17 the field.

18 Today, pursuant to the Senate's direction to conduct
19 hearings on the recommendations of the Secretary of Defense,
20 we will hear from the Secretary and the six Joint Chiefs of
21 Staff. Tomorrow at 8:00 a.m. in this hearing room we will
22 hear from the DOD general counsel and members of the military
23 working group, and I understand, Mr. Secretary, that the House
24 will be having hearings later on tomorrow morning.

25 I would ask our Members, to the extent possible -- and we

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1 certainly have flexibility in this regard, but I wanted
2 everyone to know about the second set of hearings tomorrow. I
3 would ask that everyone, to the extent possible, focus today
4 on the broad policy questions and reserve the detailed,
5 interpretive legal-type questions as much as possible for
6 tomorrow's witnesses.

7 This is an issue on which people have strongly held
8 views. For many people, this is a moral issue touching upon
9 deeply held religious and ethical beliefs. For many others,
10 it is a matter of individual rights, involving the fair and
11 equitable treatment of individuals with a particular sexual
12 orientation who want to serve their country in uniform, and we
13 have heard eloquent testimony expressing both these points of
14 view.

15 As I indicated from the outset, this committee's focus
16 has been on the implications of any change in the current
17 policy on the effectiveness of the Armed Forces to carry out
18 their mission to defend our Nation. We have heard strong and
19 compelling testimony in this area as well.

20 Our committee is not going to resolve this issue to the
21 satisfaction of everyone with strongly held views. We knew
22 that to begin with, we know it now.

23 Some pundits who under recent Republican presidents were
24 strong proponents of congressional prerogatives in the area of
25 national defense now seem to ignore the responsibility of

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1 Congress under the Constitution to address this and other
2 issues.

3 In Article 1, section 8 of the Constitution, our Founding
4 Fathers clearly set forth the responsibility of Congress "from
5 the Constitution of the United States to raise and support
6 armies, to provide and maintain a navy, and to make rules for
7 the Government and regulation of the land and naval forces."
8 This congressional responsibility under the U.S. Constitution
9 is as clear as any provision in the Constitution of the United
10 States.

11 As I have said beginning in January and on numerous
12 subsequent occasions, both the Congress and the executive
13 branch have the responsibility to resolve this issue in a way
14 that gives clear direction to our military leaders and in a
15 way that can be clearly understood by the men and women who
16 serve our Nation in uniform.

17 Military service is unique. The men and women in the
18 Armed Forces make extraordinary sacrifices in terms of their
19 personal lives and their privacy. Sometimes they are even
20 called upon to make the ultimate sacrifice.

21 In the military, it is different from civilian society.
22 In the military, the mission is the first priority. The unit
23 is the second priority. The individual is the third priority.
24 This is vastly different from our civilian society where the
25 rights of the individual properly come first.

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1 It has been clear from the outset, ever since an
2 amendment was offered to the President's first major
3 legislative initiative in February, the Family & Medical Leave
4 Act, that Congress will vote on this issue one way or the
5 other. I believe the Armed Services Committee should handle
6 this issue through the normal legislative process. That is
7 what we have strived to do.

8 I hope that we can reach a majority consensus on
9 legislative findings on this committee which will lay the
10 foundation for Senate floor debate and serve as a guide for
11 the Federal courts when these issues are adjudicated, as they
12 will be.

13 After we complete our review of Secretary Aspin's
14 recommendations today and tomorrow, this issue will be
15 discussed in our ongoing markup of the national defense
16 authorization bill which started yesterday and continues today
17 at the subcommittee level.

18 The committee will complete subcommittee markups today
19 and will shift to full committee markup tomorrow and Thursday
20 and Friday as necessary. Because of the timing, this will
21 undoubtedly -- this issue we are discussing today will
22 undoubtedly be the last item we consider in the markup so that
23 committee members will have time to absorb the testimony
24 today, to absorb the policy advocated by the Secretary, to
25 take into account the views of the chiefs, and also look at

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1 the legal implications as revealed by the testimony tomorrow.

2 If we reach a majority consensus in this committee,
3 legislation will be part of the defense bill. If we do not
4 reach that consensus, the defense authorization bill will be
5 subject, of course, to amendment on the floor of the Senate.
6 I hope that we will receive testimony today and tomorrow that
7 will enable us to mark up legislation that is consistent with
8 the policy announced by the President and by Secretary Aspin.

9 A leading editorial in a major publication today seemed
10 to be shocked at my suggestion that legislation on this issue
11 should preclude service by persons with a "propensity to
12 engage in homosexual acts." I am accustomed to personal
13 attacks, and I have gotten pretty accustomed to that, but I
14 would hope that those attacks would not cloud the issues that
15 are difficult enough to handle under the normal circumstances.

16 If the editorial writer had bothered to read the
17 administration's July 19th policy statement, he or she would
18 have seen that it contains a prohibition on service by a
19 person who makes a statement that "demonstrates a propensity
20 or intent to engage in homosexual acts." So the publication
21 that criticized my suggestion, if they had read, they would
22 have found that the prohibition that I suggested is also
23 embodied in the current policy, and it is expressly restated
24 in the Clinton administration's announcement of yesterday.

25 This emotional issue is difficult for all of us. I am

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1 sure it is difficult -- it has been very difficult for the
2 Secretary of Defense and to all chiefs sitting here today as
3 well as for the President of the United States and everyone
4 associated with him, as well as for individuals in uniform. I
5 am hopeful that all of us, including the news media,
6 particularly including the editorial writers, will resist the
7 temptation to transform the debate from don't ask, don't tell,
8 to don't read, don't think.

9 Mr. Secretary, members of the joint chiefs, we know this
10 has been a difficult and challenging issue for you. I know
11 that you have all approached this at all times from the point
12 of view of what is in the best interests of the national
13 defense and of the men and women in the armed services of the
14 United States. We are glad you are here today. We hope to
15 conclude this issue and move on to other issues as soon as
16 possible.

17 Before we call on our Secretary for his statement,
18 Senator Thurmond, I would ask you for any remarks you would
19 like to make.

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1 STATEMENT OF HON. STROM THURMOND, U.S. SENATOR FROM
2 SOUTH CAROLINA

3 Senator Thurmond: Thank you, Mr. Chairman. I join you
4 in welcoming our distinguished witnesses this morning. It is
5 always a pleasure to hear from Secretary Aspin and the joint
6 chiefs. Their counsel is important, and I look forward to
7 hearing from them on the President's proposed policy on
8 homosexuals in the military.

9 The President's announcement was a culmination of a lot
10 of work by a lot of people in the Pentagon. Concurrently with
11 their work, this committee has been holding comprehensive
12 hearings and studying the issue in depth. I am heartened to
13 see that our efforts are very close together. Our task now is
14 to review the President's proposal and determine what, if any,
15 final adjustments are needed before we write it into law.

16 Mr. Chairman, I believe homosexuality is incompatible
17 with military service. I was glad to see a similar statement
18 in Secretary Aspin's policy memorandum.

19 Secretary Aspin's memorandum goes on to recognize that
20 individuals with a homosexual orientation have served with
21 distinction in the armed services. I agree with Secretary
22 Aspin, but it is important to note that the servicemen and
23 women served first as soldiers, sailors, airmen, and marines,
24 not as homosexuals.

25 It is essential that the policy be legally defensible. I

1 will be interested in hearing what legal opinions and advice
2 Secretary Aspin and the joint chiefs received on the final
3 version of the policy.

4 I think what the President called rebuttable presumption
5 may present a legal problem. At the least, I think this will
6 present a problem for commanders and senior noncommissioned
7 officers as they try to implement the policy. I hope
8 Secretary Aspin can clear this up for us.

9 Mr. Chairman, I commend you for calling this hearing so
10 quickly. I look forward to hearing the testimony of our
11 witnesses and working with you to put the policy in law.
12 Thank you, Mr. Chairman.

13 Chairman Nunn: Thank you, Senator Thurmond.

14 [Whereupon, a nominations hearing was conducted.]

15 Chairman Nunn: Secretary Aspin, we are glad to have you.

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1 STATEMENT OF HON. LES ASPIN, SECRETARY OF DEFENSE;
2 ACCOMPANIED BY GENERAL COLIN L. POWELL, USA, CHAIRMAN, JOINT
3 CHIEFS OF STAFF, ADMIRAL DAVID E. JEREMIAH, USN, VICE
4 CHAIRMAN, JOINT CHIEFS OF STAFF, GENERAL GORDON R. SULLIVAN,
5 USA, CHIEF OF STAFF, UNITED STATES ARMY, GENERAL CARL E MUNDY,
6 JR., USMC, COMMANDANT OF THE MARINE CORPS, ADMIRAL FRANK B.
7 KELSO II, USN, CHIEF OF NAVAL OPERATIONS, GENERAL MERRILL A.
8 McPEAK, USAF, CHIEF OF STAFF, UNITED STATES AIR FORCE

9 Secretary Aspin: Thank you, Mr. Chairman. We would all
10 be willing to wait here a little while longer if you want to
11 do the Secretary of the Army and the Secretary of the Air
12 Force.

13 [Laughter.]

14 Chairman Nunn: Mr. Secretary, I hate to tell you, that
15 problem is over in the White House. They have not come up
16 here yet. At least we have not received the nominations.

17 Secretary Aspin: Mr. Chairman, I want to thank Chairman
18 Nunn and members of the committee for the opportunity to talk
19 about the new policy on homosexuals serving in the military
20 which President Clinton announced yesterday.

21 As the President said yesterday, the new policy is
22 balanced. It represents a real step forward while protecting
23 a strong, ready-to-fight military force and, as he put it, the
24 policy "provides a sensible balance between the rights of the
25 individual and the needs of our military."

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1 This issue comes to us not only because President Clinton
2 believes individuals should be able to serve their country
3 regardless of sexual orientation. Questions about how those
4 issues of orientation should be handled are being raised in
5 the Nation generally, and that means they will inevitably be
6 raised in the United States military.

7 Our Armed Forces are too large and too representative of
8 our Nation as a whole to escape these social issues. When
9 service members returned from the Gulf War several announced
10 their homosexuality and denounced the military policy.
11 Colleges with ROTC programs have questioned the military's
12 policy. The policy has been challenged in court, once
13 successfully at the trial court level.

14 The House Armed Services Committee has looked at the
15 issue since the spring of 1992. Senator Metzenbaum of Ohio
16 and Representative Schroeder of Colorado filed amendments to
17 completely abolish the ban on gays in the military during
18 consideration of the 1993 defense authorization bill. Neither
19 amendment was formally offered or brought to a vote, but they
20 did serve notice that this issue was on the horizon and had to
21 be dealt with.

22 So what I think is clear, Mr. Chairman, is that even if
23 George Bush had been reelected last fall, the Nation would
24 have had to deal with the policy of homosexuals serving in
25 uniform sometime during this 4-year period. We knew this when

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1 we set out the two main tasks that we wanted to accomplish in
2 our first 6 months at the Pentagon.

3 One task is one that we are going to be up here talking
4 to a lot in the next few weeks, which is the bottom-up review
5 that tells us what military forces we need for this new post
6 Soviet, post Cold War era. We are very near completion of
7 that review.

8 The second task we set for ourselves was to deal with the
9 pressing social issues that we faced. There are three of
10 these. First is sexual harassment. The Tailhook Convention
11 and other incidents illustrate that the military is far from
12 immune to this problem. Second, society is grappling with the
13 expanding roles of women in the military -- that means the
14 issue of women in combat -- and third and most difficult of
15 them all is the issue of opportunity to serve based on the
16 basis of sexual orientation.

17 In the Pentagon we basically had two options on all three
18 of these policies for dealing with all three of these issues.
19 We could put off dealing with them, or we could deal with them
20 forthrightly, making constructive changes that preserve our
21 readiness and fit the forces we are building for the new
22 century. We chose the latter course.

23 Over the 3-month period in the spring and summer of 1993,
24 we have taken major decisive steps to deal with all three of
25 these issues. In April, we took steps to deal with the sexual

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1 harassment and the role of women. On April 23rd, we released
2 the Tailhook report and began a process that will make the
3 military a national leader in combatting sexual harassment as
4 actions in early years made the military a national leader in
5 combatting racial discrimination.

6 On April 28th I opened new positions to women, including
7 service in combat aircraft and on combat Navy vessels. This
8 action will enable the military services to tap a pool of
9 talent that had been blocked because these jobs were closed to
10 women. And finally, on the 19th of July, acting on
11 instructions from the President, I signed a directive making
12 conduct -- not sexual orientation but conduct the focus of
13 Defense Department policy on who can serve in the military.

14 So the Department did not ignore these issues. Instead,
15 we tackled them up front. We dealt honestly and
16 constructively with them so that we can get on with the
17 historic challenges of shaping our forces to meet the dangers
18 of the post-Cold War world.

19 Now, before I describe the new policy on homosexuals
20 serving in the military, let me run through a little bit of
21 the history of how we came to this policy. It began on
22 January 29th when President Clinton asked me to review the
23 policy on homosexuals serving in the military. The President
24 directed that the Department's policy be, quote, practical,
25 realistic, and consistent with the high standards of combat

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1 effectiveness and unit cohesion our Armed Forces must
2 maintain, end quote.

3 We conducted an extensive review. First, we initiated
4 two separate efforts to examine the issue in detail and help
5 us develop the new policy. One, the military working group
6 consisting of flag officers from each of the services. The
7 other was from the Rand Corporation of Santa Monica,
8 California, which has a long history of working on military
9 personnel issues. Both groups, both working groups provided
10 valuable insights.

11 We also paid careful attention to the hearings held on
12 the issue by the House and Senate Armed Services Committees.
13 We then held a series of regular consultations with the Joint
14 Chiefs and with the acting secretaries of the military
15 departments. We looked at how the military dealt with major
16 social issues, major social changes in the past, and we
17 consulted with the Justice Department on the legal issues.

18 Throughout this process, we were guided by the position
19 stated by the President. He made his key point, and I quote,
20 people should have the right to serve their country. And if
21 denied the right, it should be on the basis of behavior, not
22 status, end quote.

23 President Clinton also outlined two major criteria for a
24 new policy. First, the policy must maintain the high morale
25 and cohesiveness of the all-volunteer military. It is

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1 important that our men and women in uniform perform well on
2 the job together, get the job done, trust one another's
3 professionalism under pressure, and work as a team. We know
4 from experience that this cohesion is the key to a unit's
5 success in combat.

6 Second, the second point that the President made, the
7 President also stated that our new policy must protect
8 personal privacy. The new policy must respect the privacy of
9 a member of the military who is dedicated, capable, and
10 conscientious, and who may have a homosexual orientation. And
11 it must respect the privacy of people who, because of the
12 unique nature of military service, must live in close
13 quarters. By protecting privacy, we can protect unit
14 cohesion.

15 And let me make this point as President Clinton did, that
16 we have no evidence that homosexual soldiers are less capable
17 or more prone to misconduct. This brings me to our policy.
18 Let me begin by stating some of the basic principles.

19 As a general rule, the Department has long held that
20 homosexuality is incompatible with military service.
21 Nevertheless, the Department also recognizes that homosexuals
22 have served with distinction in the Armed Forces of the United
23 States. Therefore, we are going to judge a person's
24 suitability for service on the basis of conduct. That is not
25 what they are, but what they do.

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1 Under the new policy, homosexual conduct will continue to
2 be the grounds for discharge from the military service. On
3 the other hand, sexual orientation is considered a personal
4 and private matter. Under the new policy, sexual orientation
5 alone will not bar a person or individuals from service unless
6 it involves homosexual conduct.

7 Our new policy includes the following points. First,
8 applicants for military service will not be asked for or
9 required to reveal their sexual orientation. Applicants will
10 be informed of accession and separation policy. Second,
11 service members will be separated from homosexual conduct.

12 Third, commanders and investigating agencies will not
13 initiate inquiries or investigations solely to determine a
14 member's sexual orientation. While service members will not
15 be asked or required to reveal their sexual orientation,
16 commanders will continue to initiate inquiries or
17 investigations, as appropriate, when there is credible
18 information that a basis for discharge or disciplinary action
19 exists.

20 Authority to initiate inquiries and investigations
21 involving homosexual conduct shall be limited to the
22 commanders. Commanders will consider, in allocating scarce
23 investigative resources, that sexual orientation is a personal
24 and private matter. They will investigate allegations of
25 violations of the Uniform Code of Military Justice in an

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1 even-handed manner without regard to whether the conduct
2 alleged is heterosexual or homosexual, or whether it occurs on
3 base or off base. Commanders remain responsible for ensuring
4 that investigations are conducted properly and that any abuse
5 of authority is addressed.

6 The constraints of military service require service
7 members to keep certain aspects of their personal lives
8 private for the benefit of the group. That means no
9 statements by a service member that he or she is homosexual.
10 A statement by a service member that he or she is homosexual
11 or bisexual creates a rebuttable presumption that the service
12 member is engaging in homosexual acts or has a propensity or
13 intent to do so. What that means is that the service member
14 has the opportunity to present evidence that he or she does
15 not engage in homosexual acts and does not have a propensity
16 or intent to do so.

17 The interim policy and the administrative separation
18 procedures that were established on February 3rd, 1993 will
19 remain in effect until October 1, 1993; the new policy is
20 scheduled to go into effect on that day.

21 The policy does some important things. A service member
22 who may be homosexual can serve under this policy without
23 lying and without fear of witch hunts. But homosexual members
24 will have to play by the rules. The constraints of military
25 service require service members to keep some aspects of their

1 personal lives private for the benefit of the group.

2 To sum up, I believe to a large extent the President has
3 achieved most of his goal. He has said that service members
4 should be able to serve their country in the United States
5 military regardless of sexual orientation, provided they obey
6 the rules; we have that in this policy. Under the old
7 policy, a homosexual service member had to lie and actively
8 hide his or her orientation. In other words, they had to work
9 hard to keep off the radar screen. Under the new policy, they
10 will have to work to get onto the radar screen. That is
11 progress.

12 Thank you, Mr. Chairman, and I would now like to turn the
13 microphone over to the Chairman of the Joint Chiefs, Colin
14 Powell, and then we would be available to answer any
15 questions.

16 [The prepared statement of Secretary Aspin follows:]
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Chairman Nunn: Good. General Powell.
General Powell: Thank you, Mr. Secretary.

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1 STATEMENT OF GENERAL POWELL

2 Mr. Chairman and members of the committee, I am pleased
3 to be here this morning with my JCS colleagues to speak in
4 full support of the President's new policy on homosexuals in
5 the military. As the President described it yesterday, it is
6 a policy that I think constitutes an honorable compromise, and
7 it is also a policy that I and my colleagues on the Joint
8 Chiefs of Staff feel that we will be able to implement
9 successfully.

10 Under Secretary Aspin's leadership, the Department has
11 been intensely studying this very difficult issue for the past
12 6 months. We have closely followed the congressional hearings
13 and the public debates. We have also benefitted from a huge
14 outpouring of mail from the American people on all sides of
15 this issue.

16 The Joint Chiefs and I have spent an enormous amount of
17 time considering this issue. We had the President's guidance
18 from January and we owed him and the Secretary of Defense our
19 very, very best advice on this issue. We have challenged our
20 own assumptions. We have challenged the history of this
21 issue. We have argued with each other.

22 We have consulted with our commanders at every level,
23 from lieutenant ensign all the way up to commander in chief of
24 the various theaters. We have talked to our enlisted troops.
25 We have talked to the family members who are part of our armed

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1 services team. We examined the arguments carefully of those
2 who are on the other side of the issue from us.

3 The challenge we faced was to try to reconcile or
4 compromise two sets of conflicting views. On the one hand are
5 those who believe that homosexuals should be allowed to openly
6 serve. They note correctly that homosexuals have privately
7 served well in the past and are continuing to serve well
8 today.

9 There are some, however, who advanced a view much more
10 aggressively than that and sought acceptance in the military
11 of the entire gay rights agenda, to include not only open
12 service within the military but the introduction of all of the
13 associated benefits of partnership and other benefits that
14 accrue to partnerships within the military. On the other hand
15 are those of us who believe that the presence of open
16 homosexuality would have an unacceptable detrimental and
17 disruptive impact on the cohesion, morale, and esprit of the
18 Armed Forces.

19 Our concern has not been about homosexuals seducing
20 heterosexuals or heterosexuals attacking homosexuals. The
21 first of these so-called problems is manageable and the second
22 so-called problem is punishable. For us the issue is also not
23 what is acceptable in civilian life, and it is also not our
24 place as the uniformed leaders of the Armed Forces to use our
25 official position to make moral or religious judgments on this

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1 issue.

2 Our perspective is a unique one, and it is the unique
3 perspective of the military and what is best for military
4 effectiveness. The military exists to fight the Nation's
5 wars, to accomplish our war-fighting mission. Hopefully, we
6 are always strong enough to deter wars, but always ready to
7 fight and win them if necessary.

8 And to win wars, we create cohesive teams of warriors who
9 will bond so tightly that they are prepared to go into battle
10 and give their lives if necessary for the accomplishment of
11 the mission and for the cohesion of the group and for their
12 individual buddies. We cannot allow anything to happen which
13 would disrupt that feeling of cohesion within the force.

14 We are the best force in the world, and to be the best
15 requires subjugating individual rights to the benefit of the
16 group and the benefit of the team. Homosexuals over history
17 who have been willing to keep their orientation private have
18 been successful members of those teams.

19 Congress and the courts have consistently upheld the
20 unique circumstances of military service, and I believe the
21 American people understand these unique circumstances and
22 support them as well. Because in the military we discriminate
23 in many ways that would be absolutely unthinkable and
24 unacceptable in civilian life. We have rules and regulations
25 that are unique to our calling and could not pass any

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1 constitutional test if they were applied in civilian life.

2 We impose on our troops conditions of service unlike any
3 other field of endeavor. We tell them who they will work
4 with, where to live, and we tell them who they will be living
5 with. The American people expect that these rules are
6 reasonable, and expect that they are justified, justified
7 because they are necessary in order for the Armed Forces to be
8 able to perform its military mission.

9 We are expected to be an accurate reflection of the
10 society at large. We have successfully mixed rich and poor,
11 black and white, urban and rural. But open homosexuality in
12 units is not just the acceptance of benign characteristics
13 such as color or race or background. It involves matters of
14 privacy and human sexuality that, in our judgment, if allowed
15 to exist in the force would affect the cohesion and well-being
16 of the force. It asks us to deal with fundamental issues that
17 the society at large has not yet been able to deal with.

18 Military service requires sacrifices in many, many forms.
19 The proposed compromise that we have before the Nation, the
20 policy as announced by the President yesterday, permits gay
21 and lesbian Americans to serve if they are willing to keep
22 their orientation a private matter. It is a sacrifice we
23 believe it is necessary for them to make for the overall good
24 of the service and the cohesive teams that they are going to
25 be a part of.

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1 We will not ask, we will not witch hunt, we will not seek
2 to learn orientation. This is a significant change on the
3 part of the military. I realize fully that this compromise
4 will not satisfy all parties, but I believe that it is a good
5 compromise, a compromise that will be understood and supported
6 by most Americans. It is also a compromise that will
7 eliminate the tension that exists in the Armed Forces over
8 this very, very complex and divisive issue.

9 I also know that this is not the end of the matter. The
10 debate will continue. I also do not pretend to know where the
11 Nation will be on this issue years in the future, but in my
12 judgment for now and for the set of circumstances we find
13 ourselves in now, I believe that this is the right answer.

14 The Joint Chiefs of Staff and I have been criticized by
15 some over our handling of this issue. Some say we fought the
16 problem, and there are even suggestions that somehow we were
17 insubordinate. Our responsibility to the President, to the
18 Secretary, to the Congress, to our troops, and to the Nation
19 is to provide our best, most honest advice when it is asked
20 for, regardless of the popularity of that advice. I am
21 pleased to say that the Commander in Chief, our President, and
22 our Secretary of Defense asked for our advice, they welcomed
23 that advice, and it was our duty to provide that advice. Not
24 to have done so would have been insubordinate.

25 I believe Secretary Aspin and the President displayed a

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1 great deal of courage in dealing with this issue head on and
2 forthrightly. Many have suggested that they could have
3 ignored the views of the military advisors that work for them,
4 or the views of most of our troops. They could have simply
5 reversed the ban and satisfied a political commitment.
6 Instead they studied all sides, they recognized their
7 responsibility for the effectiveness of the force, and I know
8 that they both agonized very very deeply over this issue.

9 I also believe that they have made a correct choice, a
10 choice which is in the best interests of the Armed Forces and
11 the best interests of the American people, and I ask for your
12 support of the President's decision.

13 Thank you.

14 Chairman Nunn: Thank you, General Powell. Let me start
15 the questioning. General, you have already touched on it, let
16 me just nail it down, and I think you have hit it pretty good
17 already, but what is the justification in the military
18 service, as opposed to civilian society, for placing the
19 rights of the unit and the mission before individual rights?
20 Why is that done in the military but not in civilian society?

21 General Powell: Because we live in a somewhat coercive
22 society within the military, what we ask our people to do is
23 to put their lives on the line, to march up hills in the face
24 of machine guns. A level of cohesion is required, that is not
25 required anywhere else in our society.

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1 I do not know that I can express it much better than
2 that, Senator. It is also a 24-hour-a-day, 7-day-a-week,
3 365-day job. You do not go home at 5 o'clock. You may be
4 living in the most incredible conditions all day long, 24
5 hours a day, with people that are part of your family, your
6 most close relations, frankly. And in that set of
7 circumstances, it is very difficult to introduce this element
8 of gender differentiation, especially along homosexual lines.

9 But I would like to yield to the service chiefs as well,
10 to answer this, Senator, because they are the heads of their
11 services, and will be dealing with this issue most directly.

12 Chairman Nunn: I would like to hear from each of them on
13 this issue, but let me add one other one to it, and that is
14 the significance of unit cohesion in developing combat
15 capability. Let me start with General Mundy, and then General
16 Sullivan, and we will work toward the other end of the table.

17 So the two questions really are, unit cohesion, what does
18 it mean? And the second question is, why is the military
19 unique, in the sense that individual rights in the military
20 have to be secondary to both the mission and to the unit?

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1 STATEMENT OF GENERAL MUNDY

2 General Mundy: All right, sir. Thank you, Mr. Chairman.
3 Unit cohesion, I think, to take off of what General Powell has
4 said to you, I would only add to that, is a necessary bonding
5 process whereby the members of a team that must go forth
6 together, as he has described, have to come together, have to
7 believe in each other, and have to believe in the common
8 purpose of the team.

9 We do not send many of our elders in this Nation to war;
10 we send young people. We send 18-, 19-, 20-year-olds. The
11 Marine Corps is predominantly a 24-year-old and younger
12 organization. They have to be, they have to have a foundation
13 built on common beliefs, on common trust, and on mutual
14 understanding of what it is their task in life to do.

15 With regard to the individual over unit rights, I think
16 that this goes back to the very right of serving in the Armed
17 Forces. There really is no right of serving in the Armed
18 Forces. If there were, those whose right eye is weak, or
19 those who have other characteristics that enable them not to
20 be able to serve effectively, according to what experience has
21 taught us over the years in the Armed Forces, would have every
22 right to seek service and to, perhaps, serve well. But they
23 are a risk, because of their, the possibility that their
24 particular characteristic, whatever it may be, can become a
25 disintegrating factor in terms of unit cohesion.

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1 Generally speaking, as this body has heard from far many
2 more voices and far younger voices than those at the table
3 here today, there is not an acceptance of homosexuality among
4 those who serve in the Armed Forces. And to try and inject
5 that, to try and force it into the ranks, simply would create
6 a fracture that would, in my view, be contrary to the
7 cohesiveness that we talked about.

8 Chairman Nunn: Thank you, General Mundy. General
9 Sullivan?

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1 STATEMENT OF GENERAL SULLIVAN

2 General Sullivan: Mr. Chairman, to the first one: What
3 separates us from civilian society is ultimate sacrifice, the
4 sacrifice of our lives for our country. We have to sublimate
5 everything that we do to selfless service to our Nation.
6 Duty, honor, country, and it is in fact that mission, the
7 protection of the Nation, which must govern everything that we
8 do. And we know from our experience that, when we find units
9 where people are coalescing around other objects, that
10 discipline breaks down, and in turn the cohesiveness and
11 combat effectiveness of the unit breaks down.

12 Now to the other: Cohesiveness, cohesion. I reflect upon
13 a letter which was written from one officer to another, which
14 I think for me epitomizes what this profession is all about.
15 In that letter, he said, throughout the war you were always in
16 my mind. I always knew, if I were in trouble and you were
17 still alive, that you would come to my assistance.

18 Every officer in the United States Army, every soldier in
19 the United States Army, every soldier, noncommissioned officer
20 and officer, everyone in the United States Army, everyone in
21 the services must know that about me. And I about them. That
22 I will give up my life for them; and they, in turn, will give
23 up their life for me. I have to have trust in them, and them
24 in me.

25 And I believe that is the question we are talking about

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1 today. Move out, move out, take the hill. And they do not
2 ask me. They look in there, and they see something. And that
3 is what this is all about.

4 Chairman Nunn: Thank you, General Sullivan. Admiral
5 Kelso, and General McPeak?

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1 STATEMENT OF ADMIRAL KELSO

2 Admiral Kelso: Well, Senator, I think unit cohesion is
3 something that builds with time, and as General Sullivan so
4 eloquently stated, is based on a trust between the members who
5 have to work together.

6 And in my case, I am talking about a ship, maybe small
7 but maybe large. But whatever happens, you are dependent upon
8 your shipmate next to you for your own survival, and how they
9 work as a team, how they work as a unit, maybe how a division
10 within that ship works as a team, depends upon the success.
11 We also are a little different, in that we are continuously,
12 or quite often, at sea a lot. There is nowhere to go, when
13 you are there. So unit cohesion is a constant battle against
14 the sea, on a day-to-day basis.

15 We have the same issues in battle as our other armed
16 services do. But it does not take much to cause unit cohesion
17 to be jeopardized; and I believe that homosexual conduct has
18 clearly been seen to do that over the years. I do not know of
19 any of us that do not believe that. And so, I think it is
20 very important that the commander have the capability and the
21 responsibility to deal with this; otherwise, his unit will not
22 have the effectiveness or the cohesion that it requires for a
23 combat situation, or to do its job on a day-to-day basis.

24 And I think it clearly is reflected in our experience,
25 that cohesion is dependent upon each one's trust of the other,

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1 his belief that they will stand up and be counted, when that
2 time comes.

3 Chairman Nunn: General McPeak?
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1 STATEMENT OF GENERAL MCPEAK

2 General McPeak: Mr. Chairman, I think the thrust of your
3 first question was, is there a difference between the military
4 and the civilian approach to this issue? I think it is a very
5 good question, because much of the public dialogue on this has
6 treated this issue as though it were a jobs issue, or a civil
7 rights issue, and that working in the Air Force is essentially
8 the same as working at General Motors or anywhere else, so why
9 should our policies be different? I think that is a very good
10 question.

11 The answer, it seems to me, is that we are not General
12 Motors. This is not a 9-to-5 job. It is a calling; requires
13 a certain dedication to service, that puts it in a different
14 category. One dimension of it that is different is that our
15 lives are in each other's hands, in peacetime. It is not just
16 a question of taking a hill under combat conditions.

17 If we send a flight of four aircraft out to go do an
18 operational mission, as we do every day in peacetime, and they
19 get in formation and the flight leader enters clouds and runs
20 into the side of the hill, all four of those aircraft are
21 going to go in, in formation. That flight requires that all
22 four of the men are cohesive, trust each other, understand
23 each other. They are, in fact, a cohesive team. That, it
24 seems to me, is what separates this from a routine job to
25 which you would apply the normal jobs rights issues, or civil

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1 rights issues.

2 Now, we talk then, about the mission as oriented on the
3 team. This is not boxing. This is not tennis. This is much
4 more like football. And the team has certain rights, as well
5 as the individual rights that we are ordinarily interested in
6 protecting in a civil environment. The team has a right to be
7 able to depend on each other, in other words, because we do
8 not give those wingmen a vote about entering the clouds. They
9 go where the leader goes. So the wingmen have a certain right
10 to expect, they have rights that must be balanced against the
11 normal rights that individuals would possess in a civil rights
12 category.

13 Now, the second question has to do with unit cohesion,
14 and why it is important. To me, it is important because it is
15 essentially identical with effectiveness. We want our units
16 to be effective in combat; we often use cohesion as a synonym
17 for effectiveness. When we look at a battlefield situation,
18 we say that such and such a unit has lost its cohesion; what
19 we mean is, it has lost its effectiveness. It may still all
20 be 100 percent alive, but it is out of ammunition, or
21 propaganda has worked, or it is physically separated some way
22 on the battlefield. It has lost its cohesiveness and,
23 therefore, its effectiveness.

24 So we pay a lot of attention to trying to create unit
25 cohesion, because it is synonymous with effectiveness for us

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1 in combat. So whatever contributes to unit cohesion makes us
2 more effective, and that is why I think many of us are
3 reluctant to go too far in pursuing what we all see as an
4 issue that has great potential to reduce our cohesiveness.

5 Chairman Nunn: Thank you, General McPeak. Senator
6 Thurmond?

7 Senator Thurmond: Thank you, Mr. Chairman. Secretary
8 Aspin, as I said in my opening statement, I am concerned about
9 the concept of rebuttable presumption the President described
10 in his speech yesterday.

11 I think this provision may lead to legal challenges. I
12 am sure it will be problematic for commanders and
13 noncommissioned officers in the field. Please explain
14 rebuttable presumption, as you understand it, in simple words;
15 and what guidance will you give commanders and noncommissioned
16 officers, to help them implement the policy?

17 Secretary Aspin: The rebuttable presumption policy,
18 Senator, is part of the current law now. That is not new in
19 the President's directive.

20 What it says is that, if a person says that they are gay,
21 it is a rebuttable presumption that they are conducting
22 homosexual acts. Now, rebuttable presumption is, the
23 presumption is that they are engaged in homosexual acts, but
24 it is rebuttable by evidence that the member might offer. In
25 other words, the requirement would be for the individual

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1 member to present the rebutting argument, and the rebutting
2 evidence.

3 Senator Thurmond: In other words, it simply means they
4 can answer the charge, and be convincing in their answer, if
5 they can.

6 Secretary Aspin: If they can show -- yes, indeed -- if
7 they can show evidence that, convincing evidence, that they
8 have not engaged in homosexual acts. It is a tough standard.
9 Senator, you should understand that it is a tough standard.
10 And I think the evidence is true, and I would have to check
11 this record, that in fact it has not been acted on in the
12 past. It is a tough standard to meet.

13 Senator Thurmond: General Powell, is that your
14 understanding?

15 General Powell: Yes, sir. Yes, sir.

16 Senator Thurmond: Thank you.

17 Chairman Nunn: Senator Thurmond, without taking any of
18 your time, if this would not count, I just want to make sure
19 that I understand on this question, because it is very
20 important. Both of you are saying this is not a change in
21 current policy?

22 Secretary Aspin: That is correct.

23 Chairman Nunn: In current policy, if somebody comes in
24 and says, I am a homosexual, and the commander brings a change
25 against them, they have a right to come up and say, look, I

1 was just kidding.

2 General Powell: Yes.

3 Chairman Nunn: And that is not correct. That is the
4 current policy, that is what we are talking about?

5 General Powell: That is my understanding, yes, sir.

6 Senator Thurmond: General Powell, I would like for you
7 and the other chiefs to answer this question. I want your
8 personal opinion, in response to one central question. Is the
9 policy which the President announced yesterday what you agreed
10 to? Did the White House, or others, make changes to the
11 policy, after you indicated your agreement? Do you agree with
12 the policy as it was announced?

13 General Powell: I do, both as a professional matter and
14 as a private matter.

15 Senator Thurmond: General Sullivan? Do you agree with
16 the policy, as announced?

17 General Sullivan: Yes, I do, and I support it.

18 Senator Thurmond: General Mundy?

19 General Mundy: I support the policy, Senator.

20 Senator Thurmond: General McPeak?

21 General McPeak: Yes sir, I support it.

22 Senator Thurmond: Admiral Kelso?

23 Admiral Kelso: Yes sir, I support the policy.

24 Senator Thurmond: Admiral Jeremiah?

25 Admiral Jeremiah: Yes, sir.

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1 Senator Thurmond: General Powell, what is your
2 understanding of the guidance on activities by service
3 members? How many times can one go to a gay bar, before the
4 commander has cause to investigate? And what about attending
5 a gay religious service in uniform? Is that okay? If a
6 service member advocates a gay lifestyle to others, while
7 professing not to be gay, is he or she within his or her
8 rights? Do we need to tighten up the policy in this or other
9 areas?

10 General Powell: Obviously, Senator, we cannot write
11 implementing regulations that could cover every possible
12 question that might be raised.

13 The way we are going to handle that is, first, by getting
14 some examples of the sorts of associational activities, we
15 call them, that would not be prohibited; where a person is
16 exercising their right of assembly, or to go to a bar that
17 they prefer to go to, as compared to some other bar, or some
18 other social activity. We are putting it in the hands of the
19 commander, where I think it belongs, the authority to make a
20 judgment.

21 If, as a result of the pattern of activity, or number of
22 things that have come to his attention, it is reasonable to
23 consider whether or not that person is exhibiting homosexual
24 conduct, then that would trigger an inquiry on his part. But
25 whether it is one, two, or three times, we are not going to

1 try to answer that question.

2 We are going to put that judgment in the hands of the
3 commander who is on the scene, and is able to assemble a body
4 of real events and real information, as opposed to speculative
5 questions. But obviously, an implementing directive cannot be
6 written to accommodate every possibility.

7 Senator Thurmond: Admiral Kelso. Historically, DOD has
8 maintained that homosexual, homosexuality is incompatible with
9 military service. Secretary Aspin's policy memorandum states
10 that, DOD has long held, as a general rule, homosexuality is
11 incompatible with military service.

12 The question is: Does the policy and Secretary Aspin's
13 memorandum state this strongly enough, in your opinion? Do
14 you have any recommendation concerning how the policy might be
15 improved?

16 Admiral Kelso: I believe the policy states clearly that,
17 in general, homosexuality is incompatible with military
18 service, and I believe that. And it should be in the policy,
19 and is, sir. And I think that is the way it should be.

20 Senator Thurmond: General Mundy. General Schwarzkopf
21 testified to the importance of a clear, well-defined policy
22 that every soldier, marine, sailor and airman can understand.
23 Do you think this proposal is clear and unambiguous? Is it as
24 workable as the pre-February 1993 policy?

25 General Mundy: It is as workable as the pre-February

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1 policy. I believe that it can be understood. As has been
2 mentioned, we publish implementing instructions to implement
3 any Department of Defense policy, and we can do that, with
4 this policy.

5 Senator Thurmond: General McPeak. In your opinion, is
6 the guidance on investigations in the proposed policy
7 appropriate? Will commanders and military investigative
8 services still have the latitude to conduct investigations
9 required to maintain good order and discipline? Are there any
10 changes you would recommend in this area or others?

11 General McPeak: No, sir. I think the new policy is
12 better than the old approach. A lot of thought went into it
13 in recent days, and I believe that the policy is a substantial
14 improvement in many, in many respects.

15 Senator Thurmond: Admiral Jeremiah. A lot has been said
16 in the last 6 months about the impact of open homosexuals on
17 unit cohesion and readiness. In your opinion, how will this
18 policy affect unit cohesion and combat readiness? Are there
19 any changes to the policy you would recommend?

20 Admiral Jeremiah: I would not make any recommendations
21 to the policy. I think this policy will support unit cohesion
22 and readiness. And that has been our fundamental issue
23 throughout this entire question, which is the mission
24 readiness of our troops and our organizations and units. I
25 believe this policy will support that.

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1 Senator Thurmond: General Sullivan, what training do you
2 anticipate being required by the proposed policy? Will there
3 be sensitivity training for all soldiers? Will those in
4 leadership positions be given training on how to implement the
5 policy? Will leaders be trained on how to counsel soldiers on
6 homosexuality and how to deal with those who frequent gay
7 bars, for instance, but remain within the policy? Who will
8 train the trainers?

9 Have you done any preliminary work in this area?

10 General Sullivan: Senator, as you know, we do equal
11 opportunity training now throughout the Army. And I
12 anticipate that this would be a part of that equal opportunity
13 training. Certainly, the regulation, when it comes out, will
14 discuss the policy implications of it.

15 But, other than that, I do not intend any further
16 separate and distinct instruction on the issue.

17 Senator Thurmond: The last question I have at this time
18 is for Secretary Aspin. I am sure your general counsel
19 reviewed the policy. We heard about consultations with the
20 Department of Justice, including Attorney General Reno. It is
21 essential that any homosexual policy be legally defensible,
22 because it will be challenged in the courts. What advice and
23 legal opinion did you receive from the DOD general counsel and
24 the Department of Justice on the policy announced by the
25 President? And will this policy stand a court challenge?

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1 Secretary Aspin: Senator, I have a statement here, a
2 memorandum for the President from the Attorney General which
3 addresses just that issue. What it says -- let me just say
4 that the basic statement here in the policy -- and we can make
5 it available to members of the committee. You have it up at
6 your desks. It says essentially that the changes that we are
7 making in the policy make it stronger. It is more easy to
8 defend in the courts than the previous policy, or the current
9 policy for that matter.

10 I think that what we are saying here is that the report
11 from the Attorney General is that this is an improvement. I
12 will read the statement:

13 The proposed policy that the Secretary of Defense has
14 submitted changes earlier policy in three respects that should
15 improve the ability of the Department of Justice to defend the
16 policy in court.

17 And it mentions the three:

18 First, the policy changes the premise on the basis of
19 which questions involving the service of homosexuals in the
20 military are to be resolved.

21 Second, the policy implements the discrimination between
22 status and conduct that you drew in your -- this is addressed
23 to the President -- that you, meaning the President, drew in
24 your January 29th directive.

25 And, third, the policy would substantially change

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1 pre-January investigative policies.

2 Based upon those, it is the opinion of the Justice
3 Department that this policy improves the ability of the
4 Department of Justice to defend the policy in court.

5 Senator Thurmond: And the Department of Defense concurs
6 in that?

7 Secretary Aspin: Yes, sir.

8 Senator Thurmond: And the counsel, I mean, of the
9 Department of Defense?

10 Secretary Aspin: Yes, sir.

11 Senator Thurmond: Thank you, Mr. Chairman.

12 Chairman Nunn: Thank you, Senator Thurmond.

13 Senator Exon.

14 Senator Exon: Mr. Chairman, thank you very much.

15 Let me start out, Mr. Chairman, by thanking you for your
16 diligence, for your thoughtfulness, for your balanced
17 selection of witnesses that have been before us on this whole
18 very complicated matter.

19 And to you, Mr. Secretary and the members of the Joint
20 Chiefs, my hat goes off to you.

21 It is easy for those who do not have to make the
22 decisions or be responsible for the decisions that you had to
23 make to criticize you. I think and would say that from what I
24 know of the policy that you have come forth with, it is very
25 much along the lines, Mr. Secretary, of what was suggested to

1 you at a late-January or early-February meeting in the White
2 House with members of this committee. And, therefore, from
3 what I know of the policy now, I think, while it is not
4 perfect and it is not what I really want, I think it is a
5 significant step in the right direction.

6 I have concerns about eliminating the witch hunts that
7 were going on. I think you have basically done that. I am
8 surprised that you have decided that it would be acceptable
9 for members of the armed services to take part in parades.
10 But I suspect that that came down to a matter of definition
11 and the legal interpretation that we are probably going to
12 have to live with.

13 So I think you have done an excellent job, and I think,
14 basically, the policy that you and the President have come
15 forward with is a reasonable one that eliminates the witch
16 hunts, the persecution and the prosecution on flimsy grounds,
17 or just because someone was a homosexual, has been corrected,
18 and that was one of the main points that this Senator thought
19 should be corrected as we made the necessary changes.

20 Let me ask you a question or two to try and make sure
21 that I understand the situation. I think you are all familiar
22 with Colonel Kammemeyer, who was discharged from the service
23 because she saw fit to honestly answer a question in an
24 intelligence interview. I take it that, notwithstanding what
25 I think was unfair treatment to her, although I would agree

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1 that it was fair under the policy that I thought was wrong and
2 is now being changed, I take it that Colonel Kammemeyer or
3 people similarly situated will have no recourse and that her
4 discharge from the service will stand per that decision that
5 was made. Is that correct?

6 Secretary Aspin: Let me refer that question to General
7 Powell maybe.

8 General Powell: General Sullivan.

9 Secretary Aspin: General Sullivan.

10 General Sullivan: Senator, Kammemeyer v. Cheney is in
11 court, and the court granted the Government's request for a
12 stay until 16 August. So that is being litigated in the court
13 in the Western District of Washington. And that is where we
14 are on that case. That is one of three cases that is being
15 litigated now.

16 Secretary Aspin: Senator, let me answer the question in
17 a general manner. There is about eight, I think, cases that
18 have come up in the period, the Kammemeyer case being one of
19 them. There is about eight cases that have come to light in
20 this interim period, since the interim policy was announced.

21 It is our intention, we have discussed that among the
22 Joint Chiefs, and I think it is the prescription that each of
23 the services will go over each of these cases that apply to
24 their own service and judge them on an individual basis to
25 see, in the light of the new policy, what might be done with

1 these particular cases. And we will try to judge them on an
2 individual basis.

3 Senator Exon: That kind of evades the answer to the
4 question. Supposing there were not in process a court action.
5 Would Colonel Kammemeyer be not reinstated?

6 Secretary Aspin: You have a difficult case here. The
7 situation is that probably, under the new policy, Colonel
8 Kammemeyer would not have been --

9 Senator Exon: I would hope so.

10 Secretary Aspin: Yes.

11 General Powell: Not under the new system

12 Secretary Aspin: But what you are dealing with is a
13 situation that now it is known that Colonel Kammemeyer is a
14 homosexual. So, what I am saying is that is what requires
15 dealing with these things on an individual basis.

16 Senator Exon: Well, let me ask this question. With
17 regard to new recruits, how do we explain, or do we, to a
18 possible new recruit that the position is that those with
19 homosexual tendencies are not encouraged to join the services
20 because of the problems that it might cause, how do we
21 formally, or do we formally, relate that to a new recruit that
22 would be coming in under the policy that I assume will become
23 law as outlined by you and the President?

24 General Sullivan: Senator, today, when a recruit gets to
25 his first duty station, he or she is informed of Department of

1 Defense policy's UCMJ, and there is a whole list of issues
2 that are discussed, not the least of which is drug abuse,
3 alcohol abuse and so forth and so on, and this is one of those
4 items. And the soldiers are informed that this is Department
5 of Defense policy, and that will continue.

6 Senator Exon: You said get to their first station. That
7 is after they are sworn in?

8 General Sullivan: At the MEPS, the Military Entrance
9 Processing Station. They are informed of the policy. Then
10 that is further elaborated on when they get to their first
11 duty station.

12 Senator Exon: I hope that we can make that clear to
13 people when they are coming in what the official position is.

14 General Sullivan. Right, we do.

15 Senator Exon: I am not sure that has been fully
16 explained.

17 My time is up. I have another question about a guardsman
18 who serves in the Nebraska National Guard that was in a parade
19 here. I would ask questions about him along the lines of
20 Colonel Kammemeyer, but I will wait for the second round.

21 Thank you very much.

22 Chairman Nunn: Thank you, Senator Exon.

23 Senator Warner.

24 Senator Warner: Thank you, Mr. Chairman.

25 First, may I be notified when I have but a minute

1 remaining?

2 Chairman Nunn: Yes.

3 Senator Warner: Mr. Chairman, I want to commend you for
4 the manner in which you have handled this difficult issue
5 throughout these many months. I have been privileged to work
6 with you for over two decades, and fairness is your hallmark.
7 And you have always, in my judgment, acted in what is in the
8 best interest of our country and the best interest of the men
9 and women of the Armed Forces.

10 Chairman Nunn: Thank you, Senator Warner.

11 Senator Warner: Now, Mr. Chairman, I turn to my first
12 question. And that relates to whether or not this policy
13 leads to condoning an officer or a petty officer or any member
14 of the Armed Forces from stating less than the truth and the
15 whole truth, Mr. Secretary. I picked out the following to
16 frame this question.

17 When I was privileged to serve in the Department, I was
18 tasked once by the then-Secretary Melvin Laird, or maybe it
19 was Schlesinger, to study the Honor Codes of the several
20 academies to determine whether or not they were balanced and
21 treated them fairly, all the academies.

22 Now, the officer corps has to operate by a certain set of
23 standards, as indeed the noncommissioned officers do. When
24 you start with the academies, which have traditionally,
25 throughout their history, set a framework for all officers and

1 noncommissioned officers to operate, the Honor Code says as
2 follows -- and this is to midshipmen -- They do not lie, cheat
3 or steal.

4 West Point adds: A cadet will not lie, cheat or steal,
5 nor tolerate those who do.

6 Ironically, Admiral Kelso, you are the only member of
7 this distinguished panel that is a graduate of the Academy,
8 and my question to you is: Will this policy require a
9 revision of the Honor Code?

10 Admiral Kelso: I do not believe it will, sir. I do not
11 see any reason why it should.

12 Senator Warner: Then can a cadet or midshipman be asked
13 if they are gay and remain silent?

14 Admiral Kelso: I think the policy would say we would not
15 ask whether they were gay or not. And then their subsequent
16 conduct would determine whether they were gay or not.

17 Senator Warner: That is correct. But a fellow
18 midshipmen may ask that.

19 Admiral Kelso: I think if there is a reason for -- if
20 you had a reason because of some evidence that you could ask,
21 then you have to answer the question honestly.

22 Senator Warner: And they cannot remain silent?

23 Admiral Kelso: No, sir. You have to answer the
24 question. But you would have to have a reason to answer the
25 question that was credible.

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1 Senator Warner: Secretary Aspin, I have two questions.
2 I hope you can keep your answers short.

3 It would seem to me that whatever policy we have -- and I
4 might address the second point -- this issue is far more
5 important than just the military, because the manner in which
6 the President and the Congress reconcile their differences,
7 probably through law, will have a far-reaching impact all
8 across the United States, in terms of what other laws that
9 relate specifically to civilians are nonmilitary should or
10 should not be changed -- so we have got to exercise the utmost
11 care as we deal with this tough issue.

