

FAMILY AND MEDICAL LEAVE ACT OF 1993 (Senate - February 04, 1993)

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The Senate continued with the consideration of the bill.

Mr. SPECTER. Mr. President, I note my colleagues have come onto the floor since I started this presentation. So I will not suggest the absence of a quorum because I think other colleagues will seek the floor at this time.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the Dole amendment No. 17, and the Mitchell amendment No. 18 in the second degree to the Dole amendment; that there be 4 hours of debate on the Mitchell and Dole amendments, concurrently, equally divided and controlled between the two leaders or their designees; that at the conclusion or yielding back of time, Senator Dole be recognized to move to table the Mitchell amendment No. 18; that if the amendment is not tabled, the Senate proceed to vote, without any intervening action or debate, on the Mitchell amendment; that Senator Dole then be recognized to offer an additional amendment in the second degree to the Dole amendment No. 17, as then amended by the Mitchell amendment No. 18, that will be identical to the text of the Dole amendment No. 17; that Senator Mitchell, or his designee, then be recognized immediately to move to table the Dole amendment No 19; that if the Dole second-degree amendment No. 19 is not tabled, the Senate proceed to vote immediately, without any intervening action or debate, on the Dole second-degree amendment No. 19; that if the Dole second-degree amendment No. 19 is tabled, the Senate then proceed to vote, without any intervening action or debate, on the Dole amendment No. 17, as amended by the Mitchell amendment No. 18; that the bill then be read for the third time; that the Senate then proceed to the House companion, H.R. 1; that all after the enacting clause be stricken and the text of S. 5, as amended, be substituted in lieu thereof, the bill read a third time, and a vote on final passage occur, without any intervening action or debate; and that no amendment, bill, or resolution that relates to the issue of homosexuals serving in the military be in order prior to the earlier of the following: First, July 15, 1993, or second, the conclusion of the hearings that the Senate Committee on Armed Services will hold on the current policy with respect to the service of homosexuals in the military services, as described in paragraph (d)(1) of the Mitchell amendment No. 18; or third, the receipt from the House of a measure dealing with the issue of homosexuals in the military; or fourth, the issuance of any directive by the President on this subject prior to July 15, 1993, which significantly alters the policy as set forth in the White House statement of Department of Defense policy regarding homosexuals in the military, dated January 29, 1993.

Further, notwithstanding this agreement, a relevant

amendment by Senator Brown subject to relevant second-degree amendments, a Pressler technical amendment, and a manager's amendment remain in order prior to third reading of S. 5; and further, that

the three amendments listed--that is, an amendment by Senator Brown subject to relative second-degree amendments, a Pressler technical amendment, and a manager's amendment--be the only amendments in order pursuant to this agreement.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the majority leader.

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Mr. DOLE. Mr. President, reserving the right to object, and I shall not object. I have had a conversation with the distinguished majority leader, and it is our hope--although we cannot put it in the agreement--that there will be two rollcall votes in this agreement. One will be on my motion to table amendment No. 18, the Mitchell amendment, and then there will be a rollcall vote on the motion of the majority leader to table amendment No. 19. Beyond that, we would hope there would be no rollcall votes, except maybe on final passage of the family leave bill.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. That is correct, and it is my intention and understanding.

Just so Senators would be aware, what we are talking about here is that Senator Dole will offer an amendment that has already been at the desk. I will offer a second-degree amendment to it. We will have a period of debate of up to 4 hours. I hope we can conclude it in less than 4 hours, and I have already suggested to the Republican leader that we agree on both sides to reduce the time, and we will attempt to do that.

At the conclusion of the debate, Senator Dole will move to table my amendment, and there will be a rollcall vote on that. If the motion to table does not carry, then my amendment will be adopted by voice vote as an amendment to the original Dole amendment.

Subsequent to that, Senator Dole will reoffer the same amendment in the first degree. It will be identical. I will then move to table that amendment.

If my motion to table prevails, that ends the matter and we go to final passage. If my motion to table does not prevail, then Senator Dole's amendment No. 19 will be adopted by voice vote and then we will go to final passage.

I think I have stated our understanding correctly.

Mr. DOLE. The majority leader is correct. We will do our best on our side to reduce the debate, because of a number of conflicts that are going to be starting at about 6 or 6:30.

I thank the majority leader, and we are prepared to proceed.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the majority leader, as amplified by the two leaders?

If not, that will be the order of the Senate.

Under the previous order, the Chair now recognizes the Republican leader for the purpose of offering an amendment.

Mr. DOLE. Mr. President, I ask unanimous consent that the time start running at 2:30.

The PRESIDING OFFICER. Is there objection? Without objection, the time will be deemed to have begun running at 2:30.

Mr. MITCHELL. Mr. President, I do want to clarify to make absolutely certain that everyone understands, that the other amendments by Senator Brown, Senator Pressler, and the manager's amendment are debatable and we do not have time agreements on them. It is our hope that those can be completed promptly. But for Senators planning with respect to their schedule, under the agreement, those remain to be disposed of. We hope they will be done promptly, but we do not have time agreements on them yet.

The PRESIDING OFFICER. Under the previous order, the time will be deemed to have begun at 2:30 for the purpose of offering an amendment. The Republican leader is recognized.

AMENDMENT NO. 17

Mr. DOLE. Mr. President, I believe my amendment is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. Dole], for himself, Mr. Thurmond, Mr. Coats, Mr. Gramm, Mr. Smith, Mr. Faircloth, Mr. Kempthorne, Mr. Warner, Mr. Lott, Mr. McCain, and Mr. Helms, proposes an amendment numbered 17.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the appropriate place, add the following:

SECTION 1. REVIEW OF DEPARTMENT OF DEFENSE POLICY CONCERNING SERVICE OF HOMOSEXUALS IN THE ARMED FORCES.

A thorough review of all Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, shall be conducted by the Congress before July 15, 1993.

All Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, as in effect on January 1, 1993, shall remain in effect until the completion of this review with respect to the Army, Navy, Air Force, and Marine Corps and unless changed by law.

Any proposed change in this policy shall be submitted by the President in the form of a bill and shall be introduced in each House of Congress by the majority leader in each House. The bill introduced in the Senate, placed on the calendar, be amendable with germane or relevant amendments, and shall be voted on no later than the close of business three days of session after its introduction.

The bill introduced in the House shall also be voted on no later than the close of business three days after its introduction. If both Houses agree to their separate bills, upon receipt of the House bill, if it is identical, the Senate shall be deemed to have passed the House bill in lieu of its own bill and the same shall be transmitted forthwith to the President.

Any conference report shall be nondebatable.

AMENDMENT NO. 18 TO AMENDMENT NO. 17

(PURPOSE: MILITARY POLICY WITH RESPECT TO HOMOSEXUALS)

Mr. MITCHELL. Mr. President, I offer my amendment now at the desk as a second-degree amendment to the Dole amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. Mitchell] proposes an amendment numbered 18 to amendment No. 17.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

Strike all after section 1 and insert in lieu thereof the following:

It is the Sense of Congress that:

(a) The Secretary of Defense shall conduct a comprehensive review of current Departmental policy with respect to the service of homosexuals in the Armed Forces;

(b) Such review shall include the basis for the current policy of mandatory separation; the rights of all service men and women, and the effects of any change in such policy on morale, discipline, and military effectiveness;

(c) The Secretary shall report the results of such review and consultations and his recommendations to the President and to the Congress no later than July 15, 1993;

(d) The Senate Committee on Armed Services shall conduct--

(i) comprehensive hearings on the current military policy with respect to the service of homosexuals in the military services; and

(ii) shall conduct oversight hearings on the Secretary's recommendations as such are reported.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, I will be making a statement later in the afternoon, maybe within an hour or so.

In the absence of Senator Thurmond, who is necessarily absent because of the death of his brother, I am going to designate the distinguished Senator from Indiana [Mr. Coats], to manage the bill on this side and also the time on this side.

The PRESIDING OFFICER. The Chair recognizes the Senator from Indiana as controlling time on that side of the aisle.

Who yields time?

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Indiana [Mr. Coats].

Mr. COATS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized accordingly.

Mr. COATS. Mr. President, it seems like we have traveled a long road. It has not been all that long, but it has been very intense. The debate has been intense, the negotiations have been intense.

I appreciate the majority leader and the minority leader's efforts in working out a situation here today whereby each side can present their argument and a vote can be held on the substance or the merits of the issue before us. On an issue of this controversy and one which has so ignited public opinion, I think it is important that the Senate have an opportunity to debate and vote on the merits of the issue.

We all know that there are a number of procedural ways in which a direct vote can be avoided in the Senate. Those of us who are in opposition to the President's stated change in policy relative to the service of homosexuals in the military believe very strongly that the U.S. Senate and the American people, through their elected representatives, have the opportunity to state their case as to why they do not believe this policy should change, why there should be, before any consideration of a policy change, consultation with the military, hearings before the U.S. Senate, ample opportunity for both sides to state their position on the issue and to explain why or why not the current policy is defective.

When distinguished military leaders, such as General Powell and General Schwarzkopf and many others, have so clearly indicated that this contemplated policy change is absolutely critical to our ability to field the kind of effective national security and military operation to secure the defense of the United States now and in the future, when it is absolutely essential that we examine it carefully before we move forward; we who support the current policy wanted to make sure we had ample opportunity to make our case.

We will have that opportunity. In the next 4 hours of debate, and in the two votes which will follow immediately after completion of that debate, Members of the Senate will have an opportunity to determine whether or not they support President Clinton's intention, as now implemented under agreement with the Joint Chiefs, to reverse decades of policy which, in effect, have excluded homosexuals from serving in the military or whether that policy is justified on the basis of 200 years of military experience and on the basis of those who have studied the issue thoroughly and on the basis of the testimony that has been received from those who are charged with implementing that policy.

Many of us here in this body have participated in the rebuilding of our military. We watched in the late sixties and seventies as a number of factors undermined the morale of our military, the esprit de corps, our fighting effectiveness. We watched as our Nation's military lost the respect of both friend and foe alike and we joined in an effort, beginning in 1980, to significantly rebuild our military. That effort came to fruition in the Persian Gulf and we saw the remarkable combination of quality people, quality training, and quality equipment brought together in a way that minimized loss of life to American men and women

serving in the armed services as well as allied nations who joined us in that effort and remarkable success on the battlefield. This was no accident. This was the result of an extraordinary commitment, bipartisan I might say, commitment to rebuild our military, led by our President, supported by the Congress.

Mr. President, I ask to yield myself 5 more minutes of time.

The PRESIDING OFFICER. The Senator is recognized for an additional 5 minutes.

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Mr. COATS. In that effort, we have achieved what most experts and observers claimed is perhaps the most efficient, effective military force in the history of the world. We take great pride in that. Americans take great pride in that. Any policy which our military commanders and leaders say will undermine that effectiveness and that efficiency, we are concerned about any change in that kind of a policy.

I think I could summarize the argument fairly quickly and then save time for my colleagues and hopefully myself to respond to other charges or questions as they arise during the course of this debate. I think I can summarize it best by stating just three essential points.

Many people who serve in the military today share a viewpoint that allowing homosexuals to serve in the military goes against their religious beliefs or moral convictions. Many of our young soldiers entering the military today are from families who hold very strong moral traditions, beliefs and convictions, and strong religious beliefs. Many military people have stated that a change in this policy will, over time, significantly affect our ability to retain many of the people whom we look to today for leadership in the military and will affect seriously our ability to recruit the needed people for the decade ahead to continue to supply the quality of people that we need in our military. Because, on the basis of their own personal religious convictions or their moral convictions, they see this change as creating an atmosphere in which they do not want their sons or daughters to serve, or which they themselves do not feel comfortable serving in.

Second, we fear that the change in policy will significantly reduce our ability to field an effective military force. Perhaps the most essential ingredient in an effective military force, as our military leaders tell us and as sergeants and captains and colonels and generals throughout the ages have said, is an intangible aspect that some define as morale, some define as esprit de corps, unit cohesiveness, discipline. General Powell has spoken to this. General Powell has indicated that change in this policy will undermine good order and discipline.

General Schwarzkopf said it will destroy the military. These are strong words. They need to be heeded. They need to be listened to. That intangible quality say, our field commanders, our sergeants, our platoon leaders, our battalion leaders--that quality is something that is fashioned in an extraordinary way through intense discipline, training, and it is derived on the basis of a unit cohesiveness that is critical to our effectiveness. It is important that we listen to our military leaders when they tell us that this change in policy will affect that in a very dramatic way.

Now, why? Why? Why does allowing homosexuals in the military affect that ability to field an efficient, effective military? Have not homosexuals served in the military, served as good patriots, served with courage, made

positive contributions? Absolutely, they have. But there is an essential element here present that is difficult to talk about, no one really wants to talk about, but it must be talked about for us to understand what is at stake. It is a three-letter word called sex.

For the same reason we do not put men and women together in the enforced intimate living situations that we find in our military which is different from every aspect of life--where people live together in barracks, sleep together in tents, shower together in makeshift showers in the desert sands of the Persian

Gulf, dress and undress with each other--for the same reason we do not put men and women together in a situation like that because of the sexual attraction element which is one of the most basic of all human instincts and really does not need to be explained in a whole lot of detail--I think everyone understands that----

Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. COATS. That is a tension-creating, conflict-creating, consequence-creating element that destroys morale, that undermines unit cohesiveness and effectiveness.

So we separate men and women. It is a problem but it is not an insurmountable problem.

When we are dealing with homosexuals who by definition have a sexual preference for someone of the same sex and put them in those same intimate enforced living conditions, we reach an insurmountable problem. It is a problem that unit and field commanders cannot overcome.

If the rationale is that we just simply have a behavioral code, then there is no justification or rationale to separate men and women. Because if the orders are simply everyone will be a professional, everyone must restrain their behavior or their conduct and it simply is bad conduct that results in disciplinary action, then there is no basis on which to say that men and women should not be put in the same situation.

The reality that we are facing is that the sexual instinct is inherent in all of us and we are simply tempting beyond individuals' ability to cope with situations--not all individuals but some individuals--when we set up a situation where that sexual attraction element is so present in those enforced 24-hour-day military-living situations.

For the reason, we need to closely examine the consequences of this, the implications of this, the way all of this will affect our military before we change the policy. Our objection is that President Clinton, instead of first getting the evidence and then making a determination about the policy, has insisted on a policy change. And the policy has now changed. And that is the issue before us. I hope we can develop that as we move along.

At this point I believe my time has expired.

The PRESIDING OFFICER. Who yields time?

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Mr. COATS. Mr. President, I yield 10 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. Smith] is recognized for up to 10 minutes.

Mr. SMITH. Mr. President, during the recent Presidential campaign, candidate Clinton repeatedly criticized the vigilance of President Bush in defense and foreign policy issues and promised that, if elected, he would focus like a laser beam on economic issues.

But, ironically, shortly after taking office, this beam is being focused by President Clinton at our Armed Forces and it is igniting a blaze of controversy and dissent throughout the Nation.

By acting to overturn the ban on homosexuals in the military, the President I believe has embarked on a very dangerous course, a course which jeopardizes the readiness and the morale of the U.S. military: the best military in the world.

From the outset, let me say I believe it is a grave mistake, both substantively and procedurally. From a procedural standpoint, the President is acting unilaterally, without proper consultation with Congress and against the strong objections of his military advisers, including the Joint Chiefs. In fact, it has been widely reported that President Clinton strategized with gay rights advocates before consulting his own Joint Chiefs as to how to approach this volatile issue.

I find it extremely troubling that someone with no military experience and a controversial record of opposition to past military campaigns can so casually dismiss the input of our Nation's most trusted and experienced military commanders.

The substance of the President's initiative is even more objectionable. The existing policy embodied in Department of Defense directives is based on the concept of military necessity. It states that homosexuality is incompatible with military service, and that the presence in the military environment of persons who engage in homosexual conduct or who, in their statements, demonstrate a propensity to engage in homosexual conduct seriously impairs the accomplishment of the military mission.

Military necessity is and should be the driving issue here and the Federal courts have traditionally accepted the argument that national security concerns demand wide latitude in military personnel policies.

Mr. President, in his attempt to overturn this policy, President Clinton is shifting the focus away from military necessity toward equal opportunity. However, this approach is inherently and fatally flawed. The U.S. military is not designed to be a mirror of society as a whole. It is a unique community of individuals who possess the mental and physical discipline required to excel in an extremely demanding environment, sometimes a life-threatening environment. Civilian standards of equal opportunity are simply not compatible with the military regime. Whether it be rules about weight or hair length, curbs on free speech, or off-duty behavior, the military discriminates in ways that would not be tolerated in civilian society, and it must. This long accepted practice is necessary and appropriate given the unique circumstances which accompany military service. Where the defense of our Nation is concerned, the rights of the individual should never take precedence over the mission and duty of the unit.

There are many compelling reasons to maintain the existing Defense Department policy. Unlike civilian society, military service entails forced association, often in very close, cramped quarters such as on ships, submarines, barracks, or in crude field conditions. Military personnel eat together, sleep together, shower together, and share the same latrines. Privacy and modesty are unaffordable luxuries. Opening the ranks to homosexuals would exacerbate this hardship and transgress upon the legitimate privacy rights of heterosexual soldiers who may find homosexuality offensive and corrupt.

One thing is for certain, by legitimizing homosexuality in the Armed Forces, the President is ensuring that homosexual behavior will, inevitably, become more brazen and prevalent. Promiscuity, already a major health problem in the homosexual community, will likely increase in on-base clubs, local nightclubs, and throughout forces deployed worldwide. While some may dismiss this threat as exaggerated, the reality is that such promiscuity could have a very direct impact on the incidence of sexually transmitted diseases within the Armed Forces.

According to the British Journal of Medicine, the probability of homosexuals contracting sexually transmitted diseases is 20 to 50 times greater than heterosexuals. Lifting the ban on homosexuals will almost certainly increase the incidence of these diseases, including HIV infections, which are the precursor to AIDS. And since soldiers must be available to provide life-saving transfusions in combat, the military's walking blood bank would be endangered.

Perhaps most importantly, the presence of openly gay personnel will undermine morale and unit cohesion. Although today's U.S. military is the best trained, best equipped fighting force in the world, morale is already suffering from massive, ongoing personnel reductions. In addition, the President intends to eliminate 200,000 more personnel in the coming years, which will necessitate widespread involuntary separations. Consequently, morale within the All-Volunteer Force is plummeting. Mr. President, as loyal soldiers with distinguished records of achievement are being forced out of service to meet arbitrary budget reductions. Now, those who survive the downsizing are confronted with what, for many, is the abhorrent prospect of serving in an environment where open homosexuality is tolerated and, indeed, legitimized.

What kind of message is the new Commander in Chief sending to our Armed Forces? While candidate Clinton vowed to be a different kind of Democrat, President Clinton is rapidly establishing himself as a traditional antidefense liberal. His radical military agenda, featuring meat-ax budget cuts and legitimization of homosexuality, I believe is reckless. And although the Joint Chiefs, rank and file service personnel, and every major veterans organization oppose lifting the ban, the President is callously disregarding their input in favor of the special interests of one community.

Mr. President, simply put, this process is a sham. Although the President has decided to defer final action for 6 months, it is a foregone conclusion that he will, in fact, overturn the ban. He said it. Thus, the so-called comprehensive hearings on this issue which Senator Nunn will chair are nothing more than a formality that will have no impact on the outcome. The President has made up his mind and no sage wisdom or testimony to the contrary will be considered. I, for one, object to it. And judging by the abundance of phone calls, faxes, and letters raining in on Capitol Hill, the American people do, as well. From the State of New Hampshire alone, phone calls are running more than 5-to-1 in opposition to lifting the ban.

As public servants and American citizens, all of us hope that the President succeeds in improving America. But the portrait of the New Commander in Chief that emerges today is disturbing. Instead of

approaching this fundamental national security issue in a balanced, statesmanlike manner, the President is acting brashly to advance the radical agenda of one community. His decision to recklessly overturn 40 years of personnel policy is nothing short of arrogant. The consequences may be devastating, yet the President apparently is not giving it a second thought.

What should the American people infer from President Clinton's action? While candidate Clinton was quick to dismiss concerns over his antiwar activities and lack of military service as political hype, the fact remains that, in his first military initiative as Commander in Chief, President Clinton has declared war on his own Armed Forces. This ill-conceived, poorly timed battle hardly assuages concerns over the President's moral authority and leadership qualities. To the contrary, it can only rekindle and amplify lingering concerns from the campaign.

Mr. President, setting aside all of the media hype and competing special interest agendas, this issue boils down to one of military readiness. War is not a game. It is not about what is fashionable, it is not about what is politically correct. It is an ugly, brutal business in which success has no substitute.

Men and women die in war. Fathers and mothers and brothers and sisters and parents and families send these young men and women into combat and many times they die.

Those of us who have served in the military and gone to war know that unit cohesion, discipline, and morale are indispensable components of readiness. Anything that erodes these elements undermines the capability and effectiveness of the force.

If President Clinton would listen to those who are most qualified to comment on this issue, he would know that lifting the ban will open a Pandora's box of trouble. Take for instance, Gen. Norman Schwartzkopf,

whose stewardship of Desert Storm earned him a distinguished place in military history. When questioned about lifting the ban, General Schwartzkopf replied that 'allowing homosexuals into the military will destroy the military.' There is certainly no ambiguity there, and that same sentiment has been echoed throughout the country by the Joint Chiefs of Staff, active and retired military personnel, and a plethora of veterans organizations. It is a sad statement, indeed, that the Joint Chiefs had to specifically request a meeting with the new Commander in Chief in order to have any opportunity to convey the services viewpoint on the issue.

In closing, Mr. President, I urge my colleagues to support the Dole amendment. Allowing homosexuals to serve in the military is prejudicial to good order and discipline, and will undermine morale and unit cohesion. Those who have served in the Armed Forces understand that, in the military regime, homosexuality is not just another lifestyle choice. It is an orientation that is simply incompatible with military service. The Armed Forces oppose lifting the ban. The American people oppose lifting the ban and if the President will not respect the will of the American public and heed their call, Congress must. I urge the adoption of the Dole amendment and yield back the remainder of my time.

The PRESIDING OFFICER (Mr. Kerry). Who yields time? The Senator from Georgia.

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Mr. NUNN. Mr. President, first let me state again, as I have often in the last 8 to 10 days, that I do not support the original announced policy of President Clinton. I do, however, support the compromise announced on Friday by President Clinton regarding the Defense Department's policy excluding homosexuals from military service. I am also cosponsoring the second-degree amendment today offered by the majority leader, Senator Mitchell.

I think everyone ought to be clear what this second-degree amendment does and what it does not do, and everyone ought to be clear about what President Clinton's directive that was announced last Friday does as opposed to his original plan for the Executive order.

Mr. President, the Mitchell amendment does not change the existing policy of the Defense Department excluding homosexuals from serving the Armed Forces. A vote for this amendment is not a vote to permit homosexuals to serve in the Armed Forces.

What the Mitchell amendment does is endorse the 6-month review period of this entire issue which was announced last Friday by President Clinton. What it does is say that neither the Congress nor the executive branch is going to take any final, determinative action on this issue at this time. Instead, both the Congress and the executive branch are going to spend the next 6 months carefully reviewing the basis for the current policy and the consequences of potential changes to that policy.

So my disagreement with my colleagues who have already spoken today and others who may speak on behalf of the Dole amendment is not a disagreement on substance. My strong feeling is we do not need any amendment at this time, and I will enumerate both why I am in favor of the second-degree amendment sponsored by the majority leader and why I do not support the Dole amendment.

Mr. President, the amendment sponsored by the majority leader directs the Secretary of Defense, in close consultation with the civilian and military leadership of the Department of Defense, to conduct a comprehensive review of the current Defense Department policy with respect to the service of homosexuals in the Armed Forces. The Secretary will report the results of his review and consultations to the President and to the Congress no later than July 15, 1993.

The majority leader's amendment also directs the Armed Services Committee to conduct comprehensive hearings on the issue of homosexuals in the Armed Forces, and on any recommendations in this area made by the Secretary of Defense.

If this amendment passes, Mr. President, the Senate will have 6 months to carefully review the Defense Department's policy on excluding homosexuals from the Armed Forces. Frankly, my hope is that once the Senate debates this issue and once we dispose of this issue this afternoon, we will be able to shift Congress' and the Nation's attention for the next several months to the truly important issues that face our country--the issue of economic growth, the issue of jobs, the issue of savings, the issue of deficit reduction, the issue of investment, the issue of health care, and the issue that we now have pending of family leave policy, so important to our children.

Mr. President, let me take a few minutes to discuss what I believe the compromise by President Clinton clearly set forth last week.

First, and most importantly, for the average officer or noncommissioned officer in the field who works directly with our troops, the compromise announced by President Clinton will not make a single change in the way that commander operates in the next 6 months. When there is an accusation or admission of homosexuality, a commander in the field will process the case in exactly the same manner that it was handled before last Friday's announcement.

Under the compromise, commanding officers will continue to process cases for discharge under the current laws and regulations relating to homosexuality. Cases involving homosexual conduct will be processed through actual separation and discharge, in accordance with current policy.

Cases involving only homosexual status--that is, those

cases not involving any homosexual acts or conduct, where someone simply indicates they are homosexual--will be processed through all the administrative proceedings: Notice of the allegation; a hearing before a board of officers; review by the separation authority; and approval by separation authority. If the separation action is approved, the person will be separated from active duty.

Let us be clear on this important point. No member of the Armed Forces in the next 6 months who is found to be a homosexual will be retained on active duty under the compromise directive just put into effect.

If the Attorney General suspends the discharge of a person that is engaged only in a status case, if that happens, then that person will be placed in the Standby Reserve--not in a Reserve unit, but in the Standby Reserve--without pay until such time as this policy is concluded one way or the other. Then that individual, if the policy is reversed later, then at that stage that person in the Standby Reserve will be able to apply to return to active duty.

The Standby Reserve includes individuals in a nonpay status who are not affiliated with any unit or position designated for mobilization in the Ready Reserve. Individuals in the Standby Reserve would have the option, upon request, to return to active duty if the policy is change. If the policy is not changed, these persons would be discharged.

In all cases involving homosexual conduct and status, the compromise makes it clear that commanding officers may direct changes in the assignment of personnel during the course of separation proceedings if they determine that such changes are in the best interests of the individual or the unit concerned.

The second major element of the compromise, Mr. President, is that the Defense Department will no longer ask incoming recruits about their sexual orientation. This is really the only significant change in policy that has taken place. However, the compromise places renewed and appropriate emphasis on informing all military members of the laws and regulations on sexual conduct which apply to them, not just on homosexual conduct but on important issues like sexual harassment. The briefings on military justice, which all recruits are required to receive when they join the military and periodically thereafter, will include

a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the Armed Forces.

Under the final component of the compromise, the Department of Justice will seek continuances in pending court cases involving former military members who have already been discharged on the basis of homosexuality and who are seeking reinstatement. The continuances will simply freeze those cases, which means they will not get back into the military, until the completion of the review directed by the President.

Mr. President, the Armed Services Committee's hearings on this issue will begin next month. As Members will recall from the debate on the defense authorization bill last year, our committee would have held these hearings even without the events of the last 2 weeks. Even if President Bush had been reelected, we would have held these hearings, because I made a firm commitment to Senator Metzenbaum on the floor of the Senate last year, when he had a proposal which would have lifted the ban on homosexuals in the military. I opposed that provision on the floor last year. But I did state to my colleague from Ohio that we would have hearings this year. And we will.

Mr. President, I hope that our hearings will be thorough, fair, and comprehensive. We will receive testimony from the senior civilian and military leadership of the Department of Defense. I also think we ought to hear directly from the people who will be most affected by any change in the current policy, that is, the men and women in our military uniforms who serve in the ranks of our services throughout this country and the world. We will make every effort to hear from those who support a change in the current policy, as well as those who favor retention of the current policy. We will not simply hear from the top ranking officials, but we will hear from those who will be most vividly affected. We will hear from our enlisted personnel, as well as our young officers.

Mr. President, I start--as I have said many times--from the premise that we should encourage every American to serve his or her country in some capacity. I am a strong supporter of national service. I applaud the patriotism of all persons, including homosexuals, who desire to serve our Nation in the military.

I have no doubt that homosexuals have served and are today serving in the Armed Forces with distinction. But most of them--and this is very important--are not today openly disclosing that sexual orientation.

I also believe, however, that we must give careful consideration to the advice of our military commanders on this subject. Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, has stated that in view of the unique conditions of military service, active and open homosexuality by members of the armed services will have a very negative effect on the military morale and discipline.

I have said for many months now that I agree with General Powell's assessment. I also believe, however, that we have to listen to other points of view, and that is what we will be doing in the Armed Services Committee. I hope all of us on both sides of this issue will be willing to listen to both sides.

Mr. President, every man and woman in this country has a right to be respected. Our Constitution enshrines individual rights and liberties. Our Constitution also underscores the essential role of the U.S. Government in providing for our common defense. When the interests of some individuals bear upon the cohesion and effectiveness of an institution on which our national security depends, we must be very cautious and careful and prudent.