12 Secretary Aspin, do we, by virtue of this policy, treat
13 heterosexuals equally with homosexuals, or are heterosexuals
14 or homosexuals set apart as a separate class and treated
15 differently?

16 Secretary Aspin: Well, I think what this policy does is
17 it moves toward a policy that treats private conduct
18 privately. I mean, it essentially is a policy that says
19 private conduct is private.

20 In terms of investigations, in terms of interest to --

21 Senator Warner: Let us try yes or no. Yes or no, do we
22 create a separate class of persons within the military by
23 virtue of their sexual orientation? Yes or no?

24 Secretary Aspin: We move away from that toward a policy
25 which creates a policy that says that privacy is privacy.

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1 That is what it does. That is the best answer I can give you,
2 Senator.

3 Senator Warner: So, in your judgment, we are treating
4 heterosexuals coequal --

5 Secretary Aspin: Not entirely. We are moving in that
6 direction.

7 Senator Warner: But we have not gotten there yet?

8 Secretary Aspin: No, sir.

9 Senator Warner: Secondly, Secretary Aspin, have you made
10 any assessment as to what impact, if this policy were to be
11 adopted by the Congress, what impact it would have on
12 recruiting?

13 Secretary Aspin: I am not the right person to ask that.
14 I think we ought to ask one of the uniformed people here.
15 Maybe General Powell can answer that question.

16 General Powell: I do not know that it would have any
17 effect that I can think of, Senator. I think throughout the
18 force, to include that part of the force that is at the
19 leading edge in terms of recruiting, the recruiters out there,
20 it removes an item of great controversy and confusion, which
21 has been having some minor effect our recruiting ability
22 because some youngsters coming in wanted to know the
23 circumstances of service and their parents wanted to know the
24 circumstances of service.

25 This removes that element of confusion.

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1 Senator Warner: All right. Let me move to my -- it
2 seems to me that answer says we really do not know. And I
3 think that is probably the best answer you or anyone else can
4 give.

5 General Powell: Yes, sir.

6 Senator Warner: We do not know whether or not this
7 policy will foster or denigrate the ability to acquire the
8 quality persons in the future.

9 My last question is to each of the Chiefs. And I would
10 like to have your personal opinions, which each of you
11 committed at your respective confirmations before this
12 committee to give the committee at any time asked. Everything
13 we do in the Congress should be done toward improving the
14 readiness of the Armed Forces of the United States. Because,
15 bottom line, you are there for one reason and one reason
16 alone. And that is to protect the security of our citizens.

17 Now, my question to you -- and we will lead off with
18 General Powell -- in your personal opinion, does the Armed
19 Forces of the United States become more combat ready
20 militarily if this policy is implemented? If your answer is
21 yes, also tell me why this policy will make the force more
22 ready or more efficient in combat?

23 General Powell: I think the answer is yes. But the
24 reason for that is that it removes an element of uncertainty,
25 an element of friction, an element of tension that has,

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1 frankly, reduced some of the readiness of the force in recent
2 months. So I think the settlement of this issue on a basis
3 that the Congress agrees with, the administration agrees with
4 and the uniformed leadership of the Armed Forces agrees with
5 will enhance our combat readiness by removing this distractor.

6 Senator Warner: General Sullivan?

7 General Sullivan: Senator, I am supportive of the policy
8 and I believe that getting the policy out there as we did
9 yesterday is going to take an element of doubt away. And I
10 concur with the chairman's comment in that regard. And we can
11 implement the policy and get on with it.

12 Senator Warner: Now, that was not the question. Does it
13 make it more ready?

14 General Sullivan: Yes.

15 Senator Warner: It makes it more ready.

16 General Mundy?

17 General Mundy: Senator, I do not think it makes it more
18 ready. I do not think it makes it less ready. I think it
19 makes it more ready than a policy that would admit open
20 homosexuality, which would make it less ready. So the policy,
21 itself, is to maintain readiness. It does not enhance
22 readiness in my view, but it does not take from it.

23 Senator Warner: Admiral Jeremiah, does it make it more
24 ready?

25 Admiral Jeremiah: Senator, I have to believe that it

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1 does make the force more ready for the reasons that Chairman
2 Powell mentioned. But also I think that as we looked at the
3 fundamental policy that we were examining, there are some
4 issues in there that Secretary Aspin suggested were coming
5 under question. And I think that the current policy, in fact,
6 is a cleaner policy, and one that is more readily
7 implementable. And I therefore think that is means that the
8 force will be a readier force.

9 Senator Warner: Admiral Kelso?

10 Admiral Kelso: I think in the sense that we have a
11 policy, and if it is supported by the Congress and the Chiefs
12 and the Defense Department and the White House, that we will
13 become more ready as a result of that. So I think yes,
14 because it removes an enormous amount of confusion that is
15 there today. And, in that sense, I think we will be more
16 ready.

17 Senator Warner: General McPeak?

18 General McPeak: Sir, I believe the President and
19 Secretary Aspin proposed to discard a policy that did not work
20 and to adopt a better approach that will work. And, from my
21 point of view, asking the question was designed to keep
22 homosexuals out of the Armed Forces and did not work to do
23 that. Getting rid of that policy makes sense to me. I do not
24 think it will have a great deal of impact on readiness
25 immediately, but it is a better policy and, therefore, over

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1 time, should work to the benefit of our readiness.

2 Chairman Nunn: Thank you, Senator Warner.

3 I believe Senator Bingaman is next.

4 Senator Bingaman: Thank you, Mr. Chairman.

5 Secretary Aspin, let me ask you sort of a clarifying
6 question. You have made quite a point of the fact that this
7 new policy tries to look at conduct rather than status. If
8 you had a situation or have a situation in one of the services
9 where one soldier advises another soldier that the first
10 soldier is homosexual, and then the second soldier relates
11 that conversation to the commander, what happens to the
12 soldier who has told the second soldier that he is homosexual
13 in that private conversation?

14 Secretary Aspin: Excuse me? You have a three-step
15 process?

16 Senator Bingaman: You have one soldier tell another
17 soldier --

18 Secretary Aspin: That he is gay.

19 Senator Bingaman: That he is gay.

20 Secretary Aspin: Then the second soldier tells the
21 commander.

22 Senator Bingaman: The second soldier tells the commander
23 that the first soldier said he was gay.

24 Secretary Aspin: Yes.

25 Senator Bingaman: The commander, then, what does he do?

1 Secretary Aspin: Well, by itself, it is not credible
2 information of homosexuality. What is ultimately at stake
3 here is the question of what is credible information. And it
4 is up to the commander to look at the totality of evidence and
5 decide whether in fact there is enough evidence there on which
6 an investigation would be undertaken to determine whether it
7 is true.

8 So the question then is for the commander to decide what
9 is credible evidence. An individual statement, with no other
10 evidence presented, would not be credible information. You
11 may have an enemy and somebody wants to get somebody in some
12 sense because of some other purpose.

13 So a single point, if I came to the commander and said
14 that you told me that you were gay, if that is the only thing
15 going, my expectation would be the commander would not do
16 anything. It has to be part of a pattern, and the commander
17 would look at the totality of evidence and decide whether
18 there is an investigation.

19 Chairman Nunn: Mr. Secretary, you are not saying that
20 the commander could not use that statement alone to start an
21 investigation, are you?

22 Secretary Aspin: It is up to the commander to decide
23 when there is credible information.

24 Chairman Nunn: He would have the discretion to use that
25 statement to start an investigation to determine if there were

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1 other evidence, is that right?

2 Secretary Aspin: Probably. But, basically, I think it
3 would be the intention of the group not to do it on the basis
4 of one case. You end up --

5 Chairman Nunn: That contradicts your guidelines in your
6 statement.

7 Secretary Aspin: Well, Senator, the point is that the
8 commander has to decide what is credible information. And the
9 danger of information that is from a single source is that
10 maybe somebody is trying to do damage to that person or that
11 person's career, and I think that the commander has to take
12 that into account if it is the only thing he knows is that
13 information.

14 Chairman Nunn: Mr. Secretary, if I could just interrupt
15 here for just a moment, because this is important. This
16 directly contradicts what you said in your opening statement,
17 as I read your opening statement. On page seven, you say,
18 quote: That means no statement by a service member that he or
19 she is homosexual. Then you go on to say, quote: A statement
20 by a service member that he or she is homosexual or bisexual
21 creates a rebuttable presumption that the service member is
22 engaged in homosexual acts or has a propensity to do so.

23 Secretary Aspin: Senator, we are not disagreeing. The
24 point is that people should not talk about this. They should
25 not say that they are gay. That is not allowed under this

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1 policy.

2 All I am saying is that when it comes to investigations
3 by a commander, that the commander must look at the question
4 about whether there is credible information or not, and
5 proceed according to the totality of the evidence.

6 Chairman Nunn: But your statement, on page seven,
7 clearly says that it is a rebuttable presumption.

8 Secretary Aspin: Exactly.

9 Chairman Nunn: So a commander would then have the
10 authority to move forward with investigation as I read your
11 statement.

12 Secretary Aspin: Exactly. The point of the matter is
13 that an individual should not -- I mean, don't ask, don't tell
14 means don't tell. That is the policy, they should not. We
15 are talking at two different parts of this document, Senator.

16 On the one question, you are asking: What is the proper
17 behavior for individuals? The proper behavior for individuals
18 is don't tell.

19 In the other part, we are talking about: What is the
20 proper behavior for commanders? And what commanders need to
21 do is to look at the totality of evidence before they decide
22 whether to institute an investigation.

23 Senator Bingaman: Let me just follow up on that with one
24 other question.

25 In the memorandum from the Attorney General, the

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1 statement is made: The commanders will initiate
2 investigations only where there is credible evidence of,
3 quote, homosexual conduct, end quote.

4 Now, under the example I just gave you, where there is
5 perhaps credible evidence of a person's status, no evidence of
6 conduct, but possibly evidence of a person's status, then, as
7 I understand what the Attorney General, at least, says here,
8 is that commanders would not initiate investigations because
9 they would not have evidence of homosexual conduct, they would
10 just have evidence, and maybe not credible or maybe credible,
11 as to status. Is that a correct interpretation?

12 Secretary Aspin: You would have to ask the Attorney
13 General.

14 Senator Bingaman: Well, I am just asking if her
15 interpretation is a credible interpretation of your policy?

16 Secretary Aspin: Yes, that is essentially what we
17 interpret to be the policy.

18 Senator Bingaman: Okay.

19 Let me just ask one other line of questioning. As I
20 understand it, until February of this year, the whole policy
21 related to this issue was a matter of DOD of Secretary of
22 Defense directive. It was not statutory. Now, what you
23 issued just in the last few days, again, is DOD, Secretary of
24 Defense directive. Is that correct?

25 Secretary Aspin: Correct.

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1 Senator Bingaman: Now, is it your position that that is
2 how the matter should be handled, or would you prefer to have
3 us codify this in the statute?

4 Secretary Aspin: The statement which we issued yesterday
5 is scheduled to go into effect on October 1st, because it
6 would normally take a length of time to get the regulations
7 disseminated and people informed of the policy. And it is our
8 view that that is sufficient. But, of course, the Congress
9 can do what they want. I mean, I do believe that it is
10 essentially up to the Congress whether they want to try and
11 codify it and put it into law or not.

12 We believe that the policy directive has worked in the
13 past and the policy directive will work in the future.

14 Senator Bingaman: That is all I had, Mr. Chairman.

15 Chairman Nunn: Thank you, Senator Bingaman.

16 Senator Bingaman, you raised some very good questions,
17 and we really -- I see the general counsel sitting back there
18 -- this has to be pinned down. We cannot have a commander out
19 there saying, "What do I do if somebody says call the Attorney
20 General?"

21 Secretary Aspin: No, it is not going to be "call the
22 Attorney General."

23 General Powell: This is not a new situation,
24 Mr. Chairman and Senator Bingaman. There is not one of us in
25 uniform sitting at this table now who has not had an

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1 individual soldier, sailor, airmen, or marine come in at one
2 time or another when we were company commander or battalion
3 commander and say something about someone else, either that
4 they were homosexual or they were doing something else that
5 was brought to the commander's attention.

6 The commander, at that point, has to examine the source
7 of the information. He has to measure it against any other
8 sources of information he has, and make an informed judgment
9 as to whether or not this is information that should be acted
10 on. Is it credible information to be acted on?

11 The difference with the new policy is that the
12 presumption is that it is not. Under the old policy, we would
13 have been off on what we have been accused of -- witch hunts.
14 Under the new policy, the commander is told it really has to
15 be, as the Secretary said, it really has to be dragged up on
16 the radar screen for you to start using scarce investigative
17 resources or your own time to go after this.

18 So, what I would expect to happen out there in each of
19 our orderly rooms and in captains' offices aboard ships, is
20 that when this kind of information comes along, the commanders
21 will examine it carefully and measure it against all other
22 kinds of information before deciding whether it warrants any
23 kind of investigation or is just to be filed away and see if
24 additional information comes along later that would suggest an
25 investigation is necessary.

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1 This is somewhat different than the way it might have
2 happened two or three or four years ago. So I think it is a
3 significant shift in emphasis on how commanders are supposed
4 to deal with this. But perhaps one of my colleagues would
5 expound on this.

6 Chairman Nunn: But, General Powell, if the commander
7 thought that was a credible statement and that the person
8 telling him thought it was a credible statement, that
9 commander, under the way I read this policy, would have the
10 authority if they so desired, to initiate an investigation.

11 General Powell: The commander answerable to his superior
12 commander could make such a judgment and will be held
13 accountable for the judgment he makes.

14 Chairman Nunn: Let me yield to Senator McCain.

15 Senator McCain: Going right along with what that
16 discussion was, and I am pleased to be next, according to the
17 memorandum for the President from the Attorney General, the
18 last chapter states clearly to me:

19 The policy would substantially change the pre-January
20 investigative policies. Applicants for military service would
21 not be questioned about their sexual orientation or behavior.
22 Investigations would no longer be conducted for the sole
23 purpose of determining an individual's sexual orientation.
24 Commanders will initiate investigations only where there is
25 credible evidence of homosexual conduct.

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1 Now, in answer to Senator Bingaman's question, if someone
2 tells someone who tells the commanding office, that is not
3 homosexual conduct. That is no reason to initiate an
4 investigation. Yet, Secretary Aspin just said that there is
5 reason to do so.

6 Secretary Aspin: Senator, in the policy, conduct is
7 defined as statements. A statement is a conduct in the
8 policy.

9 Senator McCain: So what you are saying is that, but,
10 yet, being in a homosexual parade or marching in a gay rights
11 rally in civilian clothes is not homosexual conduct.

12 Secretary Aspin: Because a person might be a
13 heterosexual who is in favor of gay rights and attends the gay
14 parade, yes.

15 Senator McCain: If that person dressed in bazaar
16 clothing and under the banner of some organization which
17 advocates certain things, what does that mean?

18 Secretary Aspin: It depends under the circumstances.
19 But the point is that a person should not be automatically
20 barred from attending a gay parade if they are doing in
21 civilian clothes. Because a person attends a gay parade, it
22 does not prove that they are homosexual.

23 Senator McCain: Mr. Secretary, what you are doing is
24 beginning a long, long lawyers' relief fund. This is going to
25 be a situation where case after case after case is going to be

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1 tried in court. It is nebulous. It creates a rebuttable
2 presumption that the service member -- and I am reading from
3 your legislative guidance: A service member who is engaging
4 in a homosexual act or has a propensity or intent to do so.
5 What is a propensity or intent to do so? That can only be
6 decided in court.

7 What you are doing here, frankly, is, as I say, we are
8 going to see case after case after case. Already the
9 homosexual community has announced -- it is in all the
10 newspapers -- that they will take this all to court, and they
11 will get their justice, in their view, in court. And what you
12 have done is ducked the issue.

13 And, frankly -- well, I have no further questions,
14 Mr. Chairman, except to say that I think that there is very
15 little doubt as to what you have done here is muddied the
16 issue to an incredible degree. Perhaps you have made some
17 advance, in your view, some improvement, in your view, but,
18 clearly, this is fodder for legal challenges.

19 I suggest that you come in with a supplemental
20 appropriation for increases in the JAG corps.

21 Secretary Aspin: Senator, let me try and respond to that
22 just very briefly, and then maybe let General Powell respond
23 also. This is not that unusual in the way policy is
24 implemented. What will follow from this is a set of
25 directions and kind of rules of thumb that people will develop

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1 in terms of how do you judge these kind of issues. And the
2 issues will be dealt with on the basis of individuals, whether
3 they kind of fall within the kind of boundaries of acceptable
4 behavior or the kind of behavior that will trigger an
5 investigation.

6 And there will develop from this a kind of set of rules
7 of thumb and guidelines.

8 Senator McCain: It will develop. It will develop after
9 several court cases.

10 Secretary Aspin: No, no, it is laid out there. They are
11 laid out there in the policy in the backup sheets to the
12 statement. And each of those policies is laid out. And I
13 think it is an eminently workable policy. And I think the
14 people sitting here before you, the Joint Chiefs, will tell
15 you that it is a workable policy.

16 General Powell: I do not know how you could say to a
17 heterosexual service member that if they chose to go to a gay
18 rights parade, either to observe it or to make a statement
19 about their view of it, but they themselves are heterosexual,
20 that we should tell them they cannot do that or that we should
21 take some action against them for doing it.

22 Senator McCain: Well, how about, General Powell, if they
23 went in transvestite clothing?

24 General Powell: I think that would be something that I,
25 as a commander, would find troubling and I would begin to

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1 wonder about that situation. But just the attendance, solely,
2 at the parade is not enough.

3 Senator McCain: This policy says marching in a gay
4 rights rally in civilian clothes will not, in and of
5 themselves, constitute credible evidence that would provide a
6 basis for initiating an investigation.

7 General Powell: I would still take a hard look at it to
8 see whether the costuming that was used started to slop over
9 the good grounds of order and discipline.

10 Senator McCain: According to this regulation, you
11 cannot.

12 General Powell: Senator, this is the problem we have had
13 with the regulations that exist now. We are in court now.
14 And as the Attorney General says --

15 Senator McCain: I am not defending the present
16 regulations. We are examining the proposed regulations.

17 General Powell: Yes, but you are comparing them, that we
18 will need new platoons of lawyers. We have had platoons of
19 lawyers before. And with the new policy, at least from the
20 standpoint of the general counsel of the Department of Defense
21 and of the Attorney General, it would be a more defensible
22 policy than the policy we are moving away from, sir.

23 Senator McCain: Thank you, Mr. Chairman.

24 Chairman Nunn: Thank you, Senator McCain.

25 Senator Graham I believe is next.

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1 Senator Graham: Thank you, Mr. Chairman.

2 I would like to go back to the basic policy rationale for
3 why we are doing this in the context of the effect on unit
4 cohesion. It seems to me that there are several levels. The
5 pre-January level might be called the status level. That is,
6 if you were a homosexual, that was considered to be
7 incompatible with military service. We attempted to enforce
8 that both at the time of entry and through scrutiny throughout
9 a period of service.

10 Is that an accurate description?

11 General Powell: Yes, sir.

12 Senator Graham: A second level might be the difference
13 between open and closed, that homosexuals would be allowed in
14 the military or there would not be a screening point of entry
15 and an aggressive pursuit while in as long as they chose to
16 not disclose their status. That would be what I would call
17 level two.

18 Would that be an accurate statement?

19 General Powell: Yes, sir.

20 General Mundy: I am not sure it is, Senator. Let me
21 jump in here.

22 What we have talked about in the policy is sexual
23 orientation. We have said everybody has one, some for the
24 same sex, maybe some for the other. We do not know. We do
25 not choose to ask. So we really do not know. So there is not

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1 a suggestion in the policy that homosexuals, who know they are
2 and who want to declare they are, will be acceptable in
3 military service.

4 Senator Graham: I am suggesting that we have gone past
5 level two, because we accept the fact that a person can make
6 an open statement that they are homosexual and then rebut the
7 presumption of that statement, which is that they are a
8 practicing homosexual.

9 So, theoretically, you can state that you are gay, but if
10 you can meet the presumption that you have not practiced that
11 status, you would be allowed to continue in the military.

12 Secretary Aspin: No, Senator. That policy is the
13 current policy. We are not changing the policy in that
14 regard. The rebuttable presumption is part of current policy.

15 General Mundy: The rebuttal presumption, Senator, if I
16 could go back some of the discussions that we had earlier.

17 Senator Graham: Is the rebuttable presumption today that
18 you are homosexual or that you are a non-practicing
19 homosexual?

20 Secretary Aspin: The presumption is that if you say you
21 are gay that you are engaged in homosexual conduct, and that
22 you can present evidence to rebut that under the rebuttable
23 presumption policy. It is a very hard case to make, but it is
24 in the law today. That is not different in the policy.

25 Senator Graham: So you are saying that the current

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1 policy is that a person can be a self-professed gay as long as
2 they can meet the test of being a non-practicing
3 self-professed gay?

4 Secretary Aspin: No.

5 Senator Graham: What do they have to do under the
6 current policy?

7 Secretary Aspin: They have to present evidence that they
8 are not involved in homosexual conduct.

9 Senator Graham: I guess that the line I am trying to
10 draw is -- and maybe there is no differentiation, but I
11 understood the current standard was that if a person says I am
12 gay, they have the opportunity subsequently to overcome the
13 presumption by stating that was a frivolous remark or I was
14 not serious about it

15 Secretary Aspin: Correct.

16 Senator Graham: I read this policy to be somewhat
17 different.

18 Secretary Aspin: The same policy.

19 Senator Graham: This is the same. So under this policy
20 a person could not meet the presumption by being able to
21 demonstrate that they do not engage in homosexual acts and do
22 not have a propensity to do so.

23 Secretary Aspin: Senator, you ought to ask this of the
24 lawyers tomorrow. All that I am saying is that whatever this
25 policy is, it is not changed under these guidelines. This is

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1 the same policy because the wording is the same as the current
2 policy.

3 Senator Graham: So you are saying that in terms of
4 effect on unit cohesion, the change that we are making is that
5 we are not -- that the unit would not know that there had been
6 a prescreen of homosexuals, that there would not be an active
7 pursuit of homosexuals who might have come into the military,
8 but they would at least be assured that no one would be a
9 self-professed homosexual and be allowed to continue to serve.

10 Secretary Aspin: Correct.

11 Senator Graham: And it is the statement that, as a
12 matter of policy, that difference of being in or out in terms
13 of public disclosure is the key factor in terms of impact on
14 unit cohesion and effectiveness.

15 Secretary Aspin: It is the same as the policy was in the
16 past on that issue.

17 Senator Graham: But in the past we had had a tight
18 screen which was intended to keep people who were homosexuals
19 out of the service in the first instance. We are not going to
20 have that screen now.

21 Secretary Aspin: But in this regard, as far as this
22 rebuttable presumption policy, there is no difference.

23 Senator Graham: Okay. I misunderstood. I thought there
24 was a difference in the question of the rebuttable
25 presumption. But I am trying to go back understanding what

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1 the policy is. Essentially is the difference between the
2 pre-January policy and this policy, then, the issue of the
3 degree to which the services attempt by prescreen and
4 relatively aggressive investigation of existing service
5 members to ferret out homosexuals?

6 Secretary Aspin: Yes. The policy, Senator, is don't
7 ask, don't tell, don't pursue. We are saying in this policy,
8 don't tell. The policy before was don't tell. The don't tell
9 part is not different. The don't ask is different, the don't
10 pursue is different. The don't ask is a policy which will not
11 be part of the forms, it will not be part of the inquisition
12 here, and the don't pursue is the issue of investigations and
13 witch hunts.

14 Senator Graham: Thank you.

15 Chairman Nunn: Thank you, Senator Graham. I believe
16 Senator Coats is next.

17 Senator Coats: Thank you, Mr. Chairman.

18 Admiral Jeremiah, I trust that your right arm is not in a
19 sling as a result of trying to reach a consensus on this
20 policy.

21 [Laughter.]

22 Admiral Jeremiah: Preventive maintenance, sir.

23 Senator Coats: We are getting to the crux of the issue
24 here, and that is the legal interpretation of all of this, and
25 I know our hearing tomorrow is designed to address that

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1 question specifically.

2 But we are just starting to tap into what I think are
3 some of the inconsistencies and maybe even direct
4 contradictions that exist in the policy you are presenting.
5 Even the President yesterday interpreted at his second press
6 conference with the attorney general a provision differently
7 than what he had announced at 2:00, and it makes me wonder if
8 the commander in chief does not understand it, how can we get
9 the commanders in the field to fully understand this.

10 But we will explore those legal differences tomorrow,
11 although I would say that is really the crux of the issue.
12 And I would agree with Senator Nunn that we have a
13 constitutional responsibility to have Congress formulate
14 personnel policies for the military, and not have that done by
15 adjudication. My own conclusion is that we are going to have
16 a very substantial amount of adjudication and policy by
17 adjudication if this committee cannot tie down some of these
18 inconsistencies and these legal loopholes.

19 Senator McCain has raised some questions that are
20 literally the tip of the iceberg. We could probably define a
21 thousand scenarios here this morning about what a soldier can
22 or cannot do in uniform, out of uniform; on base, off base; on
23 duty, off duty. Every one of those is going to raise a
24 question mark in the commanders' minds as to whether or not he
25 has an obligation to ask further questions, to investigate, to

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1 examine, particularly if he concludes that this is undermining
2 unit cohesiveness. We have all indicated that that is the
3 most important criteria.

4 I do not know how a commander can possibly conclude that
5 one of his soldiers in his unit who just marched in drag in a
6 gay parade, and the knowledge of that within the unit, that
7 that does not undermine unit cohesiveness. That is contrary
8 to the testimony of virtually every witness that came before
9 us in six exhaustive hearings. I do not know how he can
10 possibly not conclude that that is credible evidence that goes
11 to a declaration of status that undermines unit cohesiveness.
12 But we will, I guess, deal with that tomorrow.

13 Now, as I understand this, Mr. Secretary, the conclusion
14 here is that the policy is to be conduct based and not status
15 based. Is that correct?

16 Secretary Aspin: Correct.

17 Senator Coats: In two instances in your statement -- you
18 indicated on the 19th you signed a directive making conduct,
19 not orientation but conduct, the focus of the policy, and that
20 is restated on page 5. We are going to judge a person's
21 suitability for service on the basis of conduct. By the same
22 token, the President's injunctive to the Department of Defense
23 was that the policy be practical, realistic, and consistent.

24 Is it realistic to conclude that an individual who is a
25 homosexual will not engage in any expression of his sexuality

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1 or her sexuality during their entire time of service? Is that
2 realistic, knowing what we know about human beings, human
3 sexuality?

4 Secretary Aspin: No, I do not believe it is.

5 Senator Coats: Well, why would we then want a policy
6 that essentially says homosexuality is not a bar to service in
7 the military when we conclude that it is not realistic to
8 think that service in the military will not result in evidence
9 that will lead a commander to conclude that there has to be a
10 discharge. Are we not just inviting more discharges?

11 Secretary Aspin: No, because basically, Senator, you
12 cannot judge a person by what is in their head. We do not
13 know what is in their head, but we do know what their conduct
14 is, or we can know their conduct. It is just the basis ought
15 to be on the conduct because, frankly, that is what we can see
16 and that is what we can judge.

17 Senator Coats: But aren't we just setting ourselves up
18 for a nightmare of investigations?

19 Secretary Aspin: No.

20 Senator Coats: A nightmare of commanders attempting to
21 try to decide what it is they need to do to protect their
22 unit, to keep their morale in good order, and discipline. I
23 mean if we conclude that it is not realistic to think that it
24 will not result in expression of sexual orientation or sexual
25 declaration, why would we want to pretend on the way in it is

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1 not a problem, but as soon as you are in the service, that we
2 know that ultimately this is going to result in some kind of
3 problem?

4 Secretary Aspin: You do not know that. And in any case,
5 the issue that you can judge the policy on is essentially
6 conduct, and that is why the basis is on conduct.

7 Senator Coats: Well, I am just asking whether that is
8 realistic.

9 Secretary Aspin: I think it is, and I think not only is
10 it realistic, it is a workable policy, and it is a policy
11 which the Justice Department says they can defend much better
12 than the current policy. It is one of the points that the
13 Justice Department makes in that letter about why the current
14 policy is more clearly defensible in the courts than -- the
15 proposed policy is more defensible in the courts than the old
16 policy.

17 Senator Coats: So we are saying you can be a homosexual,
18 but you cannot act like a homosexual.

19 Secretary Aspin: What the policy says is that we judge
20 people on the basis of their conduct. It is the conduct that
21 will come to the attention of people and it is the conduct on
22 which the commanders will judge.

23 Senator Coats: I have one last real quick question and a
24 yes or no answer will be sufficient. I would just like to ask
25 each, because Senator Thurmond asked this question just, I

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1 believe, of Admiral Kelso and not the rest.

2 Let me just go down the line with General Mundy. The
3 question is do you believe that homosexuality is compatible or
4 incompatible with military service?

5 General Mundy: Incompatible.

6 General Sullivan: Incompatible.

7 General Powell: Open homosexuality in a unit setting is
8 incompatible.

9 Admiral Jeremiah: Open homosexuality would be
10 incompatible.

11 Admiral Kelso: Incompatible.

12 General McPeak: I believe that the question of open
13 versus closeted behavior is the key here. I agree that open
14 homosexuality works against unit cohesion.

15 Senator Coats: Believing that, are you satisfied, then,
16 that the only statement given to us by the secretary and by
17 those of you in the panel -- the only statement relative to
18 that says: "The Department of Defense has long held that, as a
19 general rule, homosexuality is incompatible with military
20 service." It does not say that it is or that you still
21 believe it or you still hold that, it just simply says it has
22 long held that. I do not know how a court would interpret
23 that any other way than that that is not current policy,
24 otherwise why not state it directly.

25 The way I read that is that the Department of Defense has

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1 held that as a general rule homosexuality is incompatible, but
2 there is nothing in this policy that states affirmatively that
3 homosexuality is incompatible with military service. Can all
4 of you accept this as the only declaration of that, which to
5 me is the basic premise of the whole policy on which
6 everything else has to follow? Either it is or it is not, and
7 everything else in the policy has to follow.

8 Secretary Aspin: Senator, may I also call attention to
9 the second part of the paragraph there, which I think all of
10 the members of the Joint Chiefs would also ascribe to, which
11 is that, as a general rule, homosexuality is incompatible with
12 military service, but it is also true that individual people
13 with a homosexual orientation have served with distinction in
14 the armed forces of the United States, and it is therefore the
15 policy of the United States to judge the conduct.

16 That is a whole series of statements. The first
17 statement is that, as a general rule, homosexuality is
18 incompatible. But there are exceptions to the rule --

19 Senator Coats: But it does not say --

20 Secretary Aspin: May I finish, sir?

21 Senator Coats: I am sorry.

22 Secretary Aspin: The second statement is that there are
23 exceptions to the rule and that individual homosexuals have
24 served with distinction in the armed forces of the United
25 States, therefore it is the policy of the department to judge

1 people based upon their conduct. And the policy is to judge
2 people based upon their conduct. That is the policy that
3 evolves from these two statements of policy which go before.

4 Chairman Nunn: Senator Coats, I am sorry, but the time
5 has run. Do you want to wrap up with a comment?

6 Senator Coats: Just a 30 second statement. I will not
7 ask another question. I do not believe -- I think you slipped
8 the issue very nicely here by saying that the Department of
9 Defense has long held that as a general rule. I think we
10 would be much more forthright, candid, and honest with the
11 American people if we just concluded one way or another what
12 the current position is on that very critical question, and I
13 do not believe this states that. I think it is very vague as
14 to what the current policy is on that question.

15 Chairman Nunn: Thank you, Senator Coats. I want to call
16 on Senator Lieberman, but my eye catches Senator Bryan who is
17 a new member of our committee, not a new member of the Senate.
18 But we welcome you very much to this committee. And I had
19 welcomed Senator Hutchinson earlier, but not in front of this
20 audience, so we welcome both of you as new members of the
21 committee.

22 And I say, looking at you at the long end of the table
23 and at the end of the line for questioning, I know it gets
24 frustrating but I must say that some of my most enjoyable
25 years in the Senate was when I was at the very bottom of the

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1 line.

2 [Laughter.]

3 Chairman Nunn: So do not get discouraged. It does not
4 get more fun as you move up. You just get to ask questions
5 sooner, that is all.

6 Let's see, I believe Senator Lieberman was next.

7 Senator Lieberman: Thank you, Mr. Chairman. I join in
8 that welcome to Senator Bryan. I told him that not only is he
9 a good friend, but his arrival here finally gives me some
10 status on this side of the committee and I appreciate it a
11 lot.

12 Secretary Aspin and General Powell, members of the Joint
13 Chiefs, I share some of the frustration about the details of
14 the policy that was announced yesterday and about what someone
15 else here called some of the inconsistencies. There are
16 apparent inconsistencies in it, and it seems to me that it is
17 important to remember as we look at this policy what the
18 President said yesterday and what I know, Secretary Aspin, you
19 said today, which is that it is a compromise. In some ways
20 that may be the best way to understand it.

21 It is a compromise between those who wanted to maintain a
22 total ban on homosexuals in military service and those who
23 wanted to lift the ban totally. In some more personal ways it
24 is a compromise between -- at some levels between the
25 President and the military. In other ways it is a compromise

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1 that recognizes what the President may have wanted initially
2 and what any reasonable estimate would say that the Congress
3 would accept. After all, there is broad, substantial support
4 here in Congress, as I see it, for maintaining the ban as it
5 used to exist, or, I would guess, majority support for the
6 kind of don't ask, don't tell policy that Chairman Nunn has
7 talked about.

8 So this is a compromise, and I think it helps to
9 understand it that way. And what I am about to say I say
10 respectfully, and sometimes when I look at it I remember
11 that -- at the policy guidelines, I remember that old line
12 about a camel being a horse designed by a committee. There
13 are a lot of ways in which this does not quite flow.

14 And it leads me to ask this general policy question from
15 my own questioning about whether perhaps this policy tries to
16 say too much, tries to do too much. And let me approach it
17 this way: I think you all indicated in response to Senator
18 Coats most recent question that homosexuality itself is not
19 necessarily inconsistent with military service. We know that
20 homosexuals have served in the military. But that, to use
21 General Powell's phrase, open homosexuality -- or as others
22 might put it, it depends on how an individual behaves.

23 And that is part of the problem in trying to take this
24 very personalized, not to mention awkward element of human
25 behavior, and turn it into guidelines and a directive, to go

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1 into the detail that this goes into. And I question
2 whether -- I mean there are a lot of questions that one could
3 ask.

4 Is there really a difference between homosexual
5 orientation and homosexual conduct that matters in most cases;
6 the kinds of questions that have been raised about certain
7 kinds of behavior that might be private homosexual conduct
8 that are allowed under the -- I am sorry, that are disallowed,
9 that are cause for separation, and yet very public conduct
10 like marching in a gay parade or reading gay magazines, which
11 presumably would be detrimental to unit cohesion, are allowed.

12 So let me just come back to one final statement. One of
13 the witnesses before the committee, I believe it was the
14 psychiatrist from Walter Reed though I am not sure, said that
15 the question here really is the way in which an individual
16 soldier conducts himself or herself. And to put it in a
17 different way -- I am paraphrasing the doctor -- that if a
18 soldier identifies primarily as a -- a gay soldier identifies
19 primarily as a soldier and secondarily, or whatever else, as
20 gay, that it is not the salient part of his or her identity,
21 then that soldier is not going to have a problem, not be a
22 problem for unit cohesion. If the opposite is true, then it
23 will be a problem.

24 So all of this leads me to ask whether it might not have
25 been a better policy, since we all seem to accept the don't

1 ask part of this, to have said that it is not inherently
2 inconsistent for homosexuals to serve ably, honorably, bravely
3 in the military service; it is a question of how an
4 individual goes at it.

5 And therefore rather than trying to define every
6 different kind of behavior that is acceptable or unacceptable,
7 since the standard here is unit cohesion as it affects
8 military effectiveness which is the unique and critical role
9 that we are talking about, why not leave it to the unit
10 commander to make the judgment?

11 Rather than trying to spell out every separate case that
12 this given soldier is acting in a way that adversely affects
13 unit cohesion and I, the unit commander, am going to take
14 disciplinary action against them whereas other soldiers who
15 might, in fact -- might not only be homosexual and be involved
16 in homosexual conduct, could act in a certain unit in a way
17 that would not affect the unit cohesion.

18 So I would ask that of you, Secretary Aspin and General
19 Powell and any of the chiefs?

20 Secretary Aspin: Let me say, Senator Lieberman, that is
21 exactly what we are doing in this policy, we are leaving it to
22 the individual commander, the unit commander. And let me say
23 that as a basic policy, the issue of the compromise -- I mean
24 I would put it differently. I think it is a compromise
25 between two different clashing sets of rights, as General

1 Powell said here, and that is what we are trying to reconcile.

2 Senator Lieberman: Right.

3 Secretary Aspin: That being the case, there is clearly
4 going to be ambiguity and gray areas that we cannot foresee
5 here. We cannot foresee all of the particular cases that are
6 likely to arise, nor should we be surprised. The only
7 unambiguous positions are at the extremes, at the end.

8 If you adopted a policy that says no gays, no way, no how
9 and you said we are against gays serving in the military and
10 we are going to ask them the questions and we are going to do
11 the investigations and we are going to make sure we throw them
12 out and all that, that is an unambiguous position. The other
13 extreme where you say open to gays, let them come in, anybody
14 can serve, it does not matter, we have no restraints on any
15 way that people behave or how they express themselves, total
16 opening, that is an unambiguous position too. Anything
17 inbetween, no matter where you draw the line or how you try
18 and work the process, it is going to run into these kind of
19 situations where you have gray areas and hypotheticals and
20 difficult, ambiguous cases.

21 But in the last analysis, this policy leaves it up to the
22 unit commanders. Now, there is going to be from each of these
23 departments and from the Department of Defense generally some
24 kind of guidelines for them, but we are essentially going to
25 leave it up to the unit commanders to institute this policy

1 and to make it work. And their purpose and their goal in
2 life, and we say it in several places in here, is the issue of
3 unit cohesion. I mean their responsibility is to maintain a
4 fighting force.

5 Senator Lieberman: So why spell it out in such detail in
6 the guidelines? In other words, why not -- when something is
7 inherent -- I think your description is right. Either
8 extreme, no ambiguity; the rest, ambiguity. Why try to spell
9 it out? Why not leave it to the unit commanders who we give a
10 lot of authority to, as it is?

11 Secretary Aspin: Well, you have got to give some
12 guidelines because you do not want treatment of people in one
13 unit to be vastly different from the treatment in another
14 unit. So we have got to give general guidelines to a policy
15 to make sure that the thing has a general uniformity among
16 services and within services. But beyond that, the last, the
17 ultimate test of this thing is the unit commander.

18 Senator Lieberman: I would ask whether General Powell or
19 any of the chiefs have a response to that, just in terms of
20 the role that you are obviously very intimately familiar with,
21 which is the role of the unit commander here.

22 General Powell: I think we have just drawn the line just
23 about where it ought to be, Senator. We talked about this a
24 great deal between the two extremes that the secretary pointed
25 out. And we tried to minimize the number of whereases and

1 wherefores and conditions and rules that were put into the
2 policy statement in order to give the commander as much
3 flexibility as possible to deal with this issue in a
4 reasonable, humane way.

5 But we had to give them some guidance, and after many
6 hours of discussion the guidance that we have put into this
7 policy is about what we thought we needed to give our
8 commanders without unduly tying their hands or making it that
9 much more difficult a policy to implement.

10 But let me yield to my colleagues. Carl.

11 General Mundy: Well, Senator, I think you make a very
12 good point, and that is a lesson that I was taught way back
13 when I was a captain one time and tried to explain why I could
14 not do something. And it was explained to me that regulations
15 are a guide for the intelligent and a crutch for others. We
16 cannot overly legalize any given policy. We cannot write down
17 every given situation that a commander in the field has got to
18 judge. So your point is very well taken in that respect.

19 The other point that I think merits making here is that
20 commanders are the best we have. Commanders, by and large,
21 are about the best this Nation has to be responsible for --
22 ultimately, finally responsible for the sons and daughters
23 that are put into the armed forces. These are good men and
24 women out there who are working their hearts out dealing with
25 people problems every day of the week.

1 And some of these deal here. There are judgmental
2 factors. It does make a difference, the circumstances under
3 which somebody might say I am gay or under which somebody
4 might go to a parade. All of those things are why we pay
5 commanders and select them to do that. So your point is very
6 well made, sir, in that respect.

7 I would suggest with regard to the policy, really the
8 point that we are getting to here, that the basic compromises
9 in this policy are in the definition of orientation. Remember
10 that we have never had orientation defined until it came up as
11 a part of this very agonizing 11 months or so that we have all
12 been trying to come to grips and deal with this. That now has
13 been defined as a part of the policy. We defined orientation.

14 But conduct is not and never has been acceptable. You
15 cannot perform in an exemplary fashion if your conduct is such
16 that it is in violation of the Uniform Code of Military
17 Justice. So if conduct is a defining act, you know we have an
18 inconsistency there. So conduct has to be the basis for
19 judgment in this policy.

20 General Sullivan: Senator, I think that, first of all,
21 all of us at this table here have worked to the secretary's
22 point long and hard, to make this as comprehensive as we can.
23 And the policy does empower our commanders. It puts the power
24 in them to investigate, to consider. And we have stated twice
25 that the commander remains responsible. And we have stated

1 that twice in this policy.

2 Frankly, I think it is a workable policy. I think they
3 will understand that. They may need some more guidance from
4 us, and the secretary has given us time to do that and we will
5 do that. But I think we have empowered them and we have put
6 this action in their hands.

7 Senator Lieberman: Thank you. Mr. Chairman, it is up to
8 you as to whether you want the other chiefs to respond. I am
9 over my time.

10 Admiral Kelso: I agree that the commanders have the
11 responsibility here and the authority to act to determine when
12 an investigation is required or not required. This is a
13 change to some extent, but not a complete change to them.
14 They are having to make those kind of decisions and have had
15 to make those kind of decisions. There has certainly been a
16 period of time here where the pressure to not investigate has
17 grown over the years even with the old policy, so it has
18 been -- their view has been adjusted with time as a result of
19 that.

20 So I think it is still going to be a judgment. And, as
21 General Powell said earlier, we have this problem today to
22 decide whether a soldier or a sailor who does something that
23 they should not do or what they demonstrate on or what they do
24 not demonstrate on, and I might say what they come and talk to
25 people about. It is a judgment as to whether that is out of

1 line or in line. So I do not think this is going to be
2 different. It is going to be a shift, but I think they will
3 understand that and will take it and do the job, sir.

4 General McPeak: Sir, I would like to put this problem in
5 context. It is an important problem, but it needs to be seen
6 in context. Last year the Air Force discharged 70,000 people.
7 10,000 were discharged involuntarily, 115 of them for
8 homosexuality-related reasons. You know, 2/10ths of 1 percent
9 of our discharges involved homosexuality issues, and of that
10 two-thirds of it was for conduct, behavior, not simple
11 statement questions. Ten times that many people were
12 discharged for being overweight.

13 Our commanders will spend in order of magnitude more time
14 on the problem of obesity than they will on homosexuality, if
15 that statistic stands up over time. So this is an important
16 problem, but I would not want to exaggerate the difficulties
17 it gives a commander.

18 Senator Lieberman: Well, I appreciate the answer. I
19 think those are very illuminating numbers, and important for
20 us and our Nation to remember as we go through this process
21 and, in a way -- I think in part I am thinking as a lawyer
22 here, and maybe reflecting some of what was said on the other
23 side of the table, which is that the more you spell out, the
24 more difficulty you may get yourself into.

25 And in a way, perhaps I would yearn for a situation where

1 we would state some general values which seem to be broadly
2 held, and then give the unit commanders the latitude to
3 enforce those values and develop what you might call a common
4 law here. Case by case, they could develop it in the exercise
5 of their judgment. I agree with you, these are the best that
6 we have, and give them the latitude to make those judgments.
7 And I think over time this will work itself out.

8 Chairman Nunn: Senator Lieberman.

9 Senator Lieberman: Excuse me, Mr. Chairman.

10 Chairman Nunn: We have run over here a little bit. It
11 would be helpful if we could get statistics like General
12 McPeak just gave for the Air Force for each of the services.
13 That is something that we have wanted, particularly how much
14 of the discharge on homosexuality is based on conduct versus
15 simply statements, or simply -- of course, conduct includes
16 statements. So if you have a breakdown on that, though, that
17 would be helpful.

18 General Sullivan: Let me -- can I jump in?

19 Chairman Nunn: Yes.

20 General Sullivan: Senator, since February of this year
21 we have released 46 people. Of that number, two for acts --

22 Chairman Nunn: 46 people on homosexual grounds.

23 General Sullivan: Right, released. Two were for acts
24 and 46 were for admissions. You know, they just admitted they
25 were and they left, all honorable, and so they have gone. So

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1 that is in keeping with the normal trend. Last year it was
2 137. And like General McPeak, I will give you these numbers.
3 .16, for instance, of all discharges, 1983 to 1991.

4 Chairman Nunn: It would be interesting to see on the
5 admissions, whether that was because someone asked the
6 question or whether it was a voluntary admission.

7 General Sullivan: No, we could not ask because that was
8 after the policy changed.

9 Chairman Nunn: So that was all since the interim policy
10 was in effect.

11 General Sullivan: That is since the interim policy
12 which, in itself is very interesting. All of these people, by
13 the way, that is 46, they all just left. They are not in the
14 IRR. To the best of my knowledge, they are not in the IRR.

15 General Mundy: It runs about the same, Senator. 3/10ths
16 of 1 percent for us, 80 percent of which are conduct related,
17 not questioning or not admissions.

18 Admiral Kelso: For the Navy it is -- in the last 4 years
19 it is a half a percent of all discharged were for
20 homosexuality. And of those people discharged for punitive
21 reasons, 2-1/2 percent were for homosexuality and 80 percent
22 were for conduct, sir.

23 Chairman Nunn: So the overwhelming majority is the
24 conduct.

25 Admiral Kelso: Yes, sir.

1 Chairman Nunn: Senator Smith.

2 Senator Smith: Thank you, Mr. Chairman. Mr. Chairman, I
3 yield 1 minute to Senator Warner of my time.

4 Senator Warner: Just a short observation, Mr. Secretary,
5 which you can address as you go along. As I listen carefully,
6 you are asking homosexuals to take an oath of celibacy, mental
7 and physical, for the balance of their terms of active duty.
8 I think that is unrealistic, unfair, discriminatory. It is
9 not a step forward, it is a step back, and we are going to be
10 back in this hearing room after the Federal courts knock it
11 down in less than a year.

12 Secretary Aspin: Senator, the only thing I can tell you
13 is that -- everybody is a lawyer here in this business, but we
14 have gone over this policy and you have got the statement
15 there from the Justice Department that they believe that the
16 policy is, with the three changes that they cite, more
17 defensible right now than the old policy was before the
18 changes were made.

19 Senator Warner: I thank Senator Smith.

20 Senator Smith: So a lawyer then, Mr. Secretary, for,
21 say, a homosexual soldier could say you are discriminating
22 against him by asking him to be celibate, and bring a lawsuit
23 against the armed forces saying that heterosexuals also ought
24 be celibate. You are not applying the same standards to them.

25 Secretary Aspin: Senator, you know that the courts have

1 long held -- and, again, I think these are questions you ought
2 to ask the panel tomorrow.

3 Senator Smith: I will.

4 Secretary Aspin: But the courts have long held a
5 difference, that they treat the military different from the
6 rest of society. Clearly in the case of the rest of society,
7 any kind of distinction like that would not be tolerated. In
8 the case of the military, because of the unique nature of
9 military service and the unique requirements of unit cohesion
10 and the unique nature of the military, which is, after all, to
11 win wars, that the courts have given a certain amount of
12 latitude to the military in order to manage their personnel
13 affairs. And distinctions like that are in the current law
14 and they are going to be in the changes in the law.

15 Senator Smith: Well, as a member of the committee and,
16 frankly, as a member of the American people, I think I, like
17 them, have strong feelings about the issue. Most of them have
18 been expressed. But at the same time, in fairness I have
19 tried to listen to all sides and tried to make a judgment on
20 the administration policy.

21 And as all of the gentlemen at the table know, I have the
22 greatest respect for each and every one of them, including the
23 secretary, but as I watched you as this discussion took place
24 it sort of reminded me of the individual who had been
25 condemned to death but got the opportunity to select his

1 punishment in terms of how the death penalty would be
2 implemented.

3 I just -- I am extremely disappointed with the product
4 that is before us. Simply put, I think it is a charade, I
5 think it is ludicrous. The policy is intellectually dishonest
6 and it is unworkable. It is simply unworkable. If the
7 President of the United States had sent you here and said
8 look, I made a promise in the campaign to lift the ban, I am
9 going to stick with it and we will let the Congress and the
10 American people make the determination one way or the other.

11 There are certain things that ought not to be
12 compromised. I do not see how you can compromise this. It
13 just does not work. To say that a homosexual can serve in the
14 military as long as he or she does not manifest their
15 orientation is pathetic. Human nature just -- as Senator
16 Coats said, you cannot subject human nature to a policy which
17 mandates celibacy. And the policy says that homosexuals can
18 serve and act out their homosexual desires as long as they
19 don't get caught. But that' is a violation of the Uniform
20 Code of Military Justice.

21 And I do not want to get into the legal part, but just
22 briefly to say article 125, any person subject to this
23 chapter -- this is sodomy -- who engages in unnatural carnal
24 copulation with another person of the same or opposite sex or
25 with an animal is guilty of sodomy. That is what the UCMJ

1 says. And then you say well, it is conduct not status, but
2 you also said that you are going to treat private conduct
3 privately. Well, if you are going to treat private conduct
4 privately, Mr. Secretary, then you are condoning it and you
5 are violating the UCMJ because the UCMJ does not distinguish
6 that.

7 You disagree.

8 Secretary Aspin: We are making a distinction, Senator,
9 between what is permitted and the investigative policy.
10 Homosexual acts, homosexual statements are not permitted.
11 People are not allowed under this law, under this regulation,
12 to conduct homosexual acts or to say statements that I am gay.

13 But the question in another part of the regulation is how
14 will the military deploy their investigative resources, and
15 they will not deploy their investigative resources with these
16 issues as a high priority. They will deploy their resources
17 in a way that can be determined -- in which these kind of
18 things are a lower priority. That is the difference in the
19 policy.

20 And if I could say, Senator, I think that the question
21 about whether this is a workable policy or not needs to be
22 addressed to the gentlemen here. The gentlemen here believe
23 that this is a workable policy. It is working with them that
24 we came up with this policy. Now, they are the people who
25 have the experience in the military, they are the people that

1 have the experience with working personnel policies across a
2 whole range of issues. I mean there is a whole range of
3 issues that people who work personnel policies have to deal
4 with, and these are the people that have to work the policies
5 and these are the people who tell you that they believe this
6 policy is a workable policy.

7 Senator Smith: Well, it is pretty clear what the
8 directive and the wish of the President is, and they are good
9 soldiers and they are going to try to carry out that policy
10 and I respect that. But still --

11 Secretary Aspin: That is not what they said, Senator.
12 What they said was they agreed with the policy, not that they
13 would try to carry it out. They agreed that this is -- and
14 let me finish, if I could -- that this is a serious and
15 difficult, difficult issue. That, basically, all of the
16 gentlemen here at this table believe, first of all, that, as a
17 general rule, homosexuality is incompatible with military
18 service. But they all know that there are cases where
19 individuals who are of a homosexual orientation have served
20 with distinction in the armed forces of the United States.

21 Now we are trying to put together a policy which is
22 consistent with both of those beliefs, and what we have here
23 is a policy that I think -- one that is based upon conduct is
24 a policy that will work, and these gentlemen sitting up here
25 believe it will work.

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1 Senator Smith: I would just like to conclude. Let me
2 just say that here is why it will not work, Mr. Secretary,
3 because you are exacerbating the problem. Right now you are
4 asking people -- you are saying to people if you are
5 homosexual, do not come in. Now you are saying if you are
6 homosexual, come on in but be a celibate.

7 Secretary Aspin: Absolutely not.

8 Senator Smith: And that exacerbates the problem. Well,
9 of course you are.

10 Secretary Aspin: No, I am not.

11 Senator Smith: Well then you are not -- then you are
12 violating the UCMJ, because you are not saying it is conduct,
13 not status. What you are saying is it is conduct, but we are
14 going to look the other way.

15 Secretary Aspin: No. Let me tell you what the policy
16 is. The policy is basically, I believe -- and I am speaking
17 now for myself as much as anything else. I believe that
18 basically if a person is homosexual, they would be much more
19 comfortable pursuing a different profession than the military
20 profession.

21 And if anybody 18, 19 year old, whether they are male or
22 female, were gay and they came to me and asked for my advice,
23 I would say -- and they said they were gay, I would say you
24 will be much more comfortable in another career. That
25 basically the military is a career which requires a lot of

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1 self sacrifice. You give up a lot of freedom that you have in
2 civilian life when you join the military.

3 One example is that you have to stay within a certain
4 weight. Another is that you have to cut your hair a certain
5 length. You have to wear a uniform during certain parts of
6 the day. You have to -- you give up certain individual rights
7 of free speech, First Amendment rights. You give up a whole
8 series of rights. If you are gay, that burden of giving up
9 those rights is likely to be more onerous than if you are a
10 heterosexual.

11 So I would advocate -- if anybody came and talked to me
12 about it, I would say if you are of homosexual orientation I
13 would advise do not join the military.

14 Senator Smith: But many will.

15 Secretary Aspin: Let me finish. The point about this is
16 if somebody wants to be a soldier first and a gay person
17 second, and they really want to join the military and they
18 pledge to abide by the rules, under this proposal they will be
19 able to do so. And the point is that what we are saying is
20 that you have to be a soldier first. A soldier first, and
21 that is not unlike anything else.

22 When you are a soldier you are a soldier first and a
23 black militant second, or a soldier first and a feminist
24 second. You are a soldier first. The main thing is to be a
25 soldier and to enforce it. The point about this is that if a

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1 person fits into that category, and there are clearly people
2 who have fit into that category, they ought to be allowed to
3 serve, and that is what this policy allows.

4 General Powell: May I add a word, Senator?

5 Senator, I think I have to say the chiefs do not believe
6 they have been shotgunned into this policy just because we are
7 good soldiers. We are good soldiers, and we will faithfully
8 execute any instruction we are given. This particular
9 instruction, we were given the opportunity to participate in
10 its development and we fully support it, and I think we have
11 already testified both as a personal matter as well as a
12 professional matter.

13 Senator Smith: Well, Mr. Chairman, my time has expired,
14 but I just want to say this, that you also, gentlemen -- also
15 said that it will enhance readiness with a possible exception
16 of General Mundy, who indicated he did not accept that
17 premise, but I do not think it will enhance readiness, I think
18 it will undermine it.

19 It is not going to give soldiers and commanders peace of
20 mind at all. It is going to create chaos, and it is going to
21 hurt unit cohesion and the mission, and that has been stated
22 by the rank and file people from privates to generals in
23 testimony before this committee and in all of the field
24 hearings that we have had, so I am just surprised at the
25 conclusion.

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1 General Powell: For the most part the policy has been
2 working for the past 6 months, Senator, and I think that what
3 we do now is improve upon that policy, and I believe it is
4 workable, as do my colleagues.

5 Chairman Nunn: Thank you, Senator Smith. Senator Levin.

6 Senator Levin: Thank you, Mr. Chairman.

7 I would like to hear precisely on that issue from each of
8 the chiefs. We have heard now from General Powell that in
9 your personal and professional opinion this policy announced
10 yesterday is workable, that you support it, and I would like
11 to go down the line.

12 General McPeak, is it your professional and personal
13 opinion that the policy is workable, and do you support it?

14 General McPeak: Yes.

15 Admiral Kelso: Yes, and I think it has been about this
16 way for the last 6 months.

17 General Sullivan: Yes.

18 General Mundy: I do, Senator.

19 Senator Levin: Okay.

20 One of the questions that was asked had to do with
21 whether or not homosexuality is compatible or incompatible
22 with military service, and after the two at this end of the
23 table answered, the word open homosexuality was added as a
24 qualifier, and then General Powell said that open
25 homosexuality in his opinion is incompatible with military

1 service, and I think Admiral Jeremiah did, too, and Admiral
2 Kelso said open homosexuality is incompatible with military
3 service, I believe, is that correct?

4 Admiral Kelso: I think I said homosexuality.

5 General McPeak: I said that the question of openness is
6 critical here, and I believe that declared homosexuality is
7 incompatible with military service.

8 Senator Levin: Do you accept that statement that it is
9 open homosexuality which is incompatible with military
10 service, General Sullivan?

11 General Sullivan: I support the policy as it is written,
12 which says homosexuality is incompatible with military service
13 because it interferes with the factors critical to combat
14 effectiveness, including unit morale and so forth.

15 Senator Levin: Now, tell us what you are reading, where
16 you are reading from.

17 General Sullivan: Page 1 of the policy as it was
18 published yesterday.

19 Senator Levin: Now, that is the statement that it has
20 been the -- that has long held that. This is the statement,
21 to give you the full sentence, that "the Department of Defense
22 has long held that as a general rule homosexuality is
23 incompatible."

24 General Sullivan: And then it says, it goes on in the
25 next paragraph to say that, "we will judge the suitability of

1 persons to serve on the basis of their conduct."

2 Senator Levin: Now let me read two paragraphs down and
3 ask you if you agree with this statement. This is the policy
4 enunciated yesterday -- not what has long been the policy, but
5 what is the policy as of now. It is near the bottom of
6 page 1.

7 "Homosexual conduct will be grounds for separation from
8 the military services" -- I am sorry. Let me start again.
9 "Sexual conduct will be grounds for separation from the
10 military services. Sexual orientation is considered a
11 personal and private matter and homosexual orientation is not
12 a bar to service entry or continued service unless manifested
13 by homosexual conduct."

14 General McPeak, do you agree with that?

15 General McPeak: Yes, sir, I do.

16 Senator Levin: Admiral.

17 Admiral Kelso: I do.

18 Admiral Jeremiah: Yes.

19 General Sullivan: Yes, sir.

20 General Mundy: Yes, sir.

21 Senator Levin: You all agree with what I just read.

22 General Mundy: Yes, sir.

23 Senator Levin: Next, I want to ask you about some
24 principles of military personnel policies and military
25 activity. Is it an important principle of military life,

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1 military activity and military personnel policies that orders
2 of commanders be obeyed?

3 General Powell: Of course.

4 Senator Levin: Does everybody agree with that? I just
5 want to establish some important principles of military
6 activity here. You all agree with that.

7 Next, would you say -- and here I am quoting, to be fair
8 for everybody, from Directive 1350.2. Would you agree that it
9 is an important -- and I know you have that right there. I
10 just want to give you the source of my quote, but would you
11 agree that the programs and activities in the military shall
12 be free from social, personal, or institutional barriers that
13 prevent people from rising to as high a level of
14 responsibility as possible?

15 General, I have quoted from a directive. Do you agree
16 with that statement?

17 General Powell: As a general proposition. I do not see
18 it in context. I am not familiar with the title of the
19 regulations.

20 Senator Levin: As a general proposition. Well, let me
21 give you --

22 General Powell: I really would like to see the whole
23 thing in context. You have an advantage on me, Senator.

24 Senator Levin: That is why I gave you the source.

25 General Powell: The number does not help me.

1 Senator Levin: I will give you more context. DOD's
2 Equal Opportunity Manual defines equal opportunity as "the
3 right of all persons to participate in and benefit from
4 programs and activities for which they are qualified. These
5 programs and activities shall be free from social, personal,
6 or institutional barriers that prevent people from rising to
7 as high a level of responsibility as possible.

8 Do you agree with that as a principle?

9 General Powell: As a general principle.

10 Senator Levin: Does everybody else agree? You are all
11 nodding yes.

12 Would you agree that for people who comply with this
13 policy that has just been enunciated, that it is important
14 that they -- and I want, now, here to talk about homosexual
15 members who comply with this policy -- that they not be
16 subject to harassment and violence. General.

17 General Powell: No soldier, sailor, airman or marine
18 should be subjected to harassment or violence, and there is
19 nothing in what you said to suggest that you have identified
20 somebody who would be subject to harassment or violence.

21 Senator Levin: But would you agree that that general
22 policy that the person should not be subject -- in the
23 military should not be subject to harassment includes
24 homosexual persons who comply with the policy enunciated
25 yesterday?

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1 General Powell: Yes.

2 General Mundy: Yes.

3 General Sullivan: Yes.

4 Admiral Kelso: Yes.

5 General McPeak: Yes.

6 Senator Levin: All right. The rebuttable presumption
7 issue, it is a rebuttable presumption we have talked about
8 here that if one announces that he or she is a homosexual,
9 that he or she is engaged in illegal activities that are
10 homosexual but it is rebuttable, and you define your policy
11 homosexual activities as sexual bodily contact with another
12 person, is that correct? Is that all your understanding that,
13 in terms of the homosexual activity --

14 General Powell: Homosexual act.

15 Senator Levin: That involves bodily contact with another
16 person, is that correct, general?

17 General Powell: That is what the policy says.

18 Senator Levin: And finally, would you not agree that we
19 have some practical problems -- we talk about practicality,
20 and by the way, I must tell you that I do believe that in
21 focusing on conduct instead of on status that the President,
22 and more important that you, Mr. Secretary, and in the first
23 instance -- not more important, but in the first instance you
24 and the chairman and the other chiefs did all you could under
25 difficult circumstances to resolve this issue, and I respect

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1 what you have done, and I think you have done the best you
2 could.

3 I think if it is workable, and that is the key to me, and
4 you have told me it is workable, then it becomes a reasonable
5 solution to a difficult policy. But -- I lost the strain of
6 my question, which is probably just as well, since I am over
7 my time anyway.

8 [Laughter.]

9 General Powell: We are greatly relieved.

10 [Laughter.]

11 Senator Levin: Saved by the bell.

12 [Laughter.]

13 Chairman Nunn: Senator Levin, I thought that was one of
14 the best questions you ever posed.

15 [Laughter.]

16 Chairman Nunn: I was looking forward to the answer.

17 [Laughter.]

18 Senator Levin: In that case, I just found it,
19 Mr. Chairman.

20 [Laughter.]

21 Chairman Nunn: Senator Faircloth.

22 Senator Faircloth: Thank you, Mr. Chairman. I think we
23 have about ground the status, orientation, conduct, and the
24 Code of Military Justice to a pulp and liquified it.

25 I would like to ask some questions and maybe bring the

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1 problem to where it is.

2 All of you, generals and admirals, have testified this is
3 a pretty good idea. You all like it and think it is going to
4 work, and it will help the army. Which ones of you had
5 planned on suggesting it to the Armed Services Committee if
6 the President had not brought it up?

7 I mean, it is a good idea now. Were you all going to
8 bring it up if he had not?

9 Secretary Aspin: I think, Senator, that eventually --
10 and as I said in my opening statement, I think that even had
11 George Bush been reelected we would be dealing with this issue
12 in some form here over the next 4 years because there is just
13 too many cases in the courts, too many amendments floating
14 around, too many issues out there with the ROTC program.

15 Senator Faircloth: Let me ask another question, then. I
16 will ask this. I will start with General Mundy on this one.
17 If President Clinton had gone through basic training at Parris
18 Island or any of the other four military basic training group
19 headquarters, do you think we would be here today discussing
20 this question?

21 General Mundy: Well, that is subjective, Senator. I do
22 not know that I can get inside the President's thought
23 process.

24 Senator Faircloth: General, when I was at Fort Bragg,
25 Fort Jackson, washing cooking pots and the pfc came back and

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1 told me to wash them over, I was reminded of a little litany
2 and rhyme that I had to learn in fifth grade Latin, and it is
3 still very much applicable here today.

4 "Big fleas have little fleas upon their backs to bite
5 them. Little fleas have lesser fleas, ad infinitum." Now,
6 washing that pan, I was at the end of infinitum, but the
7 President at the top. He has sent you this order, and here we
8 go with it.

9 But let me ask you another question.

10 General Powell: Senator, can I take it?

11 Senator Faircloth: Certainly.

12 General Powell: There are many senior people in this
13 body who have been through boot camp who have been in training
14 facilities and have come to a different conclusion on this
15 issue, and so I think it is unfair to single out the President
16 in this regard.

17 The President came into office with not only a political
18 commitment but he also had a conviction. However he arrived
19 at that --

20 Senator Faircloth: He had a what?

21 General Powell: A conviction as well as a political
22 commitment. However he arrived at that commitment and
23 conviction, he had it when he became the Commander in Chief of
24 the Armed Forces of the United States, and he discussed this
25 matter with us early on, and as early as 4 days after the

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1 Inauguration, we as a body told him that there were changes we
2 could make to the policy that we would find acceptable, and
3 that change principally was to stop asking.

4 We have not been asking for 6 months, and we have shown
5 that there can be a workable policy. We have had some
6 difficulties, but they are minor.

7 I think the policy the President announced yesterday
8 takes us a little further, and takes us further in a way that
9 we will be able to implement this new policy.

10 Senator Faircloth: General, if you wanted to inflict
11 moral problems, confusion, legal entanglements, lawsuits upon
12 the military, can you think of a better subject to have
13 brought it up than this one quicker, and would have gotten to
14 it quicker, what it would have been? Can you think of
15 anything that would have done it quicker?

16 General Powell: I can think of a few environmental
17 issues and a lot of other issues, but Senator, we are where we
18 are. The issue is before the administration, the military
19 leadership, and before the Congress.

20 As Secretary Aspin pointed out, we were going to be
21 facing this no matter who was elected. Frankly, I was facing
22 it last year. All the chiefs were facing it last year and the
23 year before, when Mr. Aspin was chairman of the House Armed
24 Services Committee and members of the House Armed Services
25 Committee wanted to raise the issue and introduced legislation

1 for that purpose, so the issue has been with us, frankly, for
2 the entire period of time that I have been chairman.

3 Senator Faircloth: How long has this current -- or the
4 one that was in place prior to January 21st, or whatever, how
5 long has that policy been in effect?

6 General Powell: A little over 10 years, sir.

7 Senator Faircloth: Why was it put into effect?

8 General Powell: It was put in place in 1981, I guess it
9 was, or 1982.

10 Senator Faircloth: Why?

11 General Powell: Because it was felt that there was a
12 need for clarification of the policy. There was a need to
13 give guidance to the services and to the commanders and to the
14 field as to what acceptable practices were and what policy
15 everybody should be following. There was confusion prior to
16 that time as to what actually we should be doing.

17 Senator Faircloth: All right, the policy was put into
18 effect to keep homosexuals out of the military. That was its
19 basic purpose.

20 General Powell: The policy was for the purpose of
21 implementing the principle that homosexuality was incompatible
22 with military service.

23 Senator Faircloth: In simple language it was --

24 General Powell: In simple language, to keep homosexuals
25 out of the service.

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1 Senator Faircloth: Now, what has changed in the last 10
2 years to make us want to change the policy?

3 General Powell: 10 years of experience, 10 years of
4 change in our society, a new President who has a conviction to
5 move in that direction -- he is our commander in chief --
6 congressional challenges, legal challenges, and frankly,
7 serious soul-searching on the part of the chiefs to see if we
8 could not in some way try to accommodate these changing social
9 forces and do it in a way that was not detrimental to good
10 order and discipline and did not adversely impact the
11 effectiveness of the service, and I think we have been able to
12 do that with this policy.

13 Senator Faircloth: Well, we just got through Secretary
14 Aspin saying the military is different. It has special needs
15 and special requirements. It inflicts special requirements
16 upon those people who participate in the military.

17 We have heard repeatedly that homosexuality is not
18 compatible with military service. Now we have clearly
19 established the military is different from -- is not a social
20 issue, so why are we trying to bring upon the military, which
21 has these special needs, a social activity? Why are we
22 bringing a social problem and inflicting it upon the special
23 needs of the military?

24 I will say to Admiral Kelso, if he can enforce and
25 understand and handle all of the discussion that we have had

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1 here today in the grinding of the minutia, he can sell his
2 launch and walk out to the ship.

3 General Powell: Senator, the military does have special
4 needs, and I am pleased that the President of the United
5 States and Commander in Chief recognizes that we have special
6 needs and took the time to listen to those special needs as we
7 developed this policy over the last 6 months.

8 Where we are now is that we are no longer asking the
9 question. It is not a matter of asking the young recruit to
10 take an oath of anything -- celibacy or anything else.

11 What we are saying, these are the unique features of the
12 military service. We will not ask the question with respect
13 to your sexual orientation, and if you can enter the military
14 service, whatever your sexual orientation, but not show
15 homosexual conduct, then that is a matter between you and your
16 conscience and your God as to whether or not you can handle
17 that.

18 But if you cannot, and you must manifest this behavior in
19 some way, or after entry in the service you subsequently
20 discover that you have a different orientation than you
21 thought you did, then at that point it is best that you
22 separate yourself from the service and we will do it under
23 honorable circumstances in a way that is a genuine parting of
24 the ways.

25 I think it is a policy that has worked. It has worked

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1 pretty well for the last 6 months, as a couple of the chiefs
2 have indicated, and I think we can make it work in the future.

3 General Sullivan: I think it is worthy of note by the
4 committee -- and I will give you these figures, Mr. Chairman.
5 46 people, of that 44, really left. They said, I am, and I am
6 gone, and they just left. They are not in the individual
7 ready reserve. They are out as civilians. This is in the 6-
8 month period. They have not litigated. They could have, and
9 that is, I think, worthy of note.

10 Senator Faircloth: My time is up, but one quick
11 question: Did anybody decide they were going to bring this up
12 to the Armed Services Committee, if the President had not?

13 Secretary Aspin: I think eventually we would have --

14 Senator Faircloth: I am talking to the Generals.

15 Secretary Aspin: Oh, sorry. I cannot bring it up.

16 General McPeak: Senator, I think the President exercised
17 leadership on this, and that does not make me uncomfortable.
18 He is Commander in Chief; he leads on lots of issues.

19 Chairman Nunn: Thank you, Senator Faircloth. Senator
20 Bryan?

21 Senator Bryan: Thank you very much, Mr. Chairman. You
22 noted in your introductory comments that I would be at the end
23 of the line. I am reminded that 35 years ago this very month,
24 I was, to use the language of our colleague, Senator
25 Faircloth, I was one of those lesser fleas at Fort Lewis,

1 Washington, doing my appointed rounds as well.

2 I understand, and I have considerable sympathy with the
3 concerns that have been articulated by the chairman and each
4 of the service chiefs, in terms of the unique features of
5 military life. And the concern that we do nothing to
6 undermine the readiness, that we do nothing to undermine the
7 effectiveness, and that we need to recognize that there are
8 some unique circumstances. I accept that premise.

9 Let me ask a series of questions, however, to try to
10 point out an area that maybe you can enlighten me on further.
11 Prior to January of this year, if an individual identified
12 himself or herself as being homosexual, that it was not just a
13 statement that was made in jest or to provoke a controversy
14 per se, but in his or her own thought process, orientation,
15 was in fact revealing candidly his or her sexual orientation,
16 that would have been grounds for separation, would it not?

17 Secretary Aspin: Yes, sir.

18 Senator Bryan: And the concern that you have all
19 expressed is about the cohesiveness and what that would do to
20 the individuals that associate in a unit that is charged with
21 the responsibility, that ultimately may call upon the service
22 member to sacrifice his or her life for another member of the
23 unit, but ultimately to satisfy the assignment or the task
24 that is given to the unit in our National policy.

25 What is a little less clear to me is that, today, as I

1 understand the policy, if an individual identifies himself or
2 herself as being homosexual, but does not perform any act of
3 homosexuality -- we are saying, do not ask, do not tell, do
4 not pursue -- that individual could complete a career in the
5 military service. Am I correct, on that assumption?

6 General Mundy: No, sir.

7 Senator Bryan: Could not?

8 General Mundy: Could not.

9 Senator Bryan: If he identified himself or herself as a
10 homosexual, but did not commit any act of homosexuality, could
11 that individual not complete -- ?

12 General Mundy: Homosexual conduct is defined as a
13 statement. Act is defined as the behavior, Senator.

14 Senator Bryan: As the behavior. But, I mean, is he or
15 she not entitled to a rebuttable presumption? And is the
16 rebuttable presumption that he or she is not homosexual?

17 Secretary Aspin: There is a rebuttable presumption,
18 Senator. There was a rebuttable presumption in the law
19 before. This is not different. The do not tell part, is not
20 different from before.

21 The previous policy was, ask, do not tell, investigate.
22 The current policy is, do not ask, do not tell, do not
23 investigate. The proposed policy.

24 Senator Bryan: So, the rebuttable presumption is a
25 rebuttable presumption that the individual then, in effect,

1 would carry the burden of establishing that he or she was not
2 homosexual?

3 Secretary Aspin: Correct.

4 Senator Bryan: So, anyone who is identified as such,
5 comes forward and acknowledges that his or her --

6 Secretary Aspin: Yes, and this is the distinction
7 between going into, marching in a gay parade, or even going
8 into a gay bar. I mean, a person may go into a gay bar and be
9 heterosexual. They may march in -- but if a person says they
10 are gay, that probably means they are gay.

11 Senator Bryan: And so, in that respect, the policy does
12 not fundamentally change then. Once an individual identifies
13 himself or herself as being gay, and says look, that is my
14 sexual orientation, notwithstanding the fact that I do not
15 intend to carry out this orientation by any type of
16 affirmative conduct, that, per se, merits a separation.

17 Secretary Aspin: That they would have the opportunity to
18 prove that, which is a very difficult thing to prove, the
19 rebuttable presumption, and that is no different. They had
20 that before.

21 Senator Bryan: But let me be clear on that. You keep
22 saying, the rebuttable presumption, Mr. Secretary. Is the
23 rebuttable presumption that they are not gay, or the
24 rebuttable presumption that they will not carry out any type
25 of affirmative?

1 Secretary Aspin: Either way. The point is conduct, and
2 either way. But the point is, it is a very difficult thing.

3 Chairman Nunn: I think you are talking past each other.
4 If I could interject, the Senator is asking whether the
5 rebuttable presumption is that they are gay, once they have
6 said they said they are gay, and then they have the right to
7 rebut that with their own proof, or whether it is the
8 contrary.

9 Senator Bryan: That is correct.

10 Secretary Aspin: Or whether it is what?

11 Chairman Nunn: Or whether the presumption is they are
12 not gay.

13 Secretary Aspin: No. The presumption is, if they say
14 it, they are gay.

15 Chairman Nunn: Right.

16 Senator Bryan: And they would then have the burden to
17 disprove that, in effect?

18 Secretary Aspin: Yes, sir.

19 Senator Bryan: I guess the last question that I would
20 have, and I recognize that this is a very difficult issue that
21 has engaged a good bit of debate, not only in this committee
22 but across the Nation over the period of the last few months,
23 is, in terms of the policy that you have advanced, I would
24 like to ask each of the service chiefs to respond.

25 In your view, if the policy as announced by the

1 Secretary's directive were fully implemented as is, would that
2 policy in any way compromise the military effectiveness of any
3 of the Armed Forces of the United States of America?

4 General Mundy: No, sir. I believe it would be
5 consistent with the military effectiveness.

6 General Sullivan: Senator, I have said this before and I
7 will say it again: This, I can support this policy; we can
8 carry it out. We must get on with our lives. I think the
9 policy as it was stated on the 19th of July, 1993, is one that
10 we can get on with.

11 Senator Bryan: I understand that, but I do not think
12 that is a response to my question.

13 General Sullivan: Well, the response to your question
14 is, I do not think it is going to hurt readiness.

15 General Powell: I agree.

16 Admiral Kelso: I agree, sir. I do not think it will.

17 General McPeak: I agree.

18 Senator Bryan: I note the chairman has reminded me, my
19 time has expired. And I thank him and my colleagues.

20 Chairman Nunn: Thank you, Senator Bryan.

21 Senator Hutchinson?

22 Senator Hutchinson: Yes, thank you, Mr. Chairman.
23 First, I would like to ask if I could put in the record that,
24 if I had been here, I would have supported the nomination of
25 John Dalton for Secretary of the Navy.

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1 Chairman Nunn: We will record you as voting for him.
2 The record is open until late this afternoon. So we will
3 record you voting affirmatively.

4 Senator Hutchinson: Thank you very much. One vantage
5 point that a person who is at the end of totem pole has,
6 Mr. Chairman, is that by the time you get to the end, you have
7 pretty much had every question asked, and heard the answers.
8 So I will not belabor it for too long a period, except to say
9 that I heard General Sullivan's eloquent discussion of what
10 was cohesiveness, and that you need to instill in your troops
11 the feeling and the commitment that, I will die for you and
12 you must be willing to die to protect me. And that keeps you
13 going.

14 I am concerned when you inject an issue upon which debate
15 is fierce, both within and without the military, that it is
16 going to damage the ability to instill in your troops that
17 kind of spirit and morale. I will look at this as we go into
18 the discussion tomorrow, because I think one of the problems
19 is the vagueness. One of the problems is we do not know where
20 we are.

21 If you are overweight, according to the code, you are
22 out. If your eyesight does not meet the code, you are out.
23 But to say that open homosexuality is a disqualification, but
24 here are the ways that we can determine if you are out or not,
25 I think does raise questions that make it not as easily

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1 determined that you are out. So I am concerned about it.

2 But I have heard your statements; I respect you very
3 much. I certainly want to do what will be the goal for all of
4 us, which is to make sure that the morale is what it needs to
5 be, so that I will be willing to die for you, and you would be
6 willing to die for me on the field. And I am not convinced
7 that we are there.

8 But I certainly want to give every benefit of listening
9 to the people that are the experts. And so that is what I am
10 trying to do. Thank you, Mr. Chairman. Being at the end also
11 means you do not take all of your time.

12 Chairman Nunn: Thank you very much. You and Senator
13 Bryan have set a rare and unusual precedent here, both of you
14 yielding back time. I believe Senator Robb is next.

15 Senator Robb: Thank you, Mr. Chairman. Let me say at
16 the outset, I would respectfully disagree with your suggestion
17 earlier on that there is great joy being the last to propose
18 questions. I hope a little later on, informally, you can tell
19 me some of the joys that you have experienced of being the
20 last questioner. But in the almost 5 years that I have been
21 here, I have found very little joy of being the last
22 questioner, whatever the circumstances.

23 Let me just say, and I will be very brief myself, I
24 certainly envy those who see this question exclusively in
25 absolute terms, and without any sense of ambiguity. Anyone

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1 who has listened to the Secretary of Defense, the Chairman of
2 the Joint Chiefs, and all of the Joint Chiefs here this
3 morning, and certainly been through any part of the hearings
4 that we have held on this issue, understands that it is a very
5 difficult one.

6 When I was asked yesterday, right after the President and
7 the Secretary made their statements, what my reaction was, I
8 made a very short statement. I just thought I would read it,
9 in conclusion here.

10 I said, the progress in civil rights is seldom rapid or
11 painless. Yet to compromise does shift the focus from who an
12 individual is, to what the individual does, and allows
13 qualified individuals, who are willing to fight and die for
14 their country, to serve without prejudice if they adhere to a
15 strict code of conduct.

16 I went to say, with strong leadership and greater
17 understanding, more changes will come in time; but for now,
18 the active support of General Powell and each of the
19 individual service chiefs, as far as I am concerned, is
20 critical. And I recognize that it is a compromise for the
21 Joint Chiefs as well.

22 And I added one caveat: I hope that Congress will resist
23 any attempt to intervene legislatively. I say that now, only
24 in as the concluding questioner on this panel, to suggest to
25 you that, almost everyone disagrees with some part of the

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1 policy, I do not think either the President or any of you
2 individually would necessarily draw the line in precisely the
3 same spot that you have drawn the line, and some of us had
4 hoped for a line in a different spot.

5 The fact that the service chiefs and the Chairman of the
6 Joint Chiefs are actively on board, and supporting this
7 policy, is, I think, probably at this particular stage the
8 most important single element. And I told many with whom I
9 shared my views, including several of those who are seated at
10 the table this morning and others, that I thought it was
11 important that we find something that the Chairman and the
12 Joint Chiefs, and the individual services, could agree with.
13 And I certainly agree with the suggestion made several times,
14 that the unit commanders are the ones who are given a fairly
15 broad leeway or discretion in carrying out this particular
16 policy.

17 It is going to be difficult; we are going to have
18 additional challenges to it. I think that any existing policy
19 is challenged in Court; and I think it would be unrealistic to
20 assume that any new policy would not also be challenged in
21 Court. But that cannot keep you, or anyone else, from
22 continuing to examine policy changes, and make changes where
23 appropriate.

24 I have a single question for the Secretary of Defense, if
25 I could. Secretary Aspin, you made reference in your opening

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1 statement to the fact that you worked very closely with the
2 military working group, consisting of flag and general
3 officers, and with the Rand Corporation, and profited from the
4 input that they received. Could you make available to this
5 committee any of the written deliberations or conclusions, or
6 the study that was the result of that particular, or those two
7 particular consultative processes in which you engaged?

8 Secretary Aspin: Let me, Senator, look at the issue and
9 see whether we cannot make some of that available. As a
10 general proposition, the answer is yes. We may have some
11 issues of confidentiality, in terms of advice; but we will try
12 and make available the information that you seek.

13 Senator Robb: Thank you, Mr. Secretary. It seems to me,
14 given the amount of time and thought that have gone into this,
15 that having the benefit of those additional professionally
16 developed responses to the challenge would be very useful to
17 the committee. With that, I thank the chairman, the Joint
18 Chiefs, and the Secretary for coming before us this morning.
19 And Mr. Chairman, I thank you for this opportunity.

20 Chairman Nunn: Thank you, Senator Robb. Let me ask my
21 final question here, to each of the chiefs. I would like each
22 of the chiefs to give you personal views as to whether the
23 July 19th policy announced by the President and signed by the
24 Secretary of Defense, the Secretary of Defense's policy and
25 directive, can be implemented in a manner that is consistent

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1 with morale, with good order, with discipline, with unit
2 cohesion, and without a degradation in unit readiness?

3 General McPeak?

4 General McPeak: Yes, sir. We will go to work
5 immediately on implementing regulations and procedures. And I
6 do not think there will be any problem whatsoever in carrying
7 this policy out in precisely the way you specified.

8 Chairman Nunn: Admiral Kelso?

9 Admiral Kelso: Yes, sir, Senator. I think we can work
10 to get this policy in place, and it will work, sir.

11 Chairman Nunn: Admiral Jeremiah?

12 Admiral Jeremiah: Yes, sir.

13 Chairman Nunn: General Powell.

14 General Powell: Yes, sir, the Army can implement this
15 policy.

16 Chairman Nunn: General Mundy?

17 General Mundy: Without any qualification. Yes, sir.

18 Chairman Nunn: Thank you. Let me suggest one thing, for
19 the General Counsel tomorrow. I think where we have had some
20 confusion today, and I am afraid it is going to get bigger
21 rather than smaller, and I think most of the questions have
22 been answered. But the area is, is to distinguish between
23 what is new in this policy, and what was existing policy.

24 Some of the big debate today has been on due process type
25 questions that are existing policy. But the way they have

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1 been presented in the last 24 hours has given the impression
2 or the perception, both in the media and in the committee and
3 perhaps the public at large, that this is something new. Like
4 the rebuttable presumption. That is an area that has been
5 difficult today.

6 And if the General Counsel tomorrow could start off with
7 her testimony by saying, here in the new policy is what is
8 really new; and here in the new policy is what was already in
9 existence. I think that would be a big help, in clarifying
10 the record.

11 I would give you 2 or 3 examples. The gay bars. It has
12 been my impression that, all along, there has been no bar, or
13 no automatic expulsion for anyone that was seen in a gay bar.
14 In fact, many bars are not known by many people who walk in
15 them as gay bars; and some of them are. Now, that would be
16 the exception. And my impression is, if a bar was placed off
17 limits, which a commander has a right to do, whether it is a
18 gay bar or another bar, they have the right to place it off
19 limits.

20 It also has been my impression that marching in a gay
21 parade, unless there is further, unless there is something in
22 the parade that gives a further evidence, would not today,
23 before any policy and before President Clinton was put in
24 office or elected, was not grounds for expulsion. Am I right
25 on that?

1 General Powell: Yes, sir.

2 Chairman Nunn: So there is no change in either of those
3 policies. That is what we really need to pin down here,
4 because I think there is some confusion.

5 Secretary Aspin: Senator, let me just say that, as a
6 general proposition, the policy being do not ask, do not tell,
7 do not pursue, the new part is in the do not ask and do not
8 pursue, and not in the do not tell.

9 Chairman Nunn: Even on the don't ask, you get into the
10 presumption, the example about one person saying to another
11 and that person reporting to the commander and what the
12 commander can do and what the commander cannot do at that
13 stage.

14 Secretary Aspin: That is don't pursue.

15 Chairman Nunn: Well, we have a problem with that one,
16 because the way I read all of your statement, Mr. Secretary,
17 is that on that one that that commander does have discretion.

18 Secretary Aspin: Yes.

19 Chairman Nunn: Based on one soldier's comment to another
20 and that soldier reporting it to the commander, that
21 soldier -- as I read all of your statements, written
22 statements, that commander would have the discretion, not the
23 absolute obligation to consider other matters, but would have
24 the discretion to, at that stage, start an investigation.

25 Secretary Aspin: It is up to the individual commander to

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1 determine when he has credible information.

2 Chairman Nunn: Right. I think General Powell --

3 General Powell: He may or not pursue it, Senator.

4 Chairman Nunn: He may or may not. He does not have to,
5 but may.

6 All right, I think we will set the stage for the
7 attorneys tomorrow. I want to yield to Senator Thurmond and
8 we will start back for those who want to ask further questions
9 here. I know you all are ready to depart in a minute, but I
10 do not want to deprive my colleagues.

11 Senator Warner: Should we limit our questions?

12 Chairman Nunn: Does anybody have a real need for a
13 break? We will not be here but another 5 or 10 minutes, I
14 believe.

15 Secretary Aspin: Go ahead.

16 Chairman Nunn: Senator Thurmond.

17 Senator Thurmond: Mr. Chairman, Secretary Aspin, Senator
18 Exon asked a line of questions which get to an interesting
19 point. Is there anything in this policy that indicates to
20 individuals or to courts that the policy is retroactive?

21 Secretary Aspin: No. I think it all takes place as of
22 October 1st.

23 Senator Thurmond: Do those who have been separated have
24 reason to believe they may reenter the military?

25 Secretary Aspin: Well, I think we cannot answer that

1 question at this point totally, Senator. We have been
2 discussing it amongst the Joint Chiefs and I can let them each
3 speak for their individual service. But we have about eight
4 cases which are scattered throughout the services, and we are
5 examining those on an individual and a case-by-case basis.

6 Senator Thurmond: General Powell, what impact, in your
7 opinion, will this policy have on our allies and coalition
8 partners' willingness to permit U.S. forces to train and to be
9 stationed in their countries?

10 General Powell: I do not think it will have any impact.
11 I do not think it will change the current status.

12 Senator Thurmond: General Mundy, I am sure you have met
13 with many family members over the past six months. How do you
14 think this policy will be accepted by Marine Corps family
15 members?

16 General Mundy: It will be accepted very well, I think,
17 Senator. It will assure their concerns about open
18 homosexuality, which has been the focus.

19 Senator Thurmond: That is all the questions I have. I
20 want to thank all you members for being here today and asking
21 the questions very frankly. Thank you.

22 Chairman Nunn: Thank you, Senator Thurmond.

23 Senator Warner.

24 Senator Warner: Thank you. I will be very quick, two
25 questions to the secretary. First, in reading through all the

1 material that descended on us for an hour or so to review it,
2 it is the acts throughout. You talk about an act of
3 homosexuality, conduct of homosexuality, and yet -- and this
4 is the only thing we have, is this thing from the attorney
5 general, and the quote is "homosexuality is incompatible with
6 military service." Why don't you say an act of homosexuality
7 is incompatible, rather than just the broad term
8 homosexuality?

9 Secretary Aspin: Well, we decided that -- the first part
10 of the thing was essentially a philosophical statement which
11 was not an operative paragraph. The operative paragraph is
12 the next paragraph, which --

13 Senator Warner: Well, we do not have it. We do not have
14 the official text.

15 Secretary Aspin: Well, the operative paragraph is that
16 the basis for judgment is conduct. I mean whether you believe
17 that homosexuality is incompatible with military service -- I
18 mean most of the members, as you have heard here, believe that
19 that is the case. They also believe that there are individual
20 members that do have a homosexual orientation who have served
21 with distinction in the armed forces, therefore it is the
22 policy to judge people on the basis of conduct. That is the
23 operating paragraph, Senator.

24 Senator Warner: This does not have it in it.

25 Secretary Aspin: I am sorry.

1 Senator Warner: This is just tactical material. We will
2 get it eventually and we will have a chance to look at with
3 the lawyers. To me that helps, because I continue to come
4 back that this thing as it is now written is simply requiring
5 of the homosexual to take an oath of mental and physical
6 celibacy or abstinence, and I find that so unrealistic.

7 Mr. Secretary, what is the burden of proof that is going
8 to be required by these individuals?

9 Secretary Aspin: You are talking about the individual
10 commanders.

11 Senator Warner: Well, both. Either the commander or the
12 homosexual who has to get up and say I am, but. What is the
13 burden of proof cast on him or her?

14 Secretary Aspin: Under the rebuttable presumption.

15 Senator Warner: Yes.

16 Secretary Aspin: They have to prove, at least to the
17 investigators, that they are not or have not engaged in
18 homosexual conduct.

19 Senator Warner: And that is during hours of professional
20 work or after hours or any period. Celibacy, that is about
21 it, right.

22 Secretary Aspin: It has never been done, Senator.
23 Nobody has ever tried this defense. It is a very tough
24 standard to meet.

25 Senator Warner: Yet you said at least once and I think

1 twice that you recognized that in the history of the military
2 homosexuals have served and have served with distinction.

3 Secretary Aspin: Correct.

4 Senator Warner: It seems to me that this is a change
5 that you are making.

6 Secretary Aspin: No, no. The issue has never come to
7 the point. The point of rebuttable presumption is that if the
8 issue comes to the attention of the authorities and the
9 authorities say you have just you are gay, you have the
10 opportunity to present some evidence to the contrary. But the
11 people who have served have served because it has never come
12 to the attention of anybody in authority. It has never come
13 to the commander's attention.

14 Senator Warner: Well, my earlier question tried to
15 strike a note that there should be some equality between all
16 sexual orientations if this policy is to withstand the
17 scrutiny of the Federal courts.

18 Secretary Aspin: I think there is something about that.
19 We will show you, Senator Warner.

20 Senator Warner: All right. Well, I do not want to take
21 up the time. My time has expired, so I will not be able to
22 pursue these issues.

23 Secretary Aspin: Part of the policy here is to try and
24 get that kind of equality that you are talking about.

25 Senator Warner: Well, I am not sure you achieved it.

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1 You see I have asked what I felt was -- what concerns me,
2 readiness, and each one of the witnesses answered it --
3 obliquely in my judgment -- yes, we are going to have a more
4 ready force because the policy is clear. I cannot find that
5 clarity, and therefore it undermines, in my judgement, the
6 responses of each that because of the clarity of policy we are
7 going to be a more ready, more combat-ready force to defend
8 our country. I cannot find that clarity.

9 Chairman Nunn: Senator Coats.

10 Senator Coats: Mr. Chairman, I know the time is short.
11 I will just ask three hopefully brief questions and hopefully
12 they will lend themselves to brief answers. I just want to
13 follow up on that point, because I do not quite understand
14 this.

15 The attorney general's memo states: "The policy," the
16 new policy, "reiterates the prior Defense Department view that
17 homosexuality is incompatible with military service because it
18 interferes with factors critical to combat effectiveness."
19 But the policy memorandum does not say that. It says "The
20 Department of Defense has long held that as a general rule."
21 Has long held that is not the same as reiterating the policy,
22 and I am just wondering why the inconsistency there, or is
23 there, am I missing something?

24 Secretary Aspin: I do not know that there is an
25 inconsistency. You ought to check with the attorney general

1 or the people who represent the attorney when they come in
2 tomorrow. But, I mean, our policy is stated there. I think
3 that to the extent that we understand these things, the
4 Department has long-held that.

5 Senator Coats: It is your intent that the present policy
6 state the long-held policy.

7 Secretary Aspin: I believe that that is true, yes, that
8 it does state the long-held policy. You just heard the chiefs
9 all talk about, and I do not think they have changed their
10 point of view. The point that we are making, though, is the
11 policy that conduct becomes the judgment.

12 Senator Coats: I understand that. I will ask the
13 attorneys tomorrow, and then we will all be confused.

14 Chairman Nunn: Senator Coats, would it help if we asked
15 the secretary whether by the words "The Department of
16 Defense has long held that" -- it would seem to me by using
17 the word "has" instead of "had," that that continues to be the
18 view of the Department of Defense. If this was past tense you
19 would have used the word "had." Does the word "has" mean that
20 that is still the view of the Department of Defense?

21 Secretary Aspin: That was my intention, yes, sir.

22 Senator Coats: I want to hear the attorneys say that
23 tomorrow, but we will all be confused, I am sure, when they do
24 give us their analysis.

25 Question number two. In your statement today, Mr.

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1 Secretary, you said the constraints of military service
2 require a service member to keep certain aspects of their
3 personal lives private for the benefit of the group. That
4 means no statement by a service member that he or she is a
5 homosexual, and we have talked about that. But yesterday the
6 President said, quote, under this policy a person can say I am
7 a homosexual. Now, did the President misinterpret what the
8 policy was?

9 Secretary Aspin: I am unfamiliar with that. In his
10 speech at the National Defense University?

11 Senator Coats: No, that was during his press conference
12 with the attorney general in response to a question. So there
13 is an inconsistency here, and it may be that the President, in
14 response to the question, simply misunderstood what the policy
15 is, and my point is if the President does not understand the
16 policy as commander in chief, how are we going to get a
17 commander to understand the policy.

18 Because you can say well now who am I supposed to follow?
19 The President's quote is a person can say I am a homosexual
20 and that is not a bar to service, and yet you said no
21 statement by a service member that he or she is as homosexual
22 is acceptable under the new policy, and that is totally
23 contradictory to me.

24 Secretary Aspin: Senator, I was not at the press
25 conference that you are referring to. What I know was that

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1 the President was at the National Defense University and laid
2 out in a speech what his views were, and I heard the speech
3 and read the speech beforehand and I think what he said in the
4 speech was absolutely correct, it is consistent with what we
5 have been saying here today. I honestly do not know what
6 happened in the press conference.

7 Senator Coats: Well, I would suggest that is something
8 we need to clarify.

9 Chairman Nunn: What did he say after he said that? Did
10 he go ahead and say what would happen?

11 Senator Coats: He said but I am going to strictly
12 adhere -- he said: "Under this policy a person can say I am a
13 homosexual but I am going to strictly adhere to the code of
14 conduct." But that directly contradicts the policy as
15 enumerated by the secretary, indicating no statement by a
16 service member that he or she is homosexual.

17 Chairman Nunn: Well, it was not a complete answer. I do
18 not know.

19 Senator Coats: Well, we will let the attorneys wrestle
20 with that one too.

21 One last question. When I asked the question
22 individually do you feel that homosexuality is compatible or
23 incompatible we got into is it open or private, and if it is
24 open I think there is agreement that it is incompatible with
25 military service, it undermines unit cohesiveness. If it is

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1 private there may or may not be a division as to whether or
2 not it is compatible and whether it undermines.

3 But, General Mundy, don't I recall a situation back a few
4 years ago at Parris Island where there was not open
5 homosexuality present but private homosexuality present, that
6 caused a lot of problems and undermined unit cohesiveness?

7 General Mundy: Yes, Senator you do. Back in the early
8 eighties, I believe, there was a great deal of aggressiveness
9 towards recruits. And that was, I think, isolated to the
10 woman Marine recruit training battalion and it was a major
11 problem for us with a number of people involved.

12 Senator Coats: But it would not be clarified as open.
13 No one was openly declaring homosexuality.

14 General Mundy: It was not a declaration. It was the
15 conduct that was taking place by homosexuals.

16 Senator Coats: So would you describe that as private?
17 Well, you would say that the conduct then would fall within
18 this policy, or how do you square that with incompatibility
19 whether it is open or closed?

20 General Mundy: Well, I believe what the policy says,
21 Senator, is that homosexual orientation is not a bar to
22 enlistment, not a bar to accession into the armed forces.
23 That is orientation. That is distinct and separate from
24 behavior or from conduct. Conduct includes all of those
25 things, of stating I am or of behaving as much or marriage,

1 those sorts of things that have been defined in the policy
2 statement.

3 Senator Coats: So what took place there at Parris Island
4 that definitely undermined cohesion --

5 General Mundy: -- Was conduct.

6 Senator Coats: And therefore would be incompatible.

7 General Mundy: Yes, sir.

8 Senator Coats: Thank you. Thank you, Mr. Chairman.

9 Chairman Nunn: Thank you, Senator Coats.

10 Thank you, Mr. Secretary and all the chiefs, General
11 Powell, all of you, thank you very much for being here and for
12 all of your hard work on this issue.

13 We will hear from general counsel tomorrow and move from
14 there. Thank you.

15 [Whereupon, at 12:15 p.m., the hearing adjourned.]

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JOINT STAFF ACTION PROCESSING FORM

246338

TO <i>VDJS R/30</i>	CLASSIFICATION UNCLASSIFIED	ACTION NUMBER J-1 2591/192-00	FILE
THRU VDJS		<i>WdV</i>	ORIG SUSPENSE SJS SUSPENSE 30 JULY 1993 J SUSPENSE
SUBJECT Hearing on Homosexuals in the Military 20 July 1993, Before the Senate Armed Services Committee, GEN Powell and ADM Jeremiah as Witnesses		ACTION <input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> SIGNATURE <input type="checkbox"/> INFORMATION	

ACTION SUMMARY

1. Purpose. To edit the transcript of the hearing on homosexuals in the military as requested* by OCJCS/LA.

2. Background. CJCS and VCJCS testified before the SASC on 20 July 1993. The testimony focused on the new DOD policy concerning homosexuals in the military.

3. Discussion. The transcript has been reviewed and edited (Tab). Only minor changes to CJCS and VCJCS statements -- capitalizations, redundant phrases -- are proposed.

4. Recommendation. VDJS approve the edited transcript at the Tab and forward to OCJCS/LA for CJCS and VCJCS review and approval.

Approve *R/30* Disapprove _____ Other _____

Attachment

Reference:

* SJS 2591/192-00

COORDINATION/APPROVAL

OFFICE	NAME & DATE	EXT	OFFICE	NAME & DATE	EXT
J-1	<i>P.A. Tracey</i> 7/30	76098	LC	(b)(6)	8JUL93 71137
	P. A. TRACEY		LA	(b)(6)	/29JUL93 41777
	RADM, USN		J-5	(b)(6)	JUL93 32744

ACTION OFFICER/DIV/PHONE (b)(6) / J-1 Pers Plns & Pol Div/46486

DATE PREPARED 30 July 1993	CLASSIFICATION UNCLASSIFIED	Classified by Declassify on
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ENCLOSURE D-E

ROUTING & COORDINATION COVER SHEET

CONTROL NUMBER
2591/192-00

DATE RECEIVED
30 July 1993

RETURN TO: ADMIN SUPPORT BRANCH, SJS, 2E928, THE PENTAGON

(b)(6)

DOCUMENT IDENTIFICATION

DATE OF DOCUMENT

SUBJECT

HEARING ON HOMOSEXUALS IN THE MILITARY 20 JULY 1993, BEFORE THE SENATE ARMED SERVICES COMMITTEE, GEN POWELL AND ADM JEREMIAH AS WITNESSES

DJS APPROVAL

CIRCULATION OF THIS DOCUMENT WILL BE TO INDIVIDUALS INDICATED BELOW. THE DOCUMENT WILL BE RETURNED TO THE ADMINISTRATIVE OFFICE FOR DISPATCH OR FILING. THIS FORM SHOULD NOT BE REMOVED FROM SUBJECT DOCUMENT.