If there is one thing I have learned on military matters in 20 years in the Senate, it is that our Armed Forces will function extremely well if we respect and support their basic requirements for cohesion and effectiveness. Resolving this conflict between individual rights and the basic needs of our military is

difficult, but our Nation has had an effective military because we have achieved an acceptable balance. This balance must be maintained.

All of us must recognize the military is not like every other walk of life. Most people--in fact, almost everyone in the military, at one time or another, is called to give up some of their constitutional rights that they would have if they were in society. They do not have full first amendment rights. Anyone who walks in as a private and tells a sergeant what he thinks, fully and completely, everything on his mind, will find out very quickly that the first amendment of the U.S. Constitution does not fully apply in the military.

Anyone who says to the sergeant or chief petty officer at night, when they come into the barracks and ask for an inspection, that they are exercising their rights under the fourth amendment of the Constitution against search and seizure will carefully and quickly be disabused of that full constitutional protection.

And everyone who has served in the military, or even observed, knows that the military gives up a tremendous right of privacy that all of us exercise on the outside. I think all of us have to understand that. And we have to maintain the balance between the constitutional requirements protecting individuals, and the constitutional requirement that we in the Congress maintain armies and navies and protect our national security.

I would like to make this clear: The Joint Chiefs, every member of the Joint Chiefs supports the statement that President Clinton made last Friday. That is the statement that would be overturned by the Dole amendment. But every single member of the Joint Chiefs--to the best of my knowledge, as reflected by General Powell's clear statement--supports the statement that President Clinton made last Friday, which was the compromise.

In General Powell's words, the Joint Chiefs `* * * believe that the 6-month period of time that we have been given to work this issue, to study it, to hear the views of all concerned, and to work with the Congress will give us the time to do this without the press of the current situation on us.'

Mr. President, this is a difficult and emotional issue. None of the debate on this issue should be taken as an excuse by anyone in our military services--or, indeed, anyone in our entire country--to engage in unacceptable behavior.

We have the most capable military in the world today because of the strong military leaders who instill good order and discipline throughout the ranks of our military services. Members of the Armed Forces know that violence against people in their own ranks or in the civilian community is incompatible with good order and discipline, and is completely incompatible with expectations of our military men and women.

Physical abuse of homosexuals by members of the Armed Forces cannot and should not be tolerated at any time, any place, by any commander. A strong signal must go out from every military commander from the very highest levels right down through the ranks making sure that every individual in our Armed Forces knows that we in this country condemn any instances of this kind of behavior.

Mr. President, in the coming months I hope that all of the interested parties will participate in a constructive and a deliberate discussion of all the questions raised by potential changes to the current Defense Department policy of excluding homosexuals from military service. I outlined a long series of questions in a speech on the Senate floor last week concerning the consequences of changing the policy in the way the President originally indicated he planned to make the changes.

In a few moments I will outline the questions that will come up if, indeed, we pass the Dole amendment. I have urged from the very beginning that the President basically be cautious in moving forward, and that he think carefully about these questions before he issues an Executive order.

I also urge my colleagues in the Senate to listen carefully to the remarks I will make in a few minutes outlining the questions which I do not believe have been thought about that would ensue if the Dole amendment passed and became law.

Mr. President, it is up to all of us on both sides of this issue to look before we leap and to make sure we are not guilty of the old saying, ready, fire, aim. We need to aim before we fire.

I believe that the amendment today that is being proposed--I will go over that in detail in a few minutes--if we pass it, we would be guilty of the old saying, ready, fire, aim. We would not know what we are doing. There are just about as many questions that come up that relate to this amendment as there are questions that would have come up if the Executive order had been issued as it was originally envisioned.

Mr. President, I retain the remainder of the time and yield the floor.

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Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. I yield myself 5 minutes of Senator Coats' time.

Mr. President, first let me commend the chairman of the Armed Services Committee for his statement and for the work he has done. Were it not for Senator Nunn, were he not able to slow down or stop the train, I think we would be in a far more difficult position than we are today.

We were initially under the impression that President Clinton did not consult with Senator Nunn or anyone else in the Senate on this issue. However, Senator Nunn has had several meetings

with President Clinton regarding this matter but was simply not able to persuade him to defer any Executive action until hearings have been held. In fact, President Clinton has moved ahead despite Senator Nunn's recommendations.

I am not certain that every member of the Joint Chiefs of Staff agrees completely with the position articulated by the President last week. I have tried to contact at least one member, if not more, of the Joint Chiefs of Staff, and they have been, in essence, muzzled. They are not in a position to speak about this issue to anyone. I am not prepared to say they fully support the position of the President, but, nonetheless, he is Commander in Chief. They will either salute him and proceed with his policy or consider resigning in opposition.

Mr. NUNN. Will the Senator yield for a brief observation? I do not mean to say the Joint Chiefs agree with the President's position, including his statement that he planned at some point to move forward with the Executive order. They disagree with that. They do not want the policy changes.

What I intended and hope I indicated was that what they agreed with was the carefully worded directive the President handed down for what would happen over the next 6 months.

Mr. COHEN. I thank the Senator for his clarification. I think we have to be very careful in how this vote is characterized. On one hand, some say that those who support Senator Dole's amendment are antigay. If you follow that argument, then you would also say that those who support Senator Nunn's or Senator Mitchell's position are completely for gays in the military. Neither conclusion is warranted. I think that we have to address this as a procedural matter. This is a debate over what is the proper procedure. The President's position has been, or at least perceived by many of us as, you go ahead and hold your hearings; I intend to move forward in July.

That to me, is not an acceptable position. Frankly, I think we ought to hold hearings first and then decide how to proceed.

President Clinton and I have one thing in common. Neither one of us has ever served in the armed services. For that reason, I think we have to proceed carefully. The President and Congress have an equal responsibility and an equal power in deciding this issue, and must proceed with caution.

The President and I have something else in common. We feel we must root out discrimination wherever we find it. We both know that our society has historically and, to a great degree, continues to discriminate based upon race, sex, age, and religion. We both believe discrimination based on these factors is intolerable and unconstitutional.

At issue here is whether it is permissible to discriminate based upon sexual orientation. This matter is unclear. As Senator Nunn has pointed out, homosexuals have served in the military for years. They are equally patriotic, equally courageous, and

equally capable to any heterosexual soldier. That is a given.

As we all know, there is no rational basis for discriminating based on race, sex, age, or religion. Is there a rational basis to exclude gays from the military?

I do not know the answer to this question. I have not served in the Navy or the Marine Corps. I do not know what the living conditions would dictate under those circumstances. I do not know if lifting the ban would have a negative impact upon morale, unit cohesion, and discipline. Maybe we can formulate policies to minimize, if not eliminate, anything that undermines these three very important factors.

During the next several months of hearings I will keep an open mind about whether we can change our policies to accommodate gays in the military without undermining morale, unit cohesion and discipline.

I hope that we will consider the entire spectrum of this issue. During the hearings, we expect to call the Joint Chiefs of Staff and General Powell, who stand in opposition to changing the ban. However, there are other individuals who favor lifting the ban. I hope that they will be included among the witnesses, as well as those who currently serve in the military and those who will serve in the future.

As I have indicated before, I intend to support Senator Dole but with the forewarning that I am completely open to lifting the ban. I am open to the idea if I can be persuaded that it can be done without compromising the readiness, effectiveness, efficiency and morale of the military.

I yield 5 minutes to the Senator from Wyoming.

Mr. WALLOP. Mr. President, let me echo the comments of Senator Cohen, that the Senate, the Congress, and the country owes the distinguished chairman of the committee for giving us the time and ability to make judgments on this.

Mr. President, there is one thing that many who have not served in the military, and many who maybe even have served in the military, seem to drop in their consideration of this argument. This is not a gay bashing question. This is not a social issue. This is a military policy issue.

Mr. President, I say that among the most important considerations for most Americans in this is to understand that the military of the United States is America's last pure meritocracy. Therefore, it is not the same kind of issue as was--as many have stated--bringing blacks into coequal

service in the military.

This is quite different than that. That is unchangeable by the participants. All of us in this country--black, white, Hispanic, and Asian--took tremendous pride in the achievements of the military in the gulf. Since that time, we have commented to each other not how well blacks have performed or Asians, but how well our military performed.

Why do we say that? It is because those in the military are promoted, are maintained in military service on one basis, and one basis alone, and that is their merit, achievement as soldiers, sailors, airmen, male or female; they are kept in service and advanced and promoted solely on the basis of how well they perform. They do not have the office of economic opportunity. They do not have the Justice Department. They do not have anybody else overlooking who gets promoted, who is permitted to reenlist, who is not promoted or is passed over for promotion. It is a judgment, albeit from time to time probably unfair, but mostly not, because the demonstrated capability of the men and women of the armed services of the United States is based solely on their ability to perform jobs and duties for which they have been enlisted and enrolled.

Mr. President, if you take a behavioral issue and insert it into that equation, and if one is able to claim that one has not been promoted, or one has been passed over for promotion, or one has in fact not be permitted to reenlist, on the basis that one is gay, and we go to the courts and we determine in the courts that that may have been part of the judgment, and all of a sudden merit leaves the whole performance standard of the Armed Forces of the United States, instantaneously that happens. Commanders no longer dare make judgments as to who in their unit is most able and most worthy of promotion. Commanders will suddenly have to make a judgment based on other elements than performance.

Mr. President, this would be catastrophic for a nation downsizing its military forces, for a nation choosing to be capable, but smaller, and the farther we remove capability from the judgment of those who get to say who stays, who advances and who performs what job, the less capable, the less certain America becomes of the Armed Forces that serve it, protect it and project it.

Mr. President, that is fundamentally the issue. It is the issue of being able to promote solely on the basis of performance and not to be able to be challenged in court on the basis of other lifestyle projections.

Mr. President, I want to express my dismay and surprise at the confrontational and uninformed way in which President Clinton has chosen to deal with the issue of homosexuals in the military. This is a curious arena in which to make his first major national security decision; with pressing crises around the world and our forces deployed on missions in Iraq and Somalia, President Clinton has decided to ignore the advice of his uniformed military advisers and perform politically motivated social experiments with the American military. I find it hard to believe that a man with no military experience would so carelessly dismiss the 200 years of combined military experience possessed by the Joint Chiefs of Staff.

In addition to ignoring the Joint Chiefs of Staff, the President also has attempted to usurp Congress' role in regulating the Armed Forces. As article I, section 8 of the Constitution clearly states, the Congress shall have the power to, 'make Rules for the Government and Regulation of the land and naval Forces.' We should not relinquish that duty to a new imperial Presidency. This is not a simple housekeeping question. Lifting the ban on homosexuals would fundamentally alter military conduct and threaten discipline, morale, and effectiveness.

Congress must be involved in deciding the merits of such a dramatic change before it is implemented. Since the President has already taken preliminary action that amounts to a partial lifting of the ban, it is only appropriate for Congress to now consider this issue.

Under the banner of a compromise within his own party, the President, says he has delayed for 6 months making any changes; but this just isn't so, he has changed the rules, and has no intention of listening to the results of any hearings. If President Clinton assumes that he can simply suspend existing policy while Congress waits patiently he is seriously misguided.

I will support the Republican leader's amendment since, unlike the President's action, it does not prejudice the outcome of congressional hearings and it permits an unbiased 6-month review. I also support the Dole amendment since it requires that any changes to current policy be undertaken in as a change in law. This issue must ultimately be decided by a vote in Congress.

Mr. President, before we vote on this issue, let me express my own views. Homosexuals have the same rights as all citizens in this county, as is proper and just. That is not the issue.

The military is not just another American organization or place of employment. It is governed with a clear goal of providing a means of projecting and protecting American's interests. It is in the business of fighting and winning wars. Federal courts have rejected any constitutional right to serve in the Armed Forces or any right to a military career or to continued service. Service in the military is a privilege that can be ended at any time based on the changing needs of the military.

The core of the argument, supported by the supreme court, is that the military is a specialized form of society drawn from civilian society, and must be free to accomplish its mission. Mr. Aspin has no basis to suggest that the courts will somehow step in and make the change. The district court ruling in California is only a ploy; it will be overturned when it arrives at the Supreme Court as have previous cases for judicially changing military regulations. Supreme Court opinions in the area of military necessity versus individual rights have been clear and consistently in favor of military necessity as the overriding consideration. My colleague, Senator Nunn was right to recall the differences in military and civilian life in his recent statement, when he reminded us that requirements of discipline supersede the rights of free association and some of the rights included in the first amendment.

The High Court has repeatedly sustained the argument that the military must be free to accomplish its mission. Chief Justice Rehnquist's opinion in the Goldman case sums it up well:

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The military need not encourage debate or tolerate protest to the extent that such tolerance is required of the civilian state by the First Amendment: to accomplish its mission the military must foster instinctive obedience, unity, commitment, and esprit de corps.

So, Mr. President, Mr. Aspin should know better than to assume that the courts will somehow lift the burden from the administration to make its case.

The key point here is that military necessity requires stricter standards of behavior and lifestyle. Military readiness is the correct reference in the present debate unless changed by Congress.

Those who favor lifting the ban on homosexuals in the military have sought to shift the frame of reference, from military necessity to equal opportunity. We should not confuse the two concepts or attempt to apply one in a context where it does not fully apply. To do so would undermine the military's long supported right, if not duty, to regulate its society to provide for combat effectiveness.

As Senator Coats recently pointed out in the New York Times:

Lifting the ban will inevitably mean privileged treatment. Will a base have to provide housing for homosexual couples as it does for families: Will same-sex `dependents' receive medical benefits? Will quotas be required in hiring and promotion?

It this sounds hysterical, consider this portion of a letter to the Superintendent of West Point by an ACT UP member who was a Clinton volunteer:

Lifting the ban is not enough. * * * We intend to sue in Federal Court as soon as the ban is lifted to insure compensatory representation in the service academies. In particular we intend to get a ruling mandating a set number of places for homosexuals in the Air Force Academy, the Naval Academy, and West Point.

Homosexuals argue that it's not a matter of integrating them into the military since they are already there. Much is made of the apparently distinguished service of selected individuals who came out of the closet. This misses the point: Sure, there are some gays who fit in, but the exception does not prove the rule. Once the sanctions are lifted, they will be free to conduct themselves as they see fit. Even if sodomy is still proscribed, obvious gay behavior will undermine privacy, morale, and discipline.

Nor is the fact that other countries allow homosexuals in the military reason for us to follow suit. In fact, those countries that permit homosexuals to serve in the military have serious problems. Most of them must severely discriminate against them to protect privacy, cohesiveness, and morale. Some do not allow gays to possess security clearances or become officers. Promotion opportunities are limited. Even extremely liberal countries like Holland face serious problems of morale.

Mr. President, the Congress has a duty to the people in the armed services to guarantee policies that protect them and acknowledge the unique nature of the society they voluntarily entered into in order to protect us. As Senators, we have a duty to listen to our constituents, and we have a duty to the Constitution to govern and regulate the Armed Forces.

The existing policy is comprehensive in its reasoning and stands on its own as a tried and tested guarantor of military effectiveness. This policy must be reaffirmed, in my view, in a statutory form, not to condemn anyone or to restrict anyone's rights, but rather to provide for the common defense.

Mr. President, we must be clear about one thing: Military service is a privilege not a right. Access to the military has never been fair. Because victories in combat are achieved by cohesive units, the Armed Forces routinely sacrifice individual interests to ensure unit cohesion. Military service is legally restricted or denied entirely to patriotic Americans who are too tall, too short, too fat, color blind, flat footed, and mentally or physically handicapped in any way. In the civilian world we aggressively seek to protect the civil rights of these groups, but in the military, they simply do not belong.

There are other restrictions; single parents, for example, are not allowed to enlist. This is no reflection on the inherent worth of these people as human beings; they are simply not suited for military service. Professional military judgment and experience indicate that mixing known homosexuals and heterosexuals degrades cohesion and combat effectiveness. It is not the individual qualities of the homosexual, but rather homosexuality itself, which is incompatible with military service.

Mr. President, the administration has tried to cloud the discussion by referring to this as a matter of status versus behavior; that somehow homosexuals can be integrated into service life as long as their behavior isn't against regulations. Mr. President, this explanation is foolish at best, and can be explained by the simple analogy of requiring military men and women to share the same showers and open barracks, yet promising to punish only those who trouble others or misbehave. Status versus behavior is high sounding foolishness, and intentionally confuses the discussion.

If the President feels he can just sign an order and end the problem, he is wrong. Military effectiveness rests on more than commands from above. Men and women risk their lives, but only because they trust their commanders and their comrades--and their commander in chief. Most Americans are uncomfortable with homosexuality in the military; in a September 4, 1992, USA Weekend survey, 67 percent of the respondents wanted the ban to continue. No change in Pentagon policy can change these feelings. A commanding officer who is known to be gay will encounter so much mistrust, if not hostility, that his ability to lead his unit will be severely compromised. All kinds of orders and punishments will not make men and women willingly put their lives in his hands.

And finally, there is the President's clarification on the issue. He now tells us that he doesn't see why homosexuals can't be allowed to serve, it's just that they can't behave badly or act contrary to the law.

I believe this administration has the burden of proof to convince this Nation that the actions they propose would not impair military effectiveness.

Since no one in the administration is willing to listen to any but themselves, Congress must act now to codify the current policy. Any meritorious changes to this standard can then be reviewed and debated in the normal manner of hearings and floor debates and votes on specific changes. In the meantime, we should assure our service personnel that there will be no suspension of the policy or other modification not based on a thorough review and fully debated approach.

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Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Mr. Lautenberg). The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I think the question of sanctioning the presence of homosexuals in the military is certainly one that this body recognizes is a difficult and very diverse issue. I think it is an issue that can only be fully addressed with the passage of time and careful deliberation by this body.

At the outset of a new administration, in a Nation beset with a variety of vexing problems, this is certainly not the issue that should have emerged at the top of our collective priority list. Yet, here we are, engaged in a debate today that most of the Members of this body did not seek.

Make no mistake about it, President Clinton, in choosing this issue as his first foray into the defense area, is the one responsible for filling our mailrooms, jamming our switchboards, and overburdening our fax machines with expressions of public opinion and outrage opinion.

I can understand how President Clinton, sensing his miscalculation, would prefer to place the issue on the back burner for 6 months. But the pot was already been brought to boil, so we are forced to deal with it and deal with it now.

In most instances, an individual's private behavior and his or her own private life should certainly not be a Government concern. But when a particular behavior has the ability to adversely affect good order and discipline in our armed services, it suddenly has an impact on one of the Government's principal obligations and constitutional duties, to provide for the common defense.

Mr. President, over the past several weeks, I have listened intently to a number of my constituents, many of whom have served, or are serving, in our Armed Forces. By an overwhelming margin, Alaskans oppose a policy of reversal.

Those who have personally led troops in combat are most adamant in their opposition to lifting the ban. They are alarmed that a President with no military experience has reaffirmed his desire to eventually reverse the current policy, notwithstanding the advice of the Joint Chiefs of Staff based on some 200 years of combined military service.

Mr. President, my position is clear. It is not an issue of rights. I am certainly not critical of those who choose a lifestyle. I think individuals have a right to choose their lifestyle. But serving in the military, Mr. President, is not a right, it is a privilege. Not everybody can serve in the military. One gives up certain rights in going into the military, and I think that is the basic difference, Mr. President. Military service is a privilege, not a right.

I have a great deal of confidence in my colleagues on the Armed Services Committee to examine matters. The hearings that they will be holding clearly will bring to light a vast variety of specifics with regard to this issue.

But as the ranking member on the Veterans' Affairs Committee, I have asked the chairman, Chairman Rockefeller, to convene a hearing on this issue as it impacts the Department of Veterans Affairs, and its ability to serve our Nation's veterans.

I think this is an area that has been overlooked, Mr. President. VA has an obligation to provide health care of our veterans, and this proposal would supply an additional burden.

Hearings before the Veterans' Affairs Committee would give the veterans of this Nation the opportunity to be heard, since this change could well affect them and the level of benefits that they might receive in the future.

For example, Newsweek reported that homosexual men account for over two-thirds of all reported AIDS cases. The AMA, American Medical Association, advises us that 50,000 Americans will die of AIDS this year. If homosexuals have a higher incidence of sexually transmitted disease than heterosexuals, what will be the effect on the VA medical centers as larger numbers of newly eligible homosexual veterans seek care in the VA Health Care System?

Mr. President, we simply do not know.

Under current conditions, VA projects that the costs of AIDS treatment will increase 20 percent per year. If the costs of VA AIDS treatment are further increased by the addition of a high risk population to the veteran population, the Congress will be faced with a choice of making substantial increased appropriations for veterans' health care, or requiring VA to absorb the costs.

Mr. President, there is only one way the VA could absorb the costs--by reducing treatment to other veterans or providing more dollars.

A decision to admit gays to the military will not be a free one. That decision will be paid for in increased funding for VA, or by the veterans VA must turn away in order to care for the new AIDS cases the decision will bring.

I submit that no matter which option we take, the cost will be high.

If additional funding for veterans' health care is available, there is no shortage of urgently needed and unmet needs within the VA Health Care System right now.

According to the CDC 60 percent of the AIDS cases in adult men reported in fiscal year 1992 were the result of men having sex with men. If gay men represent 10 percent to 15 percent of the male population and have 60 percent of the new cases reported, it is clear that the gay population still brings an increased risk of AIDS to the table.

In comparison, 48 percent of the AIDS cases treated by VA have been the result of homosexual contact. VA has treated over 12,000 veterans with AIDS, 6 percent of all AIDS treatment in this country. VA spent \$233 million treating veterans with AIDS in 1990. By 1995, that amount is projected to increase to \$581 million.

If gays are openly admitted to the uniformed services, we can expect the profile of transmission for AIDS cases in the veteran population to take on the same characteristics as transmission in the male population as a whole.

That is, the percentage of cases due to gay sex will likely increase over time from the 48 percent currently found in the veteran population to the 60 percent found in the general adult male population.

Mr. President, that is a 12-percent increase, and it is reasonable to expect that it would bring with it a 12-percent increase in cost.

If more funding is not available, I do not want to see VA health care professionals in the position of having to decide whether to turn away new AIDS patients or to turn away other veterans because the resources are not available to treat both.

There are other issues as well:

Mr. President, this body does not yet know precisely the effect of AIDS on veterans' insurance programs, but I am developing that information. I predict we will find that the impact is substantial, and that if gays are allowed to serve openly in our Armed Forces the impact will increase. The Senate, the President, and America's veterans should have hard data on this question before a decision on admitting gays to the military is made.

Would the VA become mired in controversy and litigation to determine if gay soldiers' partners are dependents or survivors for purposes of VA benefit programs?

Under the current policy, HIV infections contracted in the military are now considered service-connected disabilities for which compensation is paid. Gladly, there have been relatively few cases. What would be the effect of an open military admission policy for gays?

I would hope that the Veterans Affairs' Committee can hold open, frank hearings on these and other matters, and I trust that our committee chairman and my good friend, Jay Rockefeller, will agree with me and other Members that such hearings for veterans are important in the resolution of this matter of military policy.

Mr. President, it is noteworthy that the American Legion, the Veterans of Foreign Wars, and AMVETS--three of the Nation's largest and most influential veterans organizations--oppose a change in current military policy on homosexuals. Moreover, the Association of the U.S. Army, the Navy League, the Air Force Association, the National Guard Association, the Marine Corps League, the Reserve Officers Association, and the Retired Officers Association are united with veterans organizations on this matter.

Mr. President, it is a certainty that our military forces will be tasked to perform diverse missions in the future, ranging from peacekeeping and humanitarian relief to rapid deployment response and engagement. We cannot risk military capability for the sake of a well-intentioned but misguided notion of social engineering. In a similar vein, we should not take an action that undermines the range of veterans benefits that Congress has so carefully crafted through the years, intended to reward for faithful service those injured in harm's way, and to restore those who sacrificed life and limb for country.

I am pleased to be a cosponsor of the pending amendment with Senator Dole.

Mr. President, I ask unanimous consent that a list of organizations supporting the ban on homosexuals in the military be printed in the Record.

There being no objection, the list was ordered to be printed in the Record, as follows:

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Organizations Supporting the Ban on Homosexuals in the Military

National Guard Association.

Naval Reserve Association.

The Retired Officers Association.

Retired Enlisted Association.

Non Commissioned Officers Association.

Marine Corps League.

Association of the U.S. Army.

Marine Corps Reserve Officers Association.

Enlisted Association of the National Guard.

U.S. Army Warrant Officer Association.

Fleet Reserve Association.

Jewish War Veterans.

Air Force Association.

Military Chaplains Association.

National Association of Uniformed Services.

Veterans of Foreign Wars.

The Military Coalition.

Air Force Sergeants Association.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I yield 10 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair, and I thank my friend and colleague, the chairman of the Armed Services Committee.

Mr. President, I am not going to take much of the Senate's time today on this matter. I would simply start out by referencing a statement that I made immediately following the very thoughtful, very detailed and reasoned statement made by the chairman of the Armed Services Committee, Senator Nunn. I would reference anyone who is interested to the Record of January 27, starting on page S. 757, a statement that I made at that time.

I have had the privilege to serve my country in the armed services and I alluded to that service and some experience that I have had in this particular area. I would simply appeal to all involved to comment on whatever they think are the legitimate merits of the situation, but let us try and keep away from the emotionalism as much as we can.

I want to start out by saluting Senator Nunn, the chairman of the Armed Services Committee, once again working in conjunction with the majority leader, for putting together what I think is a proposal that can go a long ways in solving the problem that exists. And I do not for a minute indicate that there is not a problem.

I would simply say, Mr. President, that since I have had the privilege of serving my country, that does not make me any more of an expert on this, I guess, than any other. So I simply say that I hope that all of us would think back to our experiences, the experience of others, the compassion that I think we have to look to for all involved in this controversy, but, above all else, let us do as we usually do to conduct the business of the U.S. Senate as best we can on factual debate and thought and reason together and not try to inflame people with comments and suggestions that would take this beyond what I think is the responsibility of the Senate, and that is to come and reason together to try and work out a compromise.

Mr. President, the prospect of lifting the ban on homosexuals in the military has set off a firestorm of controversy. We can all agree on that. Since President Clinton announced his intention to keep his commitment, the matter has consumed the media's attention and touched a nerve in the American public like few issues before it.

As a World War II veteran and a 14-year member of the Senate Armed Services Committee, I hope I bring an informed perspective to this debate on the implications of a change. Still, I have approached the issue with compassion for all those affected, directly or indirectly, one way or the other, on the issue.

Over the last 2 weeks, I have listened closely to the arguments made by both proponents and opponents. I have listened to the concerns expressed by servicemen and women, officers and enlisted. I have taken into account the opinions of heterosexuals and homosexuals, veterans and civilians. I have discussed the pros and cons of the reform with the President himself and other Senators. Like my colleagues, my office has been deluged by hundreds of phone calls and letters from constituents. This outpouring of views from Nebraskans has been a valuable counsel to me as I have considered the advisability of making a change in this area.

Although I must say that, contrary to what some of my constituents have felt, I have never, ever advanced a proposal, nor have I seriously considered, to this moment, at least, and probably will not in the future, the permanent and total lifting of the ban. But there is a lot of reasonable ground in between, I suggest.

The agreement reached between the President and Members of this body, including Senator Nunn and Senator Mitchell, to postpone the final decision until hearings can be held on the implications and consequences of the change is a wise one. We need to be slow and deliberate about the President's wishes. This study time will provide us with a much-needed cooling off period to better address objectively the concerns raised to date. Similarly, a temporary moratorium on asking new recruits about their sexual orientation and halting final discharge action of those homosexuals currently in the military is in keeping with the President's belief that conduct, not status, should be the determining factor when it comes to military service to your country. I can support this interim policy because it does not limit the existing authority of a commander to reassign any individual service person, heterosexual or homosexual, from a unit who may be a disruptive force to the unit's morale or operation for any reason.

In retrospect, the President in my view should have acted with more deliberation and consultation with the men and women in the services and the Congress. There are many questions to get answered on this subject before a final decision on a change should be made. The first priority of the Armed Forces is the national security of the United States. The military is not designed and should not be used as a laboratory for volatile social change. Congress has a special obligation to those in uniform to fully examine the

implications of change on personal privacy and unit cohesion. Our chief concern must always be what is best for the Armed Forces as a whole, not necessarily what is best for the individual. I believe the hearings scheduled next month in the Armed Services Committee will be helpful in sorting out these very complex and complicated matters.

Amid all the emotion that this debate has generated and all the sensationalistic speculation over what changes may mean to our Armed Forces, I worry that less and less attention is being paid to the fundamental pillar of service in the military: the conduct of the individual. Is the essential ingredient. I repeat: The conduct of the individual, regardless of their sexual persuasion. In my view it is premature to draw the conclusions the President has reached. Likewise, opponents of the President's wishes are in error when they elevate an individual's status above his or her conduct and ability to serve in our Armed Forces.

The facts of the matter are that somewhere between 100,000 and 300,000 people now serving in the military are homosexuals. I think we should recognize that whether you are a heterosexual or a homosexual, you do not fit a type that has been so prominently displayed and offered so very often for homosexuals.

For these reasons, I oppose the Dole amendment and support the second-degree amendment before the body. The Congress needs time to work with the President on this complex and emotional issue, and explore in depth the consequences of what we are about.