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30 July 1993

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SECRETARY, JOINT STAFF DIRECTIVE

on

STATEMENT OF GENERAL POWELL BEFORE THE HASC, 21 JULY 93,
PLAN TO LIFT BAN ON HOMOSEXUALS IN THE MILITARY

1. The attached is referred to J-1 for DJS reply in collaboration with J-5, OCJCS/LA and OCJCS/LC.
2. The suspense for this action is 5 August 1993, unless an extension is coordinated with the Secretary, Joint Staff.

Joint Secretariat

SJS 2591/206-00

NES
(16 JUL 93)

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1 RPTS LYDA
2 DCMN QUINTERO
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5 ASSESSMENT OF THE PLAN TO LIFT
6 THE BAN ON HOMOSEXUALS IN
7 THE MILITARY

8
9 Wednesday, July 21, 1993
10
11 House of Representatives,
12 Subcommittee on Military Forces
13 and Personnel,
14 Committee on Armed Services,
15 Washington, D.C.

16
17 The subcommittee met, pursuant to call, at 10:00 a.m., in
18 Room 2118, Rayburn House Office Building, Hon. Ike Skelton
19 [chairman of the subcommittee] presiding.

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20 Mr. SKELTON. The subcommittee will now come to order.
21 Today the subcommittee turns its attention to one of the
22 most controversial issues confronting the Nation today,
23 lifting the ban on homosexuals in the military. The time
24 constraints between the President's announcement and the
25 markup is seven days, five days from now. We will write
26 into--undoubtedly, we will write into law and codify the
27 policy.

28 We must, in our subcommittee and hence the committee,
29 write it to be fair to all uniformed personnel, write it to
30 ensure unit cohesion, to keep our fighting forces the best
31 because second place does not count in the battlefield, and
32 write it to meet the constitutional standards. All of this
33 we must do within five days.

34 Over the course of the next two days, the subcommittee
35 will conduct four hearings to assess the plan announced by
36 the President Monday. During the morning and afternoon
37 sessions today, the subcommittee will focus on understanding
38 the President's policy, determining the level of support for
39 that policy within the Department of Defense and determining
40 if the policy is feasible, practical and understandable.

41 Tomorrow the subcommittee will turn its attention to
42 another full day of hearings to important legal questions,
43 to determine if the policy is defensible and, of course,
44 workable on an installation level, and most important,

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45 constitutionally. The statement of the President appears to
46 continue the policy regarding homosexuals in the military
47 that existed prior to January 1993.

48 The policy seems to describe homosexuality as incompatible
49 with military service, it just but does not say it clearly.
50 With this policy the President appears to have accepted the
51 principle that attitudes among the people of a unit do make
52 a difference and must be considered.

53 This is the old policy with a new name and a couple of
54 twists. The twists include the elimination of the practice
55 of questioning recruits and active duty personnel about
56 sexual orientation; a limitation on investigations; and the
57 creation of a rebuttable presumption that service members
58 who acknowledge homosexuality are engaging in homosexual
59 acts or they have a propensity to do so. These exceptions
60 are the threads of progress for homosexuals in the military
61 to distinguish this new policy from the old.

62 As hard as the authors of this policy worked to remove
63 questions about these exceptions, many questions remain. I
64 suspect that much of today's hearing will be consumed by
65 Members' questions concerning with those elements of this
66 policy that make it different from the policy that many
67 consider correct and not in need of fixing.

68 Personally, the President's's initiative has been a
69 disturbing issue. I want to support the President's, but my

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70 family background is deeply rooted in religious values, most
71 of my constituents have said they believe the President is
72 off track. Also, they are very cautious about any change
73 that potentially threatens the morale and cohesion of our
74 fighting force. We must not fundamentally risk undermining
75 the best military force in our Nation's history for a
76 policy change that need not happen.

77 The concept of "second best" is not an acceptable option
78 on the battlefields. I am sure the Joint Chiefs will
79 confirm that today. Accordingly, I must count on those who
80 are not comfortable with the old policy yet.

81 I wanted these hearings to be fair and air the President's
82 solution. I do know not what the final solution will be,
83 but whatever it is, it must codify this issue and, ladies
84 and gentlemen, put it to rest.

85 We are very fortunate and privileged to have a most
86 esteemed panel before us today to present the President's
87 case. I would add that the President is also fortunate and
88 privileged to have these extraordinary American leaders
89 representing their views.

90 We will hear first from the Secretary of Defense, our
91 former colleague, Les Aspin, and the Chairman of the Joint
92 Chiefs of Staff, Colin Powell.

93 I understand Secretary Aspin must leave at noon, and when
94 he leaves, we the ask the Joint Chiefs to join General

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95 Powell, and they are all at the table today.

96 We welcome Admirals Jeremiah and Kelso, General Sullivan,
97 General McPeak and General Mundy.

98 We are very grateful for your attendance today and we are
99 honored to have you here. Let me express my sincere thanks
100 to Chairman Dellums. I think I speak for all the members of
101 the subcommittee when I say we appreciate the confidence you
102 have shown in us by entrusting this important issue to our
103 care.

104 The Chairman's has always said that his intention was for
105 the full committee to deal with the policy implications of
106 lifting the ban and our subcommittee would deal with the
107 implementation of an announced policy. I believe this
108 approach is right on target and I appreciate the opportunity
109 to address this issue.

110 Before we proceed, there are a few administrative issues
111 to resolve. First, as some Members have already noted, the
112 seating has been left in full committee order. This is
113 necessary due to the short time between the full committee
114 session and the start of this hearing, as well as the
115 expectation and the number of full committee Members not on
116 the Armed Forces and Personnel Subcommittee who would attend
117 the hearings.

118 Second, seating arrangements will not affect the order in
119 which Members will be recognized for questioning because

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120 there are Members in attendance from the subcommittee and
121 the full.

122 Let me announce the following rules for today's hearing
123 governing the order in which Members to be recognized for
124 questions.

125 It is the intention of the Chair to first recognize the
126 Ranking Member, Mr. Kyl, immediately after I call upon my
127 full Chairman. Thereafter, I will ask the Ranking Member of
128 the full committee, Mr. Spence, to make his comments.

129 Members of the full committee will be recognized after the
130 subcommittee Members. It is my hope that this order of
131 recognition will avoid confusion and lead to a more orderly
132 hearing at this time.

133 I recognize Mr. Dellums for his comments.

134 Mr. Dellums.

135 Mr. DELLUMS. I thank the gentleman for yielding.

136 Let me welcome you, Mr. Secretary, and you, General
137 Powell, in your capacity as Chair of the Joint Chiefs, and
138 all the other members of the Joint Chiefs of Staff.

139 I would like to say to you, Mr. Secretary and General
140 Powell, thank you very much for this unprecedented effort
141 this morning.

142 As the Chair understands it, the Secretary and the Chair
143 of the Joint Chiefs have never appeared before a
144 subcommittee. I appreciate before the fact, that you have

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145 | agreed to do so, because the Chair made an arrangement quite
146 | a while ago that separated the responsibility of the full
147 | committee from the subcommittee on this matter.

148 | As the Chair of the subcommittee pointed out, the role of
149 | the full committee, as I see it, is to embrace the broad
150 | policy implications of what we do. The responsibilities of
151 | each subcommittee is to grapple with the nuts and bolts and
152 | substance of how we go about implementing policy.

153 | We thank you very much for doing that.

154 | The Chair, while considered an ex-officio Member of any
155 | subcommittee, as my colleagues are aware, I am not a Member
156 | of this subcommittee and I wanted to provide maximum
157 | opportunity for the subcommittee to engage the panelists
158 | today.

159 | The Chair just pointed that out, I would have more
160 | substantive remarks to make on the substantive issue when
161 | this matter comes before the full committee.

162 | I thank the gentleman for yielding.

163 | Mr. SKELTON. Thank you.

164 | Mr. Kyl.

165 | Mr. KYL. Thank you, Mr. Chairman.

166 | Welcome, Secretary Aspin, General Powell, and members of
167 | the Joint Chiefs of Staff. I want to echo the Chairman's
168 | comments about our appreciation for your appearing before
169 | the subcommittee. Given the attendance here, it may not

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170 appear that that is all we are about, but obviously, because
171 of the importance of the issue and the interest, it is
172 important for you to be here. But we especially appreciate
173 that.

174 For the past several months, you have been examining the
175 issue of allowing homosexuals to serve in the military. You
176 stressed that the central issue is the effectiveness of the
177 military to perform its mission. Individual rights are
178 subservient to the mission and the unit. Using that test,
179 you have agreed to support President Clinton's policy of
180 July 19th. Congress will now consider codifying the policy.

181 Such a policy must ensure the viability and readiness of
182 the Armed Forces of the United States. I must admit that
183 after yesterday's hearing, I have more questions than I did
184 before as to whether the President's policy meets this test.

185 Surveys have shown that the vast majority of military
186 leaders and personnel oppose lifting the ban on homosexuals
187 because of their belief that such action would negatively
188 affect the ability of the Armed Services to carry out its
189 mission.

190 Chairman Powell, you have stated that dropping the ban on
191 homosexuals would be prejudicial to good order and
192 discipline. There are statements that all of you have made
193 to this general effect. I will just quote one other
194 individual who is not here, General Norman Schwarzkopf, who

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195 said: "Allowing homosexuals in the Armed Services will
196 destroy the military. Once a homosexual comes out of the
197 closet and publicly avows their homosexuality, all unit
198 cohesiveness is lost."

199 The reason previously stated was that homosexuality is
200 incompatible with military service.

201 President Clinton's proposal fudges the fundamental
202 question of whether homosexuality is incompatible with
203 military service.

204 Because it has been, as a general rule, is it still? If
205 so, what exactly is it about homosexuality that is
206 incompatible with military service? The policy says
207 conduct; what conduct?

208 Is any obvious manifestation of homosexuality incompatibl
209 with service or must it be sexual conduct involving physical
210 contact?

211 Is the statement of homosexuality incompatible with
212 military service or nonverbal statement. What about a
213 statement of homosexual orientation or a third-party
214 recollection of a statement?

215 I could not discern a consistent, clear and certain answe
216 to those questions from the transcript of yesterday's
217 hearing. The proposed policy would still require discharge
218 for sodomy, violation of the UCMJ. Yet, someone said that
219 purely from a military point of view, in other words, impact

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220 on unit cohesion, discipline and good order, a more serious
221 problem is the public manifestation of homosexual
222 orientation, not just the UCMJ violation.

223 It may matter little to a commander an individual had a
224 consensual liaison off duty and off base, if no one else
225 ever knew of it and the individual never manifested his
226 homosexuality on duty or in public. But it may matter a
227 great deal that an individual publicly manifests his or her
228 homosexual orientation on duty to others in the unit.

229 Yet in the first case, discovery of the event guarantees
230 discharge, while in the second, it may well not. Lawyers
231 will argue over whether manifestation requires physical
232 contact or an explicit verbal admission, while Commanders
233 will calculate whether they have investigated roughly equal
234 numbers of heterosexual and homosexual cases. Meanwhile,
235 what happens to unit cohesion? Is orientation not a
236 continuum of conduct? In any event, How is this distinction
237 sustainable in court?

238 I have highlighted just this one area to illustrate which
239 seems to be an inherent contradiction in the policy offered
240 by the President. It is not at all a simple " don't ask,
241 don't tell" policy.

242 Yesterday's Washington Post carried the headline, Policy
243 tosses issue to courts. Ambiguity seen leading to
244 protracted litigation. The article says, "It is the very

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245 ambiguity of the policy and wide discretion permitted
246 commanders in the field that gives legal experts pause. Even
247 some military officials concede that the courts may have
248 difficulty coping with aspects of the policy.

249 Tomorrow the committee will hear from lawyers about the
250 many legal aspects raised by this policy. Suffice it to say
251 today that advocates of both the ban and of homosexual
252 rights agree on one thing, this policy is headed for the
253 courts and the outcome is much less certain than the cases
254 under current policy. As a constitutional lawyer, I cannot
255 ignore this obvious, admitted troublesome aspect of the new
256 policy.

257 I also want to conclude, however, by saying that I have a
258 special appreciation for all the panelists here, for your
259 serious attention to this issue, the commitment that you
260 have made to reach a good decision. You are all patriots
261 and my respect for you is immense. I welcome your testimony
262 today.

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263 Mr. SKELTON. Mr. Spence.

264 Mr. SPENCE. Thank you, Mr. Chairman.

265 As already has been pointed out, we have had some hearings
266 on the full committee level previous to today. As the
267 Chairman of the full committee said, I, as Ranking Member,
268 and he, as Chairman of the full committee, are here in
269 ex-officio committee today. I will have remarks later on.

270 Thank you.

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271 Mr. SKELTON. Thank you.

272 It is my understanding that statements will be offered by
273 Secretary Aspin and General Powell and the other gentlemen
274 will be prepared for questions; is that not correct?

275 That being the case, we welcome our old friend and
276 colleague we deeply respect, Secretary Les Aspin. Everybody
277 knows that this is your 39th birthday.

278 Secretary ASPIN. You are right.

279 Mr. SKELTON. I want to welcome everyone here to your
280 birthday party.

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281 STATEMENT OF THE HON. LES ASPIN, SECRETARY OF DEFENSE

282

283 Secretary ASPIN. Let me just say that, first of all, I
284 would like to have an opening statement here, but just as a
285 short response to some of the questions raised by

286 Congressman Kyl, I think what you the see if you examine
287 this policy and look at it, is that what we have here is a
288 workable compromise on the issue. Any policy dealing with
289 this thing that is anything other than at the extremes of
290 the solution is going to have gray areas and ambiguity.

291 You can adopt a policy in which you say no homosexual goes
292 anywhere near the military no way, anyhow. You would then
293 ask the question when they came into the service. You would
294 conduct investigations of them during the time they were
295 there and just continually drumbeat people against gays.
296 That would be an unambiguous position.

297 The other extreme would also be an unambiguous position,
298 where you let gays into the service with total freedom to do
299 whatever they wanted, no ban on any conduct, any activity,
300 et cetera. Those are the two unambiguous positions.
301 Anything in between is ambiguous.

302 The current policy is ambiguous. The policy before
303 January 29th was ambiguous. Ambiguity is not an argument
304 against any policy, because with any policy you are going to
305 have ambiguity and gray areas, and rules of thumb are going

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306 to have to be developed to learn how to deal with these
307 things.

308 Again, headed for the courts? We are going to have to
309 test any proposal in the courts. The current proposals are
310 beings tested in the courts. It is just not a credible
311 attack on the proposal to say it is headed for the courts.
312 There are people out there who want to litigate lots of
313 things and test the limits and push different agendas, both
314 from the right and the left. And they will be doing it
315 through the courts no matter what we do or what you do.

316 I think that when you are finished today and you look at
317 it, you will discover that the proposal that we are making
318 here is essentially a proposal which is a sound compromise
319 and one that is, frankly, more enforceable than the one that
320 we currently have, or the one we had before January 29th.

321 I would think that when we go through this and when you
322 study it, I think you will come to the same conclusion when
323 you look at the letter, the memorandum that has come over
324 from the Justice Department. It very clearly states that
325 they have a better chance of enforcing or getting court
326 agreement on the policy as we are presenting to you here
327 today than the current policy or the previous policy.

328 There are three important changes. I will not go into
329 Janet Reno's memorandum. You all have it in the stuff that
330 has been presented to you for these hearings.

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331 She says there are three changes that are being made in
332 the policy and the policy that we are presenting to you here
333 today, that clearly will make it more enforceable in the
334 courts or better able to be enforced in the courts than the
335 current policy.

336 With that general introductory comment, let me say I want
337 to thank the Members and the Chairman for the opportunity to
338 be here today to talk about the policy on homosexuals
339 serving in the military which President Clinton announced
340 Monday.

341 As the President said, the new policy is balanced. It
342 represents a step forward while protecting a strong,
343 ready-to-fight military force. And, as he put it, the
344 policy "provides a sensible balance between the rights of
345 the individual and the needs of our military." That the
346 compromise. We have balancing the rights of the individual
347 versus the needs of the military, and that is at the core of
348 the proposal which we have here before you.

349 The issue comes to us not only because President Clinton
350 believes individuals should be able to serve their country
351 regardless of sexual orientation, it comes to us because
352 questions about the question of sexual orientation are being
353 raised in the Nation generally, and that means they will be
354 raised in the military. Our Armed Services are too large
355 and too representative of our Nation as a whole to escape

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356 social issues.

357 If social issues are being discussed in the Nation, they
358 are going to be discussed in the context of the Armed
359 Forces. When service members returned from the Gulf War,
360 several announced their homosexual orientation and denounced
361 the military policy. Many colleges have with ROTC programs
362 have questioned the military's policy on gays and all of you
363 have colleges that have ROTC have probably received, as I
364 used to receive when I was a Member of Congress, letters
365 from the local ROTC programs or the local administrators of
366 these programs wrestling with the issue of making,
367 connecting a policy in the military on gays with a different
368 policy than they may have had at the university on gays.

369 The policy has been challenged at court, once successfully
370 at the trial court level. The House Armed Service Committee
371 here has looked into the issue since spring of 1992.
372 Senator Metzenbaum and Patricia Schroeder have filed
373 amendments to completely abolish the ban on gays in the
374 military during the 1993 Authorization Bill.

375 They were not formally offered and they were not voted on,
376 but I think this showed that the matter was on the horizon.
377 I think this issue was coming to us anyway. Even if George
378 Bush had been elected in the fall of 1992, some time next
379 four years we would be dealing with this because it was
380 bubbling up in too many quarters.

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381 One of those tasks is something that we will be back to
382 talk with you a lot about during the rest of the summer.
383 That is the Bottom Up Review to telling us what military
384 forces we need in the post-Cold War area. We are very close
385 to finishing that.

386 The second task that we found ourselves facing was to deal
387 with the pressing social issues that we faced. There turned
388 out to be three of them, two of which we inherited, one we
389 kind of started up.

390 One is sexual harassment, the Tailhook issue. The
391 Tailhook convention and other incidents illustrate that the
392 military is far from immune to this problem. Another issue
393 that is an issue in American society and therefore is an
394 issue in the American military, sexual harassment. Exhibit
395 A in that whole thing is the Tailhook and the fallout that
396 happened there.

397 The second social issue was the expanding role of women.
398 In the military context that means women in combat. We have
399 been dealing with that issue, what is the right role for
400 women in combat.

401 The third and clearly the most difficult of all three of
402 them is the issue of denying the opportunity to serve based
403 upon sexual orientation.

404 Now with all three of these we basically had two options
405 One would be to put off dealing with them, kind of stiff

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406 them and hope that they would go away or at least go away
407 for all of us to leave office and leave it to the successor.

408 The other way we could deal with them was to try to deal
409 with them forthrightly, making constructive changes where we
410 could and keeping in mind that above all, we wanted to
411 maintain the readiness of the forces that we are building
412 for the new era. In other words, try and find a way to deal
413 with these social issues in a forthright manner consistent
414 with the requirements of a strong and ready-to-fight
415 military force.

416 We choose the latter. We choose to try and deal with
417 these forthrightly. Over a three-month period in the spring
418 and summer of 1993, we have taken major decisive steps to
419 deal with all three of these issues. In April, we took
420 steps to deal with sexual harassment and the role of women.
421 On April 23 we released the Tailhook report and began a
422 process of investigations of that.

423 I want to compliment the Navy and Marine Corps for their
424 work on this issue. They really stepped out, took the issue
425 straight on and proceeded to investigate the issue of
426 Tailhook and follow up with procedures of what they learned
427 in Tailhook, and made suggestions for changing that we ought
428 to make, a very important step.

429 On April 28th, I issued the directive from the Department
430 of Defense that opened up a lot of new positions to women,

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431 including combat aircraft and on combat Navy vessels. This
432 is a culmination of something that had been going on over
433 several years. A lot of committee Members have been
434 involved in that issue over the years because I was here at
435 the time you were all working on the issue.

436 This action will enable the military services to attach
437 that pool of talent that had been blocked because these
438 issues were closed to women..

439 The third was more difficult, the issue of gays in the
440 military. That came when the President decided to send over
441 a directive that makes conduct, not sexual orientation, but
442 conduct the focus of the Defense Department policy on who
443 can serve in the military. So the Department did not ignore
444 these 23 issues.

445 Instead it tackled them head on, up front, dealing
446 honestly and constructively them so we can get on with the
447 historic challenge of shaping our forces to meet the dangers
448 of the new post-Cold War world.

449 I would like to say a little about how we developed the
450 policy on January 19th, President Clinton asked me to review
451 the policy aspect of defense, to review the policy on
452 homosexuals serving in the military. The President directed
453 that had the Department's policy be, "practical, realistic
454 and consistent with the high standards of combat
455 effectiveness and unit cohesion our Armed Forces must

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456 maintain."

457 We have conducted an extensive review. First we initiated
458 two separate efforts to examine the issue of detail and help
459 us develop the new policy. One was the working group which
460 consisted of flag officers from the each of the services.

461 The second working group was from the Rand Corporation.
462 The Rand Corporation has a long history of working on
463 military personnel issues. Both of these groups provided
464 valuable insights. We also paid careful attention to
465 hearings that were being held here in the House and over in
466 the Senate on this issue, in the House and Senate Armed
467 Services Committees.

468 We then held a series of regular consultations with the
469 Joint Chiefs and Acting Secretaries of the Military
470 Departments. We looked at how the military dealt with major
471 social changes in the past and we consulted with the Justice
472 Department on legal issues.

473 Throughout all of this process, we were guided by the
474 position taken by the President. He made this key points,
475 "people should have the right to serve their country, and if
476 denied the right, it should be on the basis of behavior, not
477 status."

478 President Clinton also outlined two major criteria for a
479 new policy. First, the policy must maintain the high morale
480 and cohesiveness of the all-volunteer force. It is

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481 important that our men and woman in uniform perform well on
482 the job together, get the job done, trust one another's
483 professionalism under pressure and work as a team. That is
484 the core of the whole thing. We know from experience that
485 this cohesion is the key to a unit's success in combat.

486 Second, President Clinton also stated that had our new
487 policy must protect personal privacy. The new policy must
488 respect the privacy of a member of the military who is
489 dedicated, capable and conscientious and who may have a
490 homosexual orientation.

491 It must respect the privacy of people who, because of the
492 unique nature of military service, must live in close
493 quarters. By protecting privacy, we can protect unit
494 cohesion.

495 Let me make this point as President Clinton did. We have
496 no evidence that homosexual soldiers are less capable or
497 more prone to misconduct than heterosexual soldiers. That
498 brings me to our policy. Let me just hit the main
499 highlights of the policy and then I am sure you will have a
500 lot of questions to deal with the details of it.

501 As a general rule, the Department of Defense has long held
502 that homosexuality is incompatible with military service.
503 Nevertheless, the Department also recognizes that there are
504 exceptions to the rule and that homosexuals have served with
505 distinction in the Armed Forces of the United States. That

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506 is the basic kind of framework that we were dealing with in
507 putting together this policy.

508 It is the department's believe that as a general rule,
509 homosexuality is incompatible with military service.
510 However, all of us here and anybody who served in the
511 military will be able to tell you that, yes, there are
512 people with a homosexual orientation who have served and
513 have served in distinction, and you see, when somebody
514 occasionally comes forward and he has been chosen "soldier
515 of the month" or "soldier of the year" of some unit and it
516 turns out that he then announces that he is gay.

517 How we reconcile this is the policy we wrestled with and
518 the thing we are presenting to you today is how do you
519 reconcile these two points in terms of a policy. How do you
520 put together a policy which incorporates these two facts?

521 What we decided was that we were going to judge appearanc
522 suitability for service on the basis of conduct. That is not
523 what they are, but what they do. Under the new policy,
524 homosexual conduct will continue to be grounds for discharge
525 from the military service.

526 On the other hand, sexual orientation is considered a
527 personal and private matter. Under the new policy, sexual
528 orientation alone will not bar individuals from military
529 service unless it involves homosexual conduct.

530 Our new policy includes the following points: First,

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531 applicants for military service will not be asked or
532 required to reveal their sexual orientation. Applicants
533 will be informed at the time of accession of the
534 requirements of accession and anything in the policy that
535 will cause them to be separated. So they will be informed.
536 But they won't be asked anything.

537 Second, service members will be separated for homosexual
538 conduct.

539 Third, commanders and investigating agencies will not
540 initiate inquires or investigations solely to determine a
541 member's sexual orientation. That is a major change.

542 While service members will not be asked or required to
543 reveal their sexual orientation, commanders will continue to
544 initiate inquiries or investigations, as appropriate, when
545 there is credible information that a basis for discharge or
546 disciplinary action exists. Authority to initiate inquiries
547 or investigations involving homosexual conduct shall be
548 limited to the commanders.

549 It cannot be initiated by the investigating agencies.
550 Commanders will consider, in allocating scarce investigative
551 resources, that sexual orientation is it a personal and
552 private matter. They will investigate allegations of
553 violations of the Uniform Code of Military Justice in an
554 even-handed manner without regard to whether the conduct
555 alleged is heterosexual or homosexual and whether it occurs

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556 on-base or off-base. The same policy ought to be for both.
557 The commander remains responsible for ensuring that
558 investigations are conducted properly and that any abuse of
559 authority is addressed. The constraints of military service
560 require service members to keep certain aspects of their
561 personal lives private for the benefit of the group. That
562 means no statement by a servicemen that he or she is
563 homosexual.

564 A statement by a service member that he or she is
565 homosexual or bisexual creates a rebuttable presumption that
566 the service member is engaging in homosexual acts or has the
567 propensity or intent to do so. That means the service
568 member has the opportunity to present evidence that he or
569 she does not engage in homosexual acts and does not have a
570 propensity or intent to do so.

571 The interim policy and the administrative separation
572 procedures that were established on February 3, 1993, will
573 remain in effect until October 1, 1993. This new policy
574 would go into effect on that day, because you need a certain
575 amount of time to get the word out to the troops and get
576 everybody understanding what the policy is. You cannot just
577 announce it one day and put it into effect the next.

578 You have to have time for people to absorb it. It also
579 gives the Congress a chance to review the policy and decide
580 whether they want to go along with it or try something

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581 different.

582 The policy does important things. A service member who may
583 be homosexual can serve under this proposal without lying
584 and without fear of "witch-hunts."

585 But homosexual service members will have to play by the
586 rules. The constraints of military service require service
587 members to keep some aspects of their personal lives private
588 for the benefit of the group.

589 To sum up, I believe to a large extent the President has
590 achieved what is a fundamental goal that he wanted to
591 achieve here.

592 The President said that people should be able to serve
593 their country in the U.S. military regardless of sexual
594 orientation, provided they play by the rules. I think this
595 policy allows that to happen. Under the old policy, a
596 homosexual service member had to lie and activity hide his
597 or her orientation. In other words, they had to work hard
598 to keep off the radar screen.

599 Under the new policy, they will actually have to work to
600 get on to the radar screen. I think that is progress.

601 Mr. Chairman that is the end much my statement. I would
602 like at this point to ask if Colin Powell could say a few
603 words.

604 Mr. SKELTON. Certainly.

605 [The statement of Secretary Aspin follows:]

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607 ***** INSERT 1 - 1 *****

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608 STATEMENT OF GENERAL COLIN POWELL, CHAIRMAN, JOINT CHIEFS OF
609 STAFF

610

611 Mr. SKELTON. General Powell.

612 General POWELL. Thank you, Mr. Chairman.

613 Mr. Secretary, Mr. Chairman, Mr. Kyl, members of the

614 subcommittee and members of the full committee: I and my

615 Joint Chiefs colleagues are very pleased to appear to speak

616 in full support of the President's policy on homosexuals in

617 the military. We think it is an honorable compromise that

618 we will be able to successfully implement.

619 Under ~~the~~ Secretary Aspin's leadership, the department has

620 been intensely studying this very difficult issue for the

621 past six months. We have closely followed the congressional

622 hearings and the public debate that has ensued since

623 January. We have also benefitted from a huge outpouring of

624 mail from the American people on all sides of the issue.

625 The Joint Chiefs of Staff have spent an enormous amount

626 time considering this matter. We have had the President's

627 guidance and the Secretary's guidance, and we have given our

628 best advice to the Secretary and to the President in order

629 to carry out their guidance.

630 We have challenged our assumptions. We have argued with

631 each other. We have consulted with commanders at all

632 levels. We have talked to troops and family members who

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633 have a view on the subject. We have examined the arguments
634 of those on the other side of the issue as well.

635 The challenge we faced was to try to reconcile or
636 compromise two sets of conflicting views. On the one hand
637 are those who believe homosexuals should be allowed to
638 openly serve in the military.

639 They note correctly that homosexuals have privately se
640 well in the past and are serving well today. Some who hold
641 that view want to go further than just allowing homosexuals
642 to openly serve. They also want to achieve acceptance of a
643 broader agenda of gay rights to include homosexual
644 partnerships and the benefits that would attend to such
645 partnerships in the military and Federal service.

646 On the other hand are those who believe that the pres
647 of open homosexuality would have an unacceptable,
648 detrimental and disruptive impact on the cohesion, morale
649 and esprit of the Armed Services of the United States.

650 Our concern has not been what many commentators have s
651 that homosexuals will suddenly openly start seducing
652 heterosexuals or heterosexuals will start attacking
653 homosexuals if ^{they are} ~~it was~~ open. The first of these problems is
654 entirely manageable and the second ^{problem} alleged is
655 entirely punishable.

656 For us, the issue is not just what is acceptable in
657 civilian life. It is not our place in the military, those

658 of us in senior military positions, to make moral or
659 religious judgments with respect to homosexuality.

660 Our perspective, and the only perspective we should bring
661 to this issue, is the unique perspective of the military and
662 what is best for military effectiveness. We exist to fight
663 the Nation's wars. Hopefully, we would also be strong
664 enough to deter wars. But we must always be ready to fight
665 them and not only to fight them, to win them. That is why
666 we exist.

667 To win wars, we create cohesive teams of warriors,
668 warriors who bond so tightly that they are prepared to go
669 into battle and to give their lives, if necessary, for the
670 accomplishment of the mission or for their buddies.

671 We should not let anything happen that disrupts this
672 feeling of cohesion, this process of bonding. The reason for
673 that is ~~that~~ we are the best in the world. We are unlike
674 any other armed forces in the world. To be the best in the
675 world requires subjugating on many occasions individual
676 rights to the benefit of the team.

677 Homosexuals who have been able to keep their orientation
678 private have understood this and have been successful
679 members of the team, even though it required a sacrifice on
680 their part.

681 Congress and the courts have, over many, many years, been
682 consistent in upholding this unique circumstance of military

683 service. I believe the American people understand these
684 unique circumstances of military service and have also
685 upheld them.

686 We discriminate in many ways in the Armed Forces that
687 would be absolutely unthinkable and unacceptable in civilian
688 life. We have rules and regulations that are unique to our
689 calling, to our profession and to our culture ^{of} ~~of~~ ^{the} military.
690 ~~service~~. We impose on our troops conditions of service
691 unlike any other field of endeavor in this society. We tell
692 them who ^{to} ~~would~~ work with, we tell them where to live, and we
693 tell them who to live with. It is a 24-hour-a-day,
694 7-day-a-week job. We send them off to faraway places. They
695 may not come back from those faraway places.

696 The American people expect that ~~these~~ rules we set for
697 their Armed Forces are reasonable. They expect that we are
698 able to justify these rules.

699 The American people, through their Constitution, have also
700 given the Congress the ultimate authority to set those
701 rules. We nevertheless are a reflection of our society at
702 large.

703 We cannot move too far ahead of that society and we cannot
704 lag behind our society.

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705 RPTS WATT

706 DCMN WEINSTEIN

707 (10:54 a.m.)

708 General POWELL. We have successfully mixed over the years
709 blacks and whites, rich and poor, urban and rural. But it
710 remains our judgment, the judgment of the senior leadership,
711 that at this time and ^{considering} where our society is right now and
712 what is best for military effectiveness and for the force,
713 open homosexuality in units is not to the benefit of our
714 military force. And it is something quite different than
715 the acceptance of benign characteristics such as color or
716 race or background.

717 It involves matters of privacy and human sexuality that,
718 our judgment, if allowed to openly exist within the force,
719 will create serious issues having to do with cohesion and
720 having to do with the well-being of the force. It asks us
721 to deal with fundamental issues that our society as a whole
722 has not yet dealt with and has not yet given us sufficient
723 guidance so that we can deal with it within the unique
724 setting of the military service. Military service requires
725 sacrifice in many forms.

726 The proposed compromise permits gay and lesbian Americans
727 to serve if they are willing to keep their orientation a
728 private matter. It is a sacrifice we can ask them to make,
729 it is a sacrifice that we believe is necessary for the

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730 overall good of the service. We won't ask, we won't witch
731 hunt, we won't chase, we will not seek to learn orientation.

732 These are significant changes from the policy that exist
733 last year. They are significant changes that we have talked
734 about, discussed with our commanders, and believe we are
735 able to make in a way that will not hurt military
736 effectiveness and allow us to move in the direction that
737 the President wishes us to move.

738 I realize that this compromise will not satisfy all
739 parties. I also realize that there is a great deal of
740 ambiguity in this compromise. I know it will be a subject
741 of litigation. Anything we do will be a subject of
742 litigation.

743 But I have great faith in the ability of our commanders
744 bring adult, mature judgment to these very, very complex
745 issues, just as they bring adult, mature judgment to all of
746 the complex issues that they face in the orderly room and in
747 the captain's office aboard a ship. I believe it is a good
748 compromise that will be understood and supported by most
749 Americans.

750 It is also a compromise that will eliminate a great de
751 of tension that exists in the force over this matter. I
752 think since the President's announcement of two days ago, w
753 have already seen that tension dissipating as our troops no
754 can get on with the business of defending the nation without

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755 this distracter.

756 I also know that this is not the end of the matter. It
757 will remain a controversial matter. The debate will
758 certainly continue. I also don't presume to know where the
759 Nation may wish us to be on this issue four, five, six, ten
760 years from now. But I am reasonably convinced that the
761 compromise that is before you now, the President's position,
762 is a fair compromise for the circumstances and the situation
763 we find ourselves in.

764 The JCS and I have been criticized by many over our
765 handling of this issue. Some say we fought the problem.
766 There were even some suggestions of insubordination, even
767 some suggestions that somehow we are generals of a banana
768 republic.

769 Our responsibility to the President, our responsibility
770 the Secretary of Defense, our responsibility to this
771 Congress, our responsibility to the troops that we serve
772 with and our responsibility to the American people, is, ^{as} ~~for~~
773 the senior ^{military} leadership of this Nation, to present our best,
774 most honest, most candid judgment to our leaders. Whether
775 it is found desirable or not, acceptable or not, that is not
776 the way in which you measure advice.

777 The way in which you measure advice ^{is} are your advisers
778 providing you their best judgment? We have reached to the
779 bottom of our hearts and our souls to provide our best

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780 judgment to our Secretary, to our President. We have done
781 our very best to represent the interest of our troops as we
782 understand those interests.

783 We have done our very best to represent the interests of
784 the American people. We did it candidly. We did it boldly.

785 And, ladies and gentlemen, not to have done so would have
786 been insubordination and the actions of banana republic
787 generals. I am very pleased that both the Secretary of
788 Defense and President of the United States sought our
789 advice. They asked us for that advice. They welcomed it.
790 They didn't reject it.

791 I believe that Secretary Aspin and the President displayed
792 a great deal of courage in dealing with this issue head on,
793 as the Secretary noted. They could have ignored the view of
794 their military advisors and the view of our troops. They
795 could have simply reversed the ban and satisfied a political
796 commitment.

797 Instead, they studied all sides, they recognized their
798 responsibility for the effectiveness of the force. And I
799 know they both agonized over it a great deal.

800 And so I believe that the President and the Secretary have
801 decided well. I think they have brought before the Congress
802 and the American people a position that we can implement and
803 implement successfully.

804 And I ask for your support of the President's decision.

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Thank you.

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806 Mr. SKELTON. Thank you, General Powell.

807 Before we go any further, I think it should be said,
808 General, that in my opinion, and I am sure that the others
809 join me, that the senior military leadership of our Nation
810 is as fine as it has ever been. And we thank you for your
811 hard work and your dedication, and on this issue we have
812 unmeasured respect for each of you. Please understand that.

813 General POWELL. Thank you, sir.

814 Mr. SKELTON. Secretary Aspin, you mentioned a moment ago,
815 and I wish you would discuss it for a moment, previous to
816 this policy someone of other sexual orientation had to fight
817 to stay off the radar screen, and today would have to fight
818 to get onto it. Would you be kind enough to more fully
819 explain that comment, sir?

820 Secretary ASPIN. Yes. The policy as presented to you has
821 been given in the shorthand of don't ask, don't tell, don't
822 pursue. The previous policy was to ask and to pursue.

823 The previous policy was to ask people at the time that
824 they volunteered to come into the armed forces whether they
825 were homosexual; and if they answered yes, they were not
826 admitted to the armed forces. They were asked at various
827 stages during their career or were possible to be asked at
828 various stages during their career whether they were
829 homosexual. And if they answered yes, they had to leave the
830 service, would be separated.

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831 In addition, there was a policy to use the investigative
832 assets of the armed forces in a kind of general way to look
833 out for people's homosexuality or people's sexual
834 orientation. Stakeouts by people in civilian clothes at gay
835 bars, taking down the names of people going in, was done,
836 and various other kinds of processes.

837 What that meant was that the policy was if you were gay,
838 you really had to work to stay out of their line of the
839 radar screen, is the term I am using. You really had to
840 work at it.

841 First of all, you had to lie. And secondly, you had to
842 really work to keep out of their kind of general radar
843 looking for gays.

844 Under the new policy, they will not be asked and there
845 will not be the kind of witch hunt investigations. The
846 investigations will take place only when the commander
847 believes that there is credible evidence that something is
848 happening.

849 So it means credible evidence, that means that a person's
850 actually going to have to do something to get up on the
851 radar screen. You are going to have to--under this policy,
852 if you are gay and you mind your own business and keep your
853 private life private, you can serve in the armed forces of
854 the United States.

855 Under the old policy, you had to do more than that. You

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856 had to lie, you had to keep low, you had to, you know,
857 dissemble a lot. Under this policy, you would almost have
858 to kind of work to get the attention of the system. A
859 little work will get you the attention of the system under
860 this policy. I am not saying there isn't some--there is that
861 aspect to it. But basically, that is the point. It is the
862 difference between the don't ask and the don't pursue, which
863 makes this policy different from the previous policy.

864 Mr. SKELTON. Thank you very much. In my opinion, the
865 purpose of this hearing is the next question I will propound
866 to those in uniform. And, again, I will begin with General
867 Powell. I will call the roll.

868 Is it your personal and professional opinion that this
869 proposal as set forth Monday of this week, a workable and
870 supportable policy?

871 General POWELL. Yes, sir.

872 Mr. SKELTON. Admiral Kelso?

873 Admiral KELSO. Yes, sir.

874 Mr. SKELTON. General McPeak?

875 General MCPEAK. Yes, sir.

876 Mr. SKELTON. General Sullivan?

877 General SULLIVAN. Yes.

878 Mr. SKELTON. ^{ADMIRAL} General Jeremiah?

879 ^{ADMIRAL} General JEREMIAH. Yes, sir.

880 Mr. SKELTON. General Mundy?

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881 General MUNDY. Yes, sir.

882 Mr. SKELTON. Let me--you know, we know that policies are,
883 but the devil is sometimes in the details. Let me ask each
884 of you gentlemen these questions, hypothetical questions.
885 You may want to take quick notes on them.

886 General Powell, I again will begin with you. Assume you
887 are now a first lieutenant or the counterpart in the Navy,
888 and you are a platoon leader or the equivalent. And you
889 have just returned from National Training Center or its
890 equivalent and your company commander says, Lieutenant, you
891 have done a fantastic job, you are the best we have, your
892 platoon is first class. Couple of days after you return, I
893 will give you four hypothetical situations: A private walks
894 into your office and says, Lieutenant, I must tell you I am
895 gay; second, another private walks into your office and
896 says, Lieutenant, I don't know, I may be gay; third, at PT,
897 6:30 in the morning, everybody is riding high from the
898 recent NTC or its equivalent, you have done well, you go out
899 and the troops yell, good morning, Lieutenant, we are all
900 guy.

901 Fourth hypothetical, a private, every Friday night for a
902 period of two months, gets off the bus with his buddies as
903 he goes into the adjoining town, and walks into a gay bar.
904 He also is seen nearly every day reading the magazines next
905 to his bunk that are all gay magazines, and he also appears

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906 in a gay parade in a nearby city, all of which are known to
907 the fellow members of the platoon. How would you as a first
908 lieutenant or a lieutenant JG handle each of these
909 situations, General Powell?

910 General POWELL. These situations are not terribly
911 different than the kinds of situations young lieutenants and
912 ensigns and JGs handle all the time. And not just on the
913 subject of homosexuality, but a variety of issues that come
914 to a commander when you are commanding a group of young
915 Americans in this age range who bring in all sorts of
916 experiences and backgrounds into the military force.

917 On the first question, if the young private walked in and
918 said I am gay, I would sit down and talk to him about it,
919 make sure that he was making a fully informed statement, he
920 really had come to an informed and not immature conclusion
921 as to what his actual sexual orientation is. And then I
922 would counsel him with respect to the policy and let him
923 know that if he was going to make an open statement, and he
924 has made an open statement to me, he was subject to
925 discharge, and did he understand that. And then I would
926 explain to him what the consequences of the statement were,
927 particularly if he were to repeat it to others and it became
928 an open matter. Make sure he understood the principle of
929 rebuttable presumption, and then we would go from there and
930 the rules were pretty straight on that one.

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931 B, a young soldier comes in and says, I don't know, maybe.
932 That is not a basis for doing anything except trying to get
933 the youngster some help, either talking to his chaplain or
934 if ~~ether~~ medical personnel might be helpful, or just sitting
935 and chatting with him at length about what difficulty he has
936 in identifying his sexual orientation, and seeing if we
937 could help him work through that. But that statement in and
938 of itself would not ~~lead rise to~~ cause ~~that~~ something ^{to} should
939 be done under the rules of this policy.

940 The third issue, ~~we all are~~, would be quite a surprising
941 event. And I would have to check the personnel system that
942 created such a phenomenon, but all of them would be dealt
943 with the same way we dealt with number one. It wouldn't be
944 a group matter; it would be an individual matter.

945 On the fourth one, D, any one of these items standing by
946 themselves would not trigger anything, because they are
947 essentially a youngster performing "associational"
948 activities, ~~is~~ the word the President used in his speech the
949 other day, where he may just be going to these places
950 because in the case of one post we know about, the drinks
951 are cheaper. He may just be interested, he may be curious.
952 He may be "B", trying to identify what his orientation is or
953 is not; might be a heterosexual attending a gay rights
954 parade because even though he is a heterosexual he believes
955 in gay rights, and there should be nothing that prevents a

956 person from attending such a parade out of uniform.

957 Reading literature in and off itself also does not trigger
958 anything. What we are asking our commanders to do is to not
959 see any one of these items as a circuit breaker that
960 requires--

961 Mr. SKELTON. You understand that I am--in the
962 hypothetical, all three occurred.

963 General POWELL. If all three occurred, then the commande
964 has to start considering whether or not he has somebody who
965 is of that orientation and may have a propensity to make
966 statements with respect to that, or to actually be in
967 conduct that would be subject to the provisions of this
968 policy. What we would expect that commander to do is to
969 assemble all of the information.

970 Previously, and what the Secretary is pointing out, any
971 one of these might have launched one of our investigative
972 services. It isn't going to happen anymore. It isn't going
973 to happen just because Private A says he saw Private B in a
974 gay bar or reading a magazine or in a parade or all three
975 doesn't launch one of our investigative office services.

976 We are placing it in the hands of experienced commanders
977 to make a judgment to see whether this is merely benign ^{and} ~~or~~
978 has nothing to do with actual conduct or whether it is a
979 pattern that should be brought to the attention of the
980 soldier and become a matter of discussion between that

981 soldier and his commander or whether it warrants some
982 investigation. But it does not launch the investigative
983 forces of that particular Service the way it would have a
984 year ago. ~~But since~~ If I may, Mr. Chairman, I really would
985 like my colleagues ^{to comment answer this} since this really is a Service matter
986 more so than a Chairman's matter.

987 Mr. SKELTON. I am about to ask them, but let me reiterate
988 and re-ask the question. All three of these activities take
989 place, it is obvious to everyone in the platoon that these
990 activities are taking place, and with the resulting comments
991 obviously that go on between buddies in a platoon. Assuming
992 all three of these activities take place, as I explained
993 them a moment ago, would a commander launch an
994 investigation?

995 General POWELL. First Lieutenant Powell would sit down
996 and talk to the young soldier involved before launching an
997 investigation by any investigative service. I would sit
998 down and talk to the young soldier involved to see what is
999 going on in his life, to see if there is a problem here, to
1000 remind him of the policy that we have.

1001 First Lieutenant Powell would not launch a major--an
1002 investigation of outside authorities at that time. First
1003 Lieutenant Powell would handle it initially as a matter
1004 between a commander and his soldier and then see if any
1005 further investigation might be required.

1006 Every commander, I think, will apply that kind of judgment
1007 to the situation and I don't think there is a cookie-cutter
1008 solution that could be imposed from Washington.

1009 Mr. SKELTON. How about Lieutenant JG Jeremiah?

1010 Admiral JEREMIAH. With respect to the first two issues,
1011 would take the same position essentially that General Powell
1012 has. With respect to the third, and this is the Good
1013 Morning, America wakeup call that the division officer
1014 receives, I have had those. Probably everybody at this
1015 table has had them in one form or another, not necessarily
1016 with homosexuals, but for some other issue.

1017 In the mid-1970s, those of us who were running ships were
1018 running on the edge with respect to manpower and resources.
1019 And anybody who had a destroyer and was wandering around ~~on~~
1020 the fire rooms on any given day might very well find the
1021 entire fire room of his destroyer announcing that they are
1022 done, "Skipper, we are out of here." I had that particular
1023 challenge.

1024 You deal with it as a leadership problem and you get on
1025 with it from that point on. Again, I think you deal with
1026 the individuals and begin to find out what has happened,
1027 what each individual really is talking about, and where and
1028 what they are all--where they are all headed.

1029 With respect to the fourth, you could come to the point
1030 where you could assert that there is credible evidence among

1031 that compilation of material that would cause the officer to
1032 initiate an investigation, I believe. However, all of us
1033 live within the lifelines of our community.

1034 We start as JGs and second lieutenants and first
1035 lieutenants in an organization. We are not there all by
1036 ourself. In my case, I would consult with my division
1037 officer and the commanding officer and executive officer of
1038 the ship. They are the ones who are ultimately going to be
1039 responsible for the decision.

1040 I am the one who is responsible for reciting the
1041 circumstances, telling them what is happening. We would
1042 make a judgment then as to where to go next with this
1043 particular youngster and, most of all, ^{to} make sure we
1044 understand what it is he is trying to do. Is he, in fact,
1045 headed down a path that leads him towards ^{being} ~~and is~~ a
1046 practicing homosexual? Or is he an explorer who is looking
1047 at things and does he understand the consequences of that
1048 exploration?

1049 Mr. SKELTON. How about First Lieutenant Mundy?

1050 General MUNDY. Mr. Chairman, I would give anything in the
1051 world to peel 35 years off and go back and start there and
1052 do it all over again, but putting myself in that position.

1053 I think with regard to the first two, any one of us at the
1054 table probably would start a discussion something like this.
1055 Son, sit down and let's talk about this. Now there is a

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1056 great deal of meaning in that that is lost on the American
1057 people, perhaps because of the legalistic focus that we are
1058 putting on these issues. And that is the word son, or
1059 daughter if it were a young woman.

1060 We don't recruit people, we don't lead people, we don't
1061 manage people, with the hope that we can ferret them out and
1062 discharge them at great expense to the government, at great
1063 waste to them, at a loss, at a casualty to the organization
1064 that we are a part of. The leadership in your armed forces
1065 is the most concerned and compassionate leadership and it is
1066 just that, it is leadership. It is an attempt to lead
1067 people and to understand people and any commander in the
1068 field today at whatever level spends an awful lot of his or
1069 her time doing just that.

1070 Each one of us who has commanded anywhere along the way
1071 would tell you that even up to and including today, we talk
1072 to people about their problems. So the first step would be
1073 let's talk about this.

1074 Contrary to the press perception that you might gain that
1075 we would leeringly delight in being able to say, ah-ha, we
1076 got one, let's lock him in a room, shine bright lights in
1077 his face, put him against the wall. That is just not the
1078 way it is.

1079 We are not a legalistic organization that is attempting to
1080 exist on that basis. So we would talk to him and we would

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1081 say are you sure about this? This happens in boot camp. Do
1082 you realize after about the third week of your drill
1083 instructor in your face that we have youngsters that come up
1084 and say, you know, can I be gay, will that get me out of
1085 here? We have that. That occurs. What happens in that
1086 case is that they are counseled, that they are--

1087 Mr. SKELTON. Is that true just in the Marines?

1088 General MUNDY. Well, I will let my other colleagues speak
1089 for their own here. But that happens.

1090 And we give them the best counseling. We have chaplains.
1091 We have counselors. We have concerned commanders that say,
1092 are you really, or do you just think you are? Because if
1093 you just think you are, and if your motive is to get out of
1094 here at any cost, stick with it, son, you can make it, stick
1095 with it. That is what we do for a living, that is what
1096 leadership means.

1097 So that is what we do. "I may be gay." "Well, let's talk
1098 about that. And, you know, maybe you--you may not be gay."

1099 With regard to the 0630 wakeup call, Good Morning, we are
1100 all gay, I would say it is very clear you are in good
1101 spirits this morning, right face, double time march, let's
1102 run five miles, we will come back and talk about it. Okay.
1103 And that having been done, then we would come out and
1104 probably sit down under a tree, sweaty, smelly, but enjoying
1105 ourselves, and talk through those sorts of things.

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1106 Because that is the human relation slant that we put on
1107 leadership of military, of the sons and daughters of
1108 America. With regard to the last one, I would take a more
1109 specific view. I think that if, as you have characterized
1110 it, Mr. Chairman, that every night after work you go into a
1111 gay bar that is known to be a gay bar, if every day you read
1112 stacks of homosexual literature stacked up in your bunk
1113 room, if you walk in a gay parade, I think once again you
1114 have a consultation where you sit down and say, look, do you
1115 remember what we explained to you at the time that you
1116 enlisted under the policy that is just being advanced? We
1117 told you that statements that indicate that you are a
1118 homosexual probably are things that are going to be
1119 disruptive to unit cohesion.

1120 The team, your organization, is beginning to stand away
1121 from you for one reason or another in the mess line; nobody
1122 wants to serve with you in a fire team or wants to go on
1123 watch with you or so on. You are beginning to be a
1124 disruptive influence, what is going on here?

1125 If that continued, in your face, I am going out there
1126 anyway, then I think probably we would say we better take a
1127 look at you, and that would be in my perspective the basis
1128 for initiating some sort of an investigation.

1129 Now, Mr. Chairman, if at the length of going on forever
1130 here, and I don't mean to, but let me also add that

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1131 investigations are not innately to this body an
1132 investigation as a credentialed investigator that goes out
1133 and begins to do a legalistic investigation. Investigations
1134 are also that first lieutenant or that JG or that captain or
1135 that colonel saying what is going on here, son? Or the
1136 sergeant major saying let's talk about what you are doing
1137 here. That is a form of investigation.

1138 Mr. SKELTON. Lieutenant JG Kelso.

1139 Admiral KELSO. Well, in the first case, the young man who
1140 comes up and says I am gay, I can't add too much to what my
1141 colleagues said. I would take it the same way, that I would
1142 sit down and say, probably with his leading petty officer as
1143 well because he is a part of this situation.

1144 We should remember that it is more likely that he came up
1145 and told his leading petty officer and that is the way you
1146 are going to learn about it. And make sure he understood
1147 what he was saying. If he persists in saying that he is
1148 gay, then this policy is very clear that a statement that he
1149 is gay is a--that we would proceed to have him leave the
1150 service.

1151 If he comes up and says I think I am gay, as Carl Mundy
1152 said, I think I would sit down and talk to him like I would
1153 my son if he came and told me that. I would also enlist the
1154 support of his leading petty officer to tell me what kind of
1155 a person he was as he saw him and those sort of things. I

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1156 am sure I would try to get the chaplain to talk to him so he
1157 could talk to somebody that he had a relationship with, that
1158 he didn't have to tell anyone, and let him try to decide
1159 what he is and help him, as Carl said, to see his way to be
1160 other than that and help him in counseling him. And then we
1161 proceed from there as to what the counseling told to us do.

1162 If I got the wakeup call with everybody gay, I would look
1163 at myself a little bit that I haven't made this case clear
1164 enough that this is serious business and maybe we go clean
1165 the engine room, as Carl says, for a little while to see if
1166 we like that position or not. And I suspect it would go
1167 away and if it would persist, then I think you have to go to
1168 each individual and determine what their feelings are.

1169 I really think that would be other than sort of a prank,
1170 and we have all had a few of those every now and then in our
1171 careers where the troops pull the division officer's chain
1172 and you have to deal with it.

1173 In the case of the youngster who goes to everything, I
1174 feel somewhat like Carl describes. He is either exploring
1175 or making a statement of some kind. I think I would go talk
1176 to his leading petty officer and say what kind of conduct,
1177 what kind of a petty officer, what kind of a seaman,
1178 fireman, has this gent been.

1179 And I think I would tell him to call him in and talk to
1180 him and say, hey, we see where you are going here, you know.

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1181 and try to find out what his thought process is, what he is
1182 doing. And say if you are going to persist in that, you are
1183 going to tell people, send a message you may not want to
1184 send. Then he has a choice to what he does from that point
1185 on. If he persists, then I think we have to recognize that
1186 the unit cohesion is going to be affected by it and take
1187 action to try to see if he actually is carrying out some
1188 homosexual activity.

1189 Mr. SKELTON. Thank you very much. First Lieutenant
1190 McPeak.

1191 General MCPEAK. Be delighted, as my marine colleague
1192 would, to trade places.

1193 Mr. Chairman, your question--your examples raise two
1194 issues. The first issue is what is the impact of homosexual
1195 statements. The second issue is when do you launch an
1196 investigation, and how do you differentiate between that or
1197 an inquiry that is legitimate and a witch hunt, in quotes.
1198 Let me deal with those two issues.

1199 First of all, the new policy defines homosexual statement
1200 as a type of homosexual conduct. The airman who comes to
1201 the orderly room and tells me he is homosexual is headed for
1202 the door. He is leaving the Air Force. "Don't tell" means
1203 "don't tell". Now, he can--there is this so-called right of
1204 rebuttable presumption or whatever it is, so he can start
1205 making the case if he wants.

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1206 Mr. SKELTON. May I interrupt you right there? And I will
1207 get to this a little bit later, probably with the folks
1208 tomorrow, but how do you prove a negative is my question?

1209 General MCPEAK. That is his problem. This young airman
1210 has come in the orderly room and said he is homosexual.
1211 That, by definition of the new policy, is a type of
1212 homosexual conduct, and he is headed for the exit. "Don't
1213 tell" means "don't tell". And so that is issue number one.

1214 Issue number two, the youngster comes in and says I don't
1215 know whether I am homosexual or not but I may be, I would
1216 say come back when you made up your mind. Because, you
1217 know, this is not "don't tell", this is a guy coming in that
1218 is a little confused who wants to talk things over. So we
1219 will give him the help you can.

1220 Issue number three is a statement made by a whole unit,
1221 they are headed all of them for the door. They are about to
1222 leave the Air Force. Even considering that this is a very
1223 cohesive unit, an attribute we like to have in general,
1224 these guys are all going home because that is a statement
1225 about homosexuality which is defined as a type of conduct.

1226 Your third issue is what constitutes credible information
1227 under which the commander might make an inquiry. The new
1228 policy says that if you go to the gay bar, that in itself is
1229 not a good enough reason to launch an investigation; or if
1230 you are in a gay parade or if you read gay literature.

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1231 My interpretation of that is that isolated instances of
1232 that kind do not give the commander the right set of
1233 indicators that he needs to ask for an inquiry, but the way
1234 you put the question was he goes every--he spends all his off
1235 duty time in a gay bar, or there is a pattern of conduct
1236 here.

1237 In my judgment as a commander, I think the scenario you
1238 described is enough to motivate a commander to launch an
1239 inquiry.

1240 Now let me just put in context how big these problems are,
1241 because I sounded a little bit like a hard-liner here, but I
1242 think we need to just put this in a total context. In the
1243 calendar year 1992, the Air Force had 70,000 discharges.
1244 10,000 of them were involuntary discharges, and of those
1245 involuntary discharges, 115 involved homosexuality.
1246 Two-tenths of one percent of all the discharges out of the
1247 Air Force last calendar year, before the policy changed.

1248 Now, of the 115 homosexual discharges, about two-thirds of
1249 them were for conduct which would be actionable under the
1250 new policy in any case. So we are talking about 40, 45
1251 cases of homosexual statements unassociated with any
1252 provable homosexual acts. In the case of most of those
1253 statements, I don't know that--I don't have any data on this,
1254 but my hunch is those 45 people wanted out of the Air Force
1255 by and large, so they came into their commander and said

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1256 they were homosexual. And they would be out of the Air
1257 Force under the old policy or the new policy.

1258 What we are focused on here is that very small number of
1259 cases where a person wants to make a statement about
1260 homosexuality and wants to stay in the Air Force. Now, each
1261 one of these cases is worth considering at length because
1262 they are human cases and we should take them seriously, but
1263 this is not the biggest problem in the world.

1264 I mean we had five times as many people involuntarily
1265 discharged last year for drug abuse. We had ten times as
1266 many people involuntarily discharged for being overweight.
1267 So if you put this in the context of the kind of problems
1268 the commander faces administratively, this is not a very big
1269 deal.

1270 On investigations, last year, last calendar year, the Air
1271 Force conducted 6,000 investigations, about. Of this, 35
1272 involved homosexuality. One-half of one percent of all our
1273 investigations in 1992 involved homosexuality. So again, I
1274 would just--I would urge you to understand that whereas this
1275 issue has seemed to have had an almost overwhelming public
1276 impact, that administratively the impact of this new policy
1277 is not going to be great on us. We can work, this is all
1278 within the limits of workability for a reasonably competent
1279 commander.

1280 Mr. SKELTON. Thank you, sir. First Lieutenant Sullivan.

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1281 General SULLIVAN. Hard to believe I ever once was. Mr.

1282 Chairman--

1283 Mr. SKELTON. You are for a moment.

1284 General SULLIVAN. Right. I appreciate the opportunity to
1285 be here and to talk to this problem.

1286 Now, on the first case, private comes in, First Lieutenant
1287 Sullivan sees him, he announces he is gay. I would then, as
1288 has been mentioned by my colleagues, sit down with the
1289 platoon sergeant and we would discuss this and probably go
1290 up and see the company commander. And in all likelihood,
1291 this young soldier would probably leave the service.

1292 I give you the following data. Since the new policy has
1293 been announced in January, 46 people, all enlisted, have
1294 left the service, left the army, because they either
1295 announced that they were homosexuals, actually 44 of them
1296 announced they were homosexuals, two committed an offense
1297 punishable under the UCMJ. All 46 left the service
1298 completely.

1299 They are not in the individual ready reserve; they are not
1300 in the standby. They are civilians. So I would presume
1301 that if this soldier said I am gay and persisted in that in
1302 a dialogue, that we would in fact process that person out
1303 and they would become a civilian, given those data.

1304 Forty-six is interesting in light of the fact that the
1305 policy has been under consideration and they could have

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1310 dialogue back and forth. Chaplain involved,
1311 non-commissioned, senior non-commissioned officer involved,
1312 health, social workers involved, just to see what it is that
1313 this young person was thinking, and where are we going with
1314 this.

1315 After that is over, I would make a determination along
1316 with my company commander, the chain of command, the senior
1317 officers over me.

1318 In the third case, Good Morning, we are all gay, we would
1319 hoo-ha and go around the blocks like the Marines and we
1320 would get that sorted out. Interestingly enough, as with
1321 General McPeak, in 1992, I had 137 homosexuals released from
1322 the army. And the army was in 1992 somewhere over 600,000
1323 people. First six months of this year, 88.

1324 So relatively small numbers, and I would--I, like my
1325 colleagues, would say, look, I am probably getting either my
1326 leg pulled here, or something else is at work and we would
1327 work our way through it.

1328 Now the gay bar and gay literature, I think the new
1329 policy, which I fully support and I believe gives the
1330 company commanders, the battery commanders, troop commanders

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1331 or whatever, any commander, the latitude to make a decision,
1332 to look at the world in which he or she lives and to
1333 evaluate the circumstances that are in front of them, the
1334 same way that we evaluate each and every day people
1335 problems. Somebody is abusing his wife or his children or
1336 whatever, any number of people problems, no matter how many
1337 you have, you are going to have these problems. And that is
1338 what I expect these young leaders to sort through. I
1339 believe the policy, as it is written, gives that commander,
1340 23, 24 years old, along with his seniors, guidelines within
1341 which to operate.

1342 Mr. SKELTON. Thank you very, very much. Mr. Kyl.

1343 Mr. KYL. Thank you, Mr. Chairman. First, Secretary
1344 Aspin, I want to go back to the first part of your statement
1345 and applaud you and all of the chiefs here for the actions
1346 that you alluded to that don't relate to this issue, but
1347 which have certainly gone forward with respect to the issue
1348 of sexual harassment and also to clear up the Tailhook
1349 incident. I appreciate you mentioning both of these things
1350 here today.

1351 Having complimented you on that, I want to disagree with
1352 you on a point that you made at the beginning of your
1353 statement. It is of course always possible to postulate to
1354 unreasonable extremes. It is not necessarily true as a
1355 result that everything in between those two extremes is

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1356 equally ambiguous, as in the case of this policy.

1357 It is quite possible, and I think the case that there is a
1358 significant degree of latitude between the two extremes as
1359 you put it, in which to develop a policy, and we will have
1360 to be grappling with that legislatively here, and that some
1361 of those policies could be quite ambiguous and difficult to
1362 resolve in the courts and others could be relatively easy.

1363 And I would hope that you would actually agree with that
1364 statement and would not repeat your comment that it is not
1365 credible--I will quote you here. I don't think you really
1366 meant to imply. You said it is not credible to attack the
1367 policy, to say that it is going to the courts. I think it
1368 is credible to suggest that this proposal is more confusing
1369 and less likely to go to the courts and be in the courts
1370 longer than the current policy is.

1371 Secretary ASPIN. Let me, if I could just respond to that,
1372 it is the exact opposite opinion of Janet Reno. So I don't
1373 know. I mean I am just going by what the Justice Department
1374 tells us. We have to go by--everybody has to be guided by
1375 their own lawyer.

1376 And the lawyer for the Federal Government is the Attorney
1377 General. And Ms. Reno believes that this is a policy which
1378 is that they can defend with confidence and in her
1379 memorandum, and we have copies of the memorandum if you
1380 don't have them, states that there are three specific

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1381 changes that this policy makes over current policy or past
1382 policy in which she specifically cites as--and gives the
1383 reasons why the policy as proposed will be more defensible.

1384 Mr. KYL. I appreciate it, Mr. Secretary.

1385 Secretary ASPIN. And I understand what you are saying.
1386 You can get lots of different lawyers to give lots of
1387 different opinions, but basically you go with the Justice
1388 Department.

1389 Mr. KYL. One lawyer in a small town has no business but
1390 two have all the business they can handle. But the fact
1391 remains, that those who have looked at this policy, know
1392 that it is going to the courts. Advocates on both sides say
1393 they are going to take it to court, and no lawyer worth his
1394 or her salt is going to suggest in advance of the case that
1395 they are going to argue that they have a weak case. So it
1396 is understandable that the Attorney General--

1397 Secretary ASPIN. John, the point about making the
1398 argument the weak case was that she looked at the policy
1399 before it was announced to see whether this was a policy, to
1400 see whether in fact it could be strengthened. And indeed
1401 there were some changes that the Justice Department did make
1402 in the policy before it was announced.

1403 So of course, you are right; after it is announced she is
1404 going to support it. What I am saying is that the support
1405 came before and indeed the policy was changed in some

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1406 relatively minor matters, but which may have turned out to
1407 be of a large significance legally.

1408 Mr. KYL. I am not going to argue the legal point with
1409 you, Mr. Secretary. I would like to bring another matter to
1410 your attention, though. It has been brought to my attention
1411 that our request to hear this afternoon from the ranking
1412 NCOs, which was transmitted on Friday the 16th, asking for
1413 them to testify by name, has been denied by the Department.
1414 Is that correct?

1415 Secretary ASPIN. We are trying to make people available,
1416 but if you call on a Friday and say you want these people on
1417 a specific time on a specific date, these are people whose
1418 jobs it is to go out and talk to the troops. They are
1419 almost never in Washington. And having all four of them in
1420 Washington on one afternoon would be very difficult.

1421 And if you are going to arrange their schedules to get it,
1422 you got to give us a couple of weeks of notice. We are not
1423 trying to stiff you here. It is just a practical matter
1424 that these people have schedules. Their job is ambassadors
1425 with the troops. And their job is to go out and be with the
1426 troops and we want them to be available to you but to have
1427 all four of them in town on a specific day--

1428 Mr. KYL. Are any of them in town, Mr. Secretary?

1429 Secretary ASPIN. --requires a couple weeks to do it.

1430 Mr. KYL. Are any of the NCOs in town?

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1431 Secretary ASPIN. What is this?
1432 Mr. KYL. Are any of them in town?
1433 Secretary ASPIN. I don't know.
1434 Mr. SKELTON. How do you know they are not available?
1435 Secretary ASPIN. I know not all of them are available,
1436 and the request was for all of them.
1437 Mr. KYL. Well, could we have some of them?
1438 Secretary ASPIN. We are not trying to stiff you on this
1439 thing, but please understand, it is reasonable.
1440 Mr. KYL. Mr. Secretary, I issued--
1441 Secretary ASPIN. It is tough enough on a short notice to
1442 get the four chiefs in town, but they are easy compared to
1443 these guys.
1444 Mr. KYL. Mr. Secretary, we haven't had much to say about
1445 the timing of this. We have been waiting and waiting and
1446 waiting. It has been in your shop.
1447 You wrote to us on May 24th indicating your intent to
1448 fully consult and to make available throughout the month of
1449 July to testify before the committee and to have the
1450 departmental witnesses available. We didn't know when this
1451 was going to come up.
1452 But as Admiral Kelso pointed out, probably the first
1453 person that is going to hear about the kind of example that
1454 Ike Skelton asked about is going to be that leading petty
1455 officer or enlisted man who is probably going to do a lot of

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1456 counseling first and then determine how best to proceed.
1457 They are obviously going to have to know how to implement
1458 the policy and they are the experts really on how the
1459 enlisted people feel. They are the key to--at least one of
1460 the keys to making this policy work. And I think it is
1461 important for us to hear from them.

1462 Secretary ASPIN. I agree.

1463 Mr. KYL. All right. Let me ask a question of General
1464 Sullivan relative to the Secretary's statement. On page
1465 five of the Secretary's statement, he said, and I am
1466 quoting, as a general rule--Mr. Secretary, you said let me
1467 begin by stating some basic principles, and then you stated
1468 as follows. "As a general rule, the department has long
1469 held that homosexuality is incompatible with military
1470 service. Nevertheless, the department also recognizes that
1471 homosexuals have served with distinction in the armed forces
1472 of the United States."

1473 Now, let's just stop there for a second. General, you
1474 have the largest number with respect to your command and
1475 that is why I am addressing this question to you. I am
1476 assuming that, and in fact some have told me, that the
1477 homosexuals who have served with distinction, and I know
1478 some, by the way, are persons who have committed homosexual
1479 acts, acts which are actionable in the old policy and the
1480 new policy.

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1481 So it is not necessarily that conduct that is
1482 incompatible, but that conduct in some cases and perhaps
1483 more broadly a manifestation of homosexuality in the unit,
1484 the kind of thing that was Ike Skelton's example four, that
1485 is the real problem.

1486 So and then the final sentence of the Chairman's
1487 statement, "therefore, we are going to judge a person's
1488 suitability for service on the basis of conduct." That is
1489 really not the whole story, is it? On conduct, behavior,
1490 that is to say no verbal statement, no touching kind of
1491 homosexual contact, but orientation, homosexual orientation
1492 behavior of the type described by Ike Skelton, is also
1493 incompatible with military service, is it not?

1494 General SULLIVAN. Right, right.

1495 Mr. KYL. So it is not just the homosexual conduct, but
1496 also manifestation of homosexual orientation; is that
1497 correct?

1498 General SULLIVAN. How did it manifest itself? Did he or
1499 she come forward and tell me, did--

1500 Mr. KYL. No, no, I am specifically limiting it to
1501 non-verbal statements and no evidence of--

1502 General SULLIVAN. I don't know what a non-verbal
1503 statement--

1504 Mr. KYL. I am sorry?

1505 General SULLIVAN. Respectfully, I don't know what is a

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1506 non-verbal statement is. You mean a T-shirt that says I am
1507 gay and proud?

1508 Mr. KYL. Well, let me ask you about non-verbal
1509 statements, because each one of you ultimately concluded
1510 that the totality of circumstances in Mr. Skelton's example
1511 number four would warrant an investigation, and yet there
1512 was no verbal statement and no physical contact.

1513 General SULLIVAN. Well, I--

1514 Mr. KYL. So since conduct here is supposed to be the key,
1515 what is it that would initiate in your mind, that would
1516 legally initiate the inquiry?

1517 General SULLIVAN. I think we have to get ourselves down
1518 in the context of First Lieutenant Sullivan. And the
1519 platoons that I dealt with at that level were 20 men, a
1520 couple of non-commissioned officers and some soldiers. I
1521 knew them all, they knew me.

1522 I think it would be almost impossible for me to live in
1523 the kind of environment that I did without knowing it, and
1524 if I felt that there was something to look at as I said in
1525 my example, then I would do so. And I think that is a
1526 normal part of what I expect a commander to do.

1527 After all, I expect them to lead these young people in
1528 battle or whatever, so I would expect them to know him and
1529 him to know them. And I think the point I am trying to make
1530 is this is not some distant legal problem here. These are

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1531 real people living together.

1532 And he would make a judgment, or she, whatever the case
1533 is, would make a judgment. And in their opinion if it was
1534 appropriate to go to the higher level of officer, whatever,
1535 battalion commander, company commander, whatever it might
1536 be, initiate an investigation and see what it is that we are
1537 doing here, if all other matters were exhausted. And I
1538 think the policy lays that out.

1539 Mr. KYL. Well, let me try to be a little bit more
1540 specific then. Under the policy, as I read it, being under
1541 the radar screen as the Secretary described it, means not
1542 making a verbal statement that you are homosexual, and not
1543 engaging in conduct, which is further defined, illustrating
1544 or demonstrating that you are homosexual.

1545 If I were the lawyer for the young man, let's say, who
1546 each of you launched an investigation or an inquiry into and
1547 discharged or seeks to discharge, I would argue that under
1548 this policy you don't have the evidence, you didn't have the
1549 evidence when you initiated the inquiry. You didn't have
1550 any evidence of physical contact and you didn't have a
1551 verbal statement. So the launching of your inquiry was
1552 improper, illegal as it were.

1553 General SULLIVAN. That--that goes on all the time.
1554 Respectfully, Mr. Kyl, that goes on all the time when we
1555 process the case. It depends on what kind of a case it is.

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1556 They have due process today, soldiers have due process, and
1557 those kind of discussions truly do go on all the time. And
1558 that truly is no different under this policy than the old
1559 policy.

1560 Mr. KYL. Well, general, let me just ask each of you t
1561 this question. I appreciate your response as to what you
1562 would ordinarily do, and it seems to me that that is
1563 entirely appropriate and proper. But we haven't had a
1564 policy before that specifically says that there are three
1565 kinds of activity which in and of themselves are
1566 insufficient to begin an inquiry or to discharge a person
1567 for engaging in.

1568 And that, on the other hand, there are two things which
1569 will do that, namely verbal statements of homosexuality and
1570 conduct which is further defined as including contact. I am
1571 suggesting to each of you that a defense lawyer now under
1572 this new policy, unlike as has been going on in the past, is
1573 going to have a much better case that action has been taken
1574 improperly in investigating, if in fact there is no evidence
1575 of a verbal statement or conduct. And I would appreciate
1576 any of you responding to that.

1577 Mr. Secretary, you are--or General Powell.

1578 General POWELL. The policy says that a ~~homosexual act i~~
1579 one of the three parts of homosexual conduct includes any
1580 bodily contact actively undertaken or passively permitted

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1581 between members of the same sex for gratifying sexual
 1582 desire, or which a reasonable person would understand
 1583 demonstrated a propensity or intent to engage in homosexual
 1584 acts, would be a basis to begin action.

1585 Now, I can't argue how a defense lawyer might or might
 1586 use that, but the kind of nonverbal statements you are
 1587 talking about, such as, perhaps, two persons of the same sex
 1588 holding hands or doing something else that would cause the
 1589 average person to suggest or to come to the ~~conclusion that~~
 1590 preliminary conclusion that perhaps there is propensity
 1591 toward homosexual conduct, would provide sufficient basis
 1592 for the commander to begin looking into it.

1593 Mr. KYL. General Powell, just as a follow-up on that,
 1594 would it in your view require physical contact in order to
 1595 fulfill the definition of statement as you have defined it
 1596 as a nonverbal statement?

1597 General POWELL. No. It is not the statement. ^{The} ~~It is~~
 1598 ~~Homosexual~~ act is the part I am talking about here, not
 1599 statements. Statements, as indicated here in the policy,
 1600 refers to a verbal statement.

1601 Mr. KYL. So it--

1602 General POWELL. An act refers to acts which includes
 1603 nonverbal statements, as you have defined, I believe,
 1604 nonverbal statements.

1605 Mr. KYL. Okay. And with respect to that second

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1606 definition of conduct, not necessarily requiring physical
1607 contact in order to give grounds to justify further
1608 investigation?

1609 General POWELL. The commander would have to see what it
1610 is then, see whether within the policy that he has been
1611 provided he has been given sufficient information to cause
1612 an inquiry to be launched.

1613 Mr. KYL. But as a general matter, I am just saying as a
1614 general matter, your advice to the commanders would be that
1615 it does not necessarily have to be a physical contact kind
1616 of conduct to warrant the investigation based upon conduct?

1617 General POWELL. I am not sure I know what a non-physical
1618 contact is.

1619 Mr. KYL. Non-physical conduct.

1620 General POWELL. Oh, I am sorry. The way an act is
1621 defined here, it talks about bodily contact.

1622 Mr. KYL. That is right.

1623 General POWELL. Yes.

1624 Mr. KYL. And what I am asking you is if you don't have
1625 bodily contact, and you don't have a statement, a verbal
1626 statement I am homosexual, then are you warranted in
1627 beginning an investigation?

1628 General POWELL. Yes. If the commander sees other
1629 indications such as a--

1630 Mr. KYL. Where is that in the policy? See, we are going

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1631 on a policy, and I don't see it in there.

1632 General POWELL. In the backup--it is whether the commander
1633 believes he has received credible information of homosexual
1634 conduct that warrants the beginning of an inquiry. And in
1635 the policy--in the implementing documents that are being
1636 prepared to accompany the Secretary's signed document and
1637 the implementing instructions that will be prepared, this
1638 will be covered in greater detail.

1639 General SULLIVAN. I think that Mr. Skelton's--I think it
1640 was point three, the gay bar.

1641 Mr. SKELTON. That is number four.

1642 General SULLIVAN. Number four, sorry, sir. The number
1643 four example is a perfect case in point. We don't have
1644 anything verbal there. What we have is continuous activity
1645 in the bar, and I think it was reading pornographic
1646 literature and so forth and so on.

1647 Mr. KYL. And walking in a parade.

1648 General SULLIVAN. By the way, the commanders at this
1649 level, all commanders wrestle all the time with issues of
1650 child abuse and spouse abuse and alcohol abuse and so forth
1651 and a lot of it is not necessarily verbal.

1652 General POWELL. It really is on page two, I think,
1653 Congressman Kyl. If you look at the third sentence,
1654 however, commanders will continue to initiate inquiries and
1655 investigations as appropriate when there is, operative

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1656 phrase, credible information that a basis for discharge or
1657 disciplinary action exists. So the commander has to satisfy
1658 himself that the actions he has seen, whether they are
1659 nonverbal or whatever, provide credible information that he
1660 should proceed.

1661 Mr. KYL. General Powell and Mr. Chairman, I have just got
1662 to finish that. I appreciate that, but on page two of the
1663 statement, there are these two statements, homosexual
1664 conduct is a homosexual act. And then a homosexual act
1665 includes any bodily contact.

1666 And so my question is really very specific, and we don't
1667 have these ultimate policies that are being written to
1668 further implement this in front of us. Under the policy as
1669 you understand it, could you initiate an investigation of
1670 the situation that Ike Skelton identified as number four
1671 without a verbal statement or without any bodily contact?
1672 You all said yes.

1673 Secretary ASPIN. Let me--let me just make the blanket
1674 statement that under this policy the commander is the final
1675 arbiter of all gray area decisions. And it is intended to
1676 be. There are several statements--

1677 Mr. KYL. But, Mr. Secretary, he has got to live within
1678 the policy that you signed. And if the policy says
1679 specifically prohibits that kind of discretion, he can't
1680 engage in it.

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1681 Secretary ASPIN. The commander--it says, however,
1682 commanders will continue to initiate inquiries or
1683 investigations as appropriate when there is credible
1684 information that a basis for discharge or disciplinary
1685 action exists.

1686 Mr. KYL. And then it says--no, let me interrupt you.

1687 Secretary ASPIN. I don't know--will you please let me
1688 finish my sentence, please? At the time--

1689 Mr. KYL. Mr. Secretary, let me--

1690 Mr. SKELTON. Let him finish.

1691 Mr. KYL. Go ahead.

1692 Secretary ASPIN. I will repeat the sentence. Commanders
1693 will continue to initiate inquiries or investigations as
1694 appropriate when there is credible information that a basis
1695 for discharge or disciplinary action exists. It also says
1696 commanders remain responsible for maintaining good order and
1697 discipline. I mean it is such--

1698 Mr. KYL. Right. But it also says, Mr. Secretary, only
1699 credible information that a service member engaged in
1700 homosexual conduct will form the basis for initiating an
1701 inquiry or investigation of a service member. And conduct
1702 is defined as contact. And I have not gotten an answer to
1703 the simple question, which is do you either have to have a
1704 statement of homosexuality or contact in order to initiate
1705 the investigation?

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1706 Secretary ASPIN. You have gotten a straight answer from
1707 all of us, from Sullivan, from Powell, from me, the answer
1708 is no.

1709 Mr. KYL. It is up to the investigation of the commander,
1710 so you don't have to have either a verbal statement or
1711 evidence of contact, correct?

1712 Secretary ASPIN. The commander is the last--is the last
1713 arbiter of all gray area decisions and it is his judgment as
1714 to whether he has got credible information.

1715 Mr. KYL. Thank you, Mr. Chairman.

1716 Mr. SKELTON. Mr. Dellums.

1717 Mr. DELLUMS. Thank you very much, Mr. Chairman. I would
1718 like to raise one question.

1719 First, Mr. Secretary, we are here this morning hearing
1720 testimony on and raising questions on a compromise that all
1721 of us realize is clearly far short of lifting the ban. In
1722 that regard, let me just quote a few of the comments that
1723 you made this morning and then form a question.

1724 You stated early in your remarks, I signed a directive
1725 making conduct, not sexual orientation, but conduct the
1726 focus of Defense Department policy on who can serve in the
1727 military. Later, referring to the President of the United
1728 States, you said, he made this key point and I quote, people
1729 should have the right to serve their country and if denied
1730 the right it should be on the basis of behavior, not status.

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1731 Further on in your remarks, and let me make this point as
1732 President Clinton did, we have no evidence that homosexual
1733 soldiers are less capable or more prone to misconduct.
1734 Further, therefore, we are going to judge a person's
1735 suitability for service on the basis of conduct. That is,
1736 not what they are, but what they do.

1737 So it is very clear by these comments that you are saying
1738 orientation should not be the issue here, it should be one
1739 of conduct. Let's set that aside for a moment. One or
1740 several of you have commented that, perhaps General Powell,
1741 perhaps you, Mr. Secretary, I just jotted a note, that this
1742 compromise is based upon the balance of the needs of the
1743 military the one hand, and the individual personal rights on
1744 the other.

1745 Then one or several of you went on to say that because we
1746 are a fighting force, that is what we exist for, the issue
1747 of unit cohesion is a very powerful and compelling important
1748 basis upon which this compromise is constructed. Therein
1749 lies the problem for this gentleman.

1750 If you make a very powerful point that this issue now is
1751 one of conduct and behavior, not orientation, the uniform
1752 code of military justice has presently constructed addresses
1753 behavior and conduct of a person serving in the military.
1754 Set that out there. Then my question is this, short of
1755 lifting the ban, what is the threat to unit cohesion if it

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1756 really isn't orientation?

1757 Because the point is that if you say that the issue here
1758 is one of conduct, and we can't pounce on each other now
1759 because the Uniform Code of Military Justice states that,
1760 then how can you frame an argument that says the issue of
1761 unit cohesion is the basis upon which we create this
1762 balance, because if you can't engage in behavior whether you
1763 are homosexual or heterosexual, then tell me what is the
1764 rationale for arguing that unit cohesion is the issue if
1765 indeed it doesn't come back to the question of orientation?

1766 Because if it is the issue of behavior, lift the ban, you
1767 are already dealing with the question of behavior. And if
1768 the question is one of unit cohesion, then what you really
1769 are saying, unfortunately, is that people have a problem
1770 with homosexuals.

1771 And if that is the case, that is who they are, not what
1772 they do, that is orientation, that is not conduct. That is
1773 orientation, that is not behavior. I have listened very
1774 carefully to every word that has been said here. I have
1775 read very carefully this issue.

1776 But what no one has focused on here clearly is what I
1777 perceive to be a major contradiction. Because if you have
1778 made such a compelling argument as you have made and I
1779 quoted in your remarks that this is an issue of conduct and
1780 behavior, it is not orientation, then what is the problem on

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1781 unit cohesion?

1782 We go back 40, 50 years, the issue of unit cohesion was
1783 white soldiers won't serve with black soldiers. They said,
1784 no, let's make it behavior, it is what they do, not what
1785 they are. All right. So we got past that. But it seems to
1786 me that this is unfortunately the focus of what this policy
1787 is. All the brilliant words, all the legalese, all of the
1788 paragraphs, what it does come down to is that what is being
1789 said here is the military is saying we exist to fight, and
1790 that we fight in units and units must have cohesion. And I
1791 am saying that if it is about behavior, our behavior is
1792 governed now by the Uniform Code of Military Justice.

1793 Am I making my point?

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1794 RPTS LYDA

1795 DCMN SISSON

1796 So that I cannot understand what is the basis for not just
1797 simply lifting the ban and getting on with the business
1798 unless it truly is a concern about orientation and who
1799 people are as opposed to what they do. Because you
1800 indicated, as I said, and that is why I pointed this
1801 particular piece out.

1802 Secretary ASPIN. Mr. Chairman, if I could--

1803 Mr. DELLUMS. There is no evidence that homosexual
1804 soldiers are more or less prone to misconduct.

1805 Secretary ASPIN. I will let Colin Powell address the
1806 issue of unit cohesion. What we have said is we are basing
1807 the policy on conduct. However, we are defining conduct to
1808 include statements.

1809 The difference, what we are saying and the crux of the
1810 matter between what we are talking about and what you are
1811 talking about here, is the question about the difference
1812 between public acknowledgment of homosexuality and private
1813 acknowledgment of homosexuality.

1814 The policy defines conduct as statements. When you look
1815 at it in that light, if a person keeps it private that they
1816 are homosexual and does not talk about it, doesn't say
1817 anything, doesn't reveal it in any way, keeps his or her
1818 private life private, the judgment of the people here is

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1819 that that does not affect the unit cohesion.

1820 But once you make it public, even though you are not doing
1821 anything other than making it public, that does affect unit
1822 cohesion. I will let the General address that. But let me
1823 just finish. That is why what we have said is based upon
1824 conduct. But we have defined conduct as including
1825 statements.

1826 Mr. DELLUMS. That is exactly the point that I am making.
1827 Once you define conduct as including statements, the only
1828 basis for that has to be to address what people are, not
1829 what they do. So you have to walk back to orientation.
1830 Once you define conduct as something other than behavior,
1831 you are coming back to the issue clearly, squarely, cleanly
1832 to the question of what people are, not what they do.

1833 You are still dealing with orientation and the notion that
1834 this is strictly about behavior doesn't ring true when you
1835 understand that you change it and make the definition of
1836 conduct.

1837 Secretary ASPIN. It doesn't change everything. If you
1838 are gay and are willing to live by the rules, and the rules
1839 include keeping your own views very private, you can serve
1840 in the military under this policy and you can do it in a way
1841 in which you certainly have a lot more kind of ease of mind
1842 than you used to under the old system. You won't be asked.
1843 You don't have to lie. You don't have to worry about the

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1844 witch hunts and the stakeouts at various facilities.

1845 So, as we have said, this is a policy which accomplishes
1846 some things for people in the military who are of a
1847 homosexual orientation, but it does not do everything. But
1848 at the core of the matter, which is the discussion, you
1849 would define conduct not to include statements. We have
1850 defined conduct to include statements.

1851 Mr. DELLUMS. I understand. I am simply saying that once
1852 you do that, you are acquiescing to the fears and the
1853 ignorance that people have regarding homosexuals.

1854 Secretary ASPIN. Let me ask the people in uniform to
1855 address the issue of unit cohesion. If someone were openly
1856 gay, how that might affect cohesion. You have better
1857 witnesses at the witness table to address that issue.

1858 Mr. DELLUMS. We have witnesses who came before us who
1859 said on the issue of unit cohesion, there are a number of
1860 psychological and cultural studies that point out that what
1861 enhances unit cohesion is when people know each other, when
1862 white folks knew black folks, when gays and straights know
1863 each other, when men and woman know and understand each
1864 other, you remove the fears and ignorance. When you keep
1865 people separated, the issue of unit cohesion continues to be
1866 the problem.

1867 There have been numerous cases pointed out that when
1868 people know gay human beings on an everyday basis, are much

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1869 less prone to bigotry and ignorance because they know people
1870 who are human beings.

1871 Secretary ASPIN. I understand that. But you ought to
1872 the people here in uniform about unit cohesion.

1873 General POWELL. The only thing I might add, Mr. Dellu
1874 first of all this is a, in my judgment, a very complex
1875 issue. The problem is: When the orientation is manifested
1876 by conduct within a small unit setting, it is our judgment
1877 that unit cohesion will be affected and this becomes a
1878 distractor. I think that is the case.

1879 I don't think it will simply be removed through the
1880 process of getting to know one another or educate^{ion} within
1881 that small unit military setting. So it is the conduct that
1882 manifests the orientation. If the orientation can be made a
1883 private matter, then I think there is no impact on unit
1884 cohesion.

1885 Mr. SKELTON. Anyone else?

1886 Mr. Spence.

1887 Mr. SPENCE. Thank you, Mr. Chairman.

1888 Mr. Secretary and gentlemen, we are getting down into the
1889 details now of how this is going to affect the lives of
1890 people. Most of the questions are along those lines. I
1891 have been sitting here just thinking we are told now, for
1892 instance, that people should not be considered for service
1893 on the basis of their status, what you are and what you do

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1894 should separate those two.

1895 Are we still going to exclude some people from military
1896 service because of their status aside from the homosexual
1897 question?

1898 Secretary ASPIN. The policy proposed will not ask people
1899 about their sexual preferences at the time they come in. It
1900 is a policy not to ask.

1901 Mr. SPENCE. When a person comes into the service now,
1902 what other questions do we ask?

1903 Secretary ASPIN. What other questions? I will yield to
1904 one of the Chiefs on that.

1905 General MCPEAK. We don't ask questions. We do when we
1906 enlist people, make sure they understand certain things
1907 about the Air Force; in other words, that our policy on drug
1908 abuse, we make them check it off, a little block that says
1909 our policy is we don't allow drug abuse. They just check
1910 that off. It is not that we ask questions. We provide
1911 preliminary information up front about our policy.

1912 Under the terms of this new policy statement here on
1913 homosexuality, we have not written the implementing
1914 instructions yet, but I am sure the Air Force will add to
1915 that an explanation of what our policy is regarding
1916 homosexual conduct and we will make sure they understand
1917 that when they come in the door.

1918 But they will not be asked the question, are you a

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1919 homosexual any more than we ask the question do you use
1920 drugs. We just make sure they understand our policy.

1921 Mr. SPENCE. What questions do we ask of a recruit coming
1922 in?

1923 General POWELL. General Mundy has some information here.

1924 General MUNDY. This is part of a enlistment form. It is
1925 obviously a lengthy form. I don't have the whole thing
1926 here. This is down to Section 24, 25 and 26. Is anyone
1927 dependent on you for support? Are you now or have you ever
1928 been divorced or legally separated? Do you owe alimony
1929 payments? Are you a conscientious objector? Have you ever
1930 been convicted of a crime or a felony?

1931 We do ask have you used illegal drugs in the Marine Corps.
1932 I gather perhaps not in the Air Force. But we ask that
1933 question and questions of that sort, Mr. Spence. And
1934 previously, we asked are you a homosexual? That has not
1935 been asked since the 29th of January.

1936 General SULLIVAN. When people appear at the recruiting
1937 station, we test them. Obviously, they must be between 18
1938 and 35 or have parental consent if they are younger than 18.
1939 Citizenship, education, dependents as family members in the
1940 case of the Marine Corps are the same thing. We ask whether
1941 they have children. Moral and administrative. There are 15
1942 disqualifying reasons under this category. Drug abuse may be
1943 one of them, convictions, or whatever, there is a whole list

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1944 of issues there, physical and medical standards, prior
1945 military service, then weight and so forth and so on.

1946 Then each recruit, when they reach their first duty
1947 station, as well as before they get there, is given this
1948 briefing which I have right here which goes through the fact
1949 that the Uniform Code of Military Justice applies every day,
1950 seven days a week. We go through rape, carnal knowledge,
1951 sodomy, cruelty to animal treatment, Article 134, which is
1952 good law and order and so forth, offenses related to
1953 homosexual acts, offenses related to AIDS, right down the
1954 line so each soldier, upon entry into the Army--admittedly
1955 some of the more detail briefings take place down in the
1956 organization--but every soldier gets this.

1957 Mr. SPENCE. We ask a lot of personal questions, that is
1958 the bottom line, except we don't ask this one.

1959 Mr. SPENCE. We don't ask about the right to ask all these
1960 questions when you are not allowed to ask other questions.
1961 Only legal questions can answer that for me.

1962 I have been reading all these phrases and it is difficult
1963 for me to accept what is happening to us today. We are being
1964 asked to change all of our views on morality and accept the
1965 views on everything else because we are going to call it
1966 something else now.

1967 We are going to redefine these traditional things that we
1968 have been talking about all of our life except--by calling it

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1969 something else.

1970 I will just tell you about a few of those words. One of
1971 them, "gay" for instance, that is supposed to characterize I
1972 guess some peoples proclivities. That is the most absurd
1973 characterization I can think of. I have a friend at home
1974 who has a daughter named Gay. He gets fighting mad every
1975 time he hears this word being used in a different way. We
1976 use it all the time. It changes the entire focus by calling
1977 it something else.

1978 Second, you have orientation. All these new words I see
1979 down here. Somebody spent a lot of time digging it up. They
1980 are masters of propaganda. Sexual orientation now. All of a
1981 sudden we have a new vocabulary, sexual preference,
1982 alternative life-style, transgender.

1983 What has happened to men and women? We are even being
1984 told that God didn't create men and women, he created
1985 homosexuals and heterosexuals. It is like coffee and tea,
1986 you have sexual preferences. Sexual orientation is defined
1987 for us now. I want to ask someone to explain this to me. We
1988 have here, sexual conduct is grounds for separation. Sexual
1989 orientation is considered personal and private. And
1990 homosexual orientation is not a bar, unless manifested by
1991 acts.

1992 Those two phases, sexual orientation, homosexual
1993 orientation are in the same sentence. Are they used

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1994 interchangeably? Does it mean the same thing? Does
1995 somebody want to answer that?

1996 General POWELL. I have to find the paragraph, sir.

1997 General MUNDY. The definition is an attraction to
1998 individuals of a particular sex. That is the definition of
1999 orientation.

2000 Mr. SPENCE. Does that mean people who are attracted
2001 sexually to children and animals, what category did you put
2002 them under? Is that a sexual orientation?

2003 General POWELL. In the context of this directive, we are
2004 talking about people who are attracted to same gender or
2005 another gender of the human race.

2006 Mr. SPENCE. How about same gender children?

2007 General POWELL. I think that would be better
2008 characterized as a form of pedophilia, which I would
2009 consider to be a disease.

2010 Mr. SPENCE. That would not be a sexual orientation?

2011 General POWELL. In the context of this directive, no.

2012 Mr. SPENCE. I am glad you figured that out. I don't know
2013 if the courts will figure it out or not, but I am glad you
2014 figured it out, General.

2015 The point I am trying to make is that we are trying to
2016 change all these things by calling them something else by
2017 blurring the distinctions. All this policy and all these
2018 words and all the rest are just going to create more

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2019 uncertainty, more legal problems, more controversy than
2020 anything I can think of.

2021 I just hoped--I have to comment about the lack of
2022 enthusiasm on the faces of all of you all this morning. You
2023 don't appear too much to be happy campers. The admiral has
2024 his arm in a sling there. I appreciate what you all have
2025 been through.

2026 Secretary ASPIN. Mr. Spence, don't read anything to the
2027 fact that David Jeremiah has his arm in a sling.

2028 General MCPEAK. My lack of enthusiasm is how long this
2029 policy has been. I think the new policy is a better policy,
2030 and I am enthusiastic about that part.

2031 Mr. SKELTON. Are there any other comments to Mr. Spence?
2032 If not, I understand that the Secretary has a meeting. It
2033 was my intention before I learned this that we would go
2034 right on through as long as we could. But you have to make
2035 your meeting. The other members of the subcommittee had
2036 some questions.

2037 What is the earliest, Mr. Secretary, you can be back.

2038 Secretary ASPIN. Let me consult with my colleagues here.

2039 Mr. SKELTON. Are you acting as a unit?

2040 Secretary ASPIN. I would rather have us all appear
2041 together. Let's come back at 2:15.

2042 Mr. SKELTON. We will come back at 2:15.

2043 [Whereupon, at 12:18 p.m., the subcommittee was recessed,

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2044 to reconvene at 2:15 p.m., that same day.]

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2045 RPTS WATT

2046 DCMN POSS

2047 [2:17 p.m.]

2048 Mr. SKELTON. Ladies and gentlemen, our hearing will
2049 resume.

2050 I might tell the subcommittee that we have our hearing
2051 schedule. But as I just was informed a moment ago, we will
2052 be having votes Friday. So we may do some readjusting on
2053 some of the items that we--

2054 Mr. MONTGOMERY. Will the gentleman yield? That is what
2055 the Speaker said this morning. I don't know about votes,
2056 but he said we would be in session Friday.

2057 Mr. SKELTON. Well, stay tuned; stay tuned.

2058 Where were we? Mr. Montgomery. Excuse me, Mr. Secretary,
2059 you informed me you have to leave at some reasonable time.

2060 Secretary ASPIN. Please.

2061 Mr. MONTGOMERY. He keeps moving down, the Secretary does.
2062 I lost where he was.

2063 Thanks.

2064 I got the green light, too. I would like to welcome our
2065 distinguished guests here. You made some tough decisions.
2066 Now you put the ball in our court, and I guess it is up to
2067 us. I would like to ask two questions, Mr. Chairman, and
2068 make a statement. And I would like to make my statement
2069 now. It pertains to the Veterans Department, Defense

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2070 Department, that really need to work together as we move
2071 into this era of service personnel getting AIDS from certain
2072 areas.

2073 The VA medical system--and I would like our panel to hear
2074 this--treated 19,000 veterans for AIDS in 1992. Forty-eight
2075 percent were homosexual, 52 percent, as were traced, were
2076 from drug users. Actually, drugs were a little higher than
2077 homosexual. The VA, it cost us \$20,000 a year for each
2078 case.

2079 And to be fair, we really don't know whether, if we
2080 implement this new policy, Mr. Chairman, it will increase
2081 the AIDS cases that come into the veterans medical care
2082 centers. It is a problem for us. We are going to put out
2083 \$300 million in treating AIDS for veterans in this next
2084 year. Something needs to be done.

2085 When you discharge a person that is a homosexual and he
2086 ends up with AIDS--and correct me if I say this wrong--you
2087 give them a--you give them an honorable discharge. And then
2088 when they come into our service as a veteran, we make it
2089 service connected because they had--they had an honorable
2090 discharge.

2091 But on a drug user that ends up with AIDS, you give him a
2092 general discharge, maybe dishonorable discharge; and then
2093 only we will pick him up is when he can't--he doesn't have
2094 the money to have any treatment. He is a very low income,

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2095 which most of them would be anyway. So we really pick them
2096 up.

2097 But if I am right on that, that needs to be looked into
2098 The drug user, he is kind of thrown out; and the homosexual
2099 ends up with an honorable discharge, and we give him
2100 compensation in our veterans programs.

2101 But my two questions are: Am I correct in saying that
2102 recruiting of high school graduates and recruiting generally
2103 is falling off, both in the active, the National Guard, and
2104 the reserve? And I have been to three military bases in the
2105 last month, and I got that impression. Now, if we implement
2106 this new law, is that going--is that going to hurt recruitin
2107 in quality? That is my question.

2108 General POWELL. Let me take a quick stab at it, Mr.
2109 Montgomery. Then let the individual ~~S~~ervice Chiefs who run
2110 their recruiting systems reply.

2111 I think we are still making our mission in terms of
2112 getting the numbers of people that we want. I think we have
2113 seen a slight softening in the quality indicators in terms
2114 of high school graduates and cat 4's. And I think in our
2115 propensity to the enlist^{ment}/pool, that is people out there in
2116 the future, youngsters in the age group 16 to 17, there has
2117 been a lowering of those propensity indicators to enlist
2118 when they are of age to enlist.

2119 But I think I really should yield to each of the ~~S~~ervic

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2120 Chiefs, because I am sure each service is a little bit
2121 different.

2122 Why don't I begin on the left with General Mundy.

2123 General MUNDY. The Chairman has accurately characterized
2124 the decline in quality. It is not dramatic at this point,
2125 but it is a percentage point or couple of percentage points.

2126 With regard--

2127 Mr. MONTGOMERY. The new policy? My question is, is it
2128 going to hurt further?

2129 General MUNDY. With regard to the policy, I think if the
2130 policy is clearly explained and is understood--and I think it
2131 is understandable and I think it is explainable--then I
2132 think, you know, America should understand that.

2133 I must tell you, in all candor, that a considerable amount
2134 of mail that I have received has been from parents. And it
2135 has expressed the same concern that you raise, Mr.
2136 Montgomery, that, you know, if there is a significant change
2137 in the policy that will allow homosexuality, then my kid
2138 isn't coming in.

2139 So we do have a concern about that. We are going to have
2140 to explain this very carefully.

2141 Admiral KELSO. From a standpoint of recruiting, Mr.
2142 Chairman, the Navy has seen the same indicators. However, we
2143 are about 94 percent high school graduates, and the other
2144 six percent are non-mental group four.

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2145 So we feel we are getting a very good quality recruit into
2146 the Navy today. It is getting harder to recruit for lots of
2147 reasons in a downsizing environment.

2148 I believe the policy which we have recommended will not
2149 dramatically change recruiting. I think it will continue to
2150 be seen as a policy that people like to come into the armed
2151 forces under.

2152 General SULLIVAN. Mr. Montgomery, as you know, my numbers
2153 are off a little bit. I am like Admiral Kelso, we are 95
2154 percent high school grads. The propensity is down as the
2155 Chairman mentioned. We are meeting our overall numbers.

2156 Hard to predict the future. But I would tell you, based
2157 on the policy that we are bringing to you, I think that
2158 clears up some of the ambiguities that were out there. And I
2159 think we will be all right.