Codifying now the ban on homosexuals in the military prejudices this study period and, in my view, is inappropriate at this time. There is clearly a time to get things done. There is clearly a time for constructive evaluation.

This is clearly a time for constructive evaluation. This is clearly a time not to rush to emotional judgment. Let us proceed in an orderly fashion, with the Congress not further challenging the President at this juncture, nor the President further challenging the Congress.

Prudent hearings and reasoning together may produce a workable compromise.

I thank the chairman of the committee. I thank the Chair.

Mr. President, I yield the floor.

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Mr. COATS. Mr. President, I yield 3 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 3 minutes.

Mr. HEFLIN. Mr. President, I rise today to address the issue of the military's right to make homosexuality a disqualification to serve in the Armed Forces. I do not think that anyone questions the premise that the personnel in military services occupy a different status from the status accorded American nonmilitary citizens. The military is not a democratic institution. The military must operate from an authoritative basis, where discipline and command prevail over a large number of individual rights. Many constitutionally protected rights are not available to its members. It involves a quasi-caste system. An individual's right to freedom of speech, freedom of assembly, freedom of protest, and other fundamental rights are greatly curtailed because of the unique demands of national security.

There is a large body of law that has developed under the provisions of section 8 of article 1 of our Constitution. Because of this body of law, I would like to approach this issue through a discussion of

relevant judicial decisions. In my review of the legal history, I am convinced that it confirms my position that the ban on homosexuals in the military should remain in place.

The courts have long recognized the uniqueness of the military. In the case of *Parker v. Levy*, 417 U.S. 733 (1974), the Supreme Court noted that it has long recognized that the military is, by necessity, a specialized society separate from civilian society. This difference has led the military to develop laws and traditions of its own during its long history. The Court points out that these differences between the military and civilian communities result from the fact that it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.

Much of the debate on this issue lately has failed to take this distinction between the military sector and the civilian sector into account. Any thoughtful discourse on the matter must give this distinction the utmost consideration. Although the Parker decision was not one concerned with homosexuals in the military, it directly addressed the issue of the rights of the individual in the military, thereby establishing a framework the Court has subsequently used to examine a number of cases involving constitutional claims brought by service personnel.

In the 1981 case of *Rostker v. Goldberg*, 453 U.S. 57, the Supreme Court heard arguments from several males challenging, on fifth amendment grounds, the Military Selective Service Act that required registration for males but not females. The Court ruled that the provision did not violate the fifth amendment, and that Congress acted within its constitutional authority to raise and regulate armies and navies.

For our discussion here today, this opinion provides some helpful insight into Congress' role in this matter. Justice Rehnquist, in delivering the opinion of the Court, noted that a case of this nature was not merely a case involving the customary deference accorded congressional decisions, but rather this case arose in the context of Congress' authority over National defense and military affairs, and perhaps in no other area has the Court accorded Congress greater deference.

This deference to Congress was brought out again in the 1983 Supreme Court decision, *Chappell v. Wallace*, 462 U.S. 296. The Court confirmed its earlier position recognizing the unique disciplinary structure of the Military Establishment.

Writing for the Court, Chief Justice Burger noted that many of the Framers of the Constitution had recently experienced the rigors of military life and were well aware of the differences between it and civilian life. In drafting the Constitution they anticipated the issues raised in this case. Their response was an explicit grant of plenary authority to Congress to raise and support armies; to provide and maintain a Navy; and to make rules for the Government and regulation of the land and naval forces.

This framework has been followed in several circuits on matters more directly on point. In *Rich v. Secretary of the Army*, 735 F.2D 1220 (1984), the tenth circuit affirmed a district court decision which upheld an Army regulation that discharged petitioner for fraudulent enlistment when Army learned that in enlistment process, the soldier had falsely represented that he was not homosexual.

The court, in its opinion, clearly stated that they did not accept plaintiff's contention that the Army's policy of excluding homosexuals violated his rights under the equal protection component of the fifth amendment. The court noted that--

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A classification based on one's choice of sexual partners is not suspect * * * and even if heightened scrutiny were required in reviewing the Army regulations because they restrict a fundamental right, the classification is valid in light of the Army's demonstration of a compelling governmental interest in maintaining discipline and morale of the Armed Forces.

The seventh circuit came to a similar conclusion in the case of *Ben-Shalom v. Marsh*, 881 F.2D 454 (1989). In that case, the court ruled that plaintiff's constitutional rights were not violated by the application of Army regulation making homosexuality or admitted homosexuality a nonwaivable disqualification to service in the military.

This case was directly on the issue of status. The court found that a rational basis standard of review was the correct test to be used in an equal protection analysis, and that the Army satisfied that standard without any difficulty.

Many point to the recent district court decision in California finding the Army's policy unconstitutional. This case, however, appears to be an aberration that will have difficulty on appeal. The judge in that case cites the ninth circuit case of *Pruitt v. Cheney*, 963 F.2D 1160, as authority for his decision. The *Pruitt* case, a case which concentrates on the issue of a summary judgment ruling, only restates the position of other circuits in pointing out that under an equal protection claim regarding a discharge based on status, the correct standard of review is a rational basis test.

The court, in the same opinion, went on to strongly acknowledge that military decisions by the Army are not lightly to be overruled by the judiciary.

Thus, contrary to years of legal precedent, the district judge in California found that the Army had no rational basis, in essence, no legitimate reason for the Army's policy. It is my estimation that the court of appeals will not so easily dismiss the Army's reasons for the regulation.

Mr. President, the military runs on a different system than the civilian sector. We, as a nation, entrust our security to the men and women who serve in our Armed Forces. In their service, they subordinate the rights of the individual in order to serve the whole. It is a system that has served this Nation well for many years.

My opposition to changing the military policy comes from a deference to the opinion of those who work so hard for the interests of our Nation's security. I believe a change in the policy regarding homosexuals in the military would be an error and go against the legal precedent as well as the carefully considered decisions of our military leaders.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. Mr. President, few matters are more vital to America's security than the readiness of the military forces who defend the values which we all cherish.

One of those values, Mr. President, is the protection of individual rights.

Yet even as our new President and Commander in Chief seeks to advance those rights by removing the unfair and outdated ban on gays and lesbians in the military, we hear disturbing voices across the land.

As we listen to those who tell us that gays and lesbians will destroy the military, the simple truth is that this debate is not about military capability at all. It is about irrational fears and prejudices. It is about civil rights and leadership in a democratic society.

The issue today, Mr. President, is simple: Do we move forward as a society, recognizing the talents and dignity of all of our citizens? Or do we allow our differences to pit one American against the other and take this country down a painful road we have traveled before?

The Pentagon tells us flatly that homosexuality is incompatible with military service. As a military leader, the Commandant of the Marine Corps, asked in defending the ban presently:

How would you react if your son called and informed you that his roommates for the next 2 years were two homosexuals * * *?

This is not the first time the military has had such concerns. I want to quote a 1942 Navy memorandum.

`Men on board ship live in particularly close association,' warned a 1942 Navy memorandum. `In their messes one man sits beside another; their hammocks or bunks are close together; in their common tasks they work side by side. * * *'

`How many white men would choose, of their own accord, that their close associates in sleeping quarters, at mess and in a gun's crew should be of another race?' the Navy's top admirals asked.

In 1948, speaking in favor of a measure to guarantee to any American the right to serve in a military unit comprised exclusively of members of his own race, one Member of this body said:

I know that perspectives are often blurred by the desire to capture the votes of a highly organized and vocal minority.

Some Senators of that era feared that allowing negroes and whites to serve together would have grave public health consequences. `The mandatory intermingling of the races' one said, would be `sure to increase the number of men who will be disabled through communicable diseases.'

And Senators in opposition to President Truman's directive insisted that they were in no way opposed to basic civil rights for all. They simply felt duty-bound, Mr. President, to defer to the Pentagon's expert judgment on the issue.

How many of those very same arguments have we heard repeated this year with regard to President Clinton's proposed directive to integrate gay and lesbians in the military?

While the discrimination faced by African-Americans often takes different forms from that faced by gay and lesbian Americans, this much we can say with absolute certainty: The military has no more of a rational basis for banning gays and lesbians in 1993 than it did for segregating African-Americans in 1943.

Old beliefs die hard, Mr. President. But when they stand in the way of equal opportunity for any American, die they must.

Gay and lesbian Americans love their country as much as any other Americans. And like any other Americans, they deserve the choice to be judged on their conduct, character, and capabilities--not persecuted because of their status alone.

Today, Mr. President, those who would keep gays and lesbians out of the military desperately cling to one last straw: the privacy argument.

It is unthinkable, they tell us, that straight men and women could properly function if occasionally forced to share a shower or a bunk with a gay or a lesbian. This last issue, they insist, goes to the very heart of an individual's most personal beliefs.

I can remember when it was just as unthinkable to ask a white American to drink from the same water fountain or swim in the same pool as a black American.

The issue is not privacy, the issue is the invasion of privacy or any other conduct on the part of any soldier or sailor, whether homosexual or heterosexual, that constitutes sexual harassment. If the U.S. military is truly concerned about the environment created by sexual harassment in the ranks, this Senator suggests that the Pentagon start by bringing to full justice those involved in the Tailhook affair and by implementing immediate measures to ensure that standards for sexual conduct and behavior are fairly applied without regard to gender.

But let us for a moment take the Joint Chiefs of Staff at their word--that the presence of openly gay and lesbian soldiers and sailors would destroy the morale and unit cohesion which allow the military to effectively carry out its mission.

We would expect, then, that in wartime--when unit cohesion can literally mean the difference between life and death--the military would be especially vigilant in ferreting out and discharging gay soldiers. But

in fact, Mr. President, the record clearly demonstrates that precisely the opposite is true. From World War II through Operation Desert Storm, whenever American Forces have gone into battle the Pentagon has always found a way to keep suspected or acknowledged homosexuals in uniform.

And when in harm's way, incidents like the one related in this week's Newsweek magazine represent the real story of gays in the military:

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On the first night of the Scud missile attacks on American troops in the Persian Gulf, an Army Specialist Fourth Class found himself cramped in a foxhole with three other men. Like many young enlisted men, the specialist had previously confided to the other men, his friends, that he was gay.

During that night in the foxhole, the men huddled together in their suffocating chemical warfare suits. They could not see one another, but to reassure themselves that they were all still alive, each man kept one hand on the other. No one seemed to mind that one of those hands belonged to a homosexual, the soldier remembers--they all had more important things to think about.

Mr. President, we need to think about the important things. It is time for each and every American to ask himself or herself--is it fair to open the closet door in wartime and ask our gay and lesbian

sons and daughters to die in their country's uniform, yet in times of peace relentlessly hound them back into the closet and strip away the same uniform they once so bravely donned?

In 1948, the military leadership felt that black and white could not and would not serve together. We now know, Mr. President, that since 1948 millions of white Americans have made such a choice. They have fought, eaten, and slept side by side with African-Americans with no impairment of military readiness whatsoever.

And from those experiences, Mr. President, they have forged an America that is stronger now than at any time in its history. Stronger now because its people are more unified and more respectful of their glorious diversity than ever before.

Despite my disagreement with the Joint Chiefs of Staff on this issue, I have confidence in our military leadership's ability to carry out the orders of their Commander in Chief.

I can even appreciate General Powell's dilemma when he said:

I've got to consider what you say to a youngster who might come and say, General, in the most private of my accommodations, I prefer to have heterosexuals around me than homosexuals.

This is what you say to that youngster, General Powell. Tell him that he's in our Armed Forces now. Tell him that he's a proud member of the greatest fighting forces in the world.

Remind him that his homosexual platoonmates

have also volunteered to give their lives for their country and the values we all hold dear. Remind him that they, like all members of our military, will be held to the strictest codes of conduct and behavior.

But most importantly, General Powell, tell him that the greatest danger he faces is not in his private accommodations. It is from the forces of hate and fear in this country that 40 years ago would have denied to you the opportunity to lead.

Tell him that if he can defeat the enemy within himself he will be ready to confront any enemy abroad. Wish him a long and distinguished career in the service, and tell him that by the end of his 40 years in uniform you hope he will have seen as many changes for the better in our military and the imperfect society it defends as you have in yours.

Mr. President, I stand in support of President Clinton on this issue, and I do not need 6 months or even 6 days to make up my mind. I want to end this baseless discrimination. I would like to see it end now. However, I am prepared to support the amendment that is before us.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, I yield 5 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. LOTT. Mr. President, I want to thank the distinguished Senator from Indiana for yielding me this time and also for the very fine and thoughtful statement he has made both today and in the past on this subject. He has done a good job, and we appreciate his leadership on this issue.

As we listen to this debate across America, one of the things that comes to my mind is who should we really be listening to? There are many elected officials and there are many military men and women who certainly are going to be very thoughtful in their remarks. But who should we listen more to than the most respected military leaders we have in America today? We have a national hero in Gen. Colin Powell, the Chairman of the Joint Chiefs of Staff. We have all admired him for the job he has done, for the things that he stands for, the job he has done in that position. Let us listen to just two of his quotes on the subject:

It's my judgment, the judgment of the Joint Chiefs, that homosexual behavior is inconsistent with maintaining good order and discipline.

With regard to the question of race, and certainly he feels especially sensitive to this question, he said in the text of a letter to Representative Pat Schroeder in 1992 this:

Skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.

Gen. Carl Mundy, Commandant of the U.S. Marine Corps, said just in December 1992:

I do support the ban against homosexuals in the military. I believe that homosexual conduct, that the gay lifestyle embodies those things that are contrary to good order and discipline in the military.

That is what two of the most respected military men in the world today had to say on this issue.

Before I get into some more substance, I want to emphasize one point, and I am sure our distinguished leader, Bob Dole, will emphasize this later on. A lot of people are going to look at this debate and look at the procedure and they are going to say what is really going on? Let me make it clear. After 3 days of struggling, the Republicans have secured from the Democratic leader an opportunity to have a vote on this issue. But let us make clear what that vote is.

If you as a Senator think that homosexuals and lesbians

should receive special status in the military, then you need to vote to table the Dole amendment. If, on the other hand, you think that allowing homosexuals in the military will reduce military readiness and effectiveness, you should vote no on the motion to table the Dole amendment. Make no mistake about it, the vote on the question of whether or not to allow homosexuals in the military is a vote that you will cast on the Dole amendment. It will be on a motion to table, but clearly that is where the issue will be decided today. So that the people here in the Chamber and so that those listening and watching will understand, that is the vote, and it will occur today.

Another thing that I have some people say to me when they call is, you are right, have a vote on this issue, make a statement, take a stand but why are you doing it now? Let us not mistake it at all. The Senators did not ask for this, Democrat or Republican. We thought we would be focused on the economy, on economic growth, on the creation of jobs and on how to reduce the deficit and on welfare reform, all very needed, necessary, important things, and yet here we are today voting on the question of homosexuals in the military. Why? It is because the President decided for reasons I do not understand to move immediately on this issue, to take a peremptory action.

Thanks to the efforts of the Senator from Georgia, there were some modifications, but make no mistake about it, the President said, you can have your hearings, but we are going forward; this is a done deal, I am going to remove the ban on homosexuals in the military. He did not consult with his Joint Chiefs of Staff until after he made that decision. He did not really consult with the Armed Services Committee and many others who would like to be heard on this issue on both sides. No, he went forward and said I am going to do it. He modified it a little, but in the end he said, no, July 15, I have my mind made up. This issue is over.

Well, I have a surprise for him. The Congress is involved in this issue.

The PRESIDING OFFICER (Mr. Bradley). The Senator's 5 minutes have expired.

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Mr. LOTT. Will the Senator yield 3 minutes?

Mr. COATS. I wonder if I could talk the Senator into 2.

Mr. LOTT. I will try 2 and, if I need another one, I will hit the Senator again.

Mr. COATS. All right.

Mr. LOTT. Section 1, article VIII of the Constitution says Congress has the responsibility and obligation to set laws and regulations governing the military. We should be heard on this issue, and we will be heard on this issue.

We are here today voting on this because the President insisted on going forward. This is the wrong thing to do. It is prejudicial; it is before consultation and before hearings. We should lock in place the ban on homosexuals in the military that existed January 1, 1993. Let us have hearings. Let us have discussions. Then let us make a decision, talking with the President, and let us have a vote on it if any modification is justified after July 15. But to make the decision and then have the hearings, the American people do not understand that. I do not understand that.

There are many questions unanswered. You have heard some of them today: Family housing. What do you do about gay partners in the military, health care, blood supply, public displays of emotion in uniform, changes that may be required or requested by homosexuals and lesbians in the Uniform Code of Military Justice, not to mention recruitment, retention, readiness, and all the other military questions that are involved.

We have not thought this through, I say to my colleagues. The President moved too quickly. Let us say, time out; keep in place the law that existed January 1; have the hearings; consider this matter; and then decide with a vote of the Congress on what the final verdicts will be. We have bigger, more important fish to fry. Let us have this vote. Let us lock in the ban now. Let us debate and then decide in July the final decision.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NUNN. Mr. President, I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The distinguished Senator from California is recognized.

Mrs. FEINSTEIN. I thank the Chair.

I rise in support of the Mitchell amendment. I agree with President Clinton's plan to end the policy that prohibits gay men and lesbians from serving in our country's armed services.

As the five Democratic women of this body said in a joint statement last week, 'The United States military is filled with brave men and women who risk their lives to defend their country. Competence, courage, willingness to serve one's country--not sexual orientation--should be the criteria for those wishing to enlist.'

I note that at least one Federal judge agrees. Judge Terry J. Hatter, in the Central District of California, recently held, in the case of CPO Keith Meinhold, that:

Gays and lesbians have served, and continue to serve, the United States military with honor, pride, dignity, and loyalty.

He goes on to say in his opinion:

The Department of Defense's justifications for its policy banning gays and lesbians from military service are based on cultural myths and false stereotypes. These justifications are baseless and very similar to the reasons offered to keep the military racially segregated in the 1940's.

The simple question is: Should everyone have an opportunity to serve our country in the Armed Forces without fear of discrimination, without blind prejudice? I answer that question with a strong `yes.'

Incidents such as the Tailhook scandal illustrate an obvious need for strict enforcement of strong rules of conduct. Clearly, after Tailhook, a reexamination of conduct is in order. Strong rules should be in place and enforced across the board. Therefore, I support Senator Mitchell's amendment, which allows time to work on a code of conduct which can, hopefully, be applied to all.

In his decision, Judge Hatter also points out that `of all the countries in the North Atlantic Treaty Organization, only the United States and Great Britain ban gays and lesbians from their Armed Forces. On October 27, 1992, Canada's military leaders rescinded Canada's policy of banning gays and lesbians from the Canadian forces.'

Heroism, I believe, is a trait that does not know race, color, creed, sex, or sexual orientation. Take, for example, an incident which occurred in San Francisco while I was mayor when a woman named Sarah Jane Moore attempted to assassinate President Gerald Ford. She fired one shot, and a man stepped forward and saved the President's life before she could fire a second. That man was a gay man. That man was also a former marine.

It is time, Mr. President, to see that all who qualify can serve in our Armed Forces. Even before repeal of the ban, we know there are thousands of gay men and lesbians who wish nothing more than to serve their country and who are today in the military willing to give their lives.

I remain firm in the belief that America's military is a great fighting force and will be even greater in the days to come.

Thank you very much, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I will be glad to yield 10 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I rise in support of Senator Mitchell's amendment. We have heard a lot of talk on the floor about different aspects of this particular problem. I was asked a few days ago by another Senator--or it came out in one of our meetings--as to just why the military objects to what the President is proposing and what effect it would have. I responded with something I would like to repeat here today, that it is not just about civil rights.

Let me repeat, I back Senator Mitchell's proposal. I think we do have to study this. I think the time has come to study it. And what our investigation in these hearings will result in I, frankly, do not know.

But I think when we take the attitude that the military and the Chairman of the Joint Chiefs of Staff and all the service chiefs are just obstructionist in nature when they object to something like this, that is just not the case.

I used as an example some of my own experience of some 23 years in the Marine Corps. I do not want anybody to interpret that these hearings are going to be slanted in a certain way, or that I will come down a certain way. I am clearly looking for the truth as to what we can do with regard to this problem, and in the extensive hearings we plan to hold we should be able to bring the facts out and decide the direction we need to go.

But let me say this. In preparing people for combat military training prepares people to do some absolutely stupid things, things that just in the interest of self-preservation, nobody in their right mind would normally do. That is what combat is all about. We can talk all day about civil rights and about whether people are capable of doing this or capable of doing something else. Of course, from a civil rights standpoint, if that was all it was, there is not any question about how this would be decided. But is there a civil right for everybody to be in the military? Do we exclude people for certain reasons? Yes, we do. Whether we are in a time when we overcome some of that right now, I do not know. But military training basically teaches people to do things they would not otherwise be able to do just from their own instincts of self-preservation.

How do we make people do that? Well, we do it by a rather circuitous route. We send people to boot camp or recruit training, and what do you do? The first thing you do is you take every civilian vestige away from them, as much as you possibly can. You shave their heads and you take their civies and send them back home or burn them on the spot, and you put them through training where they are degraded as much as they possibly can be without just losing all sense of propriety, the drill sergeant yelling in their faces. Movies are not exaggerating the situation when they show things like that. What you try to do is take people down to a common denominator of that person's body, mind, and psyche and try to divest that person of all civilian retention of the idea of rights, and freedom of speech, and freedom of assembly.

Unheard of. You give up those rights in the interest of what? In the interest eventually, you hope, of winning battles. And what do you do then? Once you have that squad there--and you are with those few people, you start trying to rebuild these people. You remold them along certain lines. You remold them along the lines where hopefully, when they come out of recruit training, they have more loyalty to the people they are with in that squad than anything else, and it even transcends their fear of being hurt, their fear of being wounded, their fear of being killed.

I do not know how many of my colleagues have read the book by James Webb, who was Secretary of the Navy a few years ago, a very decorated combat veteran from Vietnam.

He wrote a book called 'Fields of Fire.' I was quite taken with it. I sat down to read it several years ago. It is one book I did not put down. I read it straight through until about 4 or 5 in the morning. I think it is the only book that I read straight through in a long time.

His theme in that book was that when people go off to war, they go off, the flags fly, the bunting is out there, the people march, the bands play, they are off to preserve freedom for democracy--all these great thoughts, great things.

It is fine to be dedicated that way. Then you come home from war, and it is the same thing, flags, you hope the parades are there, people appreciate what you have done--'I fought for freedom, democracy,' all these sorts of things. But in combat--what did you do in combat?

Jim Webb's theme in that book is that when you are in combat in the infantry in that jungle situation your whole universe is brought down to not great theories of freedom, democracy, things like that. Does a person jump out of a foxhole and take some grenades over to the next foxhole when he is being shot at, think 'I will preserve freedom forever?'

I'll tell you what he is interested in. He is interested in survival. He is interested in whether or not the other guys are going to cover him; whether somebody got shot; if he gets wounded, will they come and pull him out of there.

In other words, the whole universe of combat narrows down to a very, very few. You and a few. That is what military training trains people to do.

My first commanding officer in the Marine Corps when I got out of flight training as a brand new 2d Lieutenant in World War II days was Pete Haines. I joined the squadron which was about to get Corsairs and we were training in southern California. Pete, who later became one of my very best friends, was my CO at that time as a marine major.

We were joking in his office one day waiting for a meeting to start, joking a little about the people who were coming back from Guadalcanal--much in the news at that time, how they had done great things; some real heroic activities out there. I was sitting there waiting for the other people to arrive. I said, 'what makes Marine training any better than any other?' I was sort of half joking about it. He got very serious. He pointed his finger and said, 'Lieutenant, marine training makes a man more afraid of letting his buddies down than he is getting hurt himself.' I always remembered that.

I do not mean to restrict it to the Marine Corps here. All training in the military that puts people through recruit training, whether it is Army, Navy, Marine Corps, Air Force, tries to instill in people the kind of camaraderie where people are more afraid of letting their buddies down than they are of getting hurt themselves.

That is stupid by any normal civilian measurement; absolutely 100 percent stupid. Yet that is the very basis of military training.

I think that is why when the Joint Chiefs have some honest concerns, we should listen carefully. I do not know whether I will eventually vote with the Joint Chiefs at the end of all of this or not, or whether at the end of hearings where we really investigated all of this, that the Joint Chiefs may in fact be willing to say, well, OK, maybe times have changed. Maybe we have a new day now in the military; maybe we should consider some of these things that we could not consider back a decade or two decades or four decades ago.

Now, maybe, is a time when we can consider some of these things. We have to look into all aspects of this.

Is it something that I think we should just ignore and say do not worry about it, we will just do it, it is a civil right and that is that? No, because we still need a military, and a military bases its ability to perform on training, small unit training, whether in an infantry squad, or in a squadron with one pilot looking out for another, people diving back in to distract anti-aircraft fire--stupid, crazy. I have seen people do that.

That is the kind of loyalty that you are trying to engender.

We have advanced a lot in this area in the last few years. I believe--over the last 15 or 20 years we see people openly gay or lesbian being accepted in jobs and positions. We are not thinking of firing them from those positions. There are people in some top civilian positions in the military who we do not question as to their loyalty, and they are admittedly gay. They do not get fired. We accept that now.

So maybe our attitudes are changing. That is what these hearings have to bring out.

Mr. President, I think I have made most of the points I want to make here. I do think that we have to consider the changing civilian attitude. There have been times in the past when the military was able to lead in some areas like this, and get an acceptance throughout the whole Nation.

But this is a different thing than, say, color of skin, as I see it. This deals with one of the most basic urges, one of the most basic drives that human beings have.

So I think it is good that we are going to have this series of hearings, where we can have people in to discuss this. Our NATO allies have already been mentioned. Many of them have different procedures on this, different restrictions for people who serve in the military with regard to being gays or lesbians.

I think we need to know other nations' experiences and perhaps then we can better judge on opening up our own situation in this country. A matter of concern is what happens on the bases? I do not want every base commander making his or her own decisions about how to deal with gay and lesbian situations on a base.

For example, some cities now have moved to recognize, in effect to legitimize, gay and lesbian marriages, male to male, female to female. What happens if on a base those people decide that they--since they see themselves as being legally married--claim spousal rights on the base? And do we have retirement benefits then to be passed on to other people? Do they get base housing then? If they have been on the base longer, do they go ahead of other people?

These are things that cannot be left up to base commanders. Policies have to be servicewide, Department of Defense-wide decisions that apply to everybody, as I see it. If we do not do that, we are going to wind up with 50 court cases in Federal courts all over the country.

These are the kinds of things that we need to look into. I think we need to go into this issue with an open mind. My mind in this area is not closed by any means. I want to get the full gamut of people that we can that have a view on this to testify before the committee. It should not be a 1-day or 2-day hearing. We have to take it on and do the best job we possibly can in this area, including seeing how it affects our NATO allies; talking to groups, and training people to see whether in this day and age we really feel we can have unit cohesion with declared gays in the military. Cohesion--that is the military word for this bonding of one combat warrior to another. Can that now apply just as well to a gay as it does to anybody else? Perhaps it can.

I know our time is short. I will not ask for additional time this afternoon, but I will have additional things to say on this as time goes on, and as we get to our hearings.

I thank the Chair.

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Mr. COATS. Mr. President, I yield 5 minutes to the Senator from Washington.

Mr. GORTON. Mr. President, the Nation and the Congress of the United States owe a great debt of gratitude to the senior Senator from Georgia [Mr. Nunn].

The President of the United States almost as his first act as President, attempting to keep a campaign promise, unilaterally, without consultation with either the Congress or the armed services, attempted a profound change in the composition, the attitude, and the morale of the Armed Forces of the United States.

The Senator from Georgia stopped that runaway train and has gained for the Nation and for this body a period of almost 6 months in which to examine the profound potential consequences of that proposed action.

This Senator had the good fortune to be in the Senate anteroom when the Senator from Georgia came to report to several of his colleagues, with some elation, the results of his negotiation with the President.

Ironically, during the very time that the Senator from Georgia was reporting on that agreement, the President was announcing that, notwithstanding anything which might take place during the course of that

6-month study, his course of action was already determined. The President announced that it did not matter what people in the military said, what Members of Congress said, what general public opinion was; he was bound and determined to go forward.

It is for that reason, in spite of the very real success of the Senator from Georgia in keeping to a minimum immediate changes and causing the more profound ones not to take place for several months, it is for exactly that reason that it is important for the Senate of the United States to pass the Dole amendment.

The Dole amendment is in strict accordance with the Constitution of the United States, which states:

The Congress shall have power to make rules for the Government and regulation of the land and naval forces.

The Dole resolution, by codifying the rules with this respect as of January 1, 1993, takes that power now and retains that power in the hands of the Congress. But it gives the President the ability to propose any change he wishes after this period of hearings and requires that we vote both here and in the House of Representatives on those proposed changes--without filibusters, without extended additional hearings--very, very promptly to settle this question. It gives us the 6 months to have the national debate and the hearings on an issue of such importance.

Since the President regards these hearings as hollow, it seems to me imperative, even in seeking the goal that the Senator from Georgia himself seeks, that we pass this particular amendment. This is not an open and shut case or debate in the mind of this Senator.

There have been profound changes in attitudes and customs in the United States as a whole. It is certainly possible that some changes are in order, but they should be changes which are debated in the context of their impact on the Armed Forces of the United States. They should be decided with respect to whether or not he will retain an effective and efficient and a high-morale Military Establishment. It is an issue of which I think the views of all Americans are appropriate, and all Americans should be given a chance to express those views before the decision is made.

But for this Senator, at least, it is an issue to which he will listen with the greatest degree of respect and will grant the greatest weight to the views of the men and women who are in uniform serving in the armed services of the United States, whose lives will be most profoundly affected. This Senator will pay a great deal of attention to the views of General Powell, General Schwarzkopf, and others, including veterans of the United States. But it is the rank and file of the military who will have to live with this decision and whose own personal decisions will determine how effective our military is, and who should be granted the greatest weight in the course of this debate.

But their views can be granted weight, Mr. President, only if we do not make the decision before those views are heard. The President has said he has made his decision. We should, in the exercise of our constitutional responsibility, see to it that he cannot make that decision alone, and we can do that only by passing into law the amendment before us.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I yield 5 minutes to the Senator from California.

Mrs. BOXER. Mr. President, I thank the chairman of the Armed Services Committee for yielding to me.

I rise in support of Senator Mitchell's amendment. I feel I must comment on a statement that was made by the Republican Senator from Mississippi [Mr. Lott] when he said 'the only reason this is before us is because President Clinton put it before us.' Well, the truth is that, today, we want to vote on the Family

and Medical Leave Act, Mr. President, and this whole issue was raised today, even though there has been a compromise already reached on the subject by the President, the leaders of the Senate, and the Joint Chiefs of Staff. So I think anyone who says it is the President who brought this amendment before us today simply is misstating what I consider to be the facts here.

We are ready to pass the Family and Medical Leave Act, and we are ready to get on with the business that affects the American people, and I think the American people understand, even though they may not all agree with the President on this issue, that this debate should not be raised around the passage of this very important bill. But, in fact, it is here, and I am honored to be part of the debate.

I personally believe that the gay ban continues the policy of deceit. It forces honest men and women to lie about a very fundamental question. Question 27, which asks a potential recruit about his or her sexual orientation, confirms that the policy is a living lie, because thousands of men and women will not answer that honestly, because then they cannot serve their country. And they want to serve their country, Mr. President.

The San Francisco Chronicle, which endorsed George Bush for President, wrote on January 28 of this year:

For the past 50 years or so, gays have had to play an unreasonable and un-American charade. * * * Living with the truth is surely better for morale than fostering secrecy and prejudice.

Mr. President, I would like to share with you and my colleagues a little story. I was visited by a physician who is one of my constituent; a heterosexual, who served very proudly in World War II. And I asked him: 'You are a brave man. You fought on the front lines against the Nazis. What is your view on this issue?'

And he said to me very clearly:

Senator, when I was on the front lines, fighting against the Nazis, I did not care if the guy next to me was straight, as long as he could shoot straight.

I think that is the issue that we should be concerned about. We need every qualified man and woman who wishes to serve us. We need them to serve us.

And behavior is the issue, Mr. President, not status. And where else can you control behavior better than in the military, where discipline is a way of life.

I think it is very important to point out that President Clinton has talked very clearly about the need for discipline and a code of conduct that applies across the board.

Mr. President, I think that we waste a lot of money on this issue, \$27 million a year, rooting out homosexuals from the military. We need that money elsewhere, or we could save that money.

I also think it is interesting to point out that records show that, in wartime, the military seems less interested in expelling homosexuals. If you look at the numbers, very few are dismissed during wartime. What do we learn from that? When bullets are flying, the military becomes less discriminatory? Mr. President, that is a sad thought. So I think that we must base military service on performance and behavior, not on a person's sexual orientation.

My last point is this, Mr. President: The United States should no longer stand as one of the few allied countries that prohibits homosexuals from serving in their armed forces. We should look to countries like Israel, which allow homosexuals to serve their nation proudly in uniform. Would anyone in this Chamber

question the effectiveness of the Israeli military, which faces a daily struggle to protect Israel's borders from attack? If Israel, which faces danger every minute can do it--we can do it.

I am struck by the comparison of some of the comments of my good friends and colleagues in this Chamber, to some of the comments made in 1948 when President Truman decided to end discrimination against African-Americans in the military.

On July 27, 1948, one Representative said:

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I predict this (integration) will do more to add to the existing turmoil in our country than anything else that has occurred since 1861. In my opinion it not only will greatly increase tension, strife, and turmoil, but it will diminish the efficiency of our armed services. * * *

On the same day another Representative said:

It is a mistake to attempt to make of the Army, Navy, and the Air Force a means of providing social reforms. Such action cannot do other than injure the high standard of efficiency of this organization.

He added:

In these times of major crises throughout the world it is a mistake to try to provide social reforms for the armed services. The result may be to seriously cripple and impair the full value of these forces. The result may be to injure them at a time when the world looks to us for strength and courage.

They talked then about the chaos that would come about if African-Americans were allowed in the military. They talked about the military not being the place for social experimentation. And yet we know that was the right decision.

So Mr. President, I appreciate the opportunity to participate in this debate. The debate is not over. We will have it again in July. I hope we can get on with it, get on with the problems facing our country.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President I yield 8 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. I thank our dear colleague from Indiana for yielding, and I thank him for his leadership on this issue, which I think is vitally important.

I would just like for the record to show that the Israeli military is one of the most restrictive militaries on the planet in terms of the promotion and participation of avowed homosexuals.

Mr. President, what I want to talk about today is the choice that is before us. Let me begin by talking about what brought us here.

Our President, in the campaign, made a commitment to a special interest group, and that commitment had to do with changing the policy of the military with regard to avowed homosexuals. What the President

has said in the first week of his administration is that his first defense priority is forcing the military, against its will, to admit avowed homosexuals.

I believe our first priority should be to the young men and women of the military services who have made us proud and who have kept us free. And that is what the two amendments before us are really all about.

In the case of the amendment offered by Senator Mitchell, what we have is a figleaf, and a figleaf that will not cover very much. It is a simple sense-of-the Senate resolution that done absolutely nothing about the policy that the President has put into effect, nor does it in any way restrict the policy that the President may put into effect in the future, nor does it in any way change anything in terms of the policy that we in Congress may carry out, no matter what happens on these votes.

So we have one resolution that is simply a figleaf for those who want to appear to be doing something but who really do not want to do anything.

On the other hand, we have a resolution that seeks to establish a process. It does not seek to judge the decision before the hearings have been held. The major reason we are here is that the President has said not only is he going to change the policy of the military with regard to induction--something he has already done against the expressed will of the Joint Chiefs and the entire commissioned and noncommissioned officer corps leadership of the military--but that we can have a debate, that we can hold hearings, but that no matter what that debate concludes, no matter what those hearings find, that he is going to change the policy.

In short, our President, has said:

Debate and hold hearings, but do not confuse me with the facts, because I have made a campaign commitment and I am going to fulfill it. I have promised a special interest group I will act without regard to the public interest.

What our amendment does is establish in law the policy that existed as of January 1. It then sets up a procedure where we have a real debate--not a phony debate, a real debate--where we have real hearings--not sham hearings--where we gather the facts, where we hear from all sides, and then we set up a procedure whereby the President will make a concrete proposal--not a campaign slogan, not a political statement, but a concrete proposal--as to how to put his policy into effect.

We will then have a debate about that policy. We will bring it to the floor of the Senate. We will have 3 days of

debate. It will be amendable. We will all have an opportunity to have our input, and then the President will get his vote. If he has the votes to change policy, he will prevail. If he does not have the votes to change policy, he will not prevail. But in my opinion, Mr. President, the public interest will be served.

What is our objective here? Well, it seems to me, the two amendments offer two objectives. The objective of the amendment offered by Senator Mitchell is to put the Congress in a position where we are saying: Do nothing; though we know the President has decided what he is going to do, though we know that our debate is phony, though we know the hearings are a sham, do nothing.

Our proposal is: Set out in law the procedure that the military supports. Have a real hearing, have a real debate, have the President submit not a simple statement of policy but a concrete proposal that deals with the very real problems of forcing the military to induce avowed homosexuals and address the impact it will have on morale, readiness, retention, recruitment--all the things we should be concerned about.

Do not allow a determined minority to prevent the President from having a vote. Set up a procedure where the President will get an opportunity to make the proposal and where Congress will have to vote yea or nay. It is a choice between a policy that takes Congress, and therefore the voice of the American people, out of the debate and a policy that puts Congress in the debate, that guarantees that we will look at the facts, that guarantees that we will have an informed decision, that guarantees that the President and the Congress will hammer out a policy.

Mr. President, that is what this issue is about. There is no doubt about the fact that the President has worked very hard to induce people to vote against this amendment. The basic promise has been that we will hold hearings. But anyone who has read the statements of the President has to be struck by the fact that the President has said, in the clearest possible terms, that his mind is made up and that his mind is not going to be changed.

Our amendment establishes a procedure whereby we have an opportunity to look at the facts, hold a debate, and make an informed decision. I believe this is the enlightened path. I believe those who are concerned about the finest military the world has ever known, those who believe the burden of proof ought to be on those who would change a policy that is uniformly supported by the leadership in the military, will vote for this amendment.

Certainly, no one can vote against this amendment and say they were undecided on this issue. Everyone in the Senate believes any informed American knows that, unless we act now, no matter what happens in the hearings, no matter what happens in the debate, the President is going to force the military against their will to induct homosexuals.

At that point, if a sizable number of Members of the Senate or House decide to try to override it, we will be in a position where we have to pass a law which can then be vetoed.

So if we want a rational debate, the way to guarantee it is by adopting the Dole amendment which is before us.

I urge my colleagues to look at it and to vote for it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

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Mr. COATS. Mr. President, I thank the Senator from Texas for his statement and support on this issue.

I yield 5 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I would like to thank and compliment my friend and colleague, Senator Coats from Indiana, for his leadership on this issue, as well as Senator Dole. And I will include Senator Nunn, for I think he has played an important role in stopping President Clinton from making a very significant mistake.

Quoting several military leaders, and quoting Admiral Stockdale, saying: Why am I here? What are we doing? I question why we are debating this particular provision at this time.

The only reason why we are debating this issue is because President Clinton has decided to move forward on it aggressively to fulfill a campaign promise to a special-interest group, without consulting the military and without consulting Congress. I think it is a serious mistake.

The President has overruled the Joint Chiefs who have over 200 years of combined experience. Yet, his first action as Commander in Chief is to totally disregard the statements that were made by the combined Joint Chiefs. I think that is a serious mistake.

I remember during the campaign that President Clinton was saying,

It's the economy, stupid. The economy is first. We are going to be first in line. We are going to have a laser beam on the issue. That is the issue. And then health care and welfare reform. Those are the real issues that affect America.

But now as President, the real issues he is pushing are parts of a very aggressive agenda to appease the special-interest groups that he made promises to; the special interests that contributed millions of campaign dollars--and I am sure lots of votes--to his election.

I am delighted--I complimented Senator Nunn and Senator Coats--I also want to compliment the American people, because they are the reason why this Executive order is not already totally complete. They are the reason why it slowed down. The American people have spoken against this change in policy, and they have spoken by the millions all across the country.

I can say in my office, we have had thousands of phone calls. Our office has not had phone calls like this--I am not sure in my 12-plus years in the Senate that we have had contacts by our constituents to the degree we have had just in the last week or so.

What about this mistaken policy's impact on the military? What does this do to unit cohesion? What does this do to morale?

Let us look at what some of the military leaders have to say. General Schwarzkopf; he was a hero 2 years ago. He led us to victory in the Persian Gulf war. Here is a quote that he made on September 25, 1992.

The experience in the Army has been * * * when you have an open, out of the closet, gay or gays within your organization, and that freely admit that, within your organization it tends to break down the cohesion. So it is not a question of a personal sexual expression, it is a question of cohesion within the organization and that is what makes organizations fight.

Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, said:

It's just my judgment, the judgment of the Chiefs, that homosexual behavior is inconsistent with maintaining good order and discipline.

What do I mean by that? I mean that it's difficult in a military setting, where there is no privacy, where you don't get choice of association, where you don't get choice of where you live, to introduce a group of individuals who are proud, brave, loyal, good Americans but who favor a homosexual lifestyle and put them in with heterosexuals who would prefer not to have somebody of the same sex find them sexually attractive, put them in close proximity, ask them to share the most private of their facilities together--the bedroom, the barracks, the latrines, the showers. I think it would be prejudicial to good order and discipline to try to integrate that into the current military structure, and I think that's the significance.

That is the Chairman of the Joint Chiefs. And I will add one or two others quickly. Gen. Carl E. Mundy, Commandant of the U.S. Marines says:

I do support the ban against homosexuals in the military * * * I believe that homosexual conduct, that the gay lifestyle, embodies those things that are contrary to good order and discipline in the military.

Finally, one last quote. This is by Adm. Frank Kelso, Chief of Naval Operations:

I believe the current Department of Defense policy on homosexuality is best for the readiness of our Armed Forces.

That was January 9, 1993.

So the Joint Chiefs have not agreed to the grand compromise. The Joint Chiefs have stated they believe we should maintain present policy.

We have two amendments that are before us. One is the sense-of-the-Senate resolution by Senator Mitchell that says we are going to study the issue. It does not say what else we are going to do. And it also changes the policy that we had January 1, because on January 1, we did ask a question that would prohibit gays from serving in the military. So we are already talking about a significant change in policy.

What about the Dole amendment? It is amendment; it is law. It says: Let us go

back to January 1. It is a time-out amendment. Let us not change our policy. Let us have at least 6 months. Let us have congressional hearings. Then if we decide after having the hearings we should make a change, then let us make the change and make the change and make it statutorily.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NICKLES. Mr. President, I ask my colleague if I may have an additional 2 minutes.

Mr. COATS. I will be happy to yield to the Senator from Oklahoma an additional 2 minutes.

Mr. NICKLES. I thank my friend, Mr. President.

After we have the hearings, then let us decide what changes should be made. As my colleagues have pointed out, we have constitutional responsibility to the Armed Forces. And so, in the Dole amendment, we provide that Congress will act. We put in expedited procedures. We will act hurriedly. We will take take the President's proposal, we will act on it within just a few days.

So the Dole provision says: Yes, Congress; you are going to be consulted. We are going to listen. We are not going to make changes until we hear all the facts, until we hear from all the interest groups on both sides of the issue. And then Congress will act.

Unfortunately, under the Mitchell compromise, President Clinton can make an Executive order. And, unfortunately, he has already stated that is exactly what he wanted to do.

A reporter asked President Clinton on January 29, 1993:

* * * July 15, this happens, period, regardless of what comes out of these hearings? Is that correct? The ban will be lifted?

President Clinton said:

That is my position. My position is I still embrace the principle, and I think it should be done. I do not expect to change my position, no.

President Clinton plans on letting the hearings go forward. Then he plans on completing his Executive order, really in total violation of the spirit of listening to Congress, listening to the military, and listening to others with the valued experience who say this might be a serious mistake; that it would seriously jeopardize the quality of our Armed Forces. I do not think we should make that mistake.

The only way we can stop that mistake is by agreeing to the Dole amendment. I urge my colleagues to vote for Senator Dole's amendment.

To reiterate, Mr. President, over the last week, my office has been flooded with hundreds of phone calls regarding the issue of homosexuals in the military. The majority of my fellow Oklahomans feel the way I do--that the ban on homosexuality in the military must stand.

I feel it is the obligation of the Senate to take a strong stand against President Clinton's unilateral action to repeal the ban on homosexuality in the military. Congress' role in regulating our Armed Forces is set forth in our Constitution. We cannot allow this President to ignore the Constitution and the will of the majority of the American people.

And let's make one thing clear. It is not the Senate who made this an issue. President Clinton chose to make this his issue. From the early days of his campaign, Bill Clinton pledged to repeal the ban on homosexuality in the military. And despite calls from a majority of the American people opposing the lifting of the ban, despite the Joint Chiefs of Staff's warnings, President Clinton decided this issue should take precedence over the economy, health care, education, or the deficit. To him, keeping his promise to a special-interest group became a matter of principle.

Well, Mr. President, I say President Clinton has chosen the wrong issue. What he calls a compromise is a fraud. The President's announced changes are real and far-reaching. In fact, they predetermine the outcome by assuring that homosexuals will be allowed in the military. The President should have allowed for a 6-month time out with no change at all to the current policy that has worked so well for so long. This would have given Congress time to evaluate and analyze whether changes to the policy were prudent. The President refused to listen to us, just as he failed to listen to the majority of the American people. Which is why we must act now.

There are several reasons why I support the ban on homosexuality in the military. First, I believe that the mission of our military should be, first and foremost, to maintain an unparalleled fighting force. The armed services should not be used as an agent of social change. Second, serving in the military is not a civil right, it is an honor reserved for the select few who contribute to military cohesion and effectiveness. Third, repealing the ban could lead to the creation of a class and culture that would jeopardize the common values and goals so important to mutual trust and unity within a fighting force. For all of these reasons, I support the Dole amendment before the Senate.

I think former Secretary of Defense Dick Cheney stated it best when he said that:

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It is important for us to remember that what we are asked to do here in the Department of Defense [DOD] is to defend the Nation. The only reason we exist is to be prepared to fight and win wars. We're not a social welfare agency. This is a military organization. Decisions we make have to be based upon those kinds of considerations and only those kinds of considerations.

Those who support President Clinton say the military should live by the same rules as those set out for civil society. But history reveals that an effective military should be a culture largely unto itself. The

military has its own standards of admission and conduct. The military also has its own legal and judicial system.

Some of these laws would be considered authoritarian and unconstitutional by civilian standards. The military's culture, seen as so strange by civilians in peacetime, provides the necessary foundation to enable our soldiers to fight and win in the chaos, fire, and blood of war. The mission of the military is to maximize efficiency and readiness. How could it be otherwise, because compromising military efficiency could result in the loss of our soldiers on the battlefield. We have to ask ourselves: Is such a risk worth the price?

Others who support President Clinton seem to think that military service is a civil right. They are wrong. There is no right to serve in the military--military service is a privilege for some. Not all people are lucky enough to serve in the military--some are too old, some have health problems, some are too short or have poor vision. Some have mental or physical disabilities.

Many of my fellow Oklahomans and I are not the only ones who believe that the current policy banning homosexuals from the military is reasonable. With their over 200 years of combined military experience, the Joint Chiefs of Staff, or JCS, also agree that the current ban should be maintained. It is disturbing that the President's first policy action as Commander in Chief is contrary to the counsel of his Joint Chiefs.

President Clinton has said on many occasions that status alone in the absence of some destructive behavior should not disqualify people from military service. The President maintains that sexual orientation and sexual behavior are separate issues. But let's examine this argument. Take, for example, the current situation regarding showering and living arrangements.

Female soldiers shower and largely live separately from men. But President Clinton argues that behavior is the only measure of untoward social conduct. By this logic a heterosexual soldier could argue that he should be allowed to shower with female soldiers while promising to keep his behavior in check.

The problem we face here is not the presence of homosexuals in the military. Many homosexuals who have served in the military have performed no

worse or no better than heterosexuals. The problem is that the creation of an open homosexual class and culture in the military would wreck the close knit military bonds, that is the foundation of military strength in which the taxpayers of this country invest over \$280 billion of their hard-earned money every year.

President Clinton's proponents say that our effort to maintain the ban on open homosexuality is the same as attempts made 40 years ago to maintain the noxious policy of racial segregation. This comparison is invalid. Gen. Colin Powell, a soldier who likely saw the worst of our segregated military stated that 'skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.' While race is a question of the color of a person's skin, the different sexual identities of homosexual and heterosexuals enforce different lifestyles. Lifting the ban would create numerous practical and legal questions. Would homosexuals in the military be afforded spousal rights, such as housing, as a couple? What about military pensions and family health care.

What about the complications in combat resulting from avowed homosexuality? What about its affect on the emergency blood supply, and the apparent or perceived favoritism among homosexual partners in life or death situations on the battlefield?

Not only do the ranking military officers believe the ban must be maintained, so do a number of military personnel and retired military groups. Twenty-seven military and veterans service organizations support the ban on homosexuals in the military, included among these are: The Retired Officers Association; the

Association of the U.S. Army; the Veterans of Foreign Wars; the Marine Corps Reserve Officers Association; the American Legion; the Fleet Reserve Association; and the Air Force Association.

It appears that President Clinton has turned a deaf ear not only to the top military brass but also to those who have served in the ranks.

Finally, some have claimed that it should be no surprise that President Clinton has decided to keep his campaign promise and overturn current policy. But I, for one, am indeed surprised, that President Clinton has failed to deliver on a number of campaign promises he made to the American people--ones that I think mean quite a lot to the majority of the population, including a middle-class tax break, providing an economic plan for putting people first, and cutting the deficit.

This mistaken change in military policy should not go forward. We, in the Congress, cannot jeopardize the quality of our armed services. Again, I urge my colleagues to vote for Senator Dole's amendment.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. NUNN. Mr. President, I have already made a few comments today about why I favor the Mitchell amendment. I have also explained--I hope rather carefully--what the President's directive that he issued for the interim 6 months while a review is going on does and what it does not do. I will repeat only one important point before I talk about the Dole amendment.

For the next 6 months, every military commander in the field anywhere in this country or elsewhere in the world will proceed exactly as they did a week ago in terms of how they would process the discharge of anyone who is either accused of homosexual conduct or of homosexual status. The President's directive does not change that.

Anyone who stands up and says, 'I am homosexual,' will be processed, just as they would have been before. They will no longer be on active duty. The only difference is that they will be separated from active duty and placed in the Standby Reserve if it is status only; if it is conduct, they will be discharged completely from all military status as previously existed.

Mr. President, I will oppose the amendment offered by the distinguished minority leader, Senator Dole. I do so even though there is much that has been said on the other side of the aisle that I agree with. And I certainly appreciate all the kind comments I have had from my colleagues about the efforts I made to really slow the President down and to warn him that there are serious questions here.

I also think that everyone in the Senate ought to realize there are serious questions regarding the Dole amendment. Even though many of these consequences are not intended, I think that the examples I am going to give demonstrate why we need to slow down; why we all need to say that this is a complicated matter; why we all need to say: Let us have some hearings. Let us have legislative counsel look carefully at whatever we decide is going to be the policy. Let us examine the Executive orders, rules, and regulations, and really know what we are doing before we act either legislatively here in the Congress or through Executive order by the President.

In my view, first of all, the minority leader's amendment is not necessary. Most important, though, I believe the amendment could have some serious and unfortunate consequences, most of which the sponsors of this amendment, in my opinion, do not intend.

There are just a few things I want to say about that. There are some serious questions we must ask, and some serious consequences which would occur if this amendment were to be adopted and if it were to become law. I hope everyone will pay heed to exactly what the amendment says. The amendment states:

All Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, as in effect on January 1, 1993, shall remain in effect until the completion of this review with respect to the Army, Navy, Air Force, and Marine Corps, and--

not or--and--
and unless changed by law.

As we have heard many times today, everything, in effect, that concerns homosexuals--appointment, enlistment, induction, and retention, everything relating to that--is frozen as of January 1, 1993. No changes unless done by law--unless done by an act of Congress.

That sounds easy and simple, Mr. President. But it has far-reaching consequences. Let us look at the precise meaning of the amendment.

First, the amendment concerns three classes of rules: The Executive orders issued by the President, the directives issued by the Department of Defense, and the regulations issued by the military departments. That is the way we proceed beyond the law: Executive orders by the President, directives by the Department of Defense, and regulations by the military departments.

Second, the amendment states that it applies to `all' such rules `concerning the appointment, enlistment, and induction, and the retention of homosexuals in the Armed Forces.' This means that any Executive order, DOD directive, or military department regulation which contains material concerning entry, retention, or separation of homosexuals is covered by the amendment and is frozen into law unless changed by law.

Third, the amendment does not say that it applies only to the specific portion of an Executive order, DOD directive, or military department regulation concerning homosexuals. It does not say that it covers only the chapters, sections, or paragraphs of an Executive order, DOD directive, or military department regulation dealing with homosexuality. The fact is that the amendment on its face, applies to all Executive orders, DOD directives, and military department regulations concerning appointment, enlistment, induction or retention in the Armed Forces if any material in the applicable rule--no matter how brief--deals with entry, retention, or separation of homosexuals.

Fourth, the amendment states that `all' of the Executive orders, DOD directives, and military department regulations covered by the amendment `shall remain in effect.' The amendment does not say `a part' or `a portion' of such rules shall remain in effect; it says `all' such rules `shall remain in effect.' This means that if there is any portion of an Executive order, DOD directive or military department regulation `concerning' homosexuality, then the entire Executive order, the entire DOD directive, or military department regulation will be frozen and can only be changed in the future by an act of Congress.

Mr. President, Members need to understand a key point here: There is no single Executive order, DOD directive, or military department regulation concerning homosexuality in the Armed Forces. It is not tied up in one little bundle. The Executive orders, DOD directives and military department regulations that deal with homosexuality do so only in

the context of much broader issues and there are many such issues. There are separate rules on recruiting; there are separate rules on retention; there are separate rules on military justice. Homosexuality is addressed in the context of each one of these broad personnel policy directives, not in a single directive. The amendment does not freeze only those portions of the Executive orders, DOD directives, and regulations that specifically address homosexuality. The amendment freezes the entire text of the Executive orders, DOD directives, and military department regulations in question.

When you freeze all of the rules concerning the appointment, enlistment and induction, and retention of military personnel, you freeze virtually all military personnel management policies from now on, unless changed by law. Under this amendment, every change in these policies from now on--no matter how minor--would have to be considered by Congress. If anyone thinks we have had gridlock around here in the recent past, wait and see what would happen if this amendment becomes law.

Let us look at some specific examples of what this amendment would do.

One of the Executive orders that would be frozen in place by this amendment is the Manual for Courts-Martial. The Manual for Courts-Martial was issued as one Executive Order, No. 12473, in 1984. This Executive order implements the Uniform Code of Military Justice.

The manual sets forth the rules that govern the power of our military commanders to discipline their troops. Every order issued by a commander; every barracks inspection; every fraud, every act of waste, every act of abuse, every nonjudicial punishment proceeding; every court-martial; and every appeal is governed by this manual.

As my colleagues can see, this is the manual. It weighs 7 pounds. It has hundreds of pages. It covers virtually everything that I have said plus hundreds of other items relating to sentencing, relating to commission of an offense, and relating to nonjudicial punishment procedure. It relates to every single thing that you can imagine in implementing the Uniform Code of Military Justice. It has hundreds of pages and detailed text covering every aspect of the court-martial process from investigations through appellate review.

Since the Manual of Court-Martial is an Executive order authorizing a dishonorable discharge for persons who commit homosexual acts, the freeze amendment, as I read it, means that any future changes in the manual would have to be authorized by a new statute. I do not think we want to take that step. For example, the freeze amendment would preclude the President from amending the manual to increase the disciplinary powers of commanders--such as the power to conduct searches, seizures, and inspections--even if our military commanders recommended those changes as necessary to ensure good order and discipline in the Armed Forces. No changes in the manual's rules could be made without a new statute.

I do not believe that is really what the authors of this amendment intend, but I think that is what this amendment does.

Mr. President, there are many other questions about the

effect of the amendment freezing all Executive orders, DOD directives and military department regulations on military personnel policy which I do not believe the sponsors of the amendment have fully considered.

The enlistment and appointment regulations set forth standards on critical factors such as education, mental ability, and physical condition for new recruits. If our military commanders determine that military effectiveness requires that any of these standards be raised or lowered, then DOD, as I read the amendment, would be prohibited from amending current rules to change those standards unless they are changed by law.

Separation regulations set forth the criteria for administrative discharges on subjects such as misconduct, drug-related offenses, and civilian convictions. If our military commanders believe that military readiness requires that any of these standards be raised, then DOD, as I read the amendment, would be prohibited from amending current rules to change these standards, unless it is changed by Congress.

What if, for instance, after review of the Tailhook report our Secretary of Defense, in terms of revising the sexual harassment rules and regulations in the Department of Defense, recommends that the President

revise the Manual for Courts-Martial to establish sexual harassment as a specific offense and prescribe a penalty for that offense? What if they believe they need to revise DOD's retention and separation regulations to expressly address the problems of sexual harassment? Is this covered by the amendment? In my opinion, it would be.

Mr. President, it has just come to my attention, and I have not read every word of this, but the Navy, for instance, on January 6, 1993, less than a month ago, issued a Department of

Navy regulation entitled 'Department of Navy Policy and Sexual Harassment.' It is dated January 6, 1993--after this freeze--which by statute under this amendment would be January 1.

These are some of the things that this Navy directive covers, which is stated on page 5: Actions, threats or attempts to influence another's career or job in exchange for sexual favors. I ask the authors of the amendment, what about sexual favors requested by a homosexual--would that be covered by the amendment and frozen out? As I read the amendment, there is serious question about whether this whole directive on sexual harassment, that is the Navy's response thus far to Tailhook, would be thrown in the trash can and put out of business by the amendment because it would be a change after the January 1, 1992, date in the amendment which freezes out all new rules. To be absolutely sure you would have to read this new rule and the old rule very carefully to determine the effect of the amendment. The Navy's January 6, 1993, rule also covers physical contact of a sexual nature which, if charged as a violation of the Uniform Code of Military Justice, could result in a punitive discharge. The way I read this, the Navy's January 6, 1993 directive would cover homosexual acts as well as heterosexual and, therefore, this directive could very well be out the window because it would be frozen out by the January 1, 1993 date in the amendment.