2160 General MCPEAK. No problem in the Air Force, and I don't
2161 anticipate one.

2162 Mr. MONTGOMERY. My time is up. Boy, it really gets away
2163 from you. But my other question was--you can think about
2164 that--that in the National Guard and reserve that maybe these
2165 commanders in the active forces can move out somebody that
2166 violates the new policy you are implementing to the
2167 Congress.

2168 But as I understand the National Guard and reserve, these
2169 people would put--would be put aside and just held there for

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2170 a year or year and a half. And if that is correct, what the
2171 noncommissioned officers are following up--do you have any
2172 Guardsmen and reservists in this next panel, Mr. Chairman?

2173 Mr. SKELTON. No.

2174 Mr. MONTGOMERY. That is something we should look into.
2175 If I am saying it wrong, then it ought to correct me.

2176 General POWELL. I think you are referring to the inter
2177 policy that this policy will replace. Is that correct?

2178 The interim policy applied both to the Active and to the
2179 Reserve Components in that, while we were waiting to see
2180 what the President would decide, from January until now--and
2181 until this new policy becomes implemented--under that interim
2182 policy, people who were under that policy subject to being
2183 discharged for homosexuality were placed into the Individual
2184 Ready Reserve, awaiting the President's final decision,
2185 which we now have.

2186 And each of those cases will be looked at on the basis
2187 the new policy and on the basis of the interim policy to see
2188 whether those persons should continue their process out of
2189 the Service or in some way be reinstated. Some of them, I
2190 believe, have already continued on the way totally out of
2191 the Service. I don't have the numbers immediately at hand
2192 as to how many Guardsmen might be in that category, Mr.
2193 Montgomery.

2194 Mr. MONTGOMERY. But the policy for the activities will

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2195 the same for the reserves forces; is that correct?

2196 General POWELL. Yes, sir. It is a total force DOD
2197 policy.

2198 Mr. MONTGOMERY. Thank you, Mr. Chairman.

2199 Mr. SKELTON. Thank you, Mr. Montgomery.

2200 Mr. Buyer.

2201 Mr. BUYER. Thank you, Mr. Chairman. Before I begin, I
2202 have a procedural inquiry. The procedural inquiry is based
2203 on some comments by Secretary of Defense Aspin as to whether
2204 or not the senior NCOs were going to be available.

2205 My inquiry to you, Mr. Chairman, is if, in fact, they are
2206 going to be made available, since they are available here in
2207 town.

2208 Secretary ASPIN. They are going to be made available, as
2209 I told Mr. Kyl.

2210 Mr. SKELTON. The Secretary has indicated to both Mr. Kyl
2211 and me that they will be made available. We are going to
2212 have to squeeze some time in. Mr. Kyl has agreed to come in
2213 a little earlier, and hopefully all of us will follow suit.
2214 We will get it done.

2215 Mr. BUYER. Thank you, Mr. Chairman.

2216 What I would like to do here is, Mr. Aspin, I
2217 disagree--while I respect you immensely--I disagree with your
2218 comment that the--that we are dealing with a burning social
2219 issue in America.

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2220 I believe that President Clinton made a political promise
2221 to a vocal minority group and has backed himself into the
2222 corner because of that political promise and has been forced
2223 to accommodate them. And that is why we are dealing with
2224 this at the present moment, it is a political-social issue
2225 that has not been resolved within the communities of
2226 America. That is almost a given, which you even talked
2227 about here today.

2228 I personally believe that the armed forces are being used
2229 as a springboard for a greater agenda. And that greater
2230 agenda is the granting of minority rights to gays and
2231 lesbians. So earlier, even in a letter which I read from
2232 Colin Powell about the use of the military as a grounds of
2233 social experimentation, is part of that overall theme which
2234 I am addressing.

2235 I really, Mr. Aspin, don't see that compelling reason to
2236 bring the gays and lesbians into the ranks of the United
2237 States military. I agree with General Colin Powell, your
2238 statement earlier, this morning when you said the purpose of
2239 the armed service is to fight and win wars; anything that
2240 does not contribute--that was your quote; and I believe
2241 also--anything that does not contribute directly to that
2242 mission or, at least has no effect on that mission, should
2243 not be implemented.

2244 I have some specific questions. One, I would like to ask

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2245 of General Sullivan. And that is, General Sullivan, if
2246 President Clinton had not been elected President and we
2247 still had George Bush, would you come here to the House
2248 Armed Services Committee and state that there is a problem
2249 with the old pre-January ban and ask for a change in that
2250 policy?

2251 My second--that is a question to General Sullivan. I have
2252 a question to Secretary of Defense Aspin. In the old policy
2253 stated that the homosexuality--the basis of the old policy is
2254 that homosexuality is incompatible with military service.
2255 Then in the statement of your policy, it talks about the
2256 compromised--states quote, "The Department of Defense has
2257 long held that, as a general rule, homosexuality is
2258 incompatible with military service because it interferes
2259 with the factors critical to combativeness, including
2260 morale, unit cohesion, and individual privacy."

2261 The exact question I have for you, Mr. Secretary, is: Does
2262 this new policy contain the statement homosexuality is
2263 incompatible with military service?

2264 My last question is one to General Mundy. General Mundy,
2265 this is a question that I might be a little long-winded on
2266 because I want to talk about our human sexuality. And I am
2267 going to narrow it down in a final question to you, sir.

2268 Our sexuality is a strong force that reaches to the very
2269 core of who we are. Heterosexuals have an attraction,

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2270 desire, to someone of the opposite sex. Homosexuals are
2271 those who have sexual desire and attraction to someone of
2272 the same sex. Bisexual is someone who has an attraction or
2273 desire to both sexes.

2274 Desire--in the forms of litigation, desire is defined as,
2275 quote, a passion, a longing, or a craving. Heterosexual,
2276 when they have a desire for someone of the opposite sex in
2277 our society, they can date, marry, and raise a family. No
2278 such option is legally open to the homosexual community.

2279 We also recognize that the recruits that we draw upon for
2280 the United States military are people who have strong sexual
2281 urges, the young people of ages 18 to 25. There have been
2282 many articles and studies written, of which all of us have
2283 all read. One in particular is a 1985 American Journal of
2284 Public Health that indicates those who call themselves
2285 homosexuals tend to participate in homosexual activities.

2286 This particular study found that despite onsets of AIDS,
2287 homosexual males have only slightly reduced the number of
2288 partners, quoting one study, that they reduced from 70 to 50
2289 partners a year, and another form of study was a reduction
2290 of 76 partners to 47 per year.

2291 In fact, in testimony, as we are talking about here,
2292 General Mundy, trying to discern the difference between
2293 sexual orientation and sexual conduct as this new policy is
2294 trying to do, in his testimony before the Senate, Dr.

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2295 Charles Moskas, stated that, quote, this sort of status
2296 versus conduct distinction that is frequently made, I think
2297 is a misleading one. We do not separate men and women in
2298 the military in intimate living conditions on the basis of
2299 status. We don't do that. We do--we do it on the basis of
2300 status, not on the basis of behavior and conduct because we
2301 know what it leads to, the tendencies of that sexual desire.

2302 The question to you, General Mundy, isn't it an
2303 unreasonable assumption to allow homosexuals to come in the
2304 military but say you must remain celibate and never act upon
2305 that sexual urge or desire, when we allow heterosexuals to
2306 come into the military and permit them to act upon their
2307 sexual desire?

2308 Thank you very much. Appreciate each of your answers to
2309 those questions.

2310 General SULLIVAN. If I understand you--

2311 Mr. BUYER. First to General Sullivan.

2312 General SULLIVAN. If I understand your question, it was,
2313 would I anticipate that if President Clinton hadn't been
2314 elected, would I be up here testifying before this
2315 committee?

2316 I think that is--that would be idle speculation on my part.
2317 I would tell you, though, that I expect that sometime
2318 within the next two years, you know, looking back two years,
2319 about two and a half years, I would think I would be up here

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2320 | testifying on the subject of homosexuals.

2321 | As a matter of fact, I answered questions on the subject
2322 | before he was elected.

2323 | Mr. BUYER. The specific question, General, is: Would you
2324 | be coming here to say we need to change the old policy? That
2325 | is the question.

2326 | General SULLIVAN. That would be idle speculation. I have
2327 | never come here at my own urging anyway.

2328 | Mr. BUYER. All right, thank you.

2329 | Mr. SKELTON. Let the record show that General Sullivan is
2330 | a truthful witness.

2331 | Secretary ASPIN. Congressman, let me try and answer some
2332 | of the questions.

2333 | First of all, the point is not that we would be up here
2334 | right now testifying about a proposal here had Bill Clinton
2335 | not made that campaign pledge.

2336 | The point is, is that sometime during this four-year term,
2337 | no matter who had been elected, Bill Clinton or George Bush,
2338 | or for that matter Ross Perot--I believe that sometime during
2339 | this four-year period we would be dealing with this in a
2340 | legislative setting where the Secretary of Defense would be
2341 | making a proposal.

2342 | Mr. BUYER. But that is highly speculative also.

2343 | Secretary ASPIN. Well, so is your proposal that we
2344 | wouldn't be here if it weren't--you are asking us to

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2345 speculate. I am speculating.

2346 Mr. BUYER. Thank you.

2347 Secretary ASPIN. And the reason I say that is because
2348 what is going on in the courts is different. We have had
2349 the Ninth Circuit, I think it is, the one out in California,
2350 which has said, in effect, kind of a revolutionary decision,
2351 which we don't know what is going to happen if it goes to
2352 the higher courts but about a decision made there in terms
2353 of being homosexual and being in the military.

2354 We have had some serious disconnects with our ROTC program
2355 and how the ROTC program in some of these universities
2356 clashes with State laws or the university regulations.

2357 And we have had--we have had a number of people serving in
2358 the military who are turning out, because they go public;
2359 they say they are gay and they are people with enormously
2360 exemplary records in terms of what their past performance
2361 was.

2362 So I think that, basically, all of that tells you that
2363 this was a coming issue. Granted, we can't tell when it
2364 would have been, but it is a coming issue.

2365 Mr. BUYER. And, Secretary Aspin, the rest of America
2366 recognizes the Ninth Circuit in San Francisco doesn't set
2367 the norms for America.

2368 Secretary ASPIN. That is all right, but it is the
2369 first--let me--

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2370 Mr. BUYER. The particular question that I have asked Mr.
2371 Aspin, Mr. Chairman, is, is the statement he--

2372 Secretary ASPIN. Would you let me finish my answer?

2373 Mr. BUYER. Sure. I am more than happy to.

2374 Secretary ASPIN. The question is whether the phrase
2375 incompatibility--the way we have phrased it in the document
2376 there is that homosexuality is incompatible with military
2377 service.

2378 Yesterday, at the Senate hearing, all of the Chiefs here
2379 were asked the question: Do you believe now that
2380 homosexuality is incompatible with military service? And I
2381 think all of the Chiefs, in one form or another, said--most
2382 of them said yes to the question. Some of them said open
2383 homosexuality is incompatible with military service.
2384 Whatever.

2385 The point is, is that the military believes two things.
2386 It believes that, as a general rule, homosexuality is
2387 incompatible with military service. I guess if you go out--I
2388 mean, you know, nothing ever applies to everybody; but I
2389 would guess that about 80 percent of the people in the
2390 military believe that.

2391 And they also believe that there are individuals who are
2392 homosexuals who are serving and have served in the military
2393 with distinction.

2394 So they believe both of these things at the same time. The

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2395 point is to devise a policy which incorporates both of those
2396 beliefs. Because, frankly, I think both--that both of those
2397 beliefs are compatible with what the gentlemen up here are
2398 thinking and believing.

2399 So we have got to design a policy which says, as a general
2400 rule, homosexuality is incompatible with military service
2401 but recognize that there are exceptions to that rule. And
2402 there are exceptions to that rule, and the policy ought to
2403 incorporate that. You ought not drive people out who are
2404 capable, who get to be soldier of the year in the 6th Army,
2405 or soldier of the month at Fort Hood or whatever the
2406 situation is. You ought not to drive them out just because
2407 of their status.

2408 So the question is, can you have a policy that
2409 incorporates both the incompatibility as a general rule, and
2410 yet allows for certain exceptions? And that is what we are
2411 trying to do here with this policy before you.

2412 It is--I mean to get to the celibate point, I believe that
2413 it is very difficult to be celibate under any circumstances.

2414 And the question then is: Are you expecting people to be
2415 celibate? What we are expecting people do is to abide by
2416 the rules. And if somebody is abiding by the rules, they
2417 will not be thrown out of the service just because of who
2418 they are. They will be judged in the service by what they
2419 do.

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2420 Mr. BUYER. All right. Thank you, Mr. Aspin. I now know
2421 why you wanted to return with the Chiefs. That was the--that
2422 was the answer that--General Mundy, would you like to respond
2423 to the particular question?

2424 General MUNDY. Gee, I thought the Secretary answered it
2425 superbly. Is it my answer?

2426 Mr. BUYER. Please, you can even take it down into the
2427 small unit level. We talked about earlier with the
2428 commanders, this is in the follow-up, Mr. Chairman, I will
2429 conclude, at the small--bringing that down even to the small
2430 unit level and what is credible information and the latitude
2431 that you talked about of the commanders and whether or not
2432 they will act upon that sexual urge or not.

2433 I mean would you please comment on that? Is it an
2434 unrealistic assumption, and its effects upon that unit
2435 cohesion once it is found out?

2436 Mr. SKELTON. Let me interrupt, just a moment. There are
2437 others that need to ask questions. And please answer this,
2438 General. But it is unfair to the others, particularly on
2439 the subcommittee, Steve, unless we move along.

2440 So, General, go ahead and answer his question.

2441 General MUNDY. I will answer as succinctly as I can, Mr.
2442 Chairman.

2443 I don't--first of all, we have to define "orientation."
2444 And that has been--those words have been read here. It is an

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2445 attraction to a person of a particular sexuality. I don't
2446 think we can, unless we ask, unless we are told, unless the
2447 person knows, all of the above, define that orientation. So
2448 we start with saying we can't do that, so we won't hold that
2449 as a bar.

2450 Now, beyond that, if a person--I think it is completely
2451 reasonable to expect that a homosexual, if he or she is a
2452 homosexual, comes into the military, that they will have to
2453 not fulfill their sexuality because to do so is a crime
2454 under Federal law and under the laws of many of the States.

2455 UCMJ does not permit that, so you can't do that. I think
2456 it is completely reasonable to expect heterosexuals to
2457 fulfill their sexual desires because we depend, among other
2458 things, on the propagation of our race for that particular
2459 function. So I think you would have to say yes there and no
2460 if a person wants to be a member of the armed forces then
2461 they must obey the law. It is that simple.

2462 Mr. SKELTON. Mr. Bilbray.

2463 Mr. BILBRAY. Thank you, Mr. Chairman.

2464 I guess I would like to praise the Joint Chiefs and the
2465 Chairman and the Secretary for coming up with what I think
2466 is a real good compromise. I think it has been hard worked,
2467 and I can see by the testimony that that you really are
2468 involved in this particular regard. I think it is going to
2469 be one that we are going to have to do a lot of selling on

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2470 | though.

2471 | I think it makes a lot of sense, it makes a lot of sense
2472 | for the military, it makes a lot of sense for society in
2473 | general. But in talking to some of my colleagues that are
2474 | opposed--and believe me on both sides; I have some sitting
2475 | over here--that really feel that the ban should just be
2476 | totally eliminated and anything less than that is a total
2477 | betrayal.

2478 | On the other side, I have people that say any reduction of
2479 | the ban is something terrible, too; and it can't be done.
2480 | So you have probably many of us sitting in the middle that
2481 | want to see something like what you are proposing happen.

2482 | But in talking to some of the colleagues that are in
2483 | opposition, I think that it is important to understand that.

2484 | I ask why are they in opposition? It seems like a good
2485 | solid, making a lot of sense; but the comment is they don't
2486 | understand what the policy is.

2487 | Now, I have listened for the last two hours. It makes a
2488 | lot of sense to me what the policy is. But for some reason,
2489 | to some of those opposed to the lifting of the ban, Mr.
2490 | Secretary, Mr. Chairman, the comment is, they don't
2491 | understand what the policy really is and what it--how it will
2492 | be applied and how it will work.

2493 | So I think that what I am saying right now is I support
2494 | the compromise; I think it is a good idea. It certainly has

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2495 taken a lot of thought and effort on all the parts of all of
2496 you. And I commend you for it. But the fact is you got a
2497 lot of salesmanship to do. You have got to really sell this
2498 because there are some sitting in here that just don't
2499 understand what you are talking about.

2500 Thank you.

2501 Secretary ASPIN. I thank the gentleman, and I understand
2502 what he is saying. And that certainly is true, and that is
2503 not only the reason why we're here today, to help try and
2504 explain the policy. But we are going to be available and
2505 talking to a lot of folks over the next few days and over
2506 the next weeks about the policy.

2507 Mr. BILBRAY. One other comment before I finish. As the
2508 gentleman from Ohio said, he doesn't want gays serving in
2509 the military. I think all of you know that gays do serve in
2510 the military, and I just have a comment.

2511 During your careers, have you known gays that have served
2512 in the military honorably and effectively and as good
2513 soldiers?

2514 General Powell?

2515 General POWELL. I do not know any who were not discharged
2516 in the course of their service. I don't personally know of
2517 any who completed service.

2518 Mr. BILBRAY. Somebody told me that there was two known
2519 gays that won the Congressional Medal of Honor. Is that

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2520 correct?

2521 General POWELL. I do not know, Mr. Bilbray.

2522 Mr. BILBRAY. Thank you.

2523 General SULLIVAN. I am like the Chairman, I know of none
2524 that have served.

2525 Admiral KELSO. I am in the same boat, sir.

2526 General MUNDY. Nor do I.

2527 General MCPEAK. Yes.

2528 Admiral JEREMIAH. I know one who completed his active
2529 duty service. He did not admit his sexuality until after he
2530 completed a career in the Navy.

2531 General MCPEAK. The point is that open homosexuality is
2532 what causes a problem. I have known homosexual airmen who
2533 didn't tell, and it did not work out to be a problem at unit
2534 level.

2535 So the whole--the whole impact of the new policy is to
2536 allow homosexuals to serve, as long as they don't tell. That
2537 is the whole point. And I have some experience in watching
2538 that in action. It works fine.

2539 Mr. BILBRAY. I compliment all of you. You are very
2540 courageous gentlemen today, even more in the line of duty, I
2541 think, in Vietnam or World War II or wherever else you
2542 served. Thank you.

2543 Mr. SKELTON. Mr. Hunter.

2544 Excuse me, let me make an inquiry. When do you turn into

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2545 a pumpkin, Mr. Secretary?

2546 Secretary ASPIN. About 3:30.

2547 Mr. SKELTON. Thank you.

2548 Mr. HUNTER. Thank you, Mr. Chairman.

2549 Gentlemen, I think the question that Mr. Bilbray asked was
2550 an important question, because, as a guy who had a small
2551 career in the military and served one tour in Vietnam and
2552 was a platoon leader, I never--like the other gentleman who
2553 spoke, the Chairman and General Mundy--never knew a
2554 homosexual who served in the military.

2555 It seems that every talk show that I have seen debating
2556 this issue, you have had anonymous callers call in and talk
2557 about how homosexuals saved their unit; and I have doubted
2558 their veracity, frankly.

2559 And my understanding is that the homosexual public
2560 relations firms searched desperately for one Medal of Honor
2561 winner out of the thousand or so who lived who was a
2562 homosexual and were not able to come up with one.

2563 And, Mr. Chairman, or, Mr. Secretary, you mentioned that
2564 people came back from Desert Storm and some of them came out
2565 of the closet. My understanding is that out of the 500,000
2566 or so people who served in Desert Storm, a grand total of
2567 seven came out of the closet and made their statements. And
2568 I agree with Mr. Buyer that that does not comprise a ground
2569 swell of political pressure and social pressure for change

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2570 in the military.

2571 And I think that the questions that were raised, General
2572 Mundy, by your statement in 1992 when you said, I do support
2573 the ban against homosexuals in the military, that was the
2574 ban that existed then; you have changed your position today
2575 because this is, I think, honestly stated as a change in
2576 position in that it does allow homosexuals who will keep
2577 quiet to come into the military.

2578 Admiral Kelso, you said, I believe, the current Department
2579 of Defense policy on homosexuality is best for the readiness
2580 of our armed forces. That was about seven months ago. That
2581 was in January of this year.

2582 General Powell, you said in 1992, as chairman of the Joint
2583 Chiefs, as well as an African-American, fully conversant
2584 with history, I believe the policy we have adopted is
2585 consistent with the necessary standards of good order and
2586 discipline required in the armed forces. You made that
2587 statement in May of 1992.

2588 I think that we have two levels of duty here, that you
2589 gentlemen--and I am speaking to the service leaders--had. I
2590 think you had a duty to protect the values of your troops.
2591 If you consider them to be legitimate values. And I think
2592 the polls and the surveys that have been taken--and I know
2593 from your own discussions with line troops--is that a
2594 majority of the troops today, the young people serving in

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2595 uniform, did not want to see the ban lifted.

2596 And you have not once used the term "value." You have not
2597 once accorded legitimacy to the feelings of people who do
2598 serve in the armed forces who feel that because of their
2599 values, because of their faith, because of their traditions,
2600 homosexuality is repugnant and they do not want to serve in
2601 intimate quarters with homosexuals. Not once have those
2602 kids been considered in making that judgment.

2603 I think, secondly, you have a duty to your nation. And I
2604 think it has been brought out that if we simply extrapolate
2605 the slight differences of opinions as to how this new policy
2606 would be carried out on the small unit level, if you
2607 extrapolate that to a small degree, you are going to have 85
2608 different types of methods of handling these cases. You are
2609 going to have a system in which the courts, activist judges,
2610 can absolutely drive a Mack truck through this policy. And
2611 I say that with my trial lawyer hat on. This thing is going
2612 to be torn to pieces by activist judges, and I think we can
2613 anticipate that.

2614 So any of you who have made this decision to support this
2615 policy because looking at it as a snapshot you think that it
2616 somehow keeps what we have in place, I think you haven't
2617 taken the long view; and I think you will soon be apprised
2618 of that as the cases start to clear.

2619 The only thing that has a chance of staying in place is

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2620 the present policy, not because it has magic words, but
2621 because it has a long log of case law that establishes it;
2622 and that would protect our people in uniform from radical
2623 changes by activist judges.

2624 Lastly, I think that it is clear to all of us that we
2625 don't know if middle America is going to buy this change.
2626 And if middle America does not buy this change, the real
2627 vote on your policy changes is going to be taken around the
2628 kitchen tables of middle America when families sit down with
2629 their young men and women and decide whether or not they are
2630 going to join the military.

2631 If they make a decision not to join because of this policy
2632 change and the perception that the military is no longer a
2633 wholesome environment for your children, then you will have
2634 taken an incredible risk and will have failed and will have
2635 damaged the military as a result of a political debt that
2636 was owed by a President of the United States who did not
2637 serve and did not have the experience of serving when he
2638 made this commitment to the homosexual community.

2639 So I know that--I know you have all been in difficult
2640 times, but that is your job. And looking at the fact that
2641 you have failed, in my estimation, as duty to the Nation and
2642 to your troops, I think that General McPeak, General
2643 Sullivan, General Powell, Admiral Jeremiah, Admiral Kelso
2644 and, General Mundy, from my perspective, you have been

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2645 weighed in the balance and found wanting on this very
2646 important issue.

2647 Thank you, Mr. Chairman.

2648 General POWELL. Is there a question that I--

2649 Mr. HUNTER. If you want to answer.

2650 General POWELL. I feel obliged, even though the questi
2651 is not at the end of your statement, Mr. Hunter, I feel
2652 obliged to respond.

2653 First of all, middle America, as well as upper and lower
2654 America, elected Bill Clinton as the President of the United
2655 States, Commander in Chief of the ~~Armed~~ ^A Forces of the United
2656 States.

2657 After the President consulted with his Joint Chiefs of
2658 ~~S~~ staff and indicated to us as the President of all Americans
2659 and as the Commander in Chief of the ~~Armed~~ ^A Forces that he
2660 wanted to modify this policy. And he asked us to go study
2661 it. He didn't change it on the spot; he asked us to go
2662 study it with a goal toward showing a little more
2663 flexibility with respect to that policy.

2664 We went--we studied it for six months, and we studied i
2665 hard, and we consulted with our commanders in the field; we
2666 consulted with our troops. And I think we have discharged
2667 our duty to our kids, to the young men and women that we are
2668 responsible for and that we serve with.

2669 I believe that they will find this to be a workable

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2670 policy. I don't think we have capitulated on anyone's
2671 behalf. I think we have tried to help our Commander in
2672 Chief and our Secretary of Defense work a difficult problem
2673 in which there are a variety of views throughout the
2674 country.

2675 It may be Swiss cheese policy, as you say, with active
2676 judges. I don't think it is quite that bad. All I can do
2677 is rest my judgment, and my colleagues rest their judgment on
2678 what we have been told by the General Counsel of the
2679 Department of Defense and the opinion that has been rendered
2680 by the Attorney General of the United States. Will middle
2681 America buy this change? I am not paid to judge what middle
2682 America might do. That is what the Congress does,
2683 reflecting the broad consensus of the American people. And
2684 it will be in your hands, under the sign that is right in
2685 front of me, to make rules and regulations for the
2686 governance of the ~~armed~~ ~~for the Army~~ the land and naval
2687 forces of the United States. And you will represent middle
2688 America to us.

2689 Thank you.

2690 Mr. SKELTON. Mr. Secretary.

2691 Secretary ASPIN. Let me--a couple of things here,
2692 Congressman Hunter.

2693 One, on the issue of whether this can be defended in
2694 court. As I said, I think earlier to Congressman Kyle, the

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2695 world is full of lawyers; and every time you have three
2696 lawyers, you got four or five different legal opinions.

2697 But the--

2698 Mr. SKELTON. Lawyers? Let's not go too hard on lawyers
2699 now.

2700 Secretary ASPIN. They are everywhere. Everywhere. Even
2701 the Chairman here is, obviously, a lawyer.

2702 Mr. SKELTON. That is right.

2703 Secretary ASPIN. Oh, man. What happens is you got--you
2704 have a lot of legal opinion. But what we are operating with
2705 here is the Justice Department's opinion. I mean it is the
2706 only thing that we can go with. They are the--they are the
2707 body that has to defend the government's policy and laws in
2708 courts.

2709 Mr. HUNTER. I understand that.

2710 Secretary ASPIN. And let me just read you from the
2711 memorandum from the Attorney General, from Janet Reno. "We
2712 are confident that the new policy proposed by the Secretary
2713 of Defense will be upheld against constitutional challenges.
2714 Moreover, the proposed policy that the Secretary of Defense
2715 has submitted changes earlier policy in three respects that
2716 should improve the ability of the Department of Justice to
2717 defend the policy in court."

2718 In other words, what the Secretary--the Attorney General is
2719 saying is that, this is a policy that is better able to be

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2720 defended in court than the previous policy.

2721 Point number two, the gentlemen that I sit up here with,
2722 Duncan, are among the most honorable people that I have ever
2723 dealt with in all my years in government. And whereas, if
2724 you say that they are doing this because of political
2725 pressure, I would say that they would come up and try and
2726 make a policy work because that is what the Commander in
2727 Chief wants them to do.

2728 But they were asked their private and professional
2729 opinion, and I don't think there are enough horses in this
2730 man's kingdom to get these gentlemen to say that this, in
2731 their private and professional opinion, was a good workable
2732 policy if, in fact, in their heart they did not believe that
2733 to be so.

2734 Mr. HUNTER. Thank you.

2735 Mr. SKELTON. Martin Lancaster. Then Tillie Fowler.

2736 Mr. LANCASTER. Thank you, Mr. Chairman.

2737 Thank you, gentlemen, for your testimony. Like others, I
2738 will ask four questions and allow you, then, to answer them
2739 if you would, please.

2740 My first question, though, directed to General Mundy,
2741 certainly, I would encourage others to respond to it,
2742 especially if your answer is different from his.

2743 General Mundy, as you understand it, does the new policy
2744 allow a declared homosexual to join the Marine Corps, or one

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2745 already serving in the Marine Corps who promises thereafter
2746 that he will not engage in homosexual acts, to, in fact,
2747 serve?

2748 In other words, can an avowed and an acknowledged
2749 homosexual join the Marine Corps? Can one with homosexual
2750 orientation who has not acted on it but now promises not to
2751 engage in homosexual acts, do so, become a Marine and remain
2752 in the Marine Corps?

2753 As another one of those lawyers, Mr. Secretary, I have
2754 real problems with rebuttable presumptions and always did as
2755 a practicing attorney because it is very difficult to prove
2756 a negative.

2757 General Mundy, in your--I mean, General McPeak, in your
2758 testimony, you indicated that that was the problem of the
2759 person to rebut the presumption. But, of course, the
2760 military has to know when the presumption has been rebutted.

2761 So I wish somebody would tell me what is going to be the
2762 standard. When has the presumption been rebutted? Because
2763 that is what you have got to determine. The person bringing
2764 the action must rebut the presumption. But somebody's got
2765 to know when it has happened.

2766 Thirdly, dealing with the subject of lawsuits which may
2767 grow out of this, how are we going to deal with that? When
2768 a lawsuit has been brought involving a person on active
2769 duty, does that person remain assigned to his operational

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2770 unit or is he assigned, pending the action, to some
2771 administrative duties?

2772 And what are the impacts, then, on unit cohesion,
2773 readiness, and other aspects of service if a significant
2774 number of lawsuits are brought and these people either
2775 remain in their unit or are pulled out for administrative
2776 duties?

2777 And then, lastly, there seems to me to be, in your
2778 testimony or in response to questions from the Chairman and
2779 Ranking Member, at least some difference on when an open
2780 statement has been made.

2781 And, General McPeak, it appeared to me in your comment
2782 that a statement to the division officer or company
2783 commander, or whatever, in the privacy of the office was an
2784 open statement.

2785 But it appeared to me that perhaps others of you seem to
2786 think or seem to indicate that that was not an open
2787 statement, that an open--that a statement between persons in
2788 a private setting might not be, and that an open statement
2789 required something more public than that.

2790 And I wonder if someone or perhaps all of you could
2791 clarify what we mean by an open statement of homosexuality.
2792 Is it still an open statement if only one person hears it
2793 and that person is in the chain of command? Or must it
2794 require some sort of public utterance?

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2795 General POWELL. Where do you want to start? Carl?

2796 General MUNDY. All right, sir. Can an avowed homosexual
2797 join the Marine Corps? No.

2798 Can a homosexual who come--I guess is in--we now have
2799 someone who has discovered or wishes to avow their
2800 homosexuality while they are in, can they--but they are non
2801 practicing? I think this ties.

2802 If I may then go to the next one, this gets to the
2803 rebuttable presumption. And what that means--what rebuttable
2804 presumption means is that, in America, we would always want
2805 it to be--and it generally is--that you have a right to
2806 explain yourself, you have a right to defend yourself if you
2807 have something to defend against.

2808 When one says I am a homosexual, our presumption is that,
2809 because he or she has just characterized themselves as a
2810 homosexual, that they commit the acts that define the
2811 status, that has a reasonable presumption.

2812 But there are those who might want to say, but I have not
2813 done anything; I don't do; I am not a practicing homosexual.

2814 In that particular case, that gives us, then, the ability
2815 to judge the level at which those individuals would be
2816 assessed.

2817 One process, for example, if they are a practicing
2818 homosexual, then they are in violation of the law. That is
2819 a disciplinary matter and normally a lawyer would be

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2820 assigned, an investigation conducted, charges can pervade,
2821 and a court martial held.

2822 In the event that they are not or there is not credible
2823 evidence to support a disciplinary charge, then we convene
2824 usually an admin separation board which hears their case,
2825 allows them to present their case, and then makes a
2826 recommendation to a commander as to whether they should be
2827 retained or whether they should be discharged.

2828 The commander does not have the authority to take more
2829 extreme action than is recommended to him by this board
2830 of--this administrative discharge board of several officers.

2831 So can they remain in the event they presented a credible
2832 case for saying, you know, I have done nothing here, and if
2833 the board recommended that they be retained, then they
2834 probably would be retained.

2835 That said, I would assume that this would not be a case
2836 where it would be on the national news, in the national
2837 newspapers, in-your-face-type situation. So it is kind of
2838 hard to identify a circumstance in which a person had
2839 announced themselves to be a homosexual and had done it in
2840 such an inaudible voice as to, you know, to not have made a
2841 factor of it.

2842 If I may, with regard to the lawsuits, would there be an
2843 impact on unit cohesion? You bet. Figure if one of the
2844 Redskins sued the Redskins team. That is what we are

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2845 talking about here, is a team. If you sue your team, your
2846 teammates generally don't--you know, I mean that kind of
2847 breaks up the unit cohesion and fractures the effectiveness
2848 of the team. So, of course, there would be impacts on unit
2849 cohesion. Most of those, in my view, who would instigate
2850 lawsuits are people who are out to make a political
2851 statement, rather than people who are genuinely concerned.

2852 If they want to serve, if they want to be Marines, then
2853 they need to want to be Marines first and foremost and be
2854 something else second to that. If they must sue the Marine
2855 Corps in order to ensure their status, then they are not--you
2856 know, they are not going to go very far in the Marine Corps.

2857 Finally, the open statement, when can you--when would an
2858 open statement be made or how would it be made? I would
2859 consider that there are wide varieties. We discussed here
2860 today, if you wear a T-shirt that says, you know, "I am gay
2861 and proud of it," or "I am queer, I am here," something like
2862 that, yes, that is a statement.

2863 If you do a compilation of things that we talked about
2864 earlier that, every day you do three or four different
2865 things, that is a statement. Or if you say, I am a
2866 homosexual, then you made a statement.

2867 And this policy contains provisions to deal with all of
2868 those.

2869 Mr. LANCASTER. So even a statement to an individual in

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2870 private would be an open statement, unless, perhaps, it was
2871 to a chaplain where it was protected speech?

2872 Secretary ASPIN. Let me try and answer this because we
2873 went round on this with the Senate yesterday. I mean,
2874 basically, there is a difference here between the don't tell
2875 and don't--and the pursue issue, the investigation.

2876 The policy is don't tell. And that means don't tell:
2877 don't tell privately, don't tell it publicly, don't tell it
2878 verbally, don't tell it non-verbally. Don't tell is the
2879 rule.

2880 There is a second question, though, as to when does a--when
2881 does an investigation get triggered? And that is up to the
2882 unit commander. I mean you saw in the hypotheticals, the
2883 Ike Skelton hypotheticals here, how different--how these
2884 people as commanders would deal with the issue. In some of
2885 those cases it was enough to--they were telling something.
2886 But whether they proceed to an investigation or separation
2887 or whatever, depends a little bit on the discretion of the
2888 commanders.

2889 And so--but the policy of don't ask, don't tell, don't
2890 pursue, don't tell means don't tell. And that is not
2891 different in this policy from the previous policy. And the
2892 rebuttable presumption that is in this policy is just a
2893 carry over from the previous policy.

2894 And you asked for the guidelines when the rebuttable

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2895 presumption has been met. I think it is historically
2896 factual to say that it has never been met in the past. It
2897 has never been tried. So it is a little hard to actually
2898 lay out the conditions under which it passes.

2899 But you might address that when you get--the lawyers, I
2900 guess, are coming in tomorrow--how they might anticipate some
2901 kind of a defense there that would be successful. But it is
2902 a tough thing to prove. I mean it is a very--it is a
2903 standard which is trying to prove a negative, as you say,
2904 which we all know it is very difficult to do.

2905 General MUNDY. If I may tag on, Mr. Secretary, let me
2906 add, because it has been said, there is another don't here;
2907 and the don'ts, don't do.

2908 We are talking about don't ask your sexual orientation.
2909 That is different. Then we are saying, we are not going to
2910 ask you, you come in, don't do, because that is a violation
2911 of the law and a violation of our statute. And we are not
2912 going to ask. We are going to presume that you don't do
2913 unless you say, I am, in which case we are going to presume
2914 that you do.

2915 Admiral KELSO. Only thing I think I could add this
2916 morning to Mr. Chairman's statement about how you would deal
2917 with somebody who would say he is an open homosexual--we are
2918 dealing with a lot of very young people.

2919 I think all any of us were saying, we would like to make

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2920 sure that the younger man understood what he was telling us.
2921 Once it was clear what he was telling us, then the policy
2922 is clear, that he would be--would leave--that we would tell
2923 him to leave.

2924 Mr. LANCASTER. So the fact that it was told between a
2925 division officer and an enlisted man, in and of itself, was
2926 not a determinative factor, but simply you had to reach that
2927 threshold of whether or not it was a sincere statement of--

2928 Admiral KEISO. What does he mean? We do have cases where
2929 our--particularly during the 1970s--where the drugs were so
2930 prevalent. We had people who decided this is how I want to
2931 leave. And you had a question quite often, is he really
2932 telling me the truth or not.

2933 So I think all we were trying to say was we want to make
2934 sure and give him the opportunity or her the opportunity to
2935 tell us what she means and we know what they mean.

2936 General SULLIVAN. I think that is an interesting question
2937 you raise and perhaps--we talked about it this morning.
2938 Sometimes young people come forward and tell us that they
2939 are. And we get the chaplain and the social worker in it,
2940 get it sorted out, and they really aren't and they just
2941 continue. But that is the commander's business, as you
2942 know.

2943 I think it is interesting, the number, by the way, I gave
2944 this morning, was 46, 46 people--44 of them really--declared

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2945 their homosexuality and left the Army since this interim
2946 policy began in the end of January of this year; and they
2947 are completely out.

2948 At noon, when I went back, I was told of one more who came
2949 forward yesterday, told his officer he wanted out. He
2950 didn't want to stay, and he is going. So they just declare
2951 and go.

2952 Mr. LANCASTER. If I may, Mr. Chairman, with regard to the
2953 disruption of lawsuits, my guess is that all of you feel
2954 that it would be disruptive and would affect unit cohesion.
2955 But I wonder how you would handle that disruption. Because
2956 I don't think anybody answered that.

2957 Would we, in fact, place that person on some sort of
2958 administrative hold pending the lawsuit? Or would they
2959 remain with their unit pending the lawsuit?

2960 General MCPEAK. We have yet to write the administrative
2961 procedures that will back up this policy statement. But my
2962 going assumption is it will be exactly like today. We start
2963 administrative action to separate people. Now, they can go
2964 to a court and ask for a Court order to stop that procedure.

2965 That has happened to us a couple times. But until a court
2966 actively intervenes, we separate.

2967 And so there is no difference between the present
2968 procedure in that regard and what the future holds in store.

2969 Admiral KELSO. I would agree with that. If we have an

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2970 individual today, regardless of what caused it, is causing a
2971 unit problem, we normally move them to a place where they
2972 won't cause a problem. If they intervene through a court or
2973 some other way to stop us, then we follow the court, if they
2974 tell us. That is rare, but occasionally it happens. But
2975 regardless.

2976 So I think, as General McPeak has said, we haven't written
2977 the specific recommendations to back this up yet. But I
2978 think that is what we would do because that is what we do in
2979 almost all cases today.

2980 Mr. LANCASTER. Thank you, gentlemen.

2981 Mr. SKELTON. Tillie Fowler.

2982 Ms. FOWLER. Thank you, Mr. Chairman.

2983 Following the procedure, I have one question for Secretary
2984 Aspin and four for General Mundy. I will just read them all
2985 out.

2986 We keep depending on you all's memory today to see if we
2987 can get them in.

2988 Secretary Aspin, my concern is I have read the old policy;
2989 I read the new; I read Attorney General Reno's memo. The
2990 old policy states that homosexuality is incompatible with
2991 military service and it bases these on the presence of
2992 conduct and statements.

2993 Attorney General Reno states in her memorandum that the
2994 policy reiterates the prior Defense Department policy of

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2995 homosexuality is incompatible with military service. If it
2996 reiterates that policy, if the old one was based on conduct
2997 and statements--and what I have been hearing here today from
2998 everybody is that the new one is based on conduct and
2999 statements--then my question is: Why did we need a new
3000 policy rather than having new policy guidelines or
3001 implementation procedures?

3002 If the problem was in implementation, then why did we not
3003 go that way rather than do a whole new policy?

3004 And then to General Mundy I have got a series of four
3005 questions.

3006 One--and I don't want to really put you on the spot but
3007 they are tough ones--do you think, General, that this is
3008 truly the best policy for this issue that we could come up
3009 with?

3010 If not, what would you change to make it better? Would
3011 you prefer to be able to ask a recruit about their conduct
3012 at the time of recruitment?

3013 Can you truly tell me that if a Marine in their barracks
3014 is overtly possessing and reading, on a daily basis,
3015 homosexual publications in the middle of his barracks, that
3016 this will not have any impact on morale or cohesiveness of
3017 his unit?

3018 Secretary ASPIN. Ms. Fowler, let me start with the
3019 question you asked me, which is about the changes in the

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3020 policy.

3021 I think that the changes in the policy come essentially
3022 from the fact that the old policy was a little bit out of
3023 sync with experience that the military was having with this
3024 issue. The military believes--and you quoted the first part
3025 of that paragraph, which is that homosexuality is
3026 incompatible with military service. But you didn't quote
3027 the second part, that there are also exceptions to that rule
3028 and that there are people who served with distinction who
3029 are of a homosexual orientation.

3030 It has to encompass both parts of that, that this policy
3031 is being redesigned a little bit. I mean the policy is
3032 being to add to the don't tell part of it, don't ask, and
3033 don't pursue.

3034 In other words, what you are trying to do is allow a
3035 person, if they have a homosexual orientation but they are
3036 abiding by all of the rules of the service, to continue to
3037 serve with distinction. And we have had some people who
3038 have served with great distinction.

3039 So what the policy you are is trying to do is to try and
3040 accommodate these two--the situation as we know it in the
3041 service by adding a don't ask and adding a don't pursue
3042 clause.

3043 I mean that is essentially what is different from the old
3044 policy. The don't tell is the same and is in the old policy

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3045 and the new policy.

3046 The thing that is added to the policy that wasn't in the
3047 old policy was don't ask and don't pursue. And the reason
3048 you are doing it is to allow people who abide by the rules
3049 to serve in the armed forces of the United States.

3050 Mrs. FOWLER. But it was determined you need to do that
3051 through a new policy rather than new guidelines or
3052 implementation procedures, because it could have been done
3053 the other way, too, because since you have had homosexuals
3054 who have been serving in the military under the old policy,
3055 you were still going back to conduct, statements, were the
3056 bases for removing them?

3057 Secretary ASPIN. That is right. But what you are doing
3058 is you have got people, the only way they could continue to
3059 serve under the old guidelines was if they lied, and they
3060 ducked the various stakeouts in the process.

3061 Mrs. FOWLER. But the new policy requires them to lie.

3062 Secretary ASPIN. No, ma'am.

3063 Mrs. FOWLER. You just sat here today and said that if--in
3064 answer to the Chairman's question, that if a member of the
3065 service comes in and says, I am a practicing--I am a
3066 homosexual, then that is grounds for removing that person.
3067 So, you know, if they are homosexual and don't want it to be
3068 known, then they better not tell it, because if they tell
3069 it--

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3070 Secretary ASPIN. That is right. But one is--one is a--I
3071 mean one is negative--it is one thing to lie by keeping
3072 quiet. I mean that is not a lie. I mean if you just don't
3073 volunteer information, that is one thing.

3074 If you are asked the question on a form and you are
3075 confronted with it and you have to either check that box
3076 that says that you are heterosexual or the box that says you
3077 are homosexual or the box that says that you are bisexual,
3078 you are confronted with the necessity to lie.

3079 Mrs. FOWLER. When you come back from marching in the gay
3080 parade and your bunk mate says, hey, are you gay, you either
3081 tell him the truth, if you are, and say yes, which then gets
3082 you into problems, or you lie.

3083 Secretary ASPIN. Or don't answer the question. You don't
3084 have to answer the question.

3085 Mrs. FOWLER. True. But I don't see what you've gained.

3086 Secretary ASPIN. Ms. Fowler, you are in politics. You
3087 know, I have been in politics, too. You don't have to
3088 answer every question. You don't have to go and volunteer
3089 your position on every issue before every audience.

3090 Mrs. FOWLER. I agree. But I am not sure what you've
3091 gained with the new.

3092 And going to General Mundy?

3093 Thank you, sir.

3094 General MUNDY. Mrs. Fowler, I only wrote down three.

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3095 Is this the best policy?

3096 The President asked us to design a policy, as the
3097 Secretary and General Powell have described here this
3098 morning, to enable those who have a homosexual orientation
3099 to serve in the military, I need not recite all of that, but
3100 you know under all the constraints we prescribed.

3101 RPTS LYDA

3102 DCMN SISSON

3103 With that guidance and we are serving officers and we
3104 follow the orders given to us by our Commander-in-Chief, we
3105 have designed the best policy that I think can be designed.
3106 We are all confident that that policy could be made to work.

3107 I answer you in the duality that each of us bears, that is
3108 to obey and carry out faithfully the orders of our
3109 Commander-in-Chief. We have done that. The other side is
3110 to provide the best advice that we can provide. That advice
3111 has been given.

3112 Congressman Hunter stated earlier views that we have
3113 expressed. We have given that advice. It is time to move
3114 beyond advice and we are in the execution of orders phase.

3115 Would I prefer to ask the question? I will answer you in
3116 the latter. In my personal opinion, I would prefer to ask
3117 the question, only because I think it is the up front and
3118 the fair thing to do.

3119 When we are asking someone to come into an organization,

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3120 we are going to explain to them under the new policy in
3121 detail what the constraints of service is in the military.
3122 I believe that their understanding of that and with the
3123 mature people that we deal with today probably we would bat
3124 a high batting percentage of people who will say I
3125 understand, I have got it, and I will serve under those
3126 parameters.

3127 My own conviction is that were I able to follow that up as
3128 we do with drug abuse or as we do with all the other things
3129 we talked about today, to say, okay, understanding what the
3130 deal is, and it is better we both understand it at the
3131 outset, I would prefer to ask it. But that is a personal
3132 view. I believe that we can live with the policy that has
3133 been established.

3134 As far as reading homosexual literature in the barracks
3135 and its impact on morale, yes it does have an impact on
3136 morale. Admiral Kelso just reminded me, and I will give you
3137 part of the answer, that we all try to prevent pinning up
3138 Playboy pin-ups. That may seem very fashionable, but that
3139 is offensive to the women Marines that I also have a
3140 responsibility for leading.

3141 We would take all those types of negative influences out
3142 of the barracks. It all falls into the circumstances under
3143 which that occurs. For a Marine who lives alone as a
3144 non-commissioned officer in his room at night and pulls a

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3145 magazine out of a drawer and reads it, I don't know that we
3146 are going to know that. I don't know that we need to
3147 necessarily pursue that.

3148 For a Marine in a squad bay who has a stack of literature
3149 next to his bunk, yes, his buddies will probably be
3150 concerned about that and that can have an impact on morale.
3151 It does not necessarily dictate that he or she is a
3152 homosexual as the policy guidelines outline.

3153 Mrs. FOWLER. That wasn't my question. It was what would
3154 that do to unit cohesiveness if you had someone doing that.
3155 Even though you might not want him to, once you have in your
3156 policy guidelines under activities where it says "possessing
3157 or reading homosexual publication does not constitute
3158 credible information," you are saying it is okay to do this.

3159 So it is going to be tough to say you cannot do it if you
3160 have it specified in a policy guideline that says it is
3161 okay.

3162 I am not saying it is proof of anything, but you will have
3163 a problem with unit cohesiveness and morale of the troops in
3164 that barracks which is what you always get back to, bottom
3165 line. Are you creating some problems by some of the
3166 exceptions you have written in here?

3167 General MUNDY. I believe the way we intended that in the
3168 policy was that in and of itself that does not constitute a
3169 basis for separation or for disciplinary action. There are

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3170 a lot of attachments you could make to that. As to the
3171 impact on morale, I don't know. Again, it depends under the
3172 circumstances under which that occurred.

3173 Mr. SKELTON. Mr. Meehan.

3174 Mr. MEEHAN. Thank you, Mr. Chairman.

3175 General Mundy, as a season ticket holder to the New
3176 England Patriots, I can kind of relate to your analogy about
3177 the Redskins suing Redskins and what that would do to the
3178 cohesive unit of the team.

3179 In New England, the press has sued the team. The owners
3180 have been suing each other for about 10 years. Players sue
3181 fans, fans sue players, and hence we have had the worst team
3182 in football for the last couple of years.

3183 That being said, it is my view that allowing citizens to
3184 serve their country regardless of race, gender, or sexual
3185 orientation is a simple matter of fairness. I think
3186 President Clinton deserves credit for trying to overturn the
3187 ban against gays and lesbians in the military. I don't
3188 think it is the kind of issue that very easily lends itself
3189 to compromise. Hence we are in the situation with this
3190 legislation today.

3191 I have a question for Secretary Aspin relative to your
3192 statement, Secretary Aspin, in your opening, relative to the
3193 Rand Corporation's analysis on this matter. I understand
3194 the DOD paid the Rand Corporation a considerable sum of

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3195 money to analyze this issue. I was wondering what Rand's
3196 conclusions where? Did Rand conclude anything at all about
3197 the impact of lifting the ban on unit cohesion?

3198 I was curious why the Department of Defense has not
3199 released results of that study. It is my understanding
3200 through published reports that \$1.3 million was spent. I
3201 wondered if you would either make that public or at least
3202 make Rand's briefing. I assume after \$1.3 million, somebody
3203 was briefed.

3204 Would you allow that briefing before this committee?

3205 Secretary ASPIN. Yes. We were asked that yesterday in
3206 the Senate. The answer is yes. We have some general
3207 records on this whole information. The only caveat was, if
3208 somebody was giving some advice which was, you know, part of
3209 the advisory, not the Rand Corporation, but part of the
3210 military working group, we might have to be careful about
3211 protecting the authorship of that. But basically we will
3212 make the information available.

3213 Mr. MEEHAN. Could you make a summary available now?

3214 Secretary ASPIN. We will do that. You mean before you
3215 act on this issue?

3216 Mr. MEEHAN. Essentially, did it make any recommendations
3217 with regard to the effect of lifting the ban on homosexuals?