Mr. President, I know that is not what the authors intend, but what I am saying to everyone here is what I said to the President last week. Let us examine what we are doing and know what we are doing on this subject and then legislate rationally if we choose to legislate.

Mr. President, even if this amendment were viewed very narrowly, even if my interpretation in the reading of it is too broad--but I do not believe it is and I think most lawyers would agree with my interpretation--but even if we give it a narrow reading, even if every word had been put in this amendment that narrowed it down to absolutely nothing in an Executive order, or nothing in a directive or nothing in a policy except the very narrow term concerning homosexual conduct, we would still have some major problems with this amendment.

Let me just give a few examples in that regard.

This freeze amendment would preclude the President from changing the Manual for Courts Martial if military commanders, for instance, recommended that the President, the Commander in Chief, deal more severely with homosexual rape and homosexual acts involving service members and minors. After his military commanders reviewed this situation and decided the existing code is not strict enough, if they said, 'Mr. President, we want to make it stricter,' then he would be precluded unless he came in and changed the law.

The PRESIDING OFFICER. The Senator's time has expired.

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Mr. NUNN. I yield myself 5 more minutes.

Mr. NUNN. Mr. President, let me give another example. For example, the Manual for Courts-Martial currently authorizes a dishonorable discharge and 20 years confinement as the maximum punishment if a service member is guilty of forcible sodomy. Under the freeze amendment, the Dole amendment, even if our military commanders recommended to the President that a greater punishment is warranted for

homosexual rape, he could not authorize any increase in the maximum punishment without a change in the law. I do not think that is really what we want to do here.

Another example: The Manual for Courts-Martial currently authorizes a dishonorable discharge and 20 years confinement if a service member is guilty of sodomy with a minor.

Under the freeze amendment, even if our military commanders recommended to the President that a greater punishment is warranted for service members who commit homosexual acts with minors, he could not do that because he would be frozen in with this amendment if it passed and became law. I do not think that the proponents of this freeze would want to limit the jail time of persons who take advantage of children if the Defense Department determines that a more serious punishment is warranted. I do not believe that is the intent, but that is what this amendment does.

The Manual for Courts-Martial currently provides that the 20-year maximum for sodomy with a minor applies only where the person is under 16 years of age. In other words, the sodomy provision of a 20-year punishment does not apply if it is committed with a 16-year-old. A 15-year-old, 14-year-old, 13-year-old, yes, but not a 16-year-old. If a service member is guilty of committing a homosexual act with a 16-year-old, then the 20-year maximum does not apply.

Under the freeze amendment, even if our military commanders recommended to the President that the 20-year maximum is warranted also for service members who commit sodomy with 16-year-old children, he could not authorize any increase. It would be subject to having to come back to Capitol Hill for a change in the law.

I really do not believe that is what is intended but that is what this amendment does. The freeze amendment also would preclude the executive branch from making any drafting changes that might be needed to improve the likelihood that the current rules on homosexuality in the military could survive legal challenges.

In this court case in California, if it on appeal looks to the DOD lawyers as if we have some problems with some of the existing rules and that they better change those Executive orders and rules and directives, if they decide they want to change those rules so we can survive a court case, this keeps them from doing so.

I can tell everybody here I have seen that happen time after time, where they have to change rules and regulations in order to be able to survive a court case. The Dole amendment, if we pass it, would block that out, making it much more likely that an appellate court would kick out the existing practice which I know the proponents of the Dole amendment would like to keep in the law.

Mr. President, I could go on and on, but I have used up an awful lot of time. Let me just close by saying that it is not an easy task to deal with this subject. That is what I have been saying to President Clinton. I have said slow down, Mr. President. Let us be prudent; let us be cautious. There are a lot of questions that I do not believe the executive branch has thought about.

Now I am saying to my colleagues in the Senate let us not legislate this. We do not know what we are doing here today in terms of the effect of this amendment. I do know that by reading the amendment there are an awful lot of unintended consequences. The very policy you are trying to protect with this amendment may very well be kicked out of court because the executive branch will not be able to make any changes even if those changes are needed to strengthen the directives.

Mr. President, I urge our colleagues to do the same thing I urged President Clinton to do last week, and that is before we fire, let us aim. Let us get ready, let us aim, and then decide what to do. Let us not jump the gun and legislate something we do not know much about and then cause the whole military

department to be basically in gridlock in dealing not just with homosexual conduct but with thousands of other things that are in these executive orders and rules and regulations.

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Mr. GLENN. Mr. President, will the Senator yield for a question.

The PRESIDING OFFICER. Who yields time?

Mr. GLENN. Mr. President, will the Senator yield for a question.

The PRESIDING OFFICER (Mr. Breaux). The Senator from Georgia has 35 minutes remaining.

Mr. NUNN. I will be glad to yield.

Mr. GLENN. Mr. President, with regard to the first paragraph of Senator Mitchell's second-degree amendment where it says, 'review of current departmental policy,' would it be the opinion of the distinguished floor manager that the Uniform Code of Military Justice would also be included in that review? Because, after all, that is the law that the military lives under when they give up some of their civilian rights.

Mr. NUNN. That is certainly the way I would interpret it as chairman of the committee dealing with it. We would have to look at the law because the law is on the books; it cannot be changed and it is a very material part of it.

Mr. GLENN. It would be the Senator's opinion that a review of departmental policy should include the UCMJ?

Mr. NUNN. That is correct, because policy flows from the law and we have to consider the law if we are going to consider the policy.

Mr. GLENN. A second area. Where it says with respect to the service of homosexuals in the Armed Forces, would it also be the consideration of the floor manager that this would include the Coast Guard, because the Coast Guard is not part of the Department of Defense normally except in times of stress or times of war. That, of course, would come under the Department of Transportation, and they should certainly be considered in that. The Coast Guard is a combat unit when we are at war, as they were in the Persian Gulf in Desert Storm.

Mr. NUNN. I would agree completely with the Senator from Ohio. And he will be helping me chair these hearings as chairman of the manpower subcommittee. We certainly would consider the Coast Guard. They in wartime would be included in the Department of Defense and in peacetime they are included under the Transportation Department. That certainly will be considered.

As a matter of fact, I served in the Coast Guard and the Coast Guard--a lot of people do not know--I am told, had the greatest number of casualties in World War II, more than any other branch of the service. They were very much part of our Armed Forces.

Mr. GLENN. I hope with the colloquy we have had here the Secretary of Defense will consult very carefully with the Secretary of Transportation and with Coast Guard officials to make sure we are including them in any consideration here also, and I thank the floor manager.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from Indiana controls 40 minutes 20 seconds.

Mr. COATS. Mr. President, I yield myself 1 minute and then I would like to yield some time to the Senator from Texas.

The PRESIDING OFFICER. The Senator is recognized for 1 minute.

Mr. COATS. Mr. President, I understand that the Senator from Georgia shares concerns that we have on this side relative to the impact of this change in policy, and that it ought to be studied carefully before policy changes are made. He said let us do nothing hasty; before we fire, let us aim; let us get the answers to the questions that are not answered as of yet; let us make sure we know what the unintended consequences are.

That is exactly what we are trying to do with the Dole amendment. That is exactly what we are asking the President of the United States to do. We are saying to the President of the United States before he takes action, because this is complex, because this has potentially unintended consequences, because this goes to the effect of our military for the future, let us make sure we know all the answers, and let us get Congress involved and let us get the military involved. That is all we are asking the President to do. Hold back on making this policy change on allowing homosexuals in a 6-month period of time to enter the military without reservation before we know what the consequences of that are going to be.

The Senator from Georgia has raised a serious question relative to the impact of this on existing Executive orders or potential changes in Executive orders.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. COATS. I would like to yield 3 minutes to the Senator from Texas to respond.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. GRAMM. Mr. President, I have heard a lot of arguments on the floor before. This is a very interesting one. If we listened to our dear colleague from Georgia, he would say that if we adopt this amendment we are fixing the policy of the Defense Department and creating all of these unintended effects. In fact, let me quote from the President's defense policy regarding homosexuals in the military:

The current Defense Department personnel policies related to this issue will remain in effect at least through July 15, 1993.

Mr. President, we can always try to come up with ways to argue that problems exist, but I just ask my colleagues to read the amendment. The amendment addresses appointment, enlistment, induction, and retention of gays in the military.

Our dear colleague from Georgia talks about punishment. I see no punishment in appointment, enlistment, induction, and retention. The truth is that the entire fabric of the debate is prefaced on the fact that the President has made a change in policy concerning induction and has frozen that policy into effect until July 15. The real debate is, are we going to continue on a path where a decision is already made, where the debate is phony, where the hearings are a sham, or are we going to establish an orderly procedure to look at the facts and then have Congress participate in the decision?

That is what this amendment is about. That is what the issue is. I am confident that the American people are not going to be confused on that issue.

I yield the remainder of my time.

Mr. COATS. Mr. President, could I get an assessment of what time is remaining?

The PRESIDING OFFICER. The Senator from Indiana controls 36 minutes, 46 seconds; the Senator from Georgia, 32 minutes, 51 seconds.

Mr. NUNN. Mr. President, in response to my friend from Texas, the President can change the directive he issued last Friday at any time. He is not going to change it. But under the rules and regulations he is not freezing this in law. He will be able to make changes and make exceptions if it is warranted in all of these other areas.

The second thing I say to my friend from Texas, the retention section has the sanctions because that is where you have the dishonorable discharge. That is dealing with the retention section that is spelled out clearly in the amendment.

I yield 5 minutes to the Senator from Minnesota.

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Mr. WELLSTONE. Mr. President, thank you.

Let me just state at the outset that I intend to support the Mitchell amendment and oppose the Dole amendment. I would like to talk about what I think is at issue in the most fundamental sense. That has to do with whether or not gay and lesbian persons in the United States of America will be accorded equal protection against discrimination, discrimination based upon who they are.

Mr. President, I have talked to a lot of people in Minnesota, veterans organizations, military people, many of whom are very nervous about all this. We are going through changes in our country. Even if I disagree with them, I deeply respect what they are saying to me because I think they are saying it in very good faith and very good conscience. But I do object to an effort, I think unfortunately, by some to--I think--push the wrong buttons and to--I think--really represent a politics of hatred.

Sometimes we can be very generous with the suffering of other people. I have heard people say to me, 'Why this issue? Let us get on with the economy, let us get on with health care.' Believe me, I know those issues are important. But on the other hand, if we were talking about someone's son or daughter or brother or sister or father or mother, they might feel differently about this.

I think the fundamental question, the subtext of such of this debate and discussion, is whether or not we are going to treat a group of citizens, based upon their sexual orientation, as if they are less than fully human. I want to make it clear as an American Jew that for all too many years Jewish people were treated as if they were less than fully human. I want to make it clear as someone who played a small part in the civil rights movement that for all too many years people of color were treated as if they were less than fully human.

But it is very difficult to quench the fires of human dignity. We will reach a day in our country, and maybe it is going to take an educational effort, but we will reach a day where we do afford equal and fair treatment to all citizens.

That is what this is all about. You know, Mr. President, we are playing with people's lives. It can be a very cruel thing.

Let me just talk about Pam Mindt, from Minnesota. Pam Mindt is a member of the National Guard, also served in the Reserve. Ten medals of honor she has received, written up in the advertisements for the Guard. But she felt not too long ago that she had to step forward and be honest and say she was a lesbian. She could not live with this schizoid existence about not being honest about who she was. As a result, she is faced

with the prospect of dismissal.

Mr. President, I want to say this to each and every Senator on the floor. This is my own view and we all have our own view.

I went to the service for Thurgood Marshall. I heard some very stirring words at that service. Those words said sometimes you have to take positions, and sometimes it is not easy, and sometimes it is very difficult, but leadership is not appealing to the fears of people, leadership is not dividing people, leadership is not using people for politics, leadership is not about polarization. Leadership is about calling on people to be their own best selves.

By supporting the Mitchell amendment and defeating the Dole amendment, we take but a small step in that direction. I do not think that is too much to ask of the U.S. Senators when it comes to a basic question of civil rights and human dignity for people in the United States of America--all people, I might add.

Mr. NUNN. Mr. President, I yield to the Senator from Rhode Island 5 minutes and 55 seconds.

Mr. WARNER. Mr. President, is it possible we could rotate from one side to the other? I would thank the distinguished managers if that were possible.

Mr. NUNN. We would be glad to do that. I say to the Senator from Virginia we have been doing that all afternoon. In fact, the Senator from Indiana asked me two or three times to go ahead and use 2 or 3 because nobody was on the floor.

Mr. COATS. Mr. President, I yield to the Senator from Virginia 5 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 5 minutes.

Mr. WARNER. Mr. President, I thank the managers. I thank my good friend and former boss, the Secretary of the Navy.

Mr. NUNN. Would the Senator from Virginia hold for just one moment? After the Senator from Virginia, I yield to the Senator from Rhode Island.

Mr. WARNER. Mr. President, in September, last fall, the distinguished Senator from Georgia and I in the capacity of managing the annual authorization bill of the Armed Forces, first addressed this issue on the floor of the Senate. At that time, I said--and it was concurred in by the distinguished chairman, Senator Nunn--that this issue is of great importance. It demands the full and careful attention of the Senate and of the House because the issue is very, very important today and will be a decade hence. Whatever decision is made by the Congress will shape the Armed

Forces of the United States for a decade hence, beginning from the first day of that decision by the Congress, if the Congress--and I hope it will not--changes the current law.

There may be some modifications. From the very beginning, in my first speech in September, I said the importance justifies our consideration, and there may be some modifications made. But we should go about it in a very slow and deliberate manner. It is for that reason that I support the amendment of the distinguished Republican leader.

ORDER OF PROCEDURE

Mr. President, regrettably, today we have the absence of the ranking member of the Armed Services Committee, Senator Thurmond. He is attending his brother's funeral. Therefore, I would like to read from his prepared remarks and ask unanimous consent that they be printed in the Record in full, and that my remarks follow thereafter, and likewise be included in the Record in full.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Senator Thurmond, were he here, would say: `Mr. President, many in the Congress are troubled with the manner in which the President has dealt with such an important issue which potentially impacts the effectiveness of our Armed Forces. I recognize and respect the role of the President as Commander-in-Chief of the Armed Forces. I also recognize and respect the constitutional role of the Congress to make all laws necessary to raise and support armies and to provide for and maintain the navy. Accordingly, we have both a role, and we--the Congress--`should both work together to develop a policy'--with our President--`which has as its goal the readiness and effectiveness of our fighting forces.' Underline `fighting forces.'

Senator Thurmond crossed the beaches of Normandy. More than any other Member of this body, with his long service here in the Senate, he has had a very, very strong and long identity with the men and women of the Armed Forces. Therefore, I believe his words, should be taken and considered very carefully by all.

I ask unanimous consent that the remainder of his remarks be placed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

Statement by Senator Strom Thurmond--Reference Amendment to Maintain the Current Department of Defense Policy Regarding Gays in the Military

Mr. President, I rise today in support of the amendment to maintain the current Department of Defense policy regarding homosexuals in the military. I regret that the President has chosen to move forward at this time notwithstanding the request of many Congressional leaders, to hold in abeyance any change in the policy until hearings and study could be completed on this complex and emotional issue. His actions last Friday, directing the Department of Defense and the military services to stop asking new recruits if they are homosexual and suspending discharge actions against those who claim to be homosexuals, have set the wheels in motion for the total revocation of the ban. In fact, President Clinton has said he fully intends to issue the Executive Order on July 15 of this year.

If consultation and cooperation are to be effective, they must take place prior to action, not subsequent to it. The President has already acted.

The amendment offered today will only return our Nation to the status quo so that--through hearing, study, and contemplation--the Senate, the President and the Nation can take informed action this summer.

To approve the amendment is to respect the role of the legislative branch as a partner in public policy. To reject the amendment is to reduce the hearings and debate of this body to a sham. We will talk, but the decision will already have been made.

The President's executive order has turned the policy process on its head. In my view, this amendment would only set it right again.

Mr. President, many in the Congress are troubled by the manner in which the President has dealt with such an important issue which potentially impacts the effectiveness of our Armed Forces. I recognize and respect the role of the President as Commander-in-Chief of our Armed Forces. I also recognize and

respect the Constitutional role of the Congress to make all laws necessary to raise and support Armies and to provide for and maintain the Navy. Accordingly, we both have a role and we should both work together to develop a policy which has as its goal the readiness and effectiveness of our fighting forces.

Mr. President, this issue is not about the morality of one's lifestyle. This issue is not about civil rights. The issue before us is National Defense. This debate is about the unique aspects of the military environment and the effect changing that environment will have on victory or defeat. We are talking about the lives of our men and women in uniform. There is no greater responsibility on the President and the 535 members of the Congress than to promote the national defense and the well being of the young people who answer their nation's call. If change is to be made with regard to homosexuals in the military, then it should come about only after thoughtful consideration and consultation, and not simply on the basis of a campaign promise. Campaign promises are part of the process. However, there are times when you just have to step back and remember that the responsibility of leadership to this Nation and its 1.7 million servicemen and women supplant what may have occurred on the campaign trail.

Mr. President, I welcome and fully support Senator Nunn's call for hearings on this issue. We need to hear from the military leaders who have dedicated their lives to this country and possess a unique insight into the working of the military. We need to hear from the non-commissioned officers who are the backbone of our Armed Forces and to whom we look for unit cohesion and discipline. We need to hear from the new recruits whether a change in the current policy would have affected their decision to enlist. We also need to hear from those who support a change in the policy. I am willing to listen to all sides and keep an open mind. Perhaps there are some changes that can be made. However we do not know what those changes should be, because we have not had the opportunity to explore the issue. We are dealing with the policy that has been in effect for 50 years. 50 years, Mr. President. A policy that has been accepted by military and civilian leaders of both parties. Before we take the first step on this uncharted course, I submit that prudence dictates we go slowly or we will run the risk of destroying the finest military in the world.

Mr. President, we all know that many gay men and women have been in uniform and have served their Nation with distinction. I am confident that they would continue to do so with or without a change in policy. However, we need to look beyond the individual to the greater whole. Successful military leaders have always emphasized the importance of trust and cohesion as an element of readiness and combat effectiveness. Our military leaders and training instructors--both officers and enlisted--have worked long and hard to create tight bonds among those who must face tough combat situations and meld individuals into the tightly knit teams necessary to accomplish their mission. In view of the antipathy that often exists between heterosexuals and homosexuals in our culture, will the trust, cohesion and spirit of teamwork that currently exists in the ranks suffer if open homosexuality is allowed? Will recruitment and retention suffer as a result of the change in policy? Will the prevalence of AIDS in the gay community create unforeseen risks on the battlefield? Will a medic refuse or hesitate to treat a wounded gay servicemember because of the fear of AIDS? Is privacy aboard a ship or submarine an issue? Should we provide military housing and benefits to a married gay couple? How does the unit commander deal with these issues? These are a few of the tough questions that need to be addressed. Frankly, Mr. President, I do not know the answers to these and other such questions. I do not believe the policy of the Department of Defense should be changed until the members of this body have had a chance to ask, and consider the answers to the many questions we face.

Let us remember that it is easy for politicians to proclaim policy from the comfort of their chambers. It is an entirely different matter for the young lieutenant who has to implement that policy from the spartan and dangerous environment of the battlefield or the close quarters of a nuclear submarine submerged for 90 days. These are the kinds of situations we have a responsibility to review prior to making any changes. Not to do so is a dereliction of our duty to the people who have to live by the rules we make.

Mr. President, in closing, I would like to remind President Clinton that he made another promise to the American people. He committed himself to working closely with the Congress--Democrats and Republicans alike. He wanted to end the divisiveness that he said hindered progress on many issues of

importance to the American people. He called for cooperation and not confrontation. Mr. President, there was no initial consultation or cooperation with the Congress on this important issue. This is not a good way to start. If the President is serious about working together on the critical issues facing America--the economy, jobs, health-care reform and the deficit--then I urge him to maintain the present policy on this matter, get on with the hearings and then come together with the Congress and the military to fashion a policy that meets the goal of all Americans--a military force that is prepared to meet the challenges of the 21st century.

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Mr. WARNER. Now, with respect to my own remarks, Mr. President, I have spoken to the distinguished chairman of our committee, Mr. Nunn, on several occasions about this issue. I commend him for the courage that he has displayed in the handling of this tough issue, both in consultation with the President and in consultation with leadership of the Senate.

It is not often that the Senator from Georgia and I are on different sides of an issue, but we are on this one. But I told him that it was imperative that a very careful study be undertaken respecting how other nations have dealt with this issue.

I have done my very best in the short period of time we have had to try and gain information about other nations policies and experience on this issue, and I will put in the Record a very brief summary of some dozen nations.

This is the best I could obtain, because not much information has been gained; although the Department of Defense has tried. This is not official. But it is the best we can learn. I have spoken with those members of the Department of Defense who have traveled to other nations, who have consulted with the military leaders of other nations with respect to the experience they have had on this issue. They are not forthcoming in terms of the information regarding their learning curve. There are nine nations that prohibit enlistment, and there are some 12 that do not ask questions. But the general theme that I have been able to determine thus far, is that of those nations that do not ask questions, they treat these individuals very differently from the other members of their Armed Forces. Many nations will not give them security clearances. Many nations will not put them in combat units.

I have recommended to the chairman that our committee delegate to several members the task of going abroad to try to learn for ourselves firsthand what the experience of other nations have been, so that when Senators wish to refer to the experience of other nations--and a Senator today has referred to the experience of another nation--we have some hard facts to help guide the ultimate decision of this body.

Mr. President, I ask unanimous consent that two articles from the January 11, 1993, edition of Army Times, along with a summary of policies of NATO nations, be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

From the Army Times, Jan. 11, 1993

[FROM THE ARMY TIMES, JAN. 11, 1993]

In Israel: The Hard Reality

(BY TOM PHILPOTT)

Haifa, Israel: Yaron, a 30-year-old reserve lieutenant in the Israeli navy, stares thoughtfully at his coffee cup, considering the question.

English is his second language, so he must choose his words carefully. But the greater challenge is sorting out his feelings on the topic raised: his experience as a homosexual in the Israeli military.

Thirty to 60 days each year, Yaron, who would not reveal his last name, commands a Dvora class fast-attack boat, patrolling Israel's coastline with a crew of five active-duty sailors and four to five reservists. 'Ten beautiful men,' is the way Yaron describes them.

The crew members train to keep their skills sharp and guard against terrorism from the Mediterranean Sea. But how does a homosexual like Yaron handle his duties? How does the crew react: How does the Israeli military accommodate gays in operational assignments?

The questions are keenly relevant given President-elect Clinton's vow to lift the ban on gays serving openly in the U.S. military. Those who support the change answer critics, in part, by pointing to countries like Israel, France and Germany and their perceived success in assimilating gays into the armed forces.

Israel often is cited not only because gays legally can serve openly here, but because the Israeli military is widely viewed as one of the best in the world. Its battle skills have been tested often.

So how do Israel and some of the major NATO countries manage this volatile issue?

A closer look reveals that supporters and opponents of the gay ban alike are clouding the debate with misleading statements. Citing laws and regulations alone is not enough to understand the situation. In many countries, there is a vast difference between what is written and what is day-to-day reality.

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THE ISRAELI MYTH

The situation in Israel, a religiously conservative country, might be the most misunderstood. In a recent editorial, The New York Times wrote, 'Homosexuals [in Israel's armed forces] are not denied promotion because of their sexual orientation; they are allowed to become career soldiers; they serve in even the most elite fighting units, on critical frontiers.'

Reality is quite different. In theory, homosexuals serve here openly without fear of harassment or discrimination. In practice, people like Yaron face many of the same pressures as their counterparts in the United States. Consequently, they are afraid to reveal their sexual preference.

Those found to be gay, or who proclaim their homosexuality, must undergo psychological testing to remain in service. Their files are flagged. They usually are barred from positions requiring top security clearances. Known gays rarely are assigned to combat units and do not serve without stigma regardless of the position they hold. Homosexuality, while no longer legally banned in Israel, still is viewed as abnormal both in the military and Israeli society.

Yet, the Israeli military handles homosexuals delicately compared with the U.S. military, where gays face immediate discharge regardless of assignment, specialty or overall performance. Many here consider such a blanket ban unnecessarily harsh. Homosexuals in the Israeli military do not fear criminal investigation, court-martial or abrupt dismissal. And 'gay bashing'--physical attacks against homosexuals--is seen here as a violent American phenomenon.

THE MASQUERADE

Yaron's experience in a close-knit operational unit provides ammunition to both sides in the gay debate. He remains in the closet, even after six years of active duty and six more in the reserves. The

masquerade, he says, said, is painful, but necessary. If he reveals his homosexuality, not only would it bother some crewmen, particularly the younger ones who don't know him, but it might upset his squadron commander. The navy has too many reserve officers for too few seagoing billets, so Yaron likely would get a quick transfer to a desk job.

Hiding his homosexuality. Yaron says, he receives excellent fitness reports and considers himself an effective boat captain. Still, he's concerned about the `sexual tension' and how his homosexuality plays off the crew.

`[Navy officials] think if I'm gay that, in an emergency, some of my subordinates won't take my orders . . . that they will be insubordinate. I feel you must trust everyone. It doesn't depend on sexual orientation. I'm very efficient,' he says.

But, `you live with the crew 24 hours a day, sometimes away from the beach for a long time. And sailors, they talk all the time about sex.'

As a homosexual, he says, `it's very difficult to separate the sexual stress from the special relationship with crew. There are close quarters and sometimes even touching. Lots of times sailors go naked and that is a problem for me. They laugh a lot about opportunities for sex among the crew and, sometimes, for a gay, it's very hard. I can't say, `Stop laughing at homosexual relationships!'

His situation is different, he concedes, than it would be for a heterosexual officer. He's uncomfortable, for example, with some of the horseplay between crew members. He's bothered that the crew uses slang for homosexual to curse one another. He wonders if some sailors who joke about homosexual relations actually are interested in them. And he fears showing favoritism toward crewmen he finds physically attractive.

`I can't ignore if I like someone very much. If I'm very attracted or [have] a special relationship, I'll act different. . . . Sometimes they can be confused and don't know the meaning of this connection.'

But Yaron emphatically says he would never have sexual relations with a crewman.

`I separate [my] civilian life when I come into the Navy. I act like I'm straight. But sometimes that may cause some trouble because I'm only a human being. I can do my job very good although I feel sexual attraction too.'

Asked if all these feelings don't affect his ability to command, Yaron says they make it `very difficult to serve. But they have to give me the opportunity.'

Listening to this conversation is Tal Weisberg, a gay reservist in the Israel army and Yaron's friend.

`I switch off my sexuality [on active duty],' Weisberg says. `Not because I want to, but because I am afraid.'

Staying in the field for long periods is not much different than being at sea, says Weisberg, who serves in a front-line maintenance unit. When he feels attracted to another soldier, in a group shower for example, he has learned to check his feelings.

`It depends on the character of the person.' Yaron says. `If he has a weak character, it's a problem.'

WE DON'T HAVE A PROBLEM

Israel has fought five major wars in its 45-year history. Today it faces real or potential enemies on every border and is dealing with the sixth year of civil unrest in the occupied Arab territories. Against this backdrop, the issue of gays in the military is seen as relatively insignificant. And as far as the government is concerned, the less attention paid to it the better.

'We don't have a problem,' one government official says, 'and we don't want one.'

While some Clinton supporters see Israel as an archetype for integrating gays, the government here is uncomfortable in that role.

'It's true that the Israeli army does not discriminate against gays. But it has to be put into a proper context,' says Lt. Col. Moshe Fogel, spokesman for the Israeli Defense Force.

That context begins with Israeli society, where the emphasis is on family values and the government is a democratic theocracy. Judaism and religious leaders play a prominent role in setting the nation's agenda. There's no concept here, as in the United States, of separation of church and state.

'We struggle to strike a balance between a modern, pluralistic, secular society and, at the same time, a Jewish state,' says Uri Dromi, director of the government press office. Judaism considers homosexuality as 'an aberration, something that should not be done and should not be endorsed or acknowledged or credited with the same status as straight people.'

Perhaps because these societal pressures are so strong, the Israeli military sees no need to paint homosexuality as a readiness issue. It already has the authority to restrict homosexual assignments and promotions.

A DIFFERENT CONTEXT

This approach to homosexuality fits in well with Israel's concept of universal service. At age 18, all Israeli men and women are drafted. Some exemptions are granted for ultraorthodox Jews and the physically handicapped. But many youths found physically unfit, including the severely handicapped, routinely appeal to a voluntary service board and win spots somewhere in the Israeli Defense Force. Throughout the process, the issue of sexual orientation never is raised.

'If you don't let someone in the Army here, it is a very cruel thing to do,' says David Kreizelman, deputy director of the government press office. 'Not only do people assume something's wrong with you . . . you're immediately bringing on yourself all kinds of problems.'