3218 Secretary ASPIN. Yes, it did. We used those very
3219 successfully, I think, to help to go back and work

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3220 interaction between the Rand study group and the military
3221 working group. Having one side look at the issue and the
3222 other side look at the issue created an ability to kind of
3223 play the issue back and forth between the two of them. I
3224 think it was very helpful in coming up with the policy that
3225 we did.

3226 Mr. MEEHAN. I for one as a member of this committee would
3227 be interested in the results of that.

3228 General Powell, it seems to me this whole issue is going
3229 to come down to, we have a compromise and we have those who
3230 have argued that we should codify something with regard to
3231 this.

3232 Opponents of the ban have argued that we should rely on
3233 the judgment of military senior leaders rather than imposing
3234 a decision made by Congress. On the same grounds, do you
3235 think Congress should avoid writing the ban into law or do
3236 you oppose Congressional involvement in this?

3237 I guess the bottom line is, when should there be an effort
3238 by Members of Congress to codify this and other issues and
3239 when should we leave it to the discretion of senior military
3240 advisors?

3241 It seems to me that if you support codification of the
3242 ban, that opens up the door to codification of other rules
3243 and regulations within the military.

3244 Should the Congress pass a law telling the military what

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3245 the atmosphere in the barracks are going to be? Should
3246 Congress pass a law governing combat tactics? Do you think
3247 that Congress should make promotional decisions? It seems
3248 to me this issue is going to come down to whether to codify
3249 or whether to accept this compromise.

3250 I wonder if you could enlighten us as to your view.

3251 General POWELL. I certainly would not suggest that
3252 Congress not involve itself with this issue because Congress
3253 has the ultimate responsibility for providing rules and
3254 regulations for our governance. Whether Congress should see
3255 fit at this time to put this policy into law or not, it is
3256 really not my place to say.

3257 We will obey the policy instructions we receive and obey
3258 it to the best of our ability, whether it comes to us in the
3259 form of a signed memorandum from the Secretary or an
3260 executive order from the President or a law passed by
3261 Congress.

3262 I think it would be presumptuous of me to suggest to
3263 Congress what it ought to do on this particular issue,
3264 whether to take note of what the President is going to do or
3265 whether it should be put in law.

3266 Mr. MEEHAN. I would like to just get clear an
3267 understanding of how this policy affects private speech in
3268 which a person acknowledges his or her status as a gay
3269 person? In other words, if one gay service member tells

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3270 another gay service member that they are gay and this
3271 service member relates that information to a commander,
3272 which as a former prosecutor, that is hearsay and not
3273 admissible within at least a court of law, and in most
3274 courts in the country.

3275 Is that a grounds to have this individual discharged?

3276 General POWELL. Not in and of itself alone. The
3277 commander would take that information, I assume he would
3278 measure it against any other information he or she had, and
3279 make a judgment as to whether or not it is something that
3280 deserved looking into for the purpose of determining whether
3281 the conduct standards had been violated in some way.

3282 Mr. MEEHAN. Thank you, Mr. Chairman.

3283 Mr. SKELTON. I may say, Mr. Meehan, that is not hearsay.
3284 Back in the days when I tried lawsuits, if one person made a
3285 comment to a second person and the second person on the
3286 witness stands tells it, that is firsthand.

3287 Mr. MEEHAN. If that person is available and there, that
3288 is one thing. But if the person is not there, at least last
3289 year when I was trying cases, that was hearsay.

3290 But let me also say that there has not been a member.
3291 Since Bill Parcell has been the coach in New England, no one
3292 has sued anyone.

3293 General POWELL. One of the great advantages we have, Mr.
3294 Chairman, is that there are no lawyers in infantry company

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3295 orderly rooms.

3296 Mr. SKELTON. I would hate to call you out of order,

3297 General.

3298 Jim Talent.

3299 Mr. TALENT. Thank you, Mr. Chairman.

3300 Mr. Meehan, I have to respond to your earlier statement.

3301 We had in St. Louis a football team which was the worst in

3302 the league and we didn't have anybody suing anybody. Then

3303 they moved to Phoenix.

3304 Mr. KYL. Would the gentleman yield? I can assure the

3305 gentlemen that lawsuits have nothing to do with the team not

3306 being very good.

3307 Mr. TALENT. I still watch them. They carry them in St.

3308 Louis. It is apropos that the Chairman referred to

3309 attorneys. I am following up on what Mr. Meehan also asked.

3310 This is going to get into the realm of the attorneys now.

3311 You all have been setting some policy with the Secretary and

3312 obviously the President. We are going to be debating that.

3313 I reviewed the policy in a fairly cursory way and listened

3314 to the testimony today. In my view, and with all due

3315 respect, it is really chock full of a whole lot of

3316 ambiguities that will make it very difficult to work in

3317 practice.

3318 I want to go over several of them as I see them and you

3319 can explain them if you can. This is really the basis for

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3320 asking a couple of questions. I am interested, as a
3321 practical matter, in what we ought to do now. Obviously,
3322 this is fraught with politics, but it is also fraught with a
3323 very substantive import to the men and women in the military
3324 and the company as a whole.

3325 It seems to me the basis of the policy is to go through
3326 some of the ambiguities. There is a general agreement that
3327 homosexuality is incompatible with service, but we are
3328 concentrating only on conduct not on status or orientation,
3329 except that status or orientation is relevant because it is
3330 evidence of conduct. To some extent, that is the existing
3331 policy as well. But certainly there is a very fine
3332 distinction there.

3333 Conduct is defined for the purposes of the policy as in
3334 some cases, but not in other cases, speech. A statement
3335 that I am a homosexual is conduct, is actually defined as
3336 conduct for purposes of the policy.

3337 On the other hand, there are some things that are
3338 manifestly conduct which cannot be taken into consideration
3339 in determining whether conduct has occurred. The policy
3340 says activities.

3341 What is activities but conduct, such as association with
3342 known homosexuals, presence at a gay bar. You will notice
3343 it says "such as" which legally means the lawyers will
3344 interpret it as meaning these and other things like them.

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3345 Presence at a gay bar, possessing or reading homosexual
3346 publications, marching in a gay rights rally will not, in
3347 and of themselves, institute even credible information that
3348 would provide a basis for initiating an investigation.

3349 So, as a policy matter, you cannot even take those things
3350 into account, even though they are conduct. The initiation
3351 of an investigation for the policy, these things are not a
3352 basis for initiating an investigation according to the
3353 written terms of this policy.

3354 Yet you all gave varying answers and many of you indicated
3355 that if you were a commander on the ground, and the least of
3356 all of these things had occurred, you would call the person
3357 in and start asking questions. Is that or is that not an
3358 initiation of an investigation? We will get into this more
3359 with the lawyers tomorrow.

3360 I am not asking necessarily for you to respond to these.
3361 These are just some of the concerns that I have. The purpose
3362 behind this change, the Secretary said that there were two
3363 very worthwhile purposes, to protect privacy. But what is
3364 ironic is that the policy punishes private statements on the
3365 basis of private statements that somebody overhears, that is
3366 actually homosexual conduct.

3367 But the most public kind of activities, marching in a
3368 rally, going to a bar, having literature around your bunk,
3369 and you have had no expectation of privacy in those things,

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3370 those cannot be taken into consideration. So those who
3371 really are trying to be private may be penalized if somebody
3372 overhears them. But those doing something very public are
3373 immune.

3374 The Secretary mentioned eliminating witch hunts. None of
3375 us wants that. General Mundy said in his opinion, and I
3376 think you all would share this, there really aren't a lot of
3377 witch hunts. You don't sniff around ferreting out people
3378 based on what they do in their private lives. And I believe
3379 that. If witch hunts are a problem, why can't we go after
3380 the witch hunts instead of changing the whole policy?

3381 It seems to me this is going to introduce an enormous
3382 amount of ambiguity in the law, put commanders under
3383 enormous amount of strain and pressure. They may be hit on
3384 one hand if they do something and hit on the other if they
3385 don't. If you are really just trying to do the existing
3386 policy in a different way, why don't we just eliminate
3387 "don't ask," and other than that, just keep the existing
3388 policy? Then we have the existing body of law and not give
3389 the courts a basis.

3390 Why don't we keep things the way they are except maybe
3391 eliminating the "don't ask" side of it?

3392 Secretary ASPIN. I again refer you to the memorandum of
3393 the Attorney General where she says that this current
3394 proposal, the policy as proposed, we are confident that the

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3395 new policy proposed by the Secretary of Defense will be
3396 upheld against constitutional challenge. Moreover, the
3397 proposed policy that the Secretary of Defense has submitted
3398 changes earlier policy in three respects that should improve
3399 the ability of the Department of Justice to defend the
3400 policy in the court.

3401 In other words, it was not our intention when we set out
3402 to redesign the policy here, to make it more defensible in
3403 the courts. But what the Attorney General is saying is that
3404 the policy that we have designed for other purposes ended up
3405 being more defensible in court.

3406 Now you know the world is full of lawyers, as I see here.
3407 You say this is going to be harder to defend and others say
3408 less hard. All I can say is we have to go with what the
3409 Attorney General says because the Attorney General is the
3410 one who has to do the defending. This is the Department
3411 that has to do the work. We have to listen to them because
3412 they are the people who are going to be the lawyers for the
3413 government when these cases come into court.

3414 I think most of the things that you were talking about as
3415 being troublesome to you, most of them are in there for a
3416 reason. Some of them are, as you pointed out, are current
3417 policy and we are not changing them. There are some
3418 ambiguities in the current policy.

3419 Again, back to my opening remarks to Mr. Kyl, there are

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3420 very few compromise positions here and all of them have
3421 ambiguities to them. Anything in this area outside of the
3422 extreme positions is likely to have ambiguities. The
3423 current policy has ambiguities. This policy certainly will
3424 have gray areas and ambiguities and we will rely on the
3425 commanders. I will let the men in uniform here answer.

3426 I think this is in the realm of the kind of questions that
3427 commanders deal with in the whole range of personnel issues
3428 across the board. I mean, they deal with these kinds of
3429 gray areas and ambiguities all the time. This is not going
3430 to be anything new to these people.

3431 Finally, the difference between private speech and public
3432 attending of bars is the degree of probability that somebody
3433 is gay. If a person attends a gay parade and marches in the
3434 gay parade, it does not mean that they are gay. They may be
3435 heterosexuals who happen to believe in gay rights and they
3436 are attending the gay parade and marching in the gay parade
3437 because they believe in gay rights.

3438 But a person who even privately says, and maybe especially
3439 who privately says "I am gay," they are probably gay. It is
3440 a degree of certainty. It is not the distinction between
3441 private speech and public action. You are dealing with a
3442 degree of, "What does it show here?"

3443 Mr. TALENT. In all fairness, a person who does these
3444 things, isn't that at least relevant? Couldn't a reasonable

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3445 person at least be justified?

3446 Secretary ASPIN. Please, we have gone through this
3447 several times today. The point is that what the regulations
3448 say is that these items alone, or in and of themselves, are
3449 not evidence that the person is gay. But there may be a
3450 cumulative impact here as we have acknowledged and talked
3451 about, cumulative either across the board, meaning that the
3452 person is doing all of these things, or cumulative in a
3453 sense of repetition.

3454 Mr. TALENT. I can understand your frustration. It seems
3455 to me that reading the policy, what it says basically is
3456 that a commander is in trouble if he proceeds even with an
3457 investigation based on those activities or activities like
3458 them.

3459 General POWELL. In and of themselves. The reason we
3460 selected that language, Congressman, is to do deal with the
3461 question of witch hunts. We are telling our commanders,
3462 look, just because Schmedlock was reported by Murphy to have
3463 been in a gay bar last night, you don't launch half the
3464 military police on Fort Swampy to go find out all about it
3465 and who his buddies were and start getting statements and
3466 all that. We are saying, look, in and of itself, that is
3467 not enough to trigger this process.

3468 A statement is more than that. A statement is a positive
3469 affirmation of conduct and that is why it causes different

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3470 things to happen. If the commander sees the gay bar, the
3471 parade, other things, literature, he should start to go up
3472 that curve as to whether he has somebody who is just
3473 learning about the orientation or somebody who may actually
3474 have that orientation.

3475 Mr. TALENT. The way I read the policy, if he starts going
3476 up that curve, he has violated the policy.

3477 General POWELL. When he starts going up that curve, he
3478 may then be giving the commander credible information that
3479 ought to be looked into.

3480 Mr. TALENT. I have gone past my time.

3481 Thank you, Mr. Chairman.

3482 Secretary ASPIN. How many more members do you have on the
3483 subcommittee who have not asked questions?

3484 Mr. SKELTON. Ms. Harman, Mr. Bartlett, Mr. Stupak. Three.

3485 Secretary ASPIN. Let's do them.

3486 Ms. HARMAN. I am not quite sure how to take that remark
3487 and I have to confess that I am a lawyer.

3488 Mr. Chairman, we are here today after months of
3489 deliberation to consider President Clinton's directive
3490 allowing gays and lesbians to serve in the armed forces. The
3491 waiting is over and this announcement is not the end of the
3492 debate on the issue. But it does signify incremental change
3493 and that change in a positive direction.

3494 I support the President's directive, though I would wish

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3495 for more. Almost two decades ago, I served as chief counsel
3496 and staff director of the Senate Judiciary Subcommittee on
3497 Constitutional Rights.

3498 My position on gays in the military is rooted in my
3499 reading of the equal protection clause of the 14th Amendment
3500 to the Constitution. As I stated on the House Floor in
3501 March of this year, I believe that the ban on gays serving
3502 in the military should be ended.

3503 I see the gay ban not only as unconstitutional, but as a
3504 waste of our scarce military resources. I have talked to
3505 former service members who left the armed forces without
3506 being accused of any crime, simply because they did not want
3507 to be subject to witch hunts and to live a continual lie.

3508 The gay ban has cost us talented people. It has provided
3509 cover for discrimination against straight women in the
3510 services and it has dominated our national security debate
3511 for long enough.

3512 While the President's plan is not perfect by anybody's
3513 yardstick, it is a necessary start. I commend our military
3514 leaders who played a major role in designing the plan and
3515 who can make it work.

3516 We must move forward from here. A good analogy is the
3517 evolution in thought and practice about women in combat.
3518 After years of resistance, the military itself changed the
3519 policy and we are all winners.

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3520 That is really the question I want to put to the panel
3521 today, to Secretary Aspin and anyone else who might want to
3522 answer it. It is about the analogy between the changes here
3523 and the changes in the rules on women in combat. I see
3524 those as developing incrementally and I see our policy here
3525 developing incrementally.

3526 I want to ask you whether that analogy is true and what
3527 you can see this policy evolving in the future. I am not
3528 asking exactly how, but whether you can see it evolving in
3529 the future as that one did.

3530 General POWELL. I don't know where the Nation will be on
3531 this issue in a few years. I am not sure where the people
3532 who succeed us will be on this issue in a few years. It
3533 would not surprise me to see the policy evolve
3534 incrementally. But I firmly believe that the change the
3535 President has made with this policy was the correct change
3536 for the times we are living in and the state of
3537 understanding of this issue that our society has and with
3538 respect to its impact on the effectiveness of the Armed
3539 Forces of the United States.

3540 So I think it is, as the President characterized it, an
3541 honorable compromise, a good solution for the time.

3542 Secretary ASPIN. I think that that is absolutely right.
3543 I think that your looking at the issue of women in combat is
3544 interesting because that was a gradual change and things did

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3545 change. I don't know again where this is going to go. It
3546 has to be consistent with where the public wants to go.

3547 I would guess that it is very unlikely that this is the
3548 last word on this subject. But I certainly would not want
3549 to be under anybody's allusion that we are about to take
3550 this on again any time real soon. I look at the people
3551 here. But basically I think that the important thing to say
3552 is that this is the right policy for the time.

3553 I think it will endure. I think it is defensible. It has
3554 to meet a couple of questions. Is it the right kind of
3555 balance for the time? I think that the reaction that has
3556 come out, the editorial reaction, the general reaction of
3557 the public to it, the cries of dismay from both the right
3558 and the left, the whole general attitude tells me that it is
3559 probably right politically.

3560 The second question is: Does it hold up in the courts, is
3561 it defensible in the courts? The only thing I can tell you
3562 is what the people who have to defend it believe and they
3563 believe it is an improvement and is defensible.

3564 The third question that is relevant is, is it workable?
3565 Is the policy that we have designed actually workable on the
3566 ground? You have heard the testimony of the gentlemen up
3567 here who would have to implement the policy that it is
3568 workable on the ground. I think it meets, therefore, the
3569 three critical tests and I think we ought to do it.

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3570 Ms. HARMAN. Let me ask unanimous consent for one thing,
3571 that is to insert two very important statements on this
3572 subject in the record, both of which appeared in The
3573 Washington Post recently. One is by Senator Bob Kerrey
3574 which was in the Sunday edition of the Post and the other is
3575 by former Senator Barry Goldwater.

3576 These are moving and thoughtful statements as have been
3577 many of the statements today, and I would ask unanimous
3578 consent to insert them in the record.

3579 [The information follows:]

3580

3581 ***** COMMITTEE INSERT *****

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3582 Mr. SKELTON. Let me interrupt before I call on Roscoe
3583 there. Our friend from California a few minutes ago made a
3584 comment about the performance of the uniformed gentlemen
3585 here in front of us.

3586 I personally want to say that I have the greatest respect
3587 and admiration for you presently and for your past duty.
3588 You are the successors to a long line of truly outstanding
3589 men who held your positions going back to Ernest King and
3590 George Marshal and before. I know that you are under the
3591 direction of the civilian authority, namely the President of
3592 the United States.

3593 I make this comment because I know that you are following
3594 direction and orders from the President and I wanted to make
3595 that comment concerning your performance.

3596 With that, Roscoe, you are on.

3597 Mr. BARTLETT. Let me save some time by saying, make it
3598 ditto to express my admiration for who you are and what you
3599 are doing collectively.

3600 I have a series of quick questions. The first one is for
3601 Admiral Kelso. We are not going to ask the question of the
3602 recruits when they bring them in. I will ask these
3603 questions and you can answer after I finish. Are we going
3604 to ask the question when you collect blood from them?

3605 If we do ask that question, what are we going to do with
3606 the answer? Is there a penitance-priest relationship here?

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3607 I just need to understand that and how we are going to keep
3608 the blood supply pure and still be consistent with this,
3609 Admiral Kelso.

3610 The second question has to do, General Sullivan, with I
3611 understand that we are no longer interested in sexual
3612 orientation. I am wondering now if you would be happy to
3613 have among your service members those who express
3614 pedophilia, bestiality, and transvestism.

3615 If that is not true, then we obviously are not talking
3616 about sexual orientation. We are talking about something
3617 else; aren't we? We ought to call it what it is.

3618 The third question has to do with an inconsistency in
3619 defining conduct. If you will look in Mr. Aspin's
3620 directive, you will see that homosexual conduct is defined
3621 as a homosexual act or statement by the service member that
3622 demonstrates the propensity or intent to engage in
3623 homosexual acts or homosexual marriage or attempted
3624 marriage.

3625 But, if I look back into the guidelines that accompany
3626 that directive, it is defined very differently. The
3627 military will discharge members who engage in homosexual
3628 conduct which is defined as a homosexual act. Now, the act
3629 here is described as a statement that the member is
3630 homosexual or bisexual.

3631 Help me understand. Those are different statements about

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3632 the statement. There is an internal inconsistency. At the
3633 least, they have to say the same thing.

3634 The fourth question is for General Mundy, I read from
3635 Janet Reno's statement that she says the present policy
3636 reiterates the prior Defense Department view that
3637 homosexuality is incompatible with military service because
3638 it interferes with the factors critical to combat
3639 effectiveness. However, she says the policy adopts a
3640 position.

3641 Now, how do you explain to the homosexuals that this is
3642 not a sham, that what she gives with the right hand she
3643 takes away with the left hand because, if I read the
3644 guidelines here. It simply says that the only way you can
3645 be a homosexual is for nobody to know it, because as soon as
3646 you tell somebody, you are out. Explain to me how we can
3647 tell homosexuals that that is not just a sham?

3648 The last question is for General McPeak and Secretary
3649 Aspin in that order. I want you to look at an
3650 inconsistency. A statement about service members that he or
3651 she is homosexual or bisexual creates a rebuttable
3652 presumption that the service member is engaging in
3653 homosexual acts or has a propensity or intent to do so.

3654 The service member has the opportunity to present evidence
3655 that he does not do two things, that he does not engage in
3656 homosexual acts and does not have a propensity. The problem

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3657 I have is, and what you need to help me do, is to explain to
3658 people why this--and I will go over it in just a moment--is
3659 not an absurdity that borders on asininity.

3660 Because what you are asking a person to do now is two
3661 things: One, to prove a negative, to prove that they are
3662 not having sexual relations. The other thing you are asking
3663 them to do--and I looked up propensity in the dictionary and
3664 it says it is an intense and often urgent natural
3665 inclination. It says, please see "leaning."

3666 So I turned to leaning. When I get to leaning, it says
3667 proclivity, propensity, penchant. It says that they all
3668 share a common element, which is a strong attraction to or
3669 liking for someone or something.

3670 What you are doing is asking this person to defend
3671 themselves from their statement that says they are
3672 homosexual by convincing you they are in fact not a
3673 homosexual. The very definition of homosexual is this
3674 tendency that is described by the word "propensity." How is
3675 that not an absurdity bordering on asininity?

3676 My last question is for all of you and was a question
3677 given to me and I agreed to ask it.

3678 Mr. SKELTON. Excuse me, Roscoe. They were supposed to be
3679 gone at 3:30 and Mr. Aspin has been kind enough to extend
3680 himself. Can we shorten the question in some way.

3681 Mr. BARTLETT. The question I was asked to ask you is,

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3682 have any of you ever thought of resigning over this issue at
3683 any time?

3684 Thank you very much.

3685 Admiral KELSO. I don't think we asked the question today
3686 or I don't think we will in the future. We test everybody
3687 for HIV positive. So, I think we should have an indicator
3688 if somebody has that.

3689 Mr. BARTLETT. You don't ask them when you take blood?

3690 Admiral KELSO. We ask them to take blood, but we don't
3691 ask them if they are homosexual when we take blood. We
3692 don't ask their sexual orientation when we take blood.

3693 There is a penitnant-priest relationship, as well as a
3694 client-lawyer relationship and a wife and husband
3695 relationship protected here.

3696 General SULLIVAN. Pedophilia, bestiality, and sodomy are
3697 punishable under the Uniform Code of Military Justice.
3698 Soldiers are told that when they come in, they are read the
3699 article verbatim, and it is punishable and they are out.

3700 General MUNDY. Homosexual is by definition incompatible
3701 with military service. Is it a sham to tell homosexuals
3702 that? I don't think so. We are not an individual rights
3703 outfit. We are an institutional rights outfit. We need the
3704 right to develop an affective military force. I don't think
3705 it is at all incompatible to say you cannot be a homosexual
3706 and serve openly in the armed forces.

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3707 Secretary ASPIN. Let me also answer that question because
3708 I think it was asked of me. Basically homosexuality, the
3709 Department has long believed as a general rule that
3710 homosexuality is incompatible with military service.

3711 Basically, I think if somebody were to ask me as an
3712 individual, if they were to come to me and some 18-year-old
3713 male or female, and tell me that they were homosexual and
3714 thinking about joining the military, I would say you ought
3715 to pick a different profession. You are not going to be
3716 comfortable in the military being gay and being in the
3717 military.

3718 However, if they told me that they wanted above all to be
3719 a member of the armed forces of the United States and they
3720 understood what the rules were and they abided by the rules,
3721 what this policy does is allow them to do that. It is going
3722 to be tough. It is tough for anybody.

3723 When somebody comes into the armed forces of the United
3724 States, they give up certain rights that civilians have as a
3725 matter of course. When you join the armed forces, you are
3726 told how to behave, how to dress, how to look. You can't be
3727 overweight. You have to wear your hair a certain way. You
3728 have to wear a uniform during certain hours. You have to
3729 behave in certain ways.

3730 It is a restriction on your freedom of expression. If you
3731 are gay and you are in the armed forces, it is going to be

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3732 even more of a constriction on your freedom of movement. But
3733 the point is, if you really want to be a soldier first and a
3734 gay person second, you ought to be able to do that here.
3735 But it means being a soldier first.

3736 Just like it means, if you join the armed forces, you are
3737 a soldier first, and if you are a black activist, you are a
3738 black activist second. You are a soldier first. If you a
3739 feminist, you have to be a soldier first and a feminist
3740 next.

3741 This is a voluntary organization. These are the rules of
3742 the game. People can choose. They will know the rules
3743 ahead of time and they can judge whether they want to join
3744 or not. It is a voluntary association. The rules are
3745 tough. They are tough for heterosexuals. They are even
3746 tougher for homosexuals.

3747 But it is not absurd to say that if a person really wants
3748 to join it and it is going to be a tough life for them, but
3749 if they really want to do it, they ought to be able to do
3750 it.

3751 Mr. BARTLETT. Mr. Secretary, I agree with everything you
3752 said. It was a great answer, but it was to another
3753 question. My question was: How can they do two impossible
3754 things in defending themselves? To prove a negative and to
3755 defend themselves, they have to prove they are not a
3756 homosexual when they just said they were a homosexual.

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3757 Secretary ASPIN. Look, Congressman, the question you
3758 asking is the current policy. As I was discussing with Mr
3759 Lancaster and with several others, the rebuttable
3760 presumption is current policy. It is tough to proof a
3761 negative. It is tough because we have never had anybody do
3762 it.

3763 Mr. Lancaster asked the question, "How do you do it?" I
3764 said, you ought to try it on the lawyers who will come
3765 before the committee tomorrow and say you are arguing the
3766 case, how would you try to win this.

3767 I can't answer it because I don't think there has been on
3768 that has been argued successfully. Not being a lawyer, I
3769 cannot concoct one. But ask the lawyers if they could.

3770 Mr. SKELTON. Mr. Stupak is the last member of the
3771 subcommittee.

3772 Mr. STUPAK. Thank you, Mr. Chairman.

3773 Gentlemen, thank you for a long day.

3774 Throughout the testimony, we have heard about allocating
3775 scarce resources. Has anyone ever done an investigation or
3776 a guesstimation of how much money is spent each year
3777 investigating inappropriate behavior?

3778 General POWELL. I would have to yield to the Service
3779 Chiefs on ~~that~~ who owns the investigatory assets. I don't
3780 know.

3781 General SULLIVAN. I could tell you what the budget is for

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3782 the Criminal Investigative Department.

3783 Mr. STUPAK. What is the budget in general?

3784 General SULLIVAN. I cannot tell you off the top of my
3785 head, but it is a knowable number.

3786 Admiral KELSO. For our Criminal Investigative Service in
3787 1992, it was less than 1-100th of a percent of the cases
3788 they investigate that were involved in sodomy cases. It was
3789 very little.

3790 Mr. STUPAK. We have heard all kinds of estimates. I have
3791 seen some in some news accounts like millions of dollars a
3792 year.

3793 My second question, the rebuttable presumption, your
3794 example, number one, that Chairman Skeleton gave us about
3795 the young soldier who comes in and says I am gay, you have
3796 this close relationship between him and his lieutenant. It
3797 is sort of a father-son and he says, sit down and talks to
3798 the gentlemen. After he gets all done, he says, however, I
3799 am going to stand on my rebuttable presumption because I
3800 realize that I would never do anything to discredit the
3801 military service.

3802 Would he still be on his way out the door?

3803 General MCPEAK. Yes, sir. Don't tell means don't tell.
3804 I think this is a better policy. This answers, to some
3805 extent, the remarks of Congressman Hunter. We feel we have
3806 protected the essential rights of the troops here because we

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3807 | have defined conduct as including statements about
3808 | homosexuality. We have protected the troops from this kind
3809 | of conduct. From my standpoint, the new policy is much
3810 | better than the old one.

3811 | Mr. STUPAK. Let's say the gentlemen does not say he is
3812 | homosexual, but he is subject to an investigation and there
3813 | is this rebuttable presumption that we are putting in the
3814 | policy. I understand you try to stay away from the
3815 | legalistic, but yet I heard comments today about the due
3816 | process rights.

3817 | Does that due process right entitle that soldier to legal
3818 | counsel that the military would offer to help him build his
3819 | case of rebuttable presumption?

3820 | General SULLIVAN. I think it depends on what kind of a
3821 | discharge he is receiving. In a legal case, a violation of
3822 | the Uniform Code of Military Justice, he or she certainly
3823 | would. In an administrative discharge, there are provisions
3824 | for him to receive counsel or her as they prepare their
3825 | case. So the answer is yes. Ultimately, it could go before
3826 | a Board for Correction of Military Records.

3827 | General POWELL. Any soldier, sailor, or Marine, or Coast
3828 | Guardsman has the right to go to a Legal Assistance Office
3829 | to consult on anything that is either a legal or
3830 | administrative matter, certainly. So I think the answer
3831 | would be yes.

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3832 Can I add a PS, Mr. Chairman? We have spent an enormous
3833 amount of time in the last few days becoming smart on
3834 rebuttable presumptions. It seems like it is one of those
3835 wonderful terms and situations that lawyers would like to
3836 talk about. But I really wonder how often that is going to
3837 be a problem out in the field.

3838 If somebody comes forward and makes a statement, unless he
3839 wants to challenge the policy, I wonder how many youngsters
3840 will come forward and make that statement so he can then go
3841 into the never, never land of rebuttable presumptions in
3842 order to disprove the impact of that statement. I don't
3843 think it is going to be that much of a problem except in the
3844 instances where we have people who are trying to test the
3845 policy.

3846 Mr. STUPAK. When you say it, it would be difficult then
3847 to try to rebut what you have just said. But when you are
3848 talking about actions or behavior, then I think you have a
3849 different situation.

3850 General POWELL. Actions or behavior, you cannot have
3851 rebuttal presumption there. We are talking about a
3852 statement that has a rebuttable presumption.

3853 Mr. STUPAK. Let me ask you, you mention that the
3854 commander is the one who would begin the investigation if
3855 there is going to be an inquiry. I think I know the answer.
3856 But why the commander? Why not higher up? Why the

3857 commander?

3858 General POWELL. There are commanders at all levels. *OVF*
3859 General belief within the military is that a commander is
3860 responsible for his unit and everything that takes place
3861 within that unit. In the first instance, the matter would
3862 come to his attention and he would make a judgment as to
3863 whether or not he should take it to a more senior commander
3864 who might have the assets to apply to this if assets were
3865 necessary.

3866 We really would expect that if it comes to a young platoon
3867 leader and he hears this information, it is not something he
3868 would act on alone. He would take it to his company
3869 commander, a more experienced officer with six, seven or
3870 eight years in the service.

3871 I think that ^a company commander, since he doesn't have any
3872 courts martial convening authority or discharge authority,
3873 he would take it up to certainly, I would think in the Army
3874 and the Marine Corps, battalion level; in the Air Force,
3875 squadron level; and in the Navy, I would expect it would be
3876 at the ship captain or equivalent shore duty level.

3877 Mr. SKELTON. The subcommittee has been heard from in all
3878 fairness. Would the Secretary take at least one question
3879 from Mr. Cunningham who has been the most patient and then
3880 we can bring the gavel down?

3881 Mr. CUNNINGHAM. First of all, I would ask Mr. Aspin,

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3882 Secretary Aspin, as I understand it, the individuals that
3883 have now admitted they are homosexuals under the court are
3884 history; is that correct?

3885 Secretary ASPIN. I think the answer is that we are going
3886 to look at the cases, and each of the service chiefs can
3887 talk about it themselves because we have about eight cases
3888 that are spread around each of the services here. We have
3889 discussed this and talked to the possibility of what we were
3890 going to do. I think we are going to take a look at each
3891 individual on a case-by-case basis.

3892 Mr. CUNNINGHAM. These are admitted homosexuals. They
3893 have said so. I would ask that you could submit to me in
3894 writing, for time, I would like to ask your personal support
3895 or opinion, if someone is discharged as a homosexual, either
3896 due to AIDS or conduct, that it not be an honorary
3897 discharge, that it go under a general or dishonorable.

3898 If you are discharged out of the military service because
3899 of conduct unbecoming enough to make you get out of the
3900 service, I would think it would do something other than
3901 honorable. I would like if you could reply to me personally
3902 on it.

3903 Secondly, I would also like to mention that several
3904 Members have talked about this being civil rights. I would
3905 commend General Powell for his statement that it is not a
3906 civil rights issue, as I understand it, all the way from the

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3907 master chief to the black churches, this is an issue of
3908 compatibility within the service and the operational
3909 effectiveness of that unit.

3910 I would also grant inference to, if President Bush, as the
3911 Secretary mentioned, were looking at this, I guarantee you
3912 things would be a lot different. First, the President would
3913 never issue an executive order. This President has issued
3914 this order with full intent of expressing the full agenda of
3915 the homosexual agenda. If we give in to this agenda, I
3916 think it is a foot in the door.

3917 I fought with each of the individuals there, I have cried
3918 with you, I laughed with you. I was down at the Marine
3919 Corps drill team and it made my heart soar like an eagle.
3920 As deep as I reach, I cannot believe that you support this.
3921 Please convince me, because I don't believe it.

3922 This is something that is very personal because I have,
3923 first hand, witnessed evidence that the agenda is to get
3924 into our schools and into our military and into churches and
3925 I don't support that.

3926 Thank you, Mr. Chairman.

3927 General POWELL. We do support it, Mr. Cunningham. We
3928 have so testified here and before the Senate yesterday. We
3929 have told the Secretary of Defense and we have told our
3930 Commander-in-Chief that we support it.

3931 We are all military advisors to the Secretary and to the

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3932 President. Four of us here, we are Service Chiefs as well.
3933 We have the best interests of our Service at heart, but we
3934 have to remind ourselves that nobody made us
3935 Commander-in-Chief. Nobody elected us to be
3936 Commander-in-Chief. Our responsibility is to give the
3937 Commander-in-Chief our best advice and to carry out his
3938 instructions. He gave us guidance to work this problem. We
3939 worked it very, very hard with the Secretary.

3940 I believe that the solution we have come to, which as the
3941 Commander-in-Chief said, did not go as far as he had
3942 originally intended, is a workable compromise and it is one
3943 that we can support. We can support it, frankly, for the
3944 reason that it did not go as far as had originally been
3945 proposed.

3946 I am very pleased that we have a solution almost there
3947 that enjoys the support of the Commander-in-Chief, the
3948 President of the United States, the Secretary of Defense and
3949 the other civilian officials within the Department of
3950 Defense, the Attorney General of the United States and the
3951 senior leadership of the armed forces.

3952 I think I can speak for all the commanders, the Unified^{and}
3953 Specified Commanders who actually command our troops, and I
3954 hope it will enjoy the support of both houses of Congress in
3955 any way you wish to provide that support. If we all have
3956 that, I think we have quite a good solution and I think it

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3957 is one that will be supported by the American people.

3958 With respect to the full agenda, I touched on that brief
3959 in my opening statement. That is a matter that the American
3960 people and the Congress will have to make a judgment on.

3961 Mr. CUNNINGHAM. My mind believes you but my heart does
3962 not.

3963 General POWELL. Your heart should, sir, because I am
3964 speaking with my heart and my mind. This is not a position
3965 we arrived at lightly or without a great deal of thought and
3966 a great deal of argument, without a great deal of study of
3967 the fact that we were moving off a position that had existed
3968 last year. I think it is something that we can work.

3969 My heart is always speaking for the best interests of the
3970 ~~Armed~~ ^A ~~forces~~ ^F of the United States.

3971 Secretary ASPIN. Let me just say a word to Duke, your
3972 comments about where Bill Clinton is going in terms of the
3973 gay rights agenda. It was never Bill Clinton's intention to
3974 impose the gay rights agenda on the armed forces of the
3975 United States.

3976 I have become sort of expert on what he said on this issue
3977 during the campaign and since the campaign. His agenda was
3978 a fairly narrow agenda in this respect, in terms of the
3979 military. And as Bill Clinton himself has said, even then
3980 he didn't get all that he wanted in this policy. The policy
3981 that Bill Clinton wanted was that a person could be of

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3982 homosexual status and abide by the rules and not be forced
3983 out of the armed forces.

3984 You could serve with a homosexual status provided that you
3985 abided by the rules. That is far from the whole agenda
3986 about beneficiaries and spousal benefits and all that kind
3987 of stuff. That was never ever part of the equation here.
3988 But clearly I think the President would have liked a policy
3989 that had been a little bit more forward leaning in terms of
3990 what the person who is gay could say.

3991 But as you heard the testimony here, the policy is "don't
3992 tell." Don't tell is the policy.

3993 Mr. SKELTON. Mr. Secretary, I know you have stayed past
3994 your allotted time and everybody still has not had the
3995 opportunity that wished to ask questions to do so. But I
3996 wanted to thank you and thank your colleagues. This has
3997 been a very difficult subject and it has been a difficult
3998 day for you, but I want you to know we appreciate your being
3999 with us and your straightforward answers.

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4000 RPTS WATT

4001 DCMN WEINSTEIN

4002 (4:14 p.m.)

4003 Mr. SKELTON. We will call our second panel to order for
4004 our subcommittee. Our second panel consists of General Jack
4005 Merritt, United States Army, Retired, President, Association
4006 of the United States Army; Sergeant Major Michael F.
4007 Ouellette. Did I pronounce that right?

4008 Major OUELLETTE. That is correct, Mr. Chairman.

4009 Mr. SKELTON. United States Army, Retired; Major Charles
4010 Johnson, Marine Corps, Retired.

4011 This afternoon the subcommittee continues its examination
4012 of President Clinton's policy to lift the ban on homosexuals
4013 in the military. This morning and this afternoon the
4014 subcommittee heard from Secretary Aspin and the entire
4015 members of the Joint Chiefs. We will now shift our focus
4016 from the broad policy questions to specific practical ones
4017 of how the people in the field will implement this policy.
4018 Is it feasible, is it understandable? Mr. Kyl.

4019 Mr. KYL. Thank you very much, Mr. Chairman. I hope
4020 that--gentlemen, welcome, and I hope that you had an
4021 opportunity to at least view some of the testimony that has
4022 been given by the Chairman and the Secretary and the Joint
4023 Chiefs today. Or perhaps some of the testimony in the
4024 Senate.

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4025 In my opening statement, I noted the fact that after
4026 reviewing some of yesterday's activity in the Senate, I was
4027 more confused than I was after first reading the policy. And
4028 that in effect the more I read, the more confused I became
4029 about how this is going to be implemented and whether it can
4030 sustain legal challenge.

4031 I tried to raise some questions in my opportunity to have
4032 a dialogue with the Joint Chiefs and the Secretary this
4033 morning. And I would summarize it by saying that to the
4034 issues that were raised, the general answer was that they
4035 believed that there would be discretion in the commanding
4036 officers to begin investigations and to implement the
4037 policy, including to discharge offending members of the
4038 armed services.

4039 I suggest that a careful reading of this and the
4040 questioning of lawyers tomorrow will reveal that much of
4041 that discretion has been given away in the development of
4042 the policy which has some rather specific constraints
4043 embodied within it. It is my intention with you gentlemen
4044 here today to ask some questions regarding the
4045 implementation of the policy, given the specific constraints
4046 in the written document itself.

4047 And when it is my turn, I will ask you some very specific
4048 questions. But I very much appreciate you being willing to
4049 be here and in particular to let the schedule slide because

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4050 we took more time with the other panel than we had
4051 originally anticipated.

4052 So thank you very much for being here.

4053 Mr. SKELTON. Let the record also show that we have
4054 invited the senior noncommissioned officers to appear before
4055 our subcommittee, the exact time of which we have not
4056 determined, but I will work with Mr. Kyl and them to have
4057 them over as expeditiously as we possibly can. And I want
4058 him and the other members of our subcommittee to know that.

4059 General Merritt, we will ask you and Major Johnson and
4060 Sergeant Major Ouellette to proceed with your testimony. If
4061 you have written testimony, it will be, without objection,
4062 entered into the record. We will ask that you summarize it
4063 as best you can so that we can proceed to questions. General
4064 Merritt.

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4065 STATEMENT OF GENERAL JACK MERRITT, UNITED STATES ARMY,
4066 RETIRED, PRESIDENT, ASSOCIATION OF THE UNITED STATES ARMY;
4067 SERGEANT MAJOR MICHAEL F. OUELLETTE, UNITED STATES ARMY,
4068 RETIRED; AND CHARLES JOHNSON

4069

4070 STATEMENT OF GENERAL JACK MERRITT

4071

4072

4073 General MERRITT. Thank you, Mr. Chairman. I have a
4074 written statement which will be furnished later. We hadn't
4075 had time to totally complete it.

4076 But let me begin by commending the committee for holding
4077 this hearing on the issue of implementation of the policy
4078 directive concerning homosexuals in military service. I
4079 think it is absolutely essential that your review of this
4080 policy culminate in legislation.

4081 It has been the position of the Association of the United
4082 States Army since the beginning of this issue back in late
4083 last year that administrative directive alone should not be
4084 accepted as the basis for a significant policy change. The
4085 issue of homosexuals in relation to society at large is one
4086 that extends throughout the history of civilization and
4087 transcends all political and geographical boundaries. To
4088 make a significant change in the relationship by imposing it
4089 on the American servicemen and women by administrative

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4090 directive alone is in my mind inappropriate. And I think
4091 that any such change should reflect the informed judgment of
4092 the majority of the American people as expressed to the
4093 Congress of the United States.

4094 Now I understand the President's desire to ensure equity
4095 and that equity prevails in the American society. However,
4096 the issue of homosexuals serving in the military is not just
4097 an equity issue. It may not even be predominantly an equity
4098 issue, since the military has always been selective in who
4099 it allows to serve.

4100 It is an issue which is vastly compounded by the rights of
4101 the military community members themselves, and by the
4102 primary responsibility of the armed forces of the United
4103 States to defend the nation.

4104 There is much good to be said about this defense
4105 directive, which has been approved by the President. Not
4106 the least being that it brings the administration back
4107 together on the issue and allows the Defense Department and
4108 the services to focus on more significant issues at a
4109 critical time with all the dramatic changes in the world.
4110 And I would also say that the tone and tenor of the
4111 directive are positive and that it places responsibility
4112 upon commanders to interpret and enforce the directive
4113 rather than new bureaucracies or old bureaucracies with
4114 operating in a new role.

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4115 There are, however, ambiguities which I would hope can be
4116 resolved by legislation, and by so doing would help
4117 commanders do the job, avoid unproductive confrontation, and
4118 help the administration in its implementation.

4119 These ambiguities pose problems in my mind. As presently
4120 written, there are ambiguities which make local
4121 interpretation difficult and could give rise to unseen,
4122 inconsistent enforcement.

4123 Many of those have been touched upon in prior discussions
4124 with this committee, but the basis of initiating
4125 investigation is clearly subject to interpretation. What
4126 really constitutes credible information that a basis exists?

4127 Perhaps a single unsubstantiated report is not--a report of
4128 conduct is perceived as inadequate, but several such
4129 independent reports could constitute a valid basis for
4130 investigation.

4131 If investigation were initiated on what was later to be
4132 determined an insufficient basis, but the investigation
4133 unearthed information which could be the basis for
4134 discharge, would that discharge be legally valid?

4135 Will commanders be subject to civil suits on the basis
4136 that they exceeded their authority under this directive? And
4137 if so, how will the government act with respect to counsel
4138 and cost?

4139 A further--and I think the most important ambiguity that

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4140 has been touched on within the last 30 minutes in this
4141 hearing room is--lies in the position concerning
4142 self-declared homosexuals which reads that a statement by a
4143 service member that he or she is a homosexual or bisexual
4144 creates a rebuttable presumption that the service member has
4145 engaged in homosexual acts or has propensity or intent to do
4146 so.

4147 The service member has the opportunity to present evidence
4148 that he is not engaged in homosexual act, does not have a
4149 propensity or intent to do so. How is a commander to deal
4150 with this issue when the service member declares that they
4151 are not engaging or do not intend to engage in homosexual
4152 acts?

4153 As noted earlier by one of the members of the committee,
4154 in one sense the service member has to prove a negative, and
4155 that is difficult in all cases.

4156 In another sense, the burden of proof would be upon the
4157 commander to disprove the assertion that the service member
4158 was not committing homosexual acts and had no intent to do
4159 so. And I think that this potentially could presage
4160 extensive investigations and eventually extensive
4161 litigation. And I need not point out that this potentially
4162 results in avowed homosexuals serving on active duty with
4163 all the problems that raises, as well as again calling into
4164 the question of whether one can really separate

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4165 homosexuality from the defining actions. And it also raises
4166 the issue of whether there really is a policy that
4167 homosexuality is not compatible with military service.

4168 Now, this in my mind is the key issue. The current
4169 policy, it is stated, admits to rebuttal, to actions in
4170 rebuttal, but by including the term "rebuttal" specifically
4171 in the directive, it changes the whole cast of the directive
4172 in my mind. Now, one has to take into consideration that
4173 the Joint Chiefs of Staff, or more importantly the chiefs of
4174 the various services, members of the Joint Chiefs with
4175 their--members of the chiefs of the various services with
4176 their unique cultures and modes of operation, have pondered
4177 this issue for months and have accepted the compromise. And
4178 I think it has to be given substantial weight. Although I
4179 would remind you that the preferred policy of the military
4180 leadership as expressed early on was the "status quo ante",
4181 that is the policy before January of 1993. This new policy
4182 represents a compromise, a loyal effort by the military to
4183 support a well-meaning President by developing a
4184 generally-accepted policy.

4185 And I do believe the President, Secretary of Defense,
4186 military leaders, are acting responsibly within the
4187 boundaries of what they are able to do under the
4188 circumstances. And I am satisfied that the policy can be
4189 made to work in some fashion, but I fear that the attendant

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4190 price that is likely to be paid in the form of increased
4191 contention, increased litigation and diversion of energy and
4192 attention of commanders at all levels would be unacceptable.

4193 The Association of the United States Army and its members
4194 firmly believes that the policy concerning homosexuals in
4195 the armed forces as it existed prior to January, 1993, is
4196 the most appropriate policy. It is unambiguous and
4197 effective. Having said that, we also agree that the policy
4198 as announced in the interim, that is not requiring recruits
4199 to make a statement concerning sexual preference, is a
4200 reasonable and acceptable compromise.

4201 Beyond that, we view the guidelines announced on Monday to
4202 contain substantial ambiguities and fear this policy will
4203 create a number of problems. But congressional action,
4204 perhaps using the new directive as a basis, can create a
4205 clear policy and thereby assist the administration in
4206 implementation.

4207 Let me close by stating once again how important we
4208 believe it is for the Congress to act on any new policy
4209 regarding such a difficult issue. Legislation is vital in
4210 order to better withstand court challenge and expensive and
4211 extensive legislation, and to remove unnecessary burdens on
4212 military commanders at all levels.

4213 Finally, in my view, an issue of such fundamental
4214 importance to society requires the action of the Congress

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4215 | expressing the will of the people.

4216 | Thank you, Mr. Chairman.

4217 | [The statement of General Merritt follows:]

4218 |

4219 | ***** COMMITTEE INSERT *****

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4220 Mr. SKELTON. Thank you. Mr. Johnson.

4221

4222 STATEMENT OF CHARLES JOHNSON

4223

4224 Mr. JOHNSON. Thank you, sir.

4225 Sir, I have prepared an explanation of bonding degradation
4226 and I will submit that for the record.

4227 But for these opening statements, I will just summarize
4228 why I might be able to answer some of your questions.

4229 I have had five companies in the Marine Corps, so I have
4230 experience at the small unit level; and have done on the
4231 academic side research in cohesion, two independent studies
4232 in the Marine Corps, that looked at small unit leaders and
4233 how they perceive their institution and the norms that they
4234 identify with.

4235 So in that light, I think I can answer your questions.
4236 What I think I bring to you today is--I need to lay a little
4237 bit of a foundation. You hear over and over that the
4238 military does what the Commander-in-Chief says, and that is
4239 entirely accurate and always has been and should always be
4240 the case. There is only a very rare exception and I don't
4241 think this country has ever experienced that, and that is
4242 where the order is outside, not only outside of his
4243 authority, but outside of anyone's authority.

4244 And I think that is what I bring to this perspective, to

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4245 | this body, and that is that the compromise of 29 January,
4246 | and certainly the compromise of two days ago, are completely
4247 | unlawful in my professional view and my personal view and my
4248 | moral view; and, therefore, are not acceptable for an
4249 | officer to take in and pass down as legitimate order to
4250 | subordinates.

4251 | Basically why to that rather dramatic statement, the clear
4252 | way to say it is that the degradation that will happen
4253 | within the small unit, the combat squad, is a certainty. It
4254 | is a reasonable certainty. A reasonable person can predict
4255 | this. You don't need proof in a statistical sense. You do
4256 | need reasonable indicators and I think those exist.

4257 | When you say that that is primary group, that is what this
4258 | three-page paper is about, is degraded, the effect of
4259 | degradation in combat is greater casualties; greater
4260 | casualties means greater death. The only question that is
4261 | relevant to that in whether or not a policy is lawful is, is
4262 | there a need? I mean war is about dying, so that is not a
4263 | problem.

4264 | The question is whether you sacrifice and whether you are
4265 | willing to put your men to sacrifice at a greater risk
4266 | without need. And I believe this policy is exactly that.
4267 | Therefore, it is unlawful as opposed to perhaps illegal. It
4268 | is unlawful in a military sense. You can dance around this
4269 | issue I think about as much as you want to, in terms of

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4270 explaining cohesion and how it--bonding multiplicity and the
4271 whole effect of that. That is what happens.

4272 The small unit, that group that is mutually dependent and
4273 has a mission to impose its will on an enemy, that is what
4274 it is about. But what causes that lack--that piercing of
4275 their faith is when you hit an issue that has caused this
4276 country to spend six months talking about an issue that
4277 absolutely cannot be compromised. Why?

4278 Because it hits to your heart, your very spirit. And it
4279 is--this is not in my opinion about a particular group as
4280 much as it is about choosing, choosing the correct way. So I
4281 would say the perspective I bring is an overarching moral
4282 imperative whose effect is bonding degradation and the
4283 killing of unneeded soldiers on future battlefields, you
4284 could not get away from that.

4285 And I started out by saying you hear a lot that, you know,
4286 we just follow orders and we say aye, aye. Well, we
4287 certainly do and we are proud to do that. The only time you
4288 cannot aye, aye is when it is unlawful. And it is extremely
4289 rare to have an unlawful order.

4290 We are in an unprecedented situation. If you are looking
4291 for a file, you are going to look forever. You had on one
4292 of the hearings I did see, you had a number of cohesion
4293 experts, one I studied under, Dr. Moscus, and Dr. Henderson
4294 who was one of the greatest of all times. They all are.

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4295 You also had Dr. Barlow, and he made a statement that I
4296 thought was a real cop out.

4297 He didn't mean it that way, but it struck me that way for
4298 a scholar. And he said basically that the American people
4299 are not ready for this. Well, a scholar needs to ask the
4300 question, if that is, you know, if that is his astute
4301 collection of his study of cohesion and what is going to
4302 happen on this issue on armed forces and society, someone
4303 needs to ask the question why that won't happen.

4304 And I believe that then goes back to this moral point. The
4305 point is not that middle America will not accept this, but
4306 that really a superior power will not accept this. That is
4307 all I have to say.

4308 [The statement of Mr. Johnson follows:]

4309

4310 ***** COMMITTEE INSERT *****

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4311 Mr. SKELTON. Thank you very much. There is a vote, and
4312 if Mr. Stupak would take the Chair, I will vote as quickly
4313 as possible and return so you can go vote. Please come take
4314 the gavel, please.

4315 Mr. STUPAK. [Presiding.] Sergeant Major Ouellette.

4316

4317 STATEMENT OF SERGEANT MAJOR MICHAEL F. OUELLETTE

4318

4319

4320 Major OUELLETTE. Thank you, Mr. Chairman. Big promotion.
4321 Took me 20 years to get to the top.

4322 Mr. Chairman, on behalf of the Noncommissioned Officers
4323 Association of the United States of America, I appreciate
4324 the opportunity to appear before your subcommittee to
4325 discuss the implementation problems associated with the
4326 recently announced DOD policy on homosexual conduct in the
4327 armed forces. NCOA has provided a statement outlining the
4328 Association's implementation problems and concerns and I ask
4329 that that statement be made a part of today's record, sir.

4330 Mr. STUPAK. It will be.

4331 Major OUELLETTE. Thank you. Mr. Chairman, as you know,
4332 the NCOA has vigorously opposed the lifting of the ban that
4333 existed prior to January 29th, 1993. That ban prohibited
4334 the recruitment and retention of homosexuals in the armed
4335 forces.

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4336 The association has gone on record many times to oppose
4337 any change or compromise to that--to the previous policy.
4338 Although the testimony offered today is directed at the
4339 implementation problems regarding the recent policy, NCOA
4340 remains opposed to any change in policy and will continue to
4341 support any legislative effort to codify the previous policy
4342 in law.

4343 Although NCOA has offered numerous comments concerning the
4344 policy and its affect on noncommissioned officers and petty
4345 officers who will be responsible for implementing and
4346 enforcing a vague policy, the major point I want to address
4347 today concerns individual integrity. The policy requires
4348 members of the armed forces to compromise their individual
4349 integrity with the wink and nod exceptions to acceptable
4350 conduct. Lawyers, physicians, and chaplains, will bear a
4351 disproportionate burden of having to decide what a commander
4352 must know and what secrets to keep.

4353 Doctors, lawyers, and chaplains are not allowed to
4354 suppression information about drug addicts, alcoholics,
4355 criminals, wife beaters or others who may have a problem
4356 that jeopardizes unit integrity or readiness.
4357 Noncommissioned and petty officer leaders are asked to make
4358 the same kind of promise. They are asked to ignore certain
4359 unacceptable conduct in order to accommodate only selected
4360 members of the command.

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4361 As every leader or manager knows, once favoritism or
4362 special treatment is given to any individual or segment of
4363 an organization, morale will suffer. In turn, discipline
4364 will decline and ultimately anarchy will prevail. Under the
4365 policy, there can be no integrity among professionals or
4366 supervisors of homosexuals. MCOA urges Congress not to rob
4367 our military leaders of their honor to support this cause.

4368 Mr. Chairman, that concludes my remarks and I will be
4369 pleased to entertain any questions you or the members of
4370 your subcommittee may have.

4371 Thank you.

4372 [The statement of Major Ouellette follows:]

4373

4374 ***** INSERT 6-1 *****

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4375 Mr. STUPAK. Thank you.

4376 Major Johnson, you indicated that you felt that it would
4377 be unlawful or illegal. Is that from your military
4378 viewpoint or do you have a legal background, sir?

4379 Mr. JOHNSON. First of all, I am not Major Johnson any
4380 more. That shouldn't be there.

4381 Mr. STUPAK. Okay.

4382 Mr. JOHNSON. I--how can you answer a question like that?
4383 Certainly it is a professional and it is a personal, but
4384 also an academic. I have a Ph.D. in policy analysis from
4385 Northwestern and, like I said, the studies I have done, I
4386 have been able to do for the Marine Corps looked at policy
4387 analysis. So when this policy came, as it developed, I
4388 don't know how--which one of those, you know, drive it, but I
4389 certainly have a legal background in the sense of how it
4390 applies in the policy analysis, but that is it.

4391 Mr. STUPAK. Do any of you gentlemen get the sense that if
4392 this policy was adopted there would be resignations from the
4393 armed services of its members because they would feel
4394 personally offended by this policy?

4395 General MERRITT. I think there will be, Mr. Chairman. In
4396 fact, I know of certain military members now who view this
4397 policy, the one that just promulgated, as being, in fact,
4398 admitting homosexuals in the military service through the
4399 provision of the rebuttable presumption, if you will, that

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4400 | ambiguous term, and that they feel that is inconsistent with
4401 | their idea of whether or not you can operate a military
4402 | effectively.

4403 | Mr. STUPAK. I asked this question earlier and I really
4404 | didn't get a response. But the investigations that
4405 | currently go on in the military, that took place before
4406 | January 29th, 1993, do you know how much money the military
4407 | spent on investigations of alleged homosexual behavior?

4408 | Major OUELLETTE. Sir, I couldn't tell you exactly how
4409 | much that they spent on it, but I can tell you that, you
4410 | know, the military services are basically constantly
4411 | involved in investigations of some type. It just isn't for
4412 | homosexual, investigating homosexuals. I mean if an
4413 | individual dies, there is line of duty investigations.

4414 | It goes on and on and on, and I will tell you if you think
4415 | there are investigations now with homosexuals, wait until
4416 | they implement this policy and they start having to
4417 | investigate all the individuals that are interpreting it
4418 | wrong and applying it differently. It is going to be far
4419 | greater than the amount of money that we spend on
4420 | investigating homosexuals.

4421 | General MERRITT. I would second that point of view.
4422 | Having served 35 years on active duty, whatever the amount
4423 | CNO or someone stated earlier that maybe one-hundredth of a
4424 | percent, it is an infinitesimal amount that has been spent

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4425 in the past.

4426 But my concern is the same one expressed by Sergeant Major
4427 Ouellette, that you are going to have a series of forced
4428 investigations in order to somehow dispel the ambiguities in
4429 each of the cases that will arise. I think that the price
4430 of that--there will be a price tag to it, as it is currently
4431 written.

4432 Mr. JOHNSON. I would agree as well, in terms just
4433 looking at policy and implementation. That what you are
4434 creating here is going to geometrically increase anything,
4435 any kind of what people have been calling witch hunts, which
4436 in my 17 years in service, I honestly can say I don't ever
4437 recall being a part or ever seeing what people would call a
4438 witch hunt. There just isn't time.

4439 I mean you have--as a unit leader, you have so many other
4440 things to do than to create unnecessary work. When you
4441 recommend to your battalion commander to initiate
4442 investigation, it is because there is an impact. You just
4443 don't have time to play games. And you certainly don't want
4444 to play games at all with your Marines. They don't deserve
4445 that and you just don't do it. So I have no idea on cost,
4446 but--

4447 Major OUELLETTE. I think more--Mr. Chairman, I think the
4448 more interesting question to ask the senior leadership would
4449 be to give a percentage on any given day within all the

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4450 services of how many officers and noncommissioned officers
4451 or petty officers are involved in some kind of
4452 investigation. I think you would be amazed at--I mean if you
4453 lose a camp cot, you have got somebody investigating it.

4454 You have got IGs investigating. It is just constantly.
4455 But I would like to know just basically under orders, and
4456 they are all under orders, by either local orders or that,
4457 but I would like to know exactly how many people are
4458 involved in an actual investigation on any given day. I bet
4459 you would be amazed at the number.

4460 Mr. STUPAK. In some questions we received, were given out
4461 earlier and answered received, they said there were about
4462 eight pending cases right now of homosexuals in the
4463 military.

4464 When I listened to your testimony today, I get the
4465 impression it is a much greater number than that.

4466 Care to comment on that, any one of you?

4467 They said they have eight pending cases right now. Is the
4468 problem about homosexuality in the military greater than
4469 eight cases?

4470 General MERRITT. I think--

4471 Major OUELLETTE. Go ahead, General, please.

4472 General MERRITT. I think the issue is--I am confident
4473 there are more than eight homosexuals serving in the army
4474 today. But the issue is people who have demonstrated

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4475 behavior that raises the issue of whether or not they are
4476 homosexuals. And the question about this policy in my mind
4477 is whether it makes the issue even more complicated because
4478 of the inherent ambiguities of the policy itself.

4479 The policy prior to January, 1973, and there have been
4480 homosexuals serving in the United States military I guess
4481 forever and many have served honorably and that is not the
4482 issue. The issue is avowed homosexuals, public--either
4483 evidencing homosexual behavior or being simply avowed
4484 homosexuals and what that does to unit cohesion. That is
4485 where my concern about the rebuttable presumption comes into
4486 play.

4487 There is always, in this society of ours and in this
4488 nation of ours, the right to rebuttal is always available.
4489 By eliciting rebuttable or suggesting that the thing is
4490 debatable and requiring some higher level of proof, then I
4491 think you are in fact inviting more complications in the
4492 issue than would exist had we maintained the policy prior to
4493 1973.

4494 Mr. SKELTON. (Presiding.) Mr. Kyl, are you in position to
4495 ask questions?

4496 Mr. KYL. Yes. I apologize, Mr. Ouellette, I didn't get a
4497 chance to read your statement or hear your statement, but we
4498 can work it through as we go. Again, I will express my
4499 appreciation for all three of you being willing to come

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4500 here. The schedule wasn't exactly precise, so we appreciate
4501 your waiting, too.

4502 Major Johnson, I am well aware of the decision-making
4503 process that you have undergone in order to resolve the
4504 issue in your mind as to whether or not this policy could be
4505 implemented in a way consistent with your views, and I
4506 respect the decision that you have made, and your
4507 willingness to be here today to talk about it.

4508 Why don't I start, ask you a couple questions, and then
4509 get to the--okay. And then get to the others.

4510 Mr. Johnson, you indicated that you had commanded Marine
4511 companies and you had also done cohesion studies, so you
4512 looked at it from both the practical and the intellectual
4513 side of the issue, if you will. Would you give me a couple
4514 of specific illustrations, if you could, of why in your mind
4515 the implementation of the policy as written would disrupt
4516 good military order and cohesion, and therefore have a
4517 negative impact on the ability of the military to perform
4518 its mission?

4519 Mr. JOHNSON. I believe--that is a tall order, sir, and I
4520 will try to do it in quick fashion. If you could say the
4521 military, if you could represent the military as a single
4522 unit and depict it, in other words, get the most crucial
4523 element and say if you disrupt this, you degrade it, and I
4524 think that historically and it is pretty much acknowledged,

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4525 is the primary group which is the squad, maybe even smaller,
4526 the fighter team.

4527 And if you visually depicted that as a circle, for
4528 example, and within that circle there was a dynamic of these
4529 members, inside that circle, self-contained, they shared a
4530 common purpose. And that purpose--and a set of common norms,
4531 agreed-upon norms, by the way, changed from squad to squad.
4532 But that the ultimate purpose of that circle in combat was
4533 the destruction of the enemy, and the ultimate risk was your
4534 own death. It is a very unique function of a group. And
4535 the dynamic in there is flowing.

4536 It doesn't go one direction, it goes all directions. But
4537 inside the circle is another circle and those are maybe the
4538 two or three key leaders, the squad leaders, the lieutenant,
4539 and the platoon sergeant. There is another dynamic in
4540 there. They are different.

4541 They are asked to do different things, but they are a part
4542 of that. And then inside that, is really the--whatever the
4543 word is, I call it "faith", inside there there is a core
4544 that describes a soldier. It is faith in--it is not just--it
4545 is faith in each other, it is faith in the leaders, that
4546 they would never do anything that wasn't good for the
4547 mission or for them, the mission first though, but the third
4548 thing is an intangible thing that has some kind of
4549 affiliation to the institution itself.

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4550 You don't--no one--no one in uniform is ignorant of the
4551 awesome responsibility, past, present, future, to those who
4552 have served before. It is a very binding affect on us. You
4553 can--if you can pierce the faith with a policy, which you
4554 can't do, I don't think, with hardly anything, there is only
4555 a couple that can, then you will degrade it predictably.

4556 Now what kind of policy will pierce the faith? The only
4557 policy that can pierce that faith is one that degrades,
4558 predictably degrades the mission that they have all agreed
4559 to. And that is combat effectiveness. They are going to
4560 die for each other, they are going to succeed together.

4561 For example, let's say let's take a weird example,
4562 whatever. Congress got really in their mind that they
4563 wanted to amend the Handicapped Act and for some reason in
4564 there it became the consensus of Congress that they wanted
4565 to force a handicapped person in every combat squad. It is
4566 not a good idea. But they think you would have--you would
4567 have a dysfunctional policy, just like you have here with
4568 this.

4569 What you have, you have a physical limitation that will
4570 predictably degrade them. It is not a bad person, you don't
4571 dislike them, it is nothing about that. It is not about
4572 hate. It is about effectiveness and trying to give the best
4573 you can for this higher good.

4574 A profession is defined by serving a higher good. If you

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4575 touch the higher good, then you are playing with something
4576 that absolutely with certainty degrades.

4577 The other thing I would say is the permanency of the
4578 effect. And this to me is a permanent affect. It doesn't
4579 change. It is not going to go away.

4580 That, I would argue, that the dynamic, what you are trying
4581 to get at really I think is an example of the dynamic of the
4582 Marine and a squad leader, the soldier and his lieutenant,
4583 is one of trust. The first time the lieutenant helps a
4584 suspected homosexual, he is in trouble. The first time he
4585 appears to harass a known homosexual, he is in trouble. He
4586 is in trouble not by higher authority.

4587 By the way, it may be that with this policy, but more
4588 importantly, he is in trouble by the perception of his men.
4589 And I would say their perception is completely wrong 90
4590 percent of the time and it won't change a thing. The effect
4591 will be the same. Perception becomes reality in this small
4592 unit. It is unfortunate, but that is just--it is a very
4593 unique group.

4594 And I think what you are going to have is a one percent in
4595 reality and a 90 percent in effect. Because no one is going
4596 to know who is what and what. Every time you shake a
4597 person's hand, you are going to have someone perceive it in
4598 the wrong way now.

4599 Mr. KYL. Interesting comment. Thank you. I know we are

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4600 not under the five-minute rule. I will perhaps just ask one
4601 more question.

4602 Sergeant Major Ouellette, let me give you a very specific
4603 example that was discussed this morning. I said in my
4604 opening statement I would do this.

4605 The Chairman asked a question if all three of the factors
4606 were in existence that are set forth in the policy here as
4607 examples of things which do not constitute credible evidence
4608 for the basis of initiating an investigation or an
4609 administrative discharge, the three items being marching in
4610 a gay rights rally, possessing or reading homosexual
4611 publications, or presence at a gay bar; if all three of
4612 those factors existed in the case of an individual, what
4613 would--what would you do if the information came to your
4614 attention either directly because you observed it or because
4615 one of your men brought it to your attention?

4616 And having read the policy statement, would you feel
4617 yourself constrained in any way with respect to being able
4618 to take the kind of action that you would want to take to
4619 avoid precisely the kind of problems that Mr. Johnson noted
4620 just a moment ago?

4621 Major OUELLETTE. Under the old policy I knew exactly what
4622 I would do. Under this policy, as I understand the policy,
4623 and I think I understand it very well, is that would be
4624 something you couldn't--it wouldn't be a credible kind of

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4625 information that you could go to a commander with to
4626 initiate an investigation.

4627 On the other side, if a heterosexual soldier, sailor, were
4628 downtown at, oh, a bar known to deal drugs, if they were
4629 reading some kind of what was considered by a commander to
4630 be pornographic material, and worse yet, they were downtown
4631 participating in a neo-Nazi rally, would you tell me there
4632 would be no investigation started?

4633 I would tell you that there would be an investigation
4634 started. What we have got is in order--what we have got, Mr.
4635 Kyl, is a situation that in order to allow for gays in the
4636 military, the rules are being relaxed and the tolerance
4637 level is appearing to be much higher in favor of the
4638 homosexual than the heterosexual.

4639 Mr. KYL. I appreciate that. And I appreciate, by the
4640 way, and I want to express on the record the NCOA has been
4641 very helpful in assisting us to understand some of the
4642 issues. You perhaps heard Admiral Kelso this morning talk
4643 about who the first people are that would get this
4644 information and have to act upon it in some way, and they
4645 are the people that you represent and I want to thank you
4646 and ask that you pass that on to everybody within the
4647 organization. And, General--

4648 Major OUELLETTE. I appreciate that, thank you very much.

4649 Mr. KYL. You're very welcome. Just to save some time

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4650 here, I want to make the same point about AUSA and also
4651 thank you for making the point that the policy needs to be
4652 codified, if nothing else to clear up the ambiguity that we
4653 don't have the situation that was identified here and I
4654 think was perceived sort of in the testimony this morning.

4655 If you would like to comment, I appreciate it.

4656 I thank you for making that key point.

4657 General MERRITT. Other than just underlining the absolute
4658 necessity both to clarify the policy both through
4659 legislative action and also to make sure the imprint of the
4660 will of the American people is expressed by the Congress of
4661 the United States is there.

4662 Mr. KYL. Thank you very much. Thank you, Mr. Chairman.

4663 Mr. SKELTON. Roscoe Bartlett, a member of the
4664 subcommittee.

4665 Mr. BARTLETT. Thank you very much. I have here a--

4666 Mr. SKELTON. We are on the five-minute rule.

4667 Mr. BARTLETT. Okay. I have here a copy of the
4668 Constitution and let me read from Article 1, Section 8,
4669 which says the "Congress shall have power to make rules for
4670 the government and regulation of the land and naval forces."

4671 Do you think that there is any reasonable argument that
4672 changing this policy does not come under this prerogative of
4673 the Congress, the Congress shall have power to make rules
4674 for the government and regulation of the land and naval

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4675 forces? If this is not a rule for government and
4676 regulation, then what would be? Do you think this is a
4677 general consensus that this is a prerogative of the Congress
4678 and not of the military commanders?

4679 Major OUELLETTE. Mr. Bartlett, I am sorry, I am not sure
4680 I understand the question.

4681 Mr. BARTLETT. Well, the question is that we have a--the
4682 President was going to issue an executive order. Instead of
4683 that, he had the Secretary of Defense issue a directive.
4684 That directive now is supposed to require this change in the
4685 military.

4686 And I am asking if you do not think, and I guess that
4687 General Merritt who made some comments about this, if you do
4688 not think that this clearly falls under the prerogative of
4689 the Congress in Section 8 says that Congress shall have
4690 power to make rules for the government and regulation of the
4691 land and naval forces. Would this not make it absolutely
4692 necessary that it be codified by the Congress?

4693 General MERRITT. Well, in my view, the Congress must act
4694 on this. Although I am not a constitutional lawyer, thank
4695 heavens. But it seems to me that the issue is--if the
4696 Congress does not act, then the military departments and the
4697 Defense Department is free to establish policies, it seems,
4698 but this is a case where it seems to me that the Congress
4699 should want to act.

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4700 Mr. BARTLETT. I think the Congress does want to act here.

4701 Major Johnson, do you think that your convictions about
4702 the legitimacy of these orders represent a majority of the
4703 officers in the military?

4704 Mr. JOHNSON. I don't--I couldn't speak for other
4705 officers. I believe that if--I can only speak for myself in
4706 the sense that if you understand the oath that you are
4707 sworn, then there is two sides to it, and that is not only
4708 to obey the superiors over you, but to obey the
4709 Constitution.

4710 The Constitution does not permit, nor does any country in
4711 history, permit capricious death, death without reason. And
4712 simply because it isn't in front of you doesn't mean it
4713 isn't going to happen and doesn't mean that you are not
4714 responsible for it right now. And I do believe that the
4715 Congress has not only a constitutional imperative, really,
4716 it is very clear, but maybe a moral imperative to make sure
4717 that this is what you want.

4718 Because it is going to affect lives. And if you--to me, of
4719 course, there is no compromise and I hope very much that you
4720 go back to consider 667. But it would be far better for the
4721 military, regardless of your decision, that you make it.
4722 You are the proper authority.

4723 And the only time I think the President can go outside of
4724 that is when you permit him, or when he is logically in sync

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4725 with your spirit. I think in 1982, President Reagan was
4726 outside of his authority possibly, but he was in the spirit
4727 of Congress through Article 125.

4728 In other words, he--he proposed a policy, actually outside
4729 of his authority, but it was in the spirit of Congress. So
4730 it is perfectly lawful as long as you allow it. Here you
4731 have an action contrary to Article 125. I mean arguably.
4732 And so you really have to act.

4733 Major OUELLETTE. Mr. Bartlett, the only thing I would
4734 just add to that is, you know, when asked about--when talking
4735 about the don't ask/don't tell policy, the President said,
4736 and I quote, "it provides a sensible balance between the
4737 rights of individuals and the needs of our military to
4738 remain the world's number one fighting force."

4739 Now, there is nowhere that I can understand where it has
4740 been proven that the addition of homosexuals to the ranks is
4741 going to improve the quality of the armed forces. Nowhere.

4742 Mr. BARTLETT. Do you think their addition will be
4743 neutral?

4744 Major OUELLETTE. I don't--no, I think that their addition
4745 will be destructive in and of itself.

4746 Mr. BARTLETT. Thank you all very much.

4747 Major OUELLETTE. You are welcome, Mr. Bartlett.

4748 Mr. SKELTON. Mr. Bilbray.

4749 Mr. BILBRAY. Thank you, I am sorry I was tied up in the

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4750 Intelligence Committee, but I did read your testimony,
4751 General. I was wondering, did you gentlemen hear the
4752 testimony of the Joint Chiefs today? Were you in the room?
4753 All of you?

4754 Major OUELLETTE. Sir, I heard the afternoon session.

4755 Mr. BILBRAY. But you know in the testimony of General
4756 Powell and the others, I mean they--you know, they
4757 enthusiastically, and I point that out strongly, because one
4758 of the--one of the witnesses, I mean one of the Congressmen
4759 brought up, says I can tell by the sour looks on your face
4760 and the body language that you don't support it. And the
4761 comment from the Chief of Staff of the Air Force was at the
4762 time, said I am sorry if you got that impression, because I
4763 do support this policy enthusiastically, because I think it
4764 is a better policy, it makes it easier to defend our policy,
4765 and as the Attorney General as mentioned before by chairman
4766 as--I mean Secretary Aspin pointed out the fact is it that
4767 she feels that she can defend this policy in the courts
4768 better.

4769 Because the Ninth Circuit has already ruled. Now somebody
4770 from one of the other areas said I hope the Ninth Circuit
4771 doesn't represent the feeling of the country, and I hope you
4772 understand the Ninth Circuit is more than San Francisco.
4773 The Ninth Circuit is also Nevada, Utah, Colorado. I mean it
4774 is a lot of Western States, Washington, Oregon, Hawaii,

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4775 Guam. You know, it is the largest circuit in the country
4776 making up about 40 percent of all the cases that are filed
4777 in this country today.

4778 And the Ninth Circuit has held that the fact is that
4779 discrimination against anyone for sexual preference or other
4780 is unconstitutional. So Janet Reno, the Attorney General,
4781 says the present code, don't ask, don't tell, don't inquire,
4782 is--don't pursue, is going to be a defensible position in the
4783 courts.

4784 Now, what is going to happen is, and you have seen from
4785 the earlier testimony, you had some people that were really
4786 upset because the fact is the policy just didn't end the
4787 discrimination totally, the ban, just didn't end it totally.

4788 Yet others that said, hey, we should not do anything to it.

4789 What you had is months and months where the Joint Chiefs
4790 and the military poured over, and I have got to believe it
4791 was soul wrenching, you know, investigation and
4792 determination and study, to determine how the military of
4793 this country could be effective, yet we could sustain that
4794 and in light of the Constitution of the United States not
4795 continue a ban against anyone because of sexual preference.
4796 Sexual conduct, yes, and that is what it says, but not
4797 sexual preference.

4798 Based on that and the fact that the Joint Chiefs, you
4799 know, uniformly supported this, enthusiastically supported

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4800 it, is your testimony still, and recognizing that the
4801 alternative, if you want to be one of those that says the
4802 ban has to be kept in, is the fact that the courts in all
4803 likelihood will strike down the ban, is your stand still
4804 that we should go to the point, this Congress, should in the
4805 authorization bill, should say we don't care what the Joint
4806 Chiefs want, we don't care what the Secretary of Defense
4807 wants, we don't care what the courts are going to say, let's
4808 keep the ban intact because that is what we believe in, and
4809 that there is no room for compromise in this situation?

4810 Major OUELLETTE. Mr. Bilbray, I will go first.

4811 I will go at it. I appreciate the loyalty that the chiefs
4812 have given on it. That is--that is the military way of life.

4813 Military men and women are loyal to their unit, they are
4814 loyal to their commanders, and they are loyal to each other,
4815 believe it or not.

4816 But what I would say, if that is so defensible in court,
4817 the lifting of the ban or you can't ask the question and it
4818 is easier to defend, that there is--you know, there is good
4819 opportunity--how far does this go? Pretty soon if you don't
4820 have to ask homosexuals the question, will we have to ask
4821 drug offenders the question, have you ever used drugs?

4822 Will we have to ask criminals, have you ever been
4823 arrested, have you ever been convicted? Wouldn't it be
4824 surprising if it came back and all of a sudden the court

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4825 said since you are not asking questions of homosexuals, yet
4826 you have UCMJ authority that their actions could result in
4827 discharge, which is the same with drug abusers and the same
4828 with criminals, you might even go to medical problems.

4829 Mr. BILBRAY. Yes. I think what you are looking at two
4830 different things. You are virtually looking at first an
4831 offense against--a criminal act. Use of drugs, for my
4832 knowledge, is a criminal offense in every State of the
4833 union, except in minor amounts in the State of California
4834 where it becomes like--it is still a misdemeanor. Same thing
4835 on being convicted of a criminal offense. There is a big
4836 difference between that and a sexual preference. I don't--

4837 Major OUELLETTE. Mr. Bilbray, I certainly agree there is
4838 a big difference. I guess the point that I am trying to
4839 make is that we ask applicants for the service many
4840 questions when they come in. Most of the questions that are
4841 asked are basically attributed to some kind of UCMJ action,
4842 which they would have a propensity to be thrown out. And I
4843 would just simply say, you know, we ask them if they are
4844 communists. You ask all kinds of questions.

4845 Mr. BILBRAY. I don't think we ask them that any more. I
4846 am not sure we do.

4847 Major OUELLETTE. I believe we do, sir. That is all I was
4848 saying. But I do respect--

4849 Mr. BILBRAY. But is there any compromise amongst the

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4850 three of you that you could look at this as a compromise
4851 that has been hard worked on and trying to find a solution
4852 to a difficult question, rather than just saying, no, there
4853 is no lifting the ban, it should absolutely be kept intact
4854 like it is today?

4855 General MERRITT. You are characterizing my statement in a
4856 way that I don't recall it being, but in my statement I said
4857 I thought that the Joint Chiefs had worked hard on this and
4858 I was confident they believed they could make it work and
4859 probably could make work in some fashion.

4860 The question is at what price? The innate ambiguity of
4861 the policy directive, as I read it, is that it will cause
4862 enormous amounts of consternation, conflict, diversion from
4863 fundamental military mission, and confusion, and that it
4864 requires clarification of and removal of ambiguity.

4865 Now either there is a policy that homosexuality is
4866 inconsistent with military service, or there isn't the
4867 policy. Whatever it is, it should be stated with some
4868 clarity so that the sergeants, the lieutenants, and the
4869 people in military services can act based on a clear and
4870 evident policy. I mean that would be my first point.

4871 Whatever my personal thoughts and preferences are about
4872 what that policy ought to be, those are secondary to the
4873 issue of clarity and unambiguous policy direction. I don't
4874 think that directive leaves that, as it should be. I can't

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4875 | predict what the courts say. I view this not as an equity
4876 | issue. You view it as an equity issue. Certainly some
4877 | jurists view it as a equity issue, but it is not yet
4878 | resolved that the military force of the United States of
4879 | America cannot properly select those who serve for good and
4880 | justified reason.

4881 | Mr. DORNAN. Would the gentleman yield for just a second
4882 | for clarification?

4883 | Mr. BILBRAY. I am finished. My time has expired, but I
4884 | am sure you will have time right now.

4885 | Mr. SKELTON. Mr. Buyer.

4886 | Mr. BUYER. Thank you, Mr. Chairman. I will yield about
4887 | 30 seconds to Mr. Dornan.

4888 | Mr. DORNAN. Thank you, because it was for clarification.
4889 | The gentleman from Nevada, my good friend, did point out
4890 | that there is a difference between State laws. It is still
4891 | debatable what the D.C. laws on sodomy will come out of the
4892 | House-Senate conference going on for the first time in a
4893 | century, and the States are now evenly split 25/25.

4894 | But I just wondered if the gentleman, as we all do
4895 | occasionally overlook the obvious, that for the military,
4896 | worldwide, the UCMJ says sodomy is illegal no matter what
4897 | state you are in, and in every single Islamic country under
4898 | the Koran, it is illegal. So there are certain places you
4899 | cannot be assigned.

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4900 Was the gentleman aware that when we look at State laws,
4901 it is totally moot? It means nothing for military people,
4902 because of the UCMJ sodomy law, which even the President has
4903 said he doesn't want to change.

4904 Mr. BILBRAY. Well, it is my understanding--

4905 Mr. BUYER. Excuse me, gentlemen, I need to reclaim my
4906 time here.

4907 Mr. BILBRAY. I wanted an opportunity to respond to the
4908 question.

4909 Mr. BUYER. Okay.

4910 Mr. BILBRAY. I just wanted to point out that I am not
4911 saying anything about the law, but they shouldn't violate
4912 the law, but that doesn't mean a person can't be homosexual
4913 and not violate the law.

4914 Mr. BUYER. All right, gentlemen. I am going to reclaim
4915 my time, Mr. Chairman.

4916 I thought I would be kind and I am learning a lesson. I
4917 have a question to Chuck Johnson, and in my statement, sir,
4918 I know you came in, you opened up your statement, but I am
4919 unabashed, because I am going to call you truly an American
4920 patriot, not only by what you did in the line of your
4921 service to your country when you were in Lebanon, and the
4922 questions whether or not there are people of great integrity
4923 and character that are in the United States military, you
4924 bet.

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4925 You are in fact one of those individuals. Not only did
4926 you serve your country in Lebanon and stopped an Israeli
4927 tank with your 45 and did incredible things and were honored
4928 by the commandant of the Marine Corps for your service and
4929 also your service in the Gulf War. You and I both know that
4930 we had some private conversations and I have a great deal of
4931 respect for you in what you did in resigning in the face of
4932 this policy.

4933 I have particular question for you, sir, since you have
4934 been a commander of five companies, and that is let's look
4935 at the implementation of the present policy and the effects
4936 that that policy may or may not have. What I found with
4937 great interest is this issue of credible information.

4938 When you have--when you have the policy statement that
4939 homosexual magazines or gay literature is non-credible
4940 information to have an inquiry on the behalf of a commander,
4941 that is what it says in the policy. We have testimony from
4942 the chiefs that say that we have latitude among commanders
4943 that that might in and of itself warrant, if in fact the
4944 literature were in an open bay barracks, so says General
4945 Mundy, but if it happens to be in the privacy of their bay
4946 outside of the plain view, that perhaps it may not.

4947 Real life scenario here amongst the troops and in the
4948 command is when this literature is found, doesn't it in fact
4949 have an effect upon unit cohesion, when they find out that

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4950 Joe over here has a Playgirl Magazine, or in fact leaves his
4951 wallet and in that wallet is a naked picture of a boyfriend
4952 and somebody finds it?

4953 I mean and that now may or may not be credible
4954 information. Whether--even if you want to forego the legal
4955 analysis of that, my question to you, sir, is the troops,
4956 they don't care so much about the legal analysis because
4957 they understand the small unit cohesion and the bonding,
4958 what effect is that going to have in the barracks and the
4959 cohesiveness of a small unit in order for it to be effective
4960 on the battlefield?

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4961 RPTS LYDA

4962 DCMN SISSON

4963 Mr. JOHNSON. Well, I think, sir, it will depend on how it
4964 is handled, of course. There is an overarching point that
4965 actually was brought up earlier and someone said, why does
4966 the unit commander have to make these decisions.

4967 The answer was exactly correct by General Powell. When
4968 you use the term "commander," it actually means something.
4969 It means that you have command. You have ultimate
4970 responsibility. That does not go down to the platoon. It
4971 doesn't go down to the squad, by the way. It goes down to
4972 the company. So that is a young captain. Is he ultimately
4973 responsible in peacetime and in war?

4974 If you set up these exceptions which really kind of boggle
4975 my mind why you have these three or four examples of
4976 exceptions, he no longer is, I would say under the
4977 definition of command, responsible. I don't know how he can
4978 execute his duties if he has to look up in some 150-page
4979 book what he can investigate, what he can't investigate.
4980 This is quite illogical.

4981 Mr. BUYER. Whether he can or cannot, will it have effect
4982 on the cohesiveness of the unit?

4983 Mr. JOHNSON. It will have a negative impact, period. You
4984 don't need to be a scholar to know that.

4985 Mr. SKELTON. Tillie Fowler.

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4986 Mrs. FOWLER. I just want to thank the witnesses for
4987 coming to the subcommittee and presenting to us your
4988 concerns with this new proposal. I share quite a few of
4989 those concerns and hope we will be able to work out
4990 something through the subcommittees. I appreciate your
4991 sharing your information with us today.

4992 Mr. JOHNSON. Thank you, Mrs. Fowler.

4993 Mr. SKELTON. Mr. Lancaster.

4994 Mr. LANCASTER. I regret I was tied up and have not heard
4995 your testimony, nor have I heard the questions, so it is
4996 difficult to know what I should ask. I would like to follow
4997 up on a line of questioning that Mr. Bilbray was involved
4998 in. I, for one, support the ban. I would like to figure
4999 out a way to maintain that. But I also recognize the
5000 reality of what is happening in the courts.

5001 If we accept, for purposes of argument, the inevitable
5002 court decision that will simply end the ban, period, is
5003 there something that we can and should do at this point that
5004 will make the restrictions hold up better in court? I don't
5005 think either one of you are attorneys, so I may be asking
5006 you an unfair question.

5007 But my question is: Is there a way that we can avoid the
5008 inevitability of a court decision based on what is now the
5009 administrative regulations?

5010 Mr. SKELTON. Mr. Lancaster, would you take the Chair

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5011 while I vote?

5012 Mr. LANCASTER. Surely.

5013 Mr. JOHNSON. If I could, I don't agree that from a policy
5014 analysis standpoint of a personnel policy this ban has been
5015 upheld for over 20 years. There is an incredible precedent.

5016 Mr. LANCASTER. [Presiding] But that has changed.

5017 Precedents are often overruled by courts and that has

5018 happened in the Ninth Circuit. So the question is: If

5019 other courts and ultimately the Supreme Court should

5020 overrule the ban on a constitutional basis, should we be

5021 trying to do something legislatively at this point to

5022 protect some level of restriction? And if so, what?

5023 Mr. JOHNSON. First of all, you have a closed loop here.

5024 Not to be disrespectful, but I mean is the Attorney General

5025 going to lose her job if the ban is lifted in a year and a

5026 half? This whole thing is a closed loop. You have people

5027 giving orders to people, giving orders, and they are using

5028 each other as an excuse to do something. You will, with

5029 absolute certainty, lose in the courts even with the 29

5030 January compromise. It is absolute certainty. Everyone

5031 knows it.

5032 I believe, and I again don't want to be disrespectful, but

5033 this is a bit of a scam. I can't believe the last two days

5034 myself. It is something that can tear your heart right out.

5035 I didn't believe everyone was in the closed circuit, but

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5036 God bless, I think if we stuck to our guns. There is no
5037 question, whatsoever, about the deference given the military
5038 whenever they say that this policy is serving an important
5039 government interest. Now any lawyer knows that.

5040 So I think we are predicting something that we certainly
5041 do not need to predict. I do not believe the Supreme Court
5042 would override a strict ban if it was held to for good and
5043 reasonable reasons, to maintain our readiness, to maintain
5044 our combat effectiveness, we deem it necessary to have a ban
5045 of this. Absolutely, they will uphold it.

5046 Mr. BILBRAY. If you would yield, the Joint Chiefs have
5047 already said it would not, lifting the ban to the extent
5048 they have proposed. So the courts would have the Joint
5049 Chiefs of Staff who run the military stating that it would
5050 not destroy the effectiveness or the ability of the United
5051 States to defend itself or take aggressive action when
5052 necessary.

5053 What you are saying, the Joint Chiefs are saying, is not
5054 true.

5055 Mr. HUNTER. The Joint Chiefs said they can make this
5056 work, but I believe the Joint Chiefs studiously avoided
5057 stating this would not have some deleterious effect on
5058 readiness. They did not say we would be absolutely
5059 unaffected by this banning.

5060 Mr. LANCASTER. Would you want to comment on the

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5061 hypothetical that if this should be ultimately returned, is
5062 this something that we should be considering legislatively
5063 to forestall that eventuality?

5064 General MERRITT. As I stated in my opening statement, I
5065 think that in this whole issue, the legislature of the
5066 Nation needs to act. That is because of the very centrality
5067 of the nature of the debate and the issue. I think that, in
5068 and of itself, has effect on the courts because, when you
5069 are expressing the will of the people rather than
5070 administrative fiat, you carry with you something much more
5071 important, in my mind, more important than the Joint Chiefs
5072 of Staff views as far as that is concerned.

5073 I am not competent to argue whether or not the position
5074 taken with the Ninth Circuit can carry broadly across the
5075 Nation. I agree with the Major that we have had a history
5076 of being able to select those who will serve.

5077 Whether or not you can continue to enforce that in the
5078 courts, I do not know. But I do know that the policy
5079 enunciated here is sufficiently ambiguous, that it invites,
5080 if nothing else, mischief making. In the process of
5081 enshrining a national policy and statute, that you have the
5082 opportunity to remove some of the ambiguities so that it can
5083 both serve the military services well and also stand up in
5084 the courts. That is my view.

5085 Mr. SKELTON. Does the Sergeant Major want to comment?

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5086 Major OUELLETTE. As far as the legal ramification goes, I
5087 think it will be a great question. You will have the
5088 lawyers in tomorrow to talk on that and that is probably the
5089 best time. I am trying to give you a feel of the issue from
5090 the boots on the ground, the deck plate level of command,
5091 how the effect of the policy is going to be interpreted by
5092 the people on the ground and not how it is viewed from way
5093 above looking down on them.

5094 You understand how they operate and that is what I am here
5095 to discuss with you.

5096 Mr. LANCASTER. Mr. Dornan.

5097 Mr. DORNAN. Let me go to Major Johnson because he
5098 mentioned H.R. 667. I am the author of that legislation. As
5099 it stands right now, it is the only standing bill in either
5100 chamber of the U.S. Congress. It will probably come before
5101 this committee.

5102 The chairman is so fast going on over to vote, he will be
5103 back in a second, and then you and I can go over and vote,
5104 Marty.

5105 Major, you mentioned that the last two days seemed
5106 unbelievable. I think it has been surreal, that I cannot
5107 even believe I am awake watching this play out.

5108 I have two questions for all of you. Did any of you see
5109 the Larry King Show on CNN last night? Well, the President
5110 said, in response to Kings's question, "will you feel in

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5111 effect, Mr. President, you kept your campaign pledge to
5112 remove the ban completely?"

5113 He said, "Absolutely. It did not go quite as far as I
5114 wanted, but yes." Then he said, "The Joint Chiefs have come
5115 a long way from their position in January."

5116 Now in the President's mind, he has lifted the ban. Maybe
5117 it is too harsh a characterization to say he broke them, but
5118 that is what I felt, that he broke 48 stars, four on each
5119 shoulder of six distinguished military officers.

5120 I would stand by my colleague, Congressman Duncan Hunter's
5121 remarks earlier that they were derelict in their duty to
5122 stand by principle here. I felt like they were props on the
5123 stage at Fort McNair, no different from the flags with all
5124 those battle gideons from conflicts from Concord Green going
5125 all the way to Desert Storm.

5126 I will tell you why I feel this way. Are any of you
5127 Catholics? Two out of three. I was in an office with
5128 several Marines, very high ranking, today and I asked them
5129 if they were Catholics and two out of three were.

5130 I am going to say to you two Catholics, and the rest of
5131 you who aren't, just listen to me because this is true. I
5132 am a loyal, stumbling, sinning Catholic, but my faith, 1900
5133 years of age, took a humane attitude on this very issue
5134 right during the height of the sexual revolution, the
5135 beginning of it.

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5136 They tried to, because we had declining nominees for the
5137 priesthood, due to materialism, the good life, it always
5138 happens in wealthy countries, sacrifice goes down in direct
5139 proportion to the good life. They said to a lot of young
5140 men, do you have homosexual tendencies, because they still
5141 ask the question. When somebody honestly said yes, wanting
5142 to be a priest of God, they said, can you live a celibate
5143 life? And they said, yes.

5144 So many have broken that promise now, not just to
5145 delayicized, 10,000 or 15,000 priests marry a woman, but
5146 some of them who did not have the guts to hit on men in
5147 their parish, and this was told to me by a psychologist who
5148 spent a quarter of a century interviewing prospective
5149 seminarians, he said, they hit on children in their parish,
5150 male children, male priests, homosexual pedophiles.

5151 You will note, the news media never put the word homophile
5152 in front of pedophilia or pediphile out. It is costing my
5153 faith \$500 million of small tithing, dimes and dollars and
5154 fives and tens, half a billion dollars. They have been too
5155 secretive about it, so they paid off families and grown up
5156 children.

5157 Here is what priests, wearing the collar, following in
5158 Jesus' foot steps did, after promising to be celibate
5159 homosexuals. I think we are creating the myth of the
5160 celibate homosexual. As Mr. Bartlett brought his dictionary

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5161 up here, if there is no propensity, then you are not a
5162 homosexual. If you are never going to act it out and you
5163 are that strong, then you have every right to say I am not a
5164 homosexual. You don't have to be counted in any group.

5165 The Army lawyers told me today, we have set up a new class
5166 of homosexuality, the non-practicing homosexual. It brings
5167 me to the eight chaplains that we had in front of one of our
5168 ad hoc committees, all eight, one Catholic priest and six
5169 retired or practicing chaplains. They say they tell every
5170 homosexual who comes to them for counseling, that is an
5171 important step, your mental stability, your emotional
5172 stability and your physical stability; for your overall
5173 general health and certainly your spiritual health, get out
5174 of the military service where you are in maximum temptation
5175 with young people of your own age cohort.

5176 Could you comment on that, too? I have to vote, too. Will
5177 you all contact me and come by my office? I have to have
5178 your answer and I have to keep my voting record.

5179 Mr. SKELTON. (Presiding.) We will take a five-minute
5180 recess so you can go over and vote.

5181 (Recess.)

5182 Mr. SKELTON. Duncan Hunter.

5183 Mr. HUNTER. Mr. Chairman, thank you and thanks for taking
5184 this break and letting me go vote so I could come back and
5185 still contribute here.

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5186 I wanted to say, Major Johnson, that I have expressed my
5187 disappointment with the Joint Chiefs for what I consider to
5188 be a dereliction of their duty. That was my opinion.

5189 My opinion is also that of the Marines that have appeared
5190 here--today, you are the marine leader and the marine hero.
5191 I think you have done exactly what you needed to do. I
5192 would offer, as a friend, my counsel that you should feel
5193 good about your decision. You should feel good about your
5194 place in history.

5195 I think that very few people remember who prosecuted Billy
5196 Mitchell. Very few people remember the people in history
5197 who have made political judgments in this city when they
5198 should have made judgments that were a function of their
5199 understanding of their duty to their troops and to their
5200 country and you have done that. I think that you are
5201 absolutely right when you speak about the vulnerability of
5202 this policy that has been made to court challenge.

5203 In fact, a couple of Members on the other side have
5204 already pointed out the loopholes that you could drive a
5205 Mack truck through.

5206 I sat here as a former trial lawyer and put together 10
5207 separate attacks on this policy, just listening to the Joint
5208 Chiefs analyzing what they thought the policy meant when
5209 they were sitting in the company of their fellows who had
5210 just made their own statements. So they were able to listen

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5211 to their comrades and come up with their analysis. There
5212 was enough difference in their analysis to drive an equal
5213 protection suit or any number of suits flowing out of
5214 different interpretations.

5215 It is also true that even though the Ninth Circuit, which
5216 could be reliably depended upon to attack this decision
5217 annually or semiannually, there is a large body of law that
5218 exists on the basic ban that would keep activist judges from
5219 poking holes in them. They can only go so far. We know a
5220 lot of decisions are made by people who wear black robes.
5221 So you are right when you say the defensible policy is a
5222 policy we are on the verge of abandoning.

5223 The chairman of this subcommittee is a very sharp, good,
5224 and knowledgeable lawyer and I hope we will be able to
5225 explore that tomorrow when we talk to legal counsel because
5226 my sense is that no matter what we will or won't do, the
5227 Chiefs decide they want to use this policy and have it
5228 applied in a court of law, activist judges are going to
5229 apply it in a way they want to apply it. They are going to
5230 give, I think, precious little regard to some of the safety
5231 measures that the Joint Chiefs think they have injected in
5232 this policy.

5233 Let me just say, Major Johnson, I am a great fan of Chesty
5234 Puller and Gimlet Eye Butler and all the great Marines, up
5235 to and including my father in San Diego, California. I am a

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5236 great fan now of yours. I think you are a national leader.

5237 I appreciate the fact that very seldom does somebody sit
5238 behind this witness table who breaks away from the party
5239 line, understanding there have to be party lines so that we
5240 can get things done, but does it under sacrifice because he
5241 knows it is the right thing to do. You are one of those few
5242 people.

5243 I think you can look forward to a bright future because
5244 there are literally hundreds of thousands of former Marines,
5245 never ex-Marines, and service people and families who want
5246 to see their young men and women in what they consider to be
5247 a wholesome environment, and rightly so, and one that has
5248 values. Those people will appreciate you.

5249 Thank you, Mr. Chairman.

5250 Mr. SKELTON. Thank you very much.

5251 Mr. Spence, do you have questions?

5252 Mr. SPENCE. Mr. Chairman, I don't have any questions. I
5253 have heard the General before. I have not heard the
5254 testimony of Major Johnson, but I know about him and I know
5255 about his position. I commend you for it. I commend all of
5256 you for your positions. You have been a help to the
5257 committee. We appreciate it.

5258 Mr. SKELTON. Thank you. If there is nothing further,
5259 General Merrett, Major Johnson and Mr. Ouellette, we really
5260 appreciate your being with us. It is very good of you and

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5261 | very helpful. That is it.

5262 | [Whereupon, at 5:45 p.m., the subcommittee was adjourned.]

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JO STAFF ACTION PROCESSING RM

2410342

TO <i>DJS Rolo</i> THRU VDJS	CLASSIFICATION UNCLASSIFIED	ACTION NUMBER J-1 2591/206-00
SUBJECT Statement of General Powell Before the HASC, 21 July 93, Plan to Lift Ban on Homosexuals in the Military		ACTION <input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> SIGNATURE <input type="checkbox"/> INFORMATION
		ORIG SUSPENSE 9 AUGUST 1993 SJS SUSPENSE 5 AUGUST 1993 J SUSPENSE

ACTION SUMMARY

1. Purpose. To edit the transcript of CJCS testimony on homosexuals in the military as requested* by OCJCS/LA.
2. Background. CJCS and VCJCS testified before the HASC Subcommittee on Military Forces and Personnel on 21 July 1993. The testimony focused on the new DOD policy concerning homosexuals in the military.
3. Discussion. The transcript has been reviewed and edited (Tab). Only minor changes to CJCS and VCJCS statements -- capitalizations, redundant phrases -- are proposed.
4. Recommendation. DJS approve the edited transcript at the Tab and forward to OCJCS/LA for CJCS and VCJCS review and approval.

Approve *Rolo* Disapprove _____ Other _____
 Attachment

Reference:
 * SJS 2591/206-00

COORDINATION/APPROVAL

OFFICE	NAME & DATE	EXT	OFFICE	NAME & DATE	EXT
J-1	<i>P. A. Tracey</i> 9/5	76098	LC	(b)(6)	AUG93 71137
	P. A. TRACEY		LA	(b)(6)	/4AUG93 41777
	RADM, USN		J-5	(b)(6)	UG93 32744

ACTION OFFICER/DIV/PHONE (b)(6) /J-1, Pers Plns & Pol Div/46486

DATE PREPARED 5 August 1993	CLASSIFICATION UNCLASSIFIED	Classified by Declassify on
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FILE

11/8

ROUTING & COORDINATION COVER SHEET

CONTROL NUMBER

2591/206-00

DATE RECEIVED

5 August 1993

WJL

RETURN TO: ADMIN SUPPORT BRANCH, SJS, 2E928, THE PENTAGON

(b)(6)

DOCUMENT IDENTIFICATION

DATE OF DOCUMENT

SUBJECT

Statement of General Powell Before the HASC, 21 July 93, Plan to Lift Ban on Homosexuals in the Military

DJS APVL

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	EA TO THE VDJS	041	<i>25/5</i>
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