Military service is a springboard to a successful civilian career here. Military experience is among the first questions asked of job applicants. Those who have progressed steadily or have served in critical positions have an advantage over their peers, particularly for jobs in government or Israel's bustling defense industry. Conversely, young people with no military experience face limited job prospects.

Male draftees must serve three years on active duty. At age 21, a relatively small number enter the small Israeli professional military and the others transfer to the reserves. Reservists drill one to two months annually until age 51. Women must serve two years on active duty. Their reserve obligation ends at age 24.

QUALITY SENT TO COMBAT

Draftees can say where they would like to be assigned, but the military makes final decisions based upon qualifications and service needs. Only top-quality recruits are sent to combat units. The definition of 'quality' is based on intelligence, motivation, psychological fitness, education and physical fitness.

Every Israeli soldier begins service as a draftee. There are no service academies or ROTC programs. Eighteen months into mandatory service, standouts can apply to attend a six-month officer course. If accepted, their active-duty obligation is extended another year.

Inductees never are asked if they are homosexual and it is rare that they would volunteer the information, officials say. For one thing, many gay men and women still are unsure of their sexual orientation at 18. Also, because Israel is a religious, family-oriented society, young people who reveal their homosexuality bring enormous pressure on themselves and their families.

'There is a tremendous difference between public acceptance of gays in the U.S. and in Israel,' says Reuven Gal, former chief psychologist for the Israeli Defense Force. 'Where we stand today is still far, far behind where the U.S. stood even in the early '70s, not to mention where it stands now.'

PSYCHOLOGICAL TESTING

While no conscript is asked about sexual preference, anyone who says he or she is gay, or anyone suspected of being gay, is referred to a mental health officer for psychological testing.

Dan Yakir, a lawyer with the Association for Civil Rights in Israel, says the official policy toward gays was set down in a 1983 military order that concludes homosexuality is not a mental disorder, but might pose a security risk.

The aim of the psychological exam is to determine if a soldier's homosexuality is an isolated phenomenon, or whether it's associated with deviant behavior. The test also attempts to measure the 'mental strength of the soldier and the ability to cope with stress,' Yakir says.

After testing, most homosexuals are permitted to remain in service. But, says Gal, 'there will be an indicator in his file that limits him from serving with specific units such as intelligence . . . or in small units where the closeness of living accommodations are so tight and limited it may create problems. They won't send him to a submarine, for example. Other than that, they won't discriminate.'

Gal, now director of the Israeli Institute of Military Studies, suggests that, structurally, the Israeli military might be better suited to accommodate gays than is the U.S. military. There is no evidence that homosexuals are less effective in combat than heterosexuals, he contends. Lawrence of Arabia, for example, was one of the most charismatic and dynamic military leaders to serve in the Middle East. The real issue, Gal says, is how openly homosexual members affect the group. In that regard, the Israeli military has an advantage over the U.S. military because it has a smaller and far more stable force.

'The very same group [of recruits] that came in together in August 1989 walks out together three years later,' Gal says. 'The same four guys in a tank crew will serve together through several wars. They know each other to the guts.'

'Suppose you had an Israeli combat unit that has been together two or three years. If suddenly a guy comes out and discloses he is a homosexual, I don't think it would affect unit cohesion. He will be considered based on how good he is as a tanker or as an infantryman,' Gal says.

Even making these allowances, gays in the IDF are swimming against strong currents. In December, a gay magazine in Tel Aviv reported a story that reinforced what a stigma homosexuality carries in the top ranks of the Israel military. According to the report, several years ago a top Army officer tried to derail the appointment of Dan Shomron as army chief of staff by alleging that Shomron was a homosexual. Shomron denied the allegation and won the chief of staff position. But he also demanded a full government investigation to clear his name. Military officials confirmed the story, including that investigation found the allegation against Shomron to be groundless.

`The Israel image of a military man, especially a combat officer, is still very much a macho image,' says Gal.

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FIGHTING FOR CHANGE

The social customs that accompany that warrior image are under attack from some quarters. Liora Moriel, who chairs the Society for Protection of Personal Rights, Israel's only gay rights organization, contends the situation for homosexuals in the Israeli military and society is improving.

In December 1991, the Knesset passed a law making it illegal to discriminate against homosexuals in the workplace. Although only elected to the Knesset this past summer, Yael Dayan, daughter of the late Israeli defense minister and soldier Moshe Dayan, already has gotten a subcommittee established to weed out discrimination based on sexual preference.

Despite their strong bias against homosexuality, many Israelis express surprise that the United States, with its reputation for protecting personal freedoms, would ban homosexuals outright from all military assignments.

`I know an officer who visited with Americans units,' one Israeli defense official says. `And what did he see? In Marine [Corps] combat units, he saw women getting the same training as men. He saw every type of ethnic background you could ever imagine, people from walks of life about as different as they could be.

`We see that and we say, `What problem could you have with homosexuals?'

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From the Army Times, Jan. 11, 1993

[FROM THE ARMY TIMES, JAN. 11, 1993]

NATO Acceptance of Gays Runs Full Spectrum

Bonn, Germany: `In working with allies,' wrote Winston Churchill, `it sometimes happens that they develop opinions of their own.'

The United States' NATO allies certainly have opinions of their own on the issue of homosexuals in military service; these opinions are about as diverse as can be. If the U.S. Army changes its policies from preventing gays to fight to permitting them to do so, it will still remain well within the bounds of accepted allied practice, which ranges from that of the Dutch--where gays in the army are represented by a union--to that of the Greeks--who flatly ban gays from service.

Most U.S. officers who work closely with NATO allies here prefer to avoid confronting the disparate policies directly. Typical was the reaction of NATO military commander Gen. John Shalikashvili, who favors retaining the U.S. ban. Asked to comment recently on the lack of problems reported by the German military, he said, `It's an issue that each nation will have to deal with within its own context, so I would not want to make comparisons.'

But another senior American officer added an equally typical comment, `The Germans, the Dutch, the Belgians--they ain't been in a fight lately.'

Despite policies that generally are more liberal than the current U.S. ban, nations that allow homosexuals to serve openly have not resolved the problem of fully integrating them into their armies. For example, gays are allowed to serve in the German armed forces, or Bundeswehr. Nor does homosexuality exclude young men from the draft.

And the treatment of gays does not come close to the full equality that homosexuals in the United States are demanding. Gay German officers find paths to promotion blocked, and in some cases have been blocked from access to classified material, according to officials interviewed there. Gay conscripts often find life in the Bundeswehr unpleasant.

Still, German officers said, the sky has not fallen. Problems feared by U.S. commanders have not materialized, and the question rarely has been a major issue in the military of one of the United States' key NATO allies.

From a practical standpoint, the *Bundeswehr's* prohibition on gays ended in 1969, when West Germany removed homosexuality from its list of criminal offenses. While some military regulations against homosexuality survived for years, in practice, gays have been left undisturbed except in rare cases where they make advances toward subordinates.

TREATED THE SAME WAY?

'Heterosexuals and homosexuals are treated the same way,' said Cmdr. Walter Reichenmiller, a spokesman for the Defense Ministry in Bonn.

But the *Bundeswehr* withholds promotions from gay officers on the grounds that they cannot command adequate respect from soldiers, according to Volker Beck, a spokesman for the German Gay League, who added court challenges to the practice have not been successful to date.

Military officials acknowledged that an officer's career can be damaged by open homosexuality.

'It might be affected where they are behaving in a way it becomes obvious,' Reichenmiller said. 'The respect a military superior needs to lead soldiers might keep him from further promotion, but he wouldn't be degraded.'

'What happens practically is that when someone is open about their homosexuality they won't be promoted,' Beck said.

Anti-gay violence, lowered readiness, and discipline problems have not been the result in Germany, officials said. 'We haven't noticed any problems like that,' said Friedrichs, a 30-year veteran. 'There were no problems that caused the military leadership any headaches.'

'I really have never heard of such a case in my 29 years of military service,' said an army pilot, who added he would prefer not to have gays in his unit.

'Morale might be touched a little, but not readiness. I can't imagine that,' he said.

OUT OF THE CLOSET, OUT OF THE ARMY

Britain's policy on gays in the military is simple. 'When you come out of the closet, you also come out of the army,' said Chris Pengelly, a spokesman at the British Embassy here.

And although policies on homosexuals in the military are being challenged and changed in other countries, Britons interviewed in Washington and London said there is little if any sentiment for change in Great Britain.

The question of permitting gays to serve in the British military simply is not a matter of debate, they said. And the fact that Canada and Australia recently lifted bans on letting homosexuals serve, and the possibility that the United States may follow suit, has not prompted the British to question their own policy, they added.

'We think we've got it right,' Pengelly said.

The only recent military action on the homosexual front in Britain came this past June, when the British military adopted the policy that homosexual acts that are not against civil law no longer will be against military law. The change means, in Pengelly's words, 'They used to be kicked out and prosecuted. Now they are just kicked out.'

Actually, the practice of prosecuting gays simply for being gay was abandoned unofficially years ago, said Andre Silverman, a spokesman for the British Defense Ministry. Most homosexual activity among consenting adults was decriminalized in Britain in 1967, he said.

But beyond making current practice into official policy, there has been no move by the British military to embrace homosexuals.

Britain's military leadership contends, much like its U.S. counterpart, that allowing homosexuals to serve would hurt the military.

John Keegan, military editor of *The Daily Telegraph* in London, recently wrote that in the wake of Australia's decision to lift its gay ban, 'The moment for experimentation with homosexual military rights is not yet with us, and probably never will be.'

According to Keegan, in British army regiments, men serve together for an entire career and homosexuality in such a regiment would be devastating to unit cohesion.

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NORWAY: 'NOT AN ISSUE'

Ask Norwegians about what problems result from gays serving in the military and the response is either a puzzled look or surprise at being asked the question.

In a country where women and men serve side by side aboard submarines or roll around naked in the snow to get clean during wintertime military exercises, Norwegians are matter-of-fact about their integrated defense force. That includes the presence of gays and lesbians, who have been allowed to serve openly in the armed forces for the past 14 years.

'Basically, the difference between the United States and Norway is that in Norway, it's not an issue,' said Air Force Lt. Col. Ragnar Haugholt, the assistant Army, Navy and Air Force attache for the Norwegian Embassy here. 'A lot of what is going on in the United States is based on believing not knowing.'

But despite the absence of debate on homosexuals serving in the Norwegian military, the status of homosexual partnerships is currently in flux. A proposal by the ruling minority Labor Party government to allow gay and lesbian couples to marry is expected to pass before spring, officials said. That would make Norway the second country in the world to officially recognize homosexual unions.

With its passage, Norwegian gays on active duty will be able get living allowances and other benefits for their partners, officials said. Military housing allowances for married couples run about \$500 to \$600 a month, said Navy Capt. Thor Hallin, naval attache at the Norwegian Embassy here.

There is some concern over the homosexual union proposal, however.

Arne Dahl, the armed forces judge advocate general, said the new law singles out homosexuals and could fuel resentment among Norwegians who may see it as unfairly advantageous treatment.

By contrast, there was little debate over ending the ban in 1979 on homosexuals serving openly in the Norwegian military, said Gro Lindstad, who chairs the National Organization of Lesbian and Gay Liberation in Norway.

FRANCE: A DRAFT DODGE

While homosexuals in the United States fight for the right to serve in the all-volunteer military, gays in France prefer to use their sexual preference to avoid mandatory service, according to government officials there.

'There is no official discrimination against gay men and women as long as they obey the rules of the French armed forces,' said Capt. Phillipe Hunter, a spokesman for the minister of defense. 'For example, it is not possible to punish somebody because of his sexual life. But if this person makes some sexual harassment upon other members of his unit, he will be in trouble.'

Other government sources said the more common practice for French homosexuals is to avoid the 10-month mandatory service required of draft-age youths by claiming their lifestyle is incompatible with service.

'If a young man claims to be a gay in hope of not being drafted, it won't work,' Hunter said. 'But if his sexual life causes him psychological troubles, he won't be drafted.'

Other French officials said homosexuals routinely dodge service that way. 'Of people eligible for duty under the conscription law, only about three-quarters of those are medically exempted. And a well-known way of being exempted is declaring you are a homosexual,' one official said. 'It will not appear on paper that you were exempted for that reason. . . . Everybody is happy.'

NATO policies on gays in uniform

Belgium: Not acknowledged as a relevant issue. Neither conscripts nor volunteers are asked about their sexual orientation. Homosexuality itself does not exempt Belgians from the draft unless there are accompanying psychological disorders as determined by clinical evaluation. Homosexual conduct between consenting adults off-duty is not punished, but inappropriate homosexual and heterosexual behavior can lead to dismissal from military duty or exclusions from certain units and jobs.

Britain: Homosexuals are officially barred from service, but unofficially the British Defense Ministry says the practice of prosecuting gays simply for being gay is rare. Homosexual acts among consenting adults has been decriminalized in military as well as civilian law as long as it is off-duty.

Canada: Was ordered by the Federal Court of Canada to drop its ban on gays in the Canadian Forces in October 1992. Canadian service members were not required to certify they were heterosexual when they enlisted, but openly gay persons were often discharged or had their transfer or promotion opportunities limited. The files of service members who were either discharged or denied promotion because of their sexual orientation are being reviewed for reconsideration by military authorities.

Denmark: No law or policy. Neither conscripts nor volunteers are asked about sexual orientation. Treated as a personal, private matter.

France: No legislation or written codes. Gays are allowed to serve in the French military as long as they do not harass other members of their units. But gays and lesbians can avoid being drafted by claiming their homosexuality is incompatible with service life.

Germany: Homosexuality cannot be used as a reason not to be drafted, although potential gay conscripts who claim service would be psychologically injurious are evaluated and frequently given alternative mandatory service. Career members of the military who are openly gay do face discrimination, frequently finding promotions blocked and access to top-level classified information denied.

Greece: Homosexuals are banned from military service.

Italy: Homosexuals are deemed unsuitable for military service. During medical examinations, homosexual conscripts will be declared ineligible if found to have behavioral 'anomalies' caused by sexual deviations.

Luxembourg: Homosexuals are not precluded from service. Military service is voluntary and enlistees are not asked about sexual orientation. Improper conduct--whether homosexual or heterosexual--is punishable by discharge or court martial.

Netherlands: Basic law prohibits all discrimination, for any reason. A union represents homosexuals in the military. Unwanted advances are treated as improper behavior. Courses in human relations are conducted for commanders and include homosexual issues. Legislation is pending for homosexual survivor benefits.

Norway: Not considered a relevant issue and no one entering the service is asked about their sexual orientation. Unwanted advances by either homosexual or heterosexual service members are treated as improper behavior contrary to good order and discipline.

Portugal: Not seen as a relevant issue. Homosexuals may serve in the armed forces, although conduct may be punishable.

Spain: There are no codes regulating homosexuals in the military. Like religion, sexual orientation is considered a person's own choice.

Turkey: Homosexuals are not permitted to serve openly in the armed services, although they are not asked about their sexual orientation upon entering the service.

Source: Military and embassy officials of each country.

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HOMOSEXUAL POLICY MATRIX

Prohibits enlistment Does not ask questions Discharged if found in the service Does not
discharge but discriminates Permits homosexuals to serve

Belgium X X
Canada X
X

Denmark									
X								X	
France			X						X
1									
Germany			X					X 1	
Greece	X 2						X		
Italy	X					X			
Luxembourg									
X							X		
Netherlands									
X							X		
Norway			X						
X									
Portugal	X						X		
Spain			X						
X									
Turkey	X						X		
United Kingdom		X						X	
Australia			X						
X									
Egypt	X								
Israel			X					X	
Japan			X						
X									
New Zealand		X					X		
Republic of Korea		X					X		
Saudi Arabia		X							

[Footnote] 1 But may be discharged if inappropriate behaviors are displayed.

[Footnote] 2 Prohibited in 'regular' forces.

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BELGIUM

Conscripts are not asked about their sexual orientation.

Homosexuality is not a reason for exclusion from the draft unless a significant 'psychopathology,' determined by a clinical evaluation, exists.

In a serving homosexual is exposed publicly, the member is referred to the medical community to determine if the member should be continued on active duty.

Serving homosexuals may have limited access to confidential documents and excluded from certain tasks and units.

Open homosexual behavior among members of the Armed Forces will not be tolerated and will lead to neuropsychiatric evaluation.

CANADA

Criminal Sodomy laws were repealed in 1969.

Armed Forces was one of the last institutions to maintain a discriminatory practice regarding homosexuals serving in the military.

Government ended the military's policy condoning homosexuals in October 1992.

Previous to policy change, questions were not asked to determine homosexual orientation but when discovered, homosexuals were discharged.

Armed forces have developed an instruction outlining inappropriate sexual behavior prohibited under civil law; not based on specific gender or orientation.

DENMARK

No law or policy regarding homosexuals in the military.

No questions are asked concerning sexual orientation.

Sexual preference is treated as a private, personal matter and is not considered a matter relevant to military service.

FRANCE

No formal, established policy.

No questions asked.

Sexuality is considered a private matter; it is considered rare in French society for homosexuals to declare their status.

Homosexuals may be medically exempted from conscription if they believe that their sexual proclivity causes psychological problems.

Commanders can separate a serving homosexual if the behavior is incompatible with military life.

An avowed homosexual may be allowed to serve if he or she is not causing problems.

May be a problem if an avowed homosexual is serving in a job linked with national security.

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GERMANY

Homosexuality was decriminalized in 1969.

No written policy regarding homosexuals serving in the Armed Forces.

No questions asked as part of the conscription or enlistment process; however if a doctor discovers homosexual orientation during the medical exam, the inductee will be eliminated from entry if declared psychologically unfit.

Potential homosexual draftee may be exempted from military service if he states that he cannot control his sexual urges.

Discrimination against serving homosexuals exists.

Practicing homosexuals: Not electable to officer or petty officer ranks on the grounds that homosexuals cannot command adequate respect from soldiers; denied security clearances; and can be removed from the Service, subject to a court decision, if behavior disturbs the military.

Non-practicing homosexuals are not discharged, but are watched and their career advancement is blocked.

GREECE

Homosexuals are not allowed to serve in the `regular' Armed Forces.

Homosexual conscripts who want to serve may do so if they do not `misbehave' but are denied certain duties such as service aboard a warship.

Serving homosexuals who display inappropriate behaviors are discharged.

Homosexual conscripts or enlistees who display `strong homosexual tendencies' during the entry process are not allowed to serve.

ITALY

An administrative policy is in place regarding homosexuals serving in the Armed Forces.

Homosexuality is considered incompatible with military service.

The question of orientation is asked during the induction process.

Homosexual conscripts are medically evaluated and, if found psychologically `normal' they are declared eligible but not desirable, put on a special profile and sent home.

Serving homosexuals, once discovered, are discharged under an administrative procedure.

LUXEMBOURG

Homosexuals are not precluded from military service.

Sexual orientation is not questioned during the entry process.

Sexual orientation is considered a private, personal matter; serving homosexuals are advised to keep it a private concern.

Inappropriate sexual behavior, homosexual or heterosexual, is punishable by discharge or court martial.

THE NETHERLANDS

Since 1974, government prohibits all forms of discrimination within all governmental institutions.

Homosexuals in the military are represented by a union.

Human relations training for military commanders includes homosexual issues.

Unwanted advances, of any kind, are treated as improper behavior.

Per a 1990 study by the Netherlands Navy, intolerance toward homosexuals still exists in the Armed Forces.

Homosexual lifestyle is not accepted by many heterosexual military members.

Baiting, fear, and 'unprovable forms of discrimination' still exist.

Many homosexual military members still stay 'in the closet.'

NORWAY

Regulations and laws do not exist regarding homosexuals in the Armed Forces.

Conscripts are not asked about their sexual orientation.

Homosexuality is not a reason for discharge.

Persons displaying unwanted aggressive behavior are transferred to another unit or Service.

Unwanted behaviors are treated as improper behavior which is contrary to good order and discipline, but homosexuality is not the main issue.

PORTUGAL

Official policy not available; unofficially, the policy is to not allow homosexuals to serve in the military.

Homosexual enlistees and/or conscripts are not accepted into active duty.

If discovered, serving homosexuals are discharged.

SPAIN

The policy to exclude homosexuals from military service was changed within the last two years.

No questions are asked concerning sexual orientation.

Homosexual orientation is no longer a reason for discharge.

Homosexuals discovered engaging in behaviors considered inappropriate are adjudged as would be any offender of the military's Uniform Code of Military Justice.

TURKEY

Homosexuality is forbidden in the Armed Forces.

Homosexual conscripts or volunteers are not allowed to serve.

If discovered, serving homosexuals are discharged and, dependent upon the circumstances, may be charged with the military justice article addressing 'disgrace.'

UNITED KINGDOM

Britain lawmakers are planning to introduce legislation to decriminalize homosexual activity in the British Armed Forces but will not challenge the policy barring homosexuals from serving.

Avowed homosexuals are not enlisted.

If discovered, serving homosexuals are discharged:

Homosexuals who engaged in activity with a member of the same rank over 21 are involuntarily administratively discharged.

Homosexuals who engaged in activity with someone under 21 or of a different rank are court martialed, then discharged.

AUSTRALIA

Government ended the policy disallowing homosexuals to serve in the Australian Defense Force (ADF) in November, 1992.

Service Personnel are required to refrain from conduct damaging to group morale or professional capability and cohesion.

Unacceptable, rather than unlawful, sexual behavior may be grounds for administrative separation.

ADF has developed an instruction to state ADF policy regarding unacceptable behavior by ADF members and the service action which may be taken as a result.

ISRAEL

The Armed Forces do not exclude based on sexual orientation.

No questions are asked regarding sexual orientation.

Admitted homosexuals can enter the military, but are not accepted for entry into highly classified units.

Although officially accepted, many homosexuals stay 'in the closet' due to fears of stunted career growth and social stigma.

JAPAN

No policy, written or otherwise, to prohibit entrance of homosexuals into the military.

Few, if any cases, have been found.

If a homosexual was discovered in the service, he would be disciplined but not discharged.

Homosexuality is contrary to the ethics and mores of the Japanese society.

NEW ZEALAND

Homosexuals are not allowed to enter the military.

If discovered, practicing homosexuals, or those charged with indecent acts, are discharged.

Current policy is under review.

REPUBLIC OF KOREA

Armed Forces are conscript.

Homosexuals are not allowed to enter the military.

Self-proclaimed homosexuals serving in the military are psychologically evaluated and discharged.

Homosexual activity is against the penal code, military members are discharged if found guilty of homosexual acts.

SAUDI ARABIA

Homosexuality is again against Muslin law and is punishable by death.

Existence of homosexuality is not acknowledged since it is contrary to the prevailing religion.

No regulation or policy regarding homosexuality exists for the military since this would acknowledge its existence.

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Senator from Rhode Island [Mr. Chafee] is recognized for 5 minutes.

Mr. CHAFEE. Mr. President, as the Senate debates the matter of whether homosexuals should be admitted into the Armed Forces of the United States, I would like to offer a few thoughts, if I might. I approached this debate with the experience of having served 2 1/2 years on active duty as a marine and then 3 1/2 years on active duty as a marine officer, where I had the privilege of commanding a rifle company, and 3 1/2 years as Secretary of the Navy.

Just as I do not think one needs to have experienced poverty in order to discuss poverty, I do not believe that one has to have served in the military in order to discuss this subject before us. Nonetheless, I do find that my experiences are helpful to my thinking on whether homosexuals should serve in the military.

Mr. President, as a nation, we have accepted the goal of making our armed services reflective of American society. All who are able-bodied and qualified, men and women, people of all races and creeds, may serve. And having served, there are certain benefits that come with that, which they are entitled to. For example, as we all know, having served in the military, one is entitled to additional points on a civil service exam, or is able to receive a VA pension.

It is not totally accurate, as sometimes is suggested, that our sole goal should be a more efficient military. For example, the integration of women into the Armed Forces has required adjustments to be made, adjustments which have taken time, attention, and money. It would have been more efficient, Mr.

President, and less expensive for the military not to make the effort to be more inclusive. But the country made the decision that women should be given the opportunity to serve, and that, I believe, is a correct decision. Gender is no longer an issue, but talent, skill, brain power, fitness, and dedication are the criteria.

Now we are confronted with the question of whether homosexuals should continue to be excluded from military service because of their sexual preference. No, we are not talking about behavior, but we are talking about sexual preference. It turns out that we were excluding a substantial percentage of our population, perhaps 8 percent, perhaps 10 percent, who knows.

I am one who strongly believes that any problems attendant to allowing homosexuals to serve in the military can be minimized. I am certain there would be no noticeable deterioration in the quality or readiness level of the Armed Forces of the United States. In fact, as we all know, there are already many homosexuals who have been private about their sexual orientation, who now serve in the military, and have compiled records of valor. I have seen that myself in my experience. Now those homosexuals serving in the military service should be allowed to come out in the open and, as citizens of this country, be given the opportunity and the privilege to serve their country.

What should be the standard of conduct? It should be the same as for all other men and women in the military. There should be nothing offensive in their conduct. For example, we cannot tolerate the retention of men who harass or molest their female peers. Likewise, the military will not be able to tolerate homosexuals whose behavior intimidates or harasses others. Any kind of untoward sexual behavior, no matter from whom it comes, must not be permitted.

It seems to me, Mr. President, much distortion about homosexuals in the military has crept into this discussion. Some suggestions have railed about and really have reached the preposterous level. I will give you a couple of examples. The idea that there is suddenly going to be a stampede of gays to enter the military force is ludicrous. So is the implication that the military will find itself battling an epidemic of AIDS, a disease that also hits, as we know, heterosexuals. That assertion makes no sense.

Should there be a careful process of admitting gays and lesbians into the armed services? Of course, there should be. Congressional hearings should go forward as planned, but the purpose of the hearings should not be to determine whether homosexuals should be allowed to enter the military but, instead, how we can go about integrating them in the smoothest way.

Can such integration take place overnight? Of course, it can. But it will have to take place gradually. There will have to be a vigorous effort to sensitize soldiers, sailors, officers, enlisted men, about the kind of behavior that will be expected.

To my mind, this effort is not unlike the aftermath of the Tailhook scandal, whereas, as many will recall, the entire Navy stood down for a day--the entire Navy--so that it could be made clear to all in the military, to all in the Navy, every man, that they cannot harass their female counterparts.

Without question, Mr. President, removing the ban on gays in the military is going to require the support of senior officers. If they are unsupportive of the new policy, then get out. It seems to me we have to all remember we have only one Commander in Chief. My experience has been, however, that when a discussion has taken place on a matter of import in the Navy, and a decision has been reached, that those in command follow the decision. They may not be wildly enthusiastic about it, but they carry it out--in exemplary fashion.

Mr. President, I have great faith in the military leadership of our country, that they will accept the directives of this President with grace.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COATS. Mr. President, I yield 10 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. HELMS. I thank the distinguished Senator and I thank the Chair.

Mr. President, let us get right to the point--no more mumbo jumbo, no parliamentary slight-of-hand. The only amendment before the Senate today that will prevent homosexuals overt entry into the Armed Forces of the United States is the Dole amendment. Any other suggestion is inaccurate.

So, the choice is clear: By supporting the Dole amendment you will be standing with the Joint Chiefs of Staff, with every major veterans' organization, and with literally millions of Americans who understand that anything short of the current ban is a threat to national defense and a surrender to a repugnant and arrogant political movement.

On the other hand, by supporting only the Mitchell amendment, while opposing the Dole amendment, you will be engaging in eyewash by supporting what is called a `nothing amendment' around this place. You will be standing with those who are ready to sacrifice the morale and effectiveness of the world's finest military in the name of a crash campaign and special interest politics.

Do not be misled by all of the talk about waiting around for this hearing or that study. The President of the United States has made clear that he is bound and determined to allow the followers of ACT-UP and Queer Nation to invade the U.S. military. He has said that no matter what this Senate does, no matter what these hearings conclude, he will lift the ban.

Mr. President, as I said in my Tuesday remarks in the Senate, President Clinton is on record, in writing, as `loathing the military.' The reasons for his refusal to serve his country in uniform are well known. He has never been through basic training and his only experience with soldiers and sailors is watching them march down the street in a parade.

His determination to invite homosexuals into the armed services can certainly be taken by America's soldiers, sailors, and airman as proof positive that the President is at best insensitive and at worst contemptuous of the military way of life.

President Clinton and his advisers--many of whom have never gone near the uniform and are proud of that fact--have ignored the warnings of General Powell and his service chiefs. Thousands of Americans saw the widely circulated January 18 memo from the new Secretary of Defense to the President. It called for the advice and help of homosexual activists and politicians and disparaged the views of our Nation's highest military leaders. Obviously, the many years of combined combat experience of the Joint Chiefs count for nothing in the face of the radical minority of homosexuals and their allies in the White House.

What is underway here is the governmental stamp of approval on the homosexual lifestyle and that means making sexual orientation a protected class, sanctioning quotas in hiring and promotion, benefits for same-sex spouses and on down the line. Transforming the U.S. military into the radical's social laboratory is the most important first step in the transformation of all of American society.

In conclusion, let me repeat: The choice is clear. By supporting the amendment of the distinguished Senator from Kansas, the Republican leader, Mr. Dole, you will be standing with the Joint Chiefs of Staff, you will be standing with every major veterans' organization, you will be standing with millions of Americans who have made clear that they understand that any thing short of the current ban is a threat to national defense and surrender to repugnant and arrogant political forces in our land.

Mr. President, I yield back the remainder of my time, and ask unanimous consent that a series of newspaper articles be placed in the Record at the conclusion of my remarks

I yield the floor.

There being no objection, the material was ordered to be printed in the Record, as follows:

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From the Washington Times, Feb. 2, 1993

[FROM THE WASHINGTON TIMES, FEB. 2, 1993]

Blooming of the Flower Children

(BY RICHARD GRENIER)

Wellington said of Napoleon that his presence on the battlefield was worth 40,000 men. And of Waterloo, where he faced a sick Napoleon with an army half his own, he remembered grimly: 'It was the most desperate business I ever was in. A damn close-run thing.'

The age of warfare and battlefields is over, some say, ignoring Serbs, Croats, Bosnians, Azeris, Georginas, Kurds, Iraqis, Somalis, Cambodians, Angolans * * *. But one can't help but wonder how many men our own commander in chief would be worth on the battlefield. And the grim suspicion comes back: zero. And he might even be worth 40,000 men to the enemy.

Thucydides wrote: 'Fix your eyes on the greatness of Athens, and remember that this greatness was won by men of courage, who did not stand idly by when the enemy attacked.' And the answer to what men would most want to be has for hundreds and hundreds of years been: brave. Civilizations have come and gone--with widespread worldly desires to be rich, handsome, intelligent, witty, sometimes kind--but in most men's heart of hearts the answer is still: brave.

President Clinton is not a 'baby boomer' president (a term rapidly approaching worthlessness), he's our first flower-child president. In his formative years, the 'flower power' mind-set at elite universities was at its most pervasive. And this country's flower children, although given to egregious imitations of courage under embarrassingly safe conditions, have never entirely gotten over the virulent antipathy they felt for the men--working class and their educational inferiors--who fought for their country in Vietnam.

These flower children had the most immaculately idealistic reasons for opposing the war. In their mind they were humanitarians, agrarian Socialists, even Mahatma Gandhi. But the suspicion of cowardice lingers, gnawing at them, too. Others fought for their country. They, children of privilege, took educational deferments or fled. And many display to this day an invidious attitude toward the military, which they consider, at best, an alien culture.

During the Gulf war, one had only to hear the press-conference 'questions' in plummy Ivy League accents expressing horror that we were bombing a retreating enemy (didn't we bomb retreating Germans in Normandy?), or that our ordnance was only 25 percent accurate (to hit a single target in World War II we had to drop 6,000 bombs).

I submit that President Clinton, who equivocated shamelessly at the outset of the Gulf war and gave it his wholehearted support only after we'd won, remains a typical flower child, and that in a remote corner of his heart, out of envy mixed with self-justification, he seeks to demean his own military.

In my London days I knew a distinguished English homosexual actor who, drafted into the Royal Air Force at the hour of greatest peril in World War II, burst into tears at the induction center. When he'd not stopped sobbing a week later, the RAF discharged him as plainly unfit to fly out on the great bombing runs over Germany. An intelligent, fairminded person in other respects, this man could never stop himself from denigrating the course, uneducated Britons whose grim determination to fight for their country had saved him from a Nazi concentration camp. My point being not his homosexuality but his strange ingratitude.

Bill Clinton, I suspect, is such a man. Would he have burst into tears at boot camp if the military had grabbed him during the Vietnam War? I have no idea. But I accuse him, after what is already a record number of broken electoral promises, of sticking to his position on homosexuals in the military out of a probably unconscious urge to demean men in a far rougher profession than his, and who've shown the physical courage he has never shown.

If there's anything to opinion polls, they show Bill Clinton's lifting of the ban on homosexuals supported by many women (not exactly the warrior class), opposed overwhelmingly by men (particularly those who've served), and opposed quite fiercely by the military itself. The armed forces, for those like Bill Clinton who see them only at parades, are not a democracy. Military men are not just another fraction of American society. When the nation is in danger, their mission, at risk of their lives, is to kill and destroy. They are not like other people.

Bill Clinton has never heard a shot fired in anger. He's never spent a day in uniform, never been through basic training or boot camp. These experiences are quite unlike the cheap bonhommie of an MTV party to the music of flower-child Bob Dylan's 'The Times They Are A-Changing'. They might horrify him. Bill Clinton claimed in New Hampshire that he could 'take a punch.' But, given his flower-child predilections, it was an odd metaphor. Can Bob Dylan take a punch? Would Saddam Hussein be frightened if we told him we were sending Bob Dylan after him?

Winning a Rhodes Scholarship was very important to Bill Clinton's political career. In stipulating the qualifications for Rhodes Scholars, Cecil Rhodes cited, immediately after scholastic achievement, 'manly outdoor sports.' But Bill Clinton, who jogs like an old lady, has never played manly sports.

And those who find it unthinkable that a president demoralize his own military might contemplate the likely behavior as commander in chief of Bill Clinton's soulmate Barbara Streisand (who nourishes senatorial ambitions). Forget Hilary. Think kiss-kiss Hollywood. Think Barbara Streisand.

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From the Washington Post, June 28, 1992

[FROM THE WASHINGTON POST, JUNE 28, 1992]

The Case For a Military Gay Ban

(BY DAVID HACKWORTH)

Rep. Pat Schroeder of Colorado wanted to give women 'equality and opportunity' by making them rucksack-toting grunts. Now she aims at putting homosexuals in the foxholes to 'end the final bastion of discrimination.'

I cannot think of a better way to destroy fighting spirit and gut U.S. combat effectiveness. My credentials for saying this are over four decades' experience as a soldier or military reporter.

Despite the ban on service by homosexuals, gays have long served in the armed forces, some with distinction. Many perhaps felt no sexual inclination toward their heterosexual fellow soldiers. If they did, they had their buddies' attitudes and the Uniform Code of Military Justice hanging over their heads. Still, I have seen countless examples of inappropriate and morale-busting behavior.

In Italy, for example, in the postwar occupation, a gay soldier could not keep his hands off other soldiers in my squad. He disrupted discipline, mangled trust among squad members and zeroed out morale. In the same unit, the personnel major was gay. He had affairs with ambitious teenage soldiers in exchange for kicking up their test scores. This corrupted the command's promotion system and led to the commissioning of William Calley-like lieutenants not fit to lead combat soldiers.

During my second tour in the Korean War, a gay commanding officer gave combat awards to his lovers who had never been on the line. IN Vietnam, a young captain in my unit was asked by the commander to go to bed with him. This almost destroyed the esprit of a fine parachute unit.

These are not isolated incidents: During my Army career I saw countless officers and NCOs who couldn't stop themselves from hitting on soldiers. The absoluteness of their authority, the lack of privacy, enforced intimacy and a 24-hour duty day made sexual urges difficult to control. The objects of their affection were impressionable lads who, searching for a caring role model, sometimes ended up in a gay relationship they might not have sought.

A majority of American citizens, according to polls, support Schroeder's bill. Many people look at the armed forces as they do the post office, the Bank of America or General Motors--an 8-to-5 institution where discrimination on the basis of sexual orientation is against basic freedom, human rights and the American way of life. If these polls are true, a lot of people don't understand what war is about.

Sure, banning gays from defending their country is discriminatory. But discriminations are necessary when a larger public purpose is being served. Civilian standards of fairness and equality don't apply down where the body bags are filled.

On the battlefield, what allows men to survive is combat units made up of discipline team players, who are realistically trained and led by caring skippers who set the example and know their trade. When all of these factors are in synch, a unit has the right stuff. It becomes tight, a family, and clicks like a professional football team. Spirited men who place their lives in their buddies' hands are the most essential element in warfare. The members of such combat teams trust one another totally.

One doesn't need to be a field marshal to understand that sex between service members undermines those critical factors that produce discipline, military orders, spirit and combat effectiveness. Mix boys and girls, gays and straights in close quarters such as the barracks or the battlefield, and both sexual contact and the consequent breakdown of morale are inevitable.

Many bright people are pushing for the ban to be lifted. I suspect that few if any have been down in the trenches, but I have no doubt their psychological political clout will have considerable influence even if they don't have a clue what combat is about.

Unfortunately, most of the top brass won't sound off. They duck and weave and offer hollow and spurious Pentagonese double-talk reasons for continuing the ban--reasons that only fuel the pro-gay argument. But they have told me in the 'G' ring of the Pentagon that they're against it, but sounding off would be the kiss of death, like opposing women in combat--a career killer, you know.

I hope that our lawmakers will visit Quantico and Fort Benning before they vote, and ask Marine gunnery sergeants and Army platoon sergeants what a few gays would do to the fighting spirit of units. These pros told me: Gays are not wanted by straight men or women in the showers, toilets, foxholes or fighting units.

They say that in combat young men face death constantly, and what allows them to make it through the hell of it all is a feeling of toughness, invincibility and total trust in their buddies.

My experience with warriors in over eight years of roaming the killing fields in seven wars confirms what these old salts are saying.

A serving lieutenant general recently wrote to me, 'Ask Pat Schroeder if she'd like her kids under a gay first sergeant who might use his rank and authority to demand sexual favors from his subordinate 18-year-old kids. We just had that occur in my command.'

No doubt advocates of gays in combat units will argue that they don't approve of demanding sexual favors and that the first sergeant deserved what he got--a court-martial. The problem is, all the court-martials and regulations in the world can't prevent the kind of morale problems that a change in the law is bound to create. Sure, the first sergeant is serving hard time at Fort Leavenworth, but Pat Schroeder and the two dozen lawmakers who support her bill must also ask themselves what happened to the morale and fighting spirit of his unit.

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From the Wall Street Journal, Nov. 16, 1992

[FROM THE WALL STREET JOURNAL, NOV. 16, 1992]

Sex and Sailors

For someone whose mantra was 'it's the economy, stupid,' President-elect Clinton has been making a lot of headlines about the issue of sex in the military services. This promises to continue today, with the release of the long awaited report of the Presidential Commission on the Assignment of Women in the Military. Some of Mr. Clinton's political allies are upset by its recommendation against expanding women's combat role.

The President-elect, of course, has already announced his intention of overturning the traditional military ban on homosexuals, and a court has already reinstated a gay sailor. We don't get very excited about this issue; since the services include gays and always have, there are humanitarian reasons for overturning the ban. Given today's climate repeal might conceivably tend to protect gays from normal discipline, but we trust the services could avoid that. Many senior officers are hotly opposed, though, and it would have been a good idea for the commander in chief to consult with them before announcing the change, rather than after.

It's evident that the armed forces have problems with heterosexual issues as well, as the Tailhook incident shows. And a survey sponsored by the presidential commission found that two-thirds of the troops who served in co-ed units say men and women were sexually intimate. It's hard to know what to make of this. Human nature being what it is, men and women who think they may die tomorrow are going to be vulnerable. The commission wisely steered clear of this tricky subject, but the services clearly have some thinking to do.

The Gulf War, in which 35,000 women served, has naturally weighed heavily on the commission's investigations over the past eight months. It was during a commission hearing in the spring that Major Rhonda Cornum, a flight surgeon and one of the two American female POWs, testified that she was sexually assaulted by an Iraqi during her captivity. The Army has said that the other woman POW was also sexually assaulted.

As the commission deliberations make clear, the question of women in combat is far more than a simple issue of women's rights. In terms of ability, women could easily perform many of the combat jobs in a modern military, which can require more mental acuity than physical strength. Instead, it is a complex question that involves children, unit readiness and military and national morale.

For the most part, the commission makes a sensible case for the status quo. It recommends that women continue to be barred from both ground fighting and combat air missions, but says that they should be allowed to serve on some warships, which would be a first for the Navy. It urges that women not be eligible for the draft.

The commission also takes on the difficult issue of military children, and again its findings are infused with common sense. It recommends that single parents of preschoolers not be allowed to deploy with units going into action or exercises, and urges a policy requiring single parents of children under the age of two to accept assignment to non-deployable positions. It recommends that spouses of military parents not be allowed to enlist. The recommendations apply to men as well as women, though most single parents are of course mothers.

While polls consistently show that Americans are reluctant to put women in combat, many Democratic leaders favor it. Vice President-elect Al Gore wants an increased role for women in the military. Colorado Rep. Patricia Schroeder, who has led the fight for women in combat, has derided the presidential panel as a 'political circus.' Mr. Clinton has yet to articulate a position on women in combat. He would be wise to heed the recommendations of this commission.

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From Forbes magazine

[FROM FORBES MAGAZINE]

Homosexuals in the Military

(BY THOMAS SOWELL)

Controversies over official policies toward homosexuals in the military are not only serious in themselves, but are also painfully revealing as to the kind of thinking--or lack of thinking--by advocates of accepting gays into the armed forces.

Many arguments run along the line that all that legitimately matters is the individual's own job performance. It is one of the signs of the utter unreality of our times that adult human beings could seriously apply this atomistic view of the world to an organization which is the very antithesis of individualism, and in which the stakes are life and death.

Military success or failure--which is to say, the fate of nations--does not depend on individual performance but on group coordination and group morale. Whatever policies emerge in the military must recognize that central fact if they are to deal responsibly with the lives of young people who are put in harm's way for the sake of their country.

It is hard to imagine how anyone who has ever lived in a military barracks can seriously suggest that open homosexuality there will do anything positive for group morale.

No doubt there have been homosexuals in the military before, as there have been homosexuals in many other walks of life. But no one is concerned about what people do privately. It is official acceptance of

homosexuality that would make it an intrusion into the lives of other people, as part of everyday barracks life.

Privacy is not to be found in military barracks. Nor are military relations egalitarian relations. Given the rigid hierarchy and the degree of subordination inherent in military life, any form of sexual activity between military personnel is fraught with explosive dangers, even in peacetime.

In combat, when members of a platoon under fire have to depend on each other for survival, what does it do to that unit's cohesion when soldiers know that some of their comrades are lovers, who are likely to look out for each other, rather than the platoon?

Does anyone doubt for a moment that official acceptance of homosexuality will be only a prelude to demands that homosexuals not be 'discriminated' against--which is to say, that any adverse decision regarding an individual who happens to be homosexual will be a potential lawsuit?

And does anyone expect either military discipline or morale to be unaffected by all that? Without discipline and morale, what is a military unit but a disaffected mob?

We need not limit ourselves to speculation. As homosexuality has become increasingly accepted on many of our leading college campuses, gays have become another privileged class.

Students have been punished merely for daring to criticize the homosexual lifestyle. On some college campuses, men's toilets have become rendezvous centers for homosexual activity to such an extent that gay activists have published annually updated guides to the best places for such encounters.

Toilets in libraries at Georgetown University, Howard University and the University of Maryland, for example, have made that list. Holes have been drilled in the toilet stalls to facilitate anonymous homosexual activity from Dartmouth to Georgetown to the University of Florida and the University of California at San Diego.

Concentrations of young males in institutions that accept homosexuality have proven to be magnets for gays. Toilets at the University of Florida have attracted gay men from as far as 40 miles away. Are we now to turn the military into another concentration of young males in an institution that accepts homosexuality?

When you can't even go to the toilet without being a witness to or a target of homosexual activity, we are no longer talking about how someone does his individual job. Can anyone imagine how soldiers, Marines or paratroopers are going to react to such situations?

The last refuge of the advocates of admitting gays into the military is to analogize the military's resistance to their past resistance to the racial desegregation of the armed forces. But such analogies are strained, and they certainly do not prove that military leaders are always wrong and politicians are always right.

Are we prepared to bet young people's lives, or the effectiveness of our armed forces, on the presumption that Pat Schroeder knows better than Colin Powell?

No small part of the social problems of this country today derive from three decades of blithe disregard of factors which transcend the individual. Social norms have been waved aside as mere superstitions and public decency has become something regarded as quaint, if not oppressive.

After a chilling string of failures of the 1960s social philosophy in civilian life--deteriorating education, soaring crime rates, disintegrating families, growing drug addiction--zealots are now ready to apply it to the military.

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From the Washington Post, Jan. 31, 1993

[FROM THE WASHINGTON POST, JAN. 31, 1993]

Soldiering: It's a Job, Not an Adventure in Social Change

(BY CHARLES MOSKOS)

Once thought of as the institution through which citizens--at least male citizens--discharged their basic civic obligation, the military is now coming to be seen as a vast and potent laboratory for social experimentation, in which charged debates over gender roles, homosexuality and national service can not only be addressed but possibly resolved. This lack of clarity about the military's primary function is potentially harmful to the long-term security interests of the nation.

The military's potential role as a vanguard of social progress was established by its successful integration of the armed forces in the years since World War II. Thanks to decisions made by the military leadership in the `time of troubles'--the Vietnam era and the early years of the all-volunteer force--the Army is now rivaled by few civilian institutions in terms of black achievement. The army is still no racial utopia; beneath the cross-race bantering, an edge of tension often lurks. But under the grueling conditions of the Gulf War not one racial incident was brought to the attention of the military police. Certainly the racial climate is more positive than that found on most college campuses today.

It is important to remember, however, that the driving force behind integration of the armed forces was not social improvement or racial benevolence but necessity (notably manpower shortages in World War II and the Korean War) and the belated recognition of the military superiority of an integrated force. Put another way, it was the imperative of military effectiveness that led to equal opportunity, not the imperative of equal opportunity that led to greater military effectiveness.

The issue of women in the military--and particularly in fighting roles--is a more complicated one. Following World War II--in which some 350,000 women performed duties ranging from shuttling aircraft across the Atlantic to breaking enemy secret codes--a 2 percent ceiling on the number of women was set, and most served in administrative, clerical and health-care jobs. This situation remained basically unchanged until the advent of the all-volunteer force in 1973. Finding it difficult to recruit more than a few good men, the military allowed good women to fill the ranks. Today, women make up about 12 percent of the total armed forces and hold virtually all assignments except direct combat roles.

The combat exclusion rule, already opposed by feminist leaders and many women officers, came under renewed attack in the wake of the Gulf War. The performance of the 35,000 women who served in that conflict received high praise from both the media and Pentagon officials. But surveys of soldiers who served in the gulf yield a murkier picture. Forty-five percent of those who were in mixed-gender units reported that `sexual activity had a negative impact' on unit morale. Over half rated women's performance as fair or poor, while only 3 percent gave such ratings to men. Nevertheless, Congress lifted the ban on women in combat planes, though service regulations effectively maintained the ban.

The usual response to a thorny social impasse is a presidential commission, and, true to form, one was established late in 1991. The 15-member panel (on which I served) took up three areas of consideration. The first was primarily factual. What, for example, were women's physical capabilities, and what would be the cost of modifying equipment or quarters to accommodate a woman's size or need for privacy?

A trickier area concerned questions of how mixed-gender groups would perform in combat. Here definitive answers are harder to come by, because apart from the defense of the homeland, no military force has ever used women in combat roles. Just as difficult to determine were matters related to the last area of concern: culture and values.

In addition to hearing opposing arguments, the commission sponsored a poll to determine whether the American public was willing to accept women in combat roles. Three findings deserve mention. First, the public was split pretty much down the middle on the question of whether the combat-exclusion rule should be lifted. A large majority favored giving women the option to volunteer for combat arms, as long as no woman was ever compelled to assume a combat role. Second, most people believed women already served in combat roles. Third, most respondents were more concerned with family status than with gender limitations. Three-quarters opposed mothers serving in combat; 43 percent felt the same way about fathers doing so.

By contrast with the general public, army women are much more wary about women in combat roles. One 1992 survey found that only 4 percent of enlisted women and 11 percent of female officers said they would volunteer for combat. But like the larger population, most military women favored a voluntary option.

The same survey disclosed that almost all army women--by a margin of 15-to-1--opposed the adoption of uniform physical standards for men and women. Ironically, both feminist and conservatives supported such standards, the former on egalitarian grounds, the latter because they believed uniform standards would reduce the number of women in the military across the board. Focusing on the strength definition of capability, both groups scanted the social and psychological problems that would likely arise with men and women fighting together in life-or-death situations.

Less dogmatic opponents of the combat exclusion rule favor trial programs. Yet even the most carefully prepared trials would not address the biggest question: Should every woman soldier be made to take on the same combat liability that every male soldier does?

True equality should mean that both genders incur the same liability. To allow only women the option of entering or avoiding combat would not only cause resentment among men, it would be hard to defend in a court of law. To allow both sexes to choose whether or not to go into combat would be the end of an effective military.

By a one-vote margin last November, the presidential commission arrived at a surprisingly conservative recommendation: While approving of women's service on most warships (except submarines and amphibious vessels), it advised keeping women out of combat planes and ground combat units. President Clinton has said that he will take the recommendation under consideration, but debate will surely continue.

The vexed issue of homosexuals in the armed forces draws the postmodern military into another heated social controversy. And some of the solutions proposed would present just as great a problem to the military's combat effectiveness as do those proposed in the gender arena.

Up to World War II, the military treated homosexuality as a criminal act, punishable by imprisonment. During the war, service leaders came to adopt a psychiatric explanation of homosexuality: Discovered gays were either 'treated' in hospitals or given discharges 'without honor.' From the 1950s through the 1970s, gays--defined almost always as people who had engaged in homosexual activity--were discharged under less than honorable circumstances. In 1982, in an effort to bring about a more uniform policy, the Department of Defense issued new guidelines that stipulated that service members who declared they were gay would receive an honorable discharge if their records were otherwise unsullied. Those caught in a compromising situation might still receive a less than honorable discharge.

Public opinion polls show that the number of Americans favoring the admission of gays into the armed forces has been creeping upward. A Washington Post poll last week showed the public evenly split on the question but 64 percent of veterans opposed to lifting the ban. A December 1992 poll that I conducted found 78 percent of currently serving soldiers opposed with an astounding 90 percent saying they would be 'uncomfortable' sharing a room with a homosexual.

Support for repeal of the ban is strongest among women and whites, and weakest among males and minorities. Without a question, the growing support for ending the ban reflects a generally more tolerant attitude among the general public, but it may also be a sign of how distant most of the citizenry has become from the realities of military service.

Certainly, some of the reasons for excluding gays do not stand up to scrutiny. No evidence exists that homosexuals, under present rules, have been greater security risks than anyone else. If there were no ban, the argument that a gay service member could be blackmailed by threat of exposure would evaporate. Furthermore, no one can prove that homosexuals are any less effective than heterosexual as soldiers, sailors, airmen or marines.

What is at issue today, however, is whether or not declared gays should be allowed to serve in the military. This is different from the question of tolerating the service of discreet homosexuals in uniform (though with some 1,000 gays being discharged each year, it is clear that not all are discreet). To condone discreet homosexuality in the services while opposing the official acceptance of declared homosexuals is to set oneself up for the charge of hypocrisy. And it probably does no good to say that a little hypocrisy may be the only thing that allows imperfect institutions to function in an imperfect world.

Whatever is done, policymakers should think twice before invoking a misleading analogy between the dynamics of racial integration and the proposed acceptance of overt homosexuality. Racial integration increased military efficiency; the acceptance of declared homosexuals will likely have the opposite effect, at least for a time.

At the very least, the lifting of the ban will create a controversy over the issue of privacy, which in turn could make recruitment (particularly among minorities) even more difficult than it is today. Just as most men and women dislike being stripped of all privacy before the opposite sex, so most heterosexual men and women dislike being exposed to homosexuals of their own sex. The solution of creating separate living quarters would be not only impractical but an invitation to derision, abuse and deep division within the ranks.

There is also the problem of morale and group cohesion. Foes of the ban point to the acceptance of homosexuals in the armed forces of such countries as the Netherlands, Sweden, Denmark and Israel. In the Netherlands, an alleged 10 percent of the military is gay (though nine out of 10, studies say, remain undeclared) and a four-day seminar stressing sensitivity toward minorities, including gays, is mandatory in all Dutch services. Harmony is said to reign throughout the tolerant ranks of the Dutch army.

Those who object to the validity of national comparisons charge that the Dutch and Scandinavian cultures are far more tolerant than is mainstream American culture. Furthermore, they say, neither the Dutch nor Scandinavian armies have been in the thick of combat in recent decades.

These objections are partially validated by the example Israel's military, which inducts declared homosexuals. While it is true that gays in Israel are expected to fulfill their military obligation, it is also true that they receive de facto special treatment. For example, gays are excluded from elite combat units, and most sleep at their own homes rather than in barracks.

Despite widespread resistance within the U.S. military, Clinton has committed himself to rescind the gay ban. One can of course argue that the United States now has such a decisive strategic advantage over any potential enemy that it can well afford to advance the cause of equal opportunity at possible cost to

military effectiveness. Still, such a risk must be acknowledged. We must decide, for example, whether we will be willing to restore compulsory national service if dropping the gay ban makes recruitment even more difficult than it now is. (Most nations without such a ban do have obligatory national service, the military being an option in many cases.) Unless such realities are faced, we can only hope that our postmodern military never has to face the uncivil reality of war.

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From the Washington Times, Jan. 1, 1993

[FROM THE WASHINGTON TIMES, JAN. 1, 1993]

New Military Way of Life and Strife

MATTERS OF LAW

(BY TERRY EASTLAND)

President Clinton initially seemed to think that lifting the ban on gays in the military would be a strictly presidential matter, achieved through an executive order premised on his constitutional authority as commander in chief. Then his White House discovered that another branch of government, Congress, also has constitutional authority--that of making (as Article I provides) 'rules for the government and regulation of the land and naval forces.' Thus did Mr. Clinton come to learn that whatever he does on the issue Congress may alter, even totally undo, assuming strength to override a veto.

The prospect of such an early, major political defeat in part explains the president's decision to postpone for six months an executive order. That decision shifts the balance of power on the issue to Congress, and in particular to Sen. Sam Nunn, Georgia Democrat, who had opposed lifting the ban on gays in the military but now is open to at least some change, and who plans to commence hearings on the matter next month. As Mr. Nunn goes, so goes the Senate and probably the Congress: If Mr. Clinton and Mr. Nunn can agree on a new policy, Republicans in Congress who prefer the old one will have a much diminished chance of legislative success.

In the context of gays in the military the White House's ongoing seminar in separation of powers now must include, thanks to last Thursday's decision by U.S. District Judge Terry Hatter, reference to the third branch of government. It is Judge Hatter who intruded into the debate by striking down the ban on gays in the military and ordering the reinstatement of a Navy petty officer discharged after disclosing his homosexuality on national television.

If the Navy does as the armed forces have in previous cases, it will now ask the Justice Department to appeal Judge Hatter's opinion. But the president is no longer George Bush but Mr. Clinton; he could tell the Navy not to appeal. Consistent with his statements Friday on how he intends to proceed on changing the inherited policy, Mr. Clinton might want to do just that. Still, he cannot be entirely happy with the decision rendered in the Central District of California.

In his remarks Friday, Mr. Clinton said he had not read Judge Hatter's decision. He should. Judge Hatter was a Jimmy Carter appointee, and his opinion fairly invites the new president to reflect on the kind of judges he cannot possibly want to appoint. The opinion distinguishes between homosexual 'status' and 'conduct'--a distinction Mr. Clinton of course endorses. But consider what else the opinion does.

In holding that the Defense Department's policy banning gays and lesbians, when based `merely on status and conduct' violates the Constitution's guarantee of equal protection, Judge Hatter asked whether the policy is `rationally related to [the military's] permissible goals.' In several too brief paragraphs, he concluded it was not. Declaring no `factual basis' for the Pentagon policy, the judge was unwilling to defer--as courts historically have--to military judgment, based on decades of experience, on the advisability of having gays in the armed forces.

Whatever one thinks policy in this area should be, Judge Hatter's decision is a regrettable piece of judicial activism. The decision usurps Mr. Clinton's authority as commander in chief and the military's subordinate power to determine rules necessary for good order and discipline. By implication, the decision also denies the Article I authority of Congress to determine rules for governing the armed forces.

In sum, the problem with the opinion is that it seeks to declare the nation's policy on gays in the military. `Gays and lesbians,' as Judge Hatter put it, `should not be banned from serving our country in the absence of conduct which interferes with the military mission.' `Hopefully,' he added, as though he held both the executive and legislative powers, `our military leaders will come to realize the `[w]e are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide someone else's unfamiliar or even repellent practice because the same tolerant impulse protects our own idiosyncrasies.' This language, which settles one of today's `culture wars' in a most debatable way, comes from a dissenting opinion in a 1989 case by Justice William Brennan.

Mr. Clinton seems close to grasping that the federal courts should not be making policy in this area. On Friday he said, correctly enough, that there is a `not insignificant chance' the courts might impose the kind of policy Judge Hatter has articulated, and that the courts might do so before `a whole range of practical issues' have been adequately dealt with. Those practical issues, apparently, are the ones Mr. Clinton now wants addressed, with Mr. Nunn's help.

Policy on gays in the military is properly the province of the elective branches. Mr. Clinton's education in separation of powers will be complete when he takes issue, rhetorically if not in litigation, with the activism of such opinions as those of Judge Hatter.

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From the Washington Times, Jan. 1, 1993

[FROM THE WASHINGTON TIMES, JAN. 1, 1993]

New Military Way of Life and Strife

CIVILIAN ANXIETIES

(BY SUZANNE FIELDS)

Maria, a beautician who was born in Bolivia (she's an American now), worries about lifting the ban on homosexuality in the military.

`I wouldn't want my son to enter the service under those conditions,' she says with an appeal to euphemism. Maria voted for Bill Clinton. She didn't focus on that issue back then. Not many people did.

Sarah, a sophisticated widow in her 80s, also voted for Bill Clinton. `Why is it that every time I turn on the television, the commentators are talking about sodomy?' she asks. `Must we now be bombarded with all these intimate sexual references all over the news? I thought that was restricted to soaps and sitcoms.'

Maria and Sarah are neither homophobes nor bigots. They're not particularly religious or even Republicans. They can't be fairly accused of gay bashing or political expediency. They just don't want to know about the private sex lives of homosexuals or heterosexuals. They're offended by the vulgarity of this public discussion.

Maria, who assumes her son, now 8, would answer proudly if his country calls, believes that open admission of homosexuality in the armed forces undercuts the pride of military service and will hurt recruitment. Sarah thinks everyone got along all right when everyone was less interested in the private sexual habits of men and women everywhere (or at least restrained their curiosity.)

Rep. Barney Frank, one of two Democratic congressmen who openly declares his homosexuality, declares it often on television to answer questions by other women (and men) like Maria and Sarah. He insists the discussion is not about walking in Gay Pride parades, or men dancing together at the Officers Club or the Enlisted Men's Club.

But isn't it? If the issue is civil rights and discrimination, then shouldn't homosexual men and women expect the same rights and perks as heterosexuals? Defenders of homosexuals in the military readily invoke comparisons to the integration of blacks in the military. Can anyone imagine Harry Truman saying blacks could serve side by side with whites, but they couldn't march together or dance together?

The homosexual analogy to blacks, of course, is false, as Gen. Colin Powell, chairman of the Joint Chiefs of Staff, frequently points out. The issue is one of behavior, not skin color--military readiness, not prejudice. Readiness includes issues of morale, discipline, recruitment, personal privacy, concerns of deeply religious servicemen and not least the increased risk of AIDS. If randiness is not part of homosexual notions of readiness, why the eagerness to flaunt sexual preference?

Sen. Sam Nunn insists the rights of those in the armed services who find overt homosexuality offensive are being ignored, and he's right. Will `straights' require therapy to cure them of their religious faith and teachings?

The debate about homosexuality in the military, like so many other debates in the United States today, is conducted in two voices. One is the voice of the Politically Correct, which believes that tolerance must be replaced with celebration, that not only should homosexuals be free to practice what they wish, but the rest of us should accord homosexuality the respectability of heterosexuality, including rights (and rites) of marriage. The other is the voice of the ages that commands us not to throw away common sense in the pursuit of decency and tolerance.

`Though men be much governed by interest, yet even interest itself and all human affairs are entirely governed by opinion,' wrote Scottish philosopher David Hume.

Such opinion will be heard in the hearings Sen. Nunn will conduct. That opinion might surprise the president. He could even change his mind. He changed it on Zoe Baird, on Haiti and on a tax cut for the middle-class. But I doubt it, and that's too bad for all of us.

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From the Washington Times, Jan. 1, 1993

[FROM THE WASHINGTON TIMES, JAN. 1, 1993]

New Military Way of Life and Strife

CULTURAL BASICS

(BY JOSEPH SOBRAN)

Suddenly Slick Willie has become Thick Willie. Supposedly a smart politician, he has begun his presidency by picking a fight he can't win over a red-hot cultural issue.

His stand on gays in the military has embarrassed his own allies in Congress. The Democrats know they can sneak almost anything through, as long as Rush Limbaugh doesn't find out about it. This was definitely an item that called for furtive midterm treatment. But the commander in chief decided to tell it to the Marines.

Liberals--those broad-minded people who define a bigot as anyone who disagrees with them--have decided that homosexuals are to be officially defined as a victimized group. It's now nearly taboo to suggest in public that there is anything wrong with homosexuality, when everyone knows otherwise, as the popular reaction shows. The media's hypocrisy about sex would amaze the Victorians.

Like impotence and many other disorders, homosexuality is a disability for marital life. No decent person would torment anyone for it, but no sane person would think it's normal. Despite all we hear of gay 'pride,' nobody wishes the condition on those they love. It's bizarre to imagine even the most liberal expectant parents hoping their child will be homosexual. People never say: 'Susan and I don't care whether it's a boy or a girl, as long as it's gay or lesbian.'

Yet the liberal chorus insists that Mr. Clinton's action is the equivalent of Harry Truman's decision to integrate the armed forces. This strained analogy is a clue to what's really going on. Today's liberals want to re-enact the civil rights struggle, and they are using the gay rights movement as an opportunity to strike virtuous poses. See how tolerant we are! See how nobly we stand in contrast to our benighted opponents!

Liberals fear nothing more than being on the Wrong Side of History. They presume, of course, that History will ultimately be written by moralizing liberals like the people who write editorials in the New York Times. It never occurs to them that their moral fads may blow over in a few years, as nature inexorably reasserts herself, and that their views won't necessarily constitute the perspective by which future historians judge us. Let's not dismiss the possibility that future historians, surveying our age, will die laughing.

Gays and feminists, cognate political activists, hold pretty much the same ideology--one that belittles the centrality of the family. Those who don't share that ideology can see what the decline of the family has brought us: a social dissolution whose most volatile element is fatherless boys.

Yet liberals, of whom gays and feminists are merely two denominations, insist on asserting the same old precedents, which have lost their relevance and now can only mislead. And instead of offering evidence for their views--of which there is precious little--they condemn anyone who is reactionary enough to disagree with them.

The result is a severe reactionary shortage. Progressives have a terrible record of predicting the future: Remember the Soviet experiment and the great Society? But the reactionaries who saw only a dark future, though they had more sense, fell short. They had no idea how bad things were going to be.

Just as no monarchist or capitalist predicted that communism would kill tens of millions of people, no Goldwater Republican or Bircher foresaw the rates of crime, disease and abortion that now degrade and depopulate American society. And who, back in sunny 1964, prognosticated AIDS? Never mind what History will say. We can't even draw the right lessons from our own experience.

No, our gloomiest conservatives turned out to be utopian optimists. This is History speaking, folks. Absolutely nobody a generation ago had any inkling of what was to issue from social reform and experimentation and welfare and liberation--all those hot tickets of the '60s.

Throughout this progressive century, only the pessimists have been prophetic. But not prophetic enough. If any segment of our society deserves to be nurtured and cherished and encouraged (I won't say subsidized), it's the doomsayers. The more hysterical they sound, the more respectfully we should listen to them. That's what recent history teaches.

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From the Washington Times, Nov. 16, 1992

[FROM THE WASHINGTON TIMES, NOV. 16, 1992]

Picking Up the Promissory Invoices

(BY WILLIAM MURCHISON)

The military--whose call Bill Clinton conspicuously spurned in the 1960s--can't be greatly surprised when the commander in chief-elect discloses plans to incorporate homosexuals into its ranks.

The election is over, the inauguration impends. The time for presenting bills has come. Here's the homosexual-rights lobby's invoice.

Top military officers, starting with Gen. Colin Powell, don't want the homosexual ban lifted, for reasons of order and discipline, but that's not the point where Mr. Clinton is concerned. The point is accommodating a numerous, active, well-heeled and ever-more-clamorous element of the Democratic constituency.

The Clinton victory on Nov. 3 comes near to guaranteeing homosexuals that social and political legitimacy toward which they have aspired. The military ban will go--though only after consultation with military officials, Mr. Clinton promises. The administration will have an AIDS advocate of some sort. (No cancer or heart advocates, last time I checked.) At a minimum, no one in the Clinton administration is going to hurt homosexuals' feelings deliberately.

The U.S. military becomes an unwilling pawn in this power game. The imperatives of order and discipline, cited by the likes of Gen. Powell, don't seem so imperative, weighed against the need to deliver on promises to constituents.

True, homosexuality in military ranks isn't exactly an innovation or, in every circumstance, a hindrance to success. I believe it was Lord Nelson who said the Royal Navy was sustained by rum, sodomy and the lash.

Well, at least they called it sodomy. No one back then pretended that homosexuality was just a life-style choice: no better, no worse than any other; as morally neutral as a birthmark.

The homosexual-rights lobby today takes a very different view of things. It demand validation. This means all doors must swing wide open, so that members of the lobby may enter at will. A ban on homosexual soldiering is, to the lobby, mere job discrimination. Away with it!

Bill Clinton finds such a demand easy to comply with, in part because he never wore a uniform. He doesn't know the military. What is often referred to as the military's non-homosexual 'tradition'--as if it had no more moral standing than a school fight song or squash casserole at Thanksgiving--makes sense in terms of instilling unit cohesiveness. Unwanted sexual attentions from a barrack mate or mates don't build the kind of community spirit on which military effectiveness depends. 'It is difficult,' says Gen. Powell, 'in a military setting where there is no privacy, where you don't get choice of association, where you don't get choice of where you live, to introduce a group of individuals who are proud, brave, loyal, good Americans but who favor a homosexual lifestyle.' Don't forget that the service is an authority structure. The possibilities for abusing authority in quest of sexual dominance are endless.

Odd and disturbing things go on in late 20th century America. We the people put our various institutions at the service of subgroups with gnawing anxieties--racial, sexual, whatever kind. The functioning of the institution--even one so essential as the military--becomes secondary to the massaging of those anxieties. This is as true of the outcry to open up military combat roles to women as it is true of the agitation to allow uniformed homosexuals.

Of course the line one hears is that actually we're making the institution better than ever, by bringing in people/viewpoints hitherto shut out. Pluralism becomes the acid test.

Actually, it's the only test one hears about anymore. Tests of worth and efficiency, right and wrong, truth and falsehood, don't matter. It's nothing but look-how-inclusive-we're-becoming. Look how many 'outcasts' we're rescuing. America as one giant therapeutic enterprise, designed not to maximize liberty and virtue but to make people Feel Good About Themselves--isn't that increasingly our national vision? If you call it 'vision.'

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Washington, DC,
May 8, 1992.

Hon. Patricia Schroeder,
House of Representatives, Washington, DC.

Dear Pat: Thank you for your recent letter concerning the position I took before Congress in February concerning homosexuals serving in the Armed Forces. I have given a great deal of thought to my position and continue to hold the view that the presence of homosexuals in the military is prejudicial to good order and discipline.

This is the policy of the Department of Defense and is supported by all of the Joint Chiefs of Staff. It is also a view held by experts who have studied the sociology of the military for many years. I am including a recent article by Charles Moskos on the subject.

I am well aware of the attempts to draw parallels between this position and positions used years ago to deny opportunities to African-Americans. I know you are a history major, but I can assure you I need no reminders concerning the history of African-Americans in the defense of their Nation and the tribulations they faced. I am a part of that history.

Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument. I believe the privacy rights of all Americans in uniform have to be considered, especially since those rights are often infringed upon by the conditions of military service.

As Chairman of the Joint Chiefs of Staff, as well as an African-American fully conversant with history, I believe the policy we have adopted is consistent with the necessary standards of good order and discipline required in the Armed Forces.

Sincerely,
COLIN L. POWELL,

Chairman of the
Joint Chiefs of Staff.

The PRESIDING OFFICER. The Senator yields the floor.

Who yields time?

The Senator from Indiana controls 25 minutes.

Mr. COATS. Mr. President, I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 5 minutes.

Mr. McCain. Mr. President, I ask unanimous consent that my full text of my statement and accompanying materials be entered into the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

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THE ALL-VOLUNTEER MILITARY

Mr. McCain. Mr. President, the American armed forces are not a social laboratory. There are approximately 1.5 million men and women in uniform who volunteered to serve their country in extraordinary circumstances and risk their lives when ordered to do so by their Commander in Chief. Even during peacetime, they give up certain rights and privileges accorded civilians because of conditions of military service.

Our men and women in uniform have little choice about their jobs, they must live where they are assigned, and they must give up their privacy--often without warning and for months at a time. Deployments in areas like Panama, Somalia, and the Persian Gulf involve living in close proximity, with little personal space, and with no choice of associates. The ship, the battalion, and the squadron become the center of every moment of military life. Survival is often based on the cohesion of small groups of men and women who literally must live in each other's shoes.

The issue of allowing open gay life styles in the military is completely different from the kind of changes taking place in civil life. The whole structure of military life involves wide ranging sacrifices of individual prerogatives. Any changes to that structure can rapidly erode morale, efficiency, and unit cohesion--the three critical factors that determine survival and victory.

America's uniformed military leaders are not being reactionary by objecting to the open admission of gays into the military before our society has fully resolved questions about their involvement in many other walks of life where a gay life style may be perceived as more than a matter of personal choice.

A broadly respected national figure like Gen. Colin Powell, who exemplifies the progress we are making in civil rights, is not reacting out of prejudice, but out of concern for the practical implications which the open admission of homosexuals poses for his profession. He is charged with considering the impact of such policies on the safety of our nation.

This is not a civil rights issue. No one supports prejudice and discrimination. The issue is what policy best promotes the effectiveness and strength of our military. Comparison to racial discrimination is misplaced and inappropriate. Homosexuality is a behavioral trait, unlike skin color. Gen. Colin Powell has eloquently stated:

I have given a great deal of thought to my position and continue to hold the view that the presence of homosexuals in the military is prejudicial to good order and discipline. I am well aware of the attempts to draw parallels between this position and positions used years ago to deny opportunities to African-Americans . . . skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.

I believe the privacy of all Americans in uniform has to be considered, especially since those rights are often infringed upon by the conditions of military service. As Chairman of the Joint Chiefs of Staff, as well as an African-American fully conversant with history, I believe the policy we have adopted is consistent with the necessary standards of good order and discipline required in the Armed Forces.

I think it is also important to point out other statements by senior uniformed leaders who are well-known, well respected, and modern-day heroes because of their great service to our country.

Gen. H. Norman Schwarzkopf has stated: 'once a homosexual comes out of the closet and publicly avows their homosexuality, all unit cohesiveness is lost.'

Gen. Al Gray has said: 'the presence of homosexuals would adversely affect our ability to maintain good order, discipline, and morale; foster mutual trust and confidence; and ensure the integrity of the system of rank and command. We cannot afford homosexual suspicions, which would threaten our mission by degrading unit cohesion, morale, and esprit de corps.'

We need to preserve the trust that is the core of military life. We cannot do this by telling over 1 million people who have already sacrificed many of their rights on our behalf that in addition to their loss of privacy and choice they must now accommodate in close quarters a life style they rejected when they enlisted and continue to reject in every opinion poll taken on the subject.

Last week, Adm. George Kinnear and Vice Adm. Tom Kilcline from the Retired Officers Association briefed me on a Gallup poll that they had commissioned to determine the attitudes and opinions among active and retired military members with regard to the issue of allowing homosexuals in the military. I found the information interesting and in stark contrast to some of the other polls I have noticed in the press.

For instance, 83 percent were strongly opposed to lifting the ban on homosexuals in military. Eighty-five percent of those respondents who had recommended the military as a career to either a family member or friend were particularly opposed to allowing homosexuals in the military and would tell the person who they had given the advice to, to reconsider. Also, 77 percent of the respondents who opposed allowing homosexuals in the military cited a disruptive negative effect on morale, on discipline, combat readiness, and lack of acceptance as reasons for their opposition.

The day may come when society as a whole accepts gay life styles as a fully integrated part of our national life. At that point, military life may change as well. Until that day arrives, the U.S. military should not be used for legal tests and social experiments that threaten its ability to preserve our national security.

In preparation for 6 months of study that this body will engage in, I asked the Congressional Research Service to put together a series of studies on the issue of homosexuals in the military.

The first is a study by the American Law Division of the Congressional Research Service summarizing the legal challenges to the Department of Defense policy regarding homosexuals in the military.

The second is a collection of major articles, opinions, and speeches regarding homosexuals in the military.

The third is a socioeconomic study.

The fourth is a background study on homosexuals in other areas of Federal service.

Mr. David Burelli of the Congressional Research Service has done a fine job in bringing the results of this research together. His report is a must read for anyone interested in an objective examination of the issue of gays in the military. I urge my colleagues to review it in its entirety.

In addition to this extensive research I have requested letters from Veterans organizations, letters from the veterans of my State, relevant statements by public officials, and a Gallup poll of the members of the Retired Officers Association.

I ask unanimous consent that all of these documents be included in the Record at this point.

Congressional Research Service,
Washington, DC, December 21, 1992.

American Law Division Memorandum

Current Department of Defense policy states that '[h]omosexuality is incompatible with military service.'¹ Homosexuals, therefore, are barred from enlisting or serving in the military service, and if their sexual orientation becomes known, they are subject to discharge with or without proof of actual homosexual conduct on their part. In addition, the Uniform Code of Military Justice, article 125, provides criminal penalties for both homosexual and heterosexual sodomy.

The military policy of excluding homosexuals had been judicially challenged, largely without success, on a variety of legal and constitutional grounds. Most of the early cases involved personnel suspected of homosexual conduct who argued that the policy violated the constitutional right of privacy;² that it was prohibited by the Equal Protection Clause because only homosexual sodomy was persecuted while similar heterosexual conduct was not;³ or that the procedure applied by the service to effect discharge did not conform to procedural due process requirements.⁴ Later cases also raised First Amendment free speech claims when brought by admitted homosexuals who had been discharged not for alleged sexual conduct but rather because of their 'status' as revealed by voluntary statements to colleagues, or in the press and other public fora.⁵

Due process challenges predicated on the right of privacy have been uniformly rejected by the courts in these cases, particularly after the U.S. Supreme Court in *Bowers v. Harwick*⁶ sustained a Georgia statute criminalizing sodomy as applied to consenting adults in the privacy of the home of one of them. The Court there expressed the view that homosexual sodomy was neither a fundamental liberty 'implicit in the concept of ordered liberty' nor is it 'deeply rooted in the Nation's history and tradition.'⁷ On parallel reasoning, the courts generally have refused to apply heightened scrutiny to the equal protection claims of discharged homosexuals according to the constitutional standards traditionally applied in cases of governmental discrimination based on race, ethnicity or other 'suspect' classifications.⁸ First Amendment challenges to the military policy have fared little better. Thus, open acknowledgment by a service person

of his/her homosexual orientation, whether in the media or otherwise, has not generally been accorded First Amendment protection since it does not implicate the exchange of information and ideas on homosexuality as a matter of 'public concern.'⁹ An important element in each of these decisions was the history of judicial deference to military judgments that is now firmly entrenched in our legal tradition.¹⁰

Accordingly, to date, successful judicial challenges to the military's exclusionary policy regarding homosexuals have been few in number and of relatively narrow legal significance. For example, *Matlovich v. Secretary of the Air Force*,¹¹ involved an admitted homosexual with an 'outstanding' 12-year record of military service who had not been charged with any homosexual activity on base or with other servicemen. Neither the court of appeals nor the federal district court on remand ever decided the main constitutional challenge asserted by the petitioner based on the right to privacy. Instead, the Air Force policy, which at that time permitted retention of homosexual personnel in 'unusual circumstances,' was held procedurally defective for its lack of fair and objective standards governing discharge. In other words, the petitioner was entitled to an explanation of why the exception did not apply to him. Subsequent to this decision, and a similar one concerning Navy regulations,¹² the Department of Defense issued revised regulations clarifying the exceptions to the policy of mandatory discharge of homosexual servicemembers which effectively preempted any defense based on quality of performance in future cases.

In a more recent and highly publicized decision, *Watkins v. United States Army*,¹³ the Ninth Circuit *en banc* vacated a panel's constitutional condemnation of the DOD policy as violative of the Fifth Amendment right to equal protection and instead ordered reinstatement of a homosexual 16-year veteran on equitable estoppel grounds. The earlier panel ruling had determined that lesbian and homosexual persons constitute a 'suspect class' and employed heightened equal protection scrutiny to invalidate the Army policy. On rehearing, however, the full court held that the Army could not refuse reenlistment to a highly rated serviceman who had openly acknowledged his homosexuality at the time of initial enlistment and who had consistently been reenlisted despite the Army's awareness of his sexual orientation. Because it disposed of the case of equitable estoppel grounds, based on the specific factual circumstances before it, the *en banc* court avoided making any determination of the constitutional issues raised. Consequently, the decision is likely to have minimal impact upon current military policy.

Judicial analysis of federal equal protection claims fall into three basic modes. First is the traditional 'rational basis' standard that will uphold most legislative or executive action that classifies individuals as long as the classification is reasonable and rationally related to a legitimate governmental objective. Certain classifications are deemed 'suspect' or 'quasi-suspect,' however, and governmental actions based on such classifications will be subjected to rigorous or 'searching' judicial scrutiny.¹⁴ Governmental actions that burden members of a suspect or quasi-suspect class call for a higher level of justification both in terms of the weight of the government's interest¹⁵ and the degree of relationship to the interest served.¹⁶ The federal courts of appeals to date have generally refused to apply the so-called 'strict scrutiny' test, or other heightened equal protection standard of judicial review, to the military policy regarding homosexuals.

Applying the more lenient equal protection standard, the courts have usually had little difficulty accepting as 'rational' the military's justifications for its homosexual policy.¹⁷ In *Beller v. Middendorf*,¹⁸ the Ninth Circuit accepted all of the military's justifications and upheld the Navy policy as applied to the discharge of three enlisted personnel who had engaged in homosexual acts. Judge (now Justice) Kennedy wrote that:

The Navy can act to protect the fabric of military life, to preserve the integrity of the recruiting process, to maintain the discipline of personnel in active service, and to insure the acceptance of men and women in the military, who are sometimes stationed in foreign countries with cultures different from our own.

Furthermore, although he felt the policy was 'perhaps broader than necessary to accomplish some of its goals,' Judge Kennedy concluded that it 'represents a reasonable effort to accommodate the needs of the Government with the interests of the individual.'¹⁹ In *Dronenburg v. Zech*²⁰ Judge Bork wrote for the D.C. Circuit in another case involving homosexual conduct that '[t]he effects of homosexual conduct

within a naval or military unit are almost certain to be harmful to morale and discipline.' Finally, in *Ben-Shalom v. Marsh*, 21 a status (not conduct) case, the Seventh Circuit ruled that military discharge due to a declaration of lesbianism did not violate the First Amendment, and that the Army regulation barring homosexuals passed rational basis equal protection review.

A recent judicial development that may forecast invigorated scrutiny into the military's justifications for excluding homosexuals is the Ninth Circuit decision in *Pruitt v. Cheney*. 22 Pruitt was an officer in the U.S. Army Reserve with an 'outstanding' record in both active and reserve duty. Although it had no evidence of homosexual acts on her part, the Army moved to revoke Pruitt's security clearance and discharge her after she revealed, in a *Los Angeles Times* interview, that she was a lesbian and had twice participated in ceremonies of marriage to other women. Pruitt thereafter challenged the Army's actions, which were based solely on her own admissions of homosexuality, as a violation of free speech rights. This First Amendment claim was rejected by both the district and appellate court on the rationale that Pruitt's admission of her homosexual status was not protected speech. 23 The appeals court did hold, however, that the Army had not demonstrated the rational basis for its regulation and that Pruitt had the right to a hearing on the equal protection claim. Moreover, the decision departs from *Beller* and related precedent by relying on two Supreme Court rulings which stand for the principle that governmental denial of equal protection is never justified by the antipathy of others towards the group adversely affected.

In the more recent of these, *City of Cleburne v. Cleburne Living Center, Inc.*, 24 the Court invalidated under rational basis equal protection analysis the refusal of a city to permit construction of a group home for the mentally retarded. Although neither a suspect nor quasi-suspect class was involved, the city's justifications for denying a permit were rejected. The desire to avoid negative reactions of neighbors was found to be an unacceptable basis for discriminatory treatment, 25 and even the legitimate goal of relieving congestion could not be achieved by prohibiting only certain types of group homes while allowing others. *Palmore v. Sidoti* 26 was an earlier case which struck down a denial of child custody based upon social disapproval of the interracial marriage of the mother. The Supreme Court declared that '[t]he Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.' 27

The Court's refusal in these cases to accept asserted governmental goals as legitimate, and its more than perfunctory scrutiny of the means by which the governmental body pursued its legitimate goals, may have important implications for future judicial review of military policies regarding homosexuals. At the very least, if applied in this context, it could mean that the military faces a weightier burden than heretofore in terms of justifying its policies as rational and reasonable based on factual evidence presented to the court. In this regard, the courts may be less willing to accept as rational the offer of any proof which reflects popular antipathy toward or stereotypical views concerning homosexuality.

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FOOTNOTES

1 DOD Directive 1332.14 (Jan. 28, 1982).

2 *E.g.*, *Matlovich v. Secretary of the Air Force*, 591 F.2d 852 (D.C. Cir. 1978); *Dronenburg v. Zech*, 741 F.2d 1388 (D.C. Cir. 1984) and *Beller v. Middendorf*, 632 F.2d 788 (9th Cir. 1980), *cert. denied sub nom. Miller v. Weinberger*, 454 U.S. 855 (1981).

3 *E.g.*, *Hatheway v. Secretary of the Army*, 641 F.2d 1376 (9th Cir.), *cert. denied*, 454 U.S. 864 (1981).

4 *See, e.g.*, *Matlovich (supra)* n. 2.

5 *E.g., Ben-Shalom v. Marsh*, 881 F.2d 454 (7th Cir. 1989). *cert. denied sub nom. BenShalom v. Stone*, 494 U.S. 1004 (1990); *Pruitt v. Cheney*, 963 F.2d 1160 (9th Cir. 1991), *cert denied* 61 U.S.L.W. 3413 (S.Ct 12-8-92).

6 478 U.S. 186 (1986).

7 *Id.*, at 191-92.

8 *See, e.g., Woodward v. United States*, 871 F.2d 1068, 1075-76 (Fed. Cir. 1989), *cert denied*, 494 U.S. 1003 (1990) where the appeals court noted that *Hardwick* permitted the criminalization of 'the most common sexual practices of homosexuals.' Because 'there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal,' the *Woodward* court reasoned that, under *Hardwick*, the military's discrimination against homosexuals is constitutional.

9 In *Ben-Shalom v. Marsh*, 881 F.2d 454, 462 (7th Cir. 1989), *cert. denied*, 494 U.S. 1004 (1990), the federal appellate tribunal stated the proposition:

[Appellant] is free under the regulation to say anything she pleases *about* homosexuality and about the Army's policy toward homosexuality. She is free to advocate that the Army change its stance; she is free to know and talk to homosexuals if she wishes. What [appellant] cannot do, and remain in the Army, is to declare herself to *be* a homosexual. Although that is, in some sense, speech it is also an act of identification. And it is the identity that makes her ineligible for military service, not the speaking of it aloud. (emphasis in original).

See also Johnson v. Orr, 617 F.Supp. 170 (E.D.Cal. 1985) (finding for the military), *aff'd mem.*, 787 F.2d 597 (1986); *Pruitt v. Cheney*, (*supra*) n. 5. (same).

10 *See, e.g., Ben-Shalom v. Marsh*, 881 F.2d 454, 461 (7th Cir. 1989)('The Commander-in-Chief, the Secretary of Defense, the Secretary of the Army, and the generals have made the determination about homosexuality, at least for the present, and we, as judges, should not undertake to second-guess those with direct responsibility for our armed forces. If a change of Army policy is to be made, we should leave it to those more familiar with military matters than are judges not selected on the basis of military knowledge.');

Goldman v. Weinberger, 475 U.S. 503, 507-510 (1986)(Court deferred to the 'professional judgment of military authorities' that Jewish officer's wearing of yarmulke justified a court martial for noncompliance with dress code); *Rostker v. Goldberg*, 453 U.S. 57, 70-71 (1981)('[J]udicial deference to such congressional exercise of authority is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulation for their governance is challenged.').

Also, Gilligan v. Morgan, 413 U.S. 1, 10 (1973); *Orloff v. Willoughby*, 345 U.S. 83, 93-94 (1953).

11 *Supra* n. 2.

12 *Berg v. Claytor*, 436 F. Supp. 76 (D.D.C. 1977), vacated and remanded, 591 F.2d 849 (D.C.Cir. 1978).

13 875 F.2d 699 (9th Cir. 1989), *aff'g en banc* on other grounds, 847 F.2d 1328 (9th Cir. 1988), *cert. denied* 111 S. Ct. 384 (1990).

14 The Supreme Court has found that classifications based on race, national origin, and in some cases, alienage constitute suspect classifications. *See Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439-42 (1985). In addition, classifications based on gender, e.g. *Craig v. Boren*, 429 U.S. 190 (1976), and illegitimacy, *Trimble v. Gordon*, 430 U.S. 762 (1977), are considered 'quasi-suspect' and trigger a form of 'intermediate scrutiny' that is more rigorous than basic rational relationship review. In addition to subjecting suspect or quasi-suspect classification to strict scrutiny, courts will apply strict scrutiny to classifications that burden 'fundamental interests.'

15 These classifications must be supported by more than merely a `legitimate' interest: governmental actions that burden a quasi-suspect classification must be based on an `important' interest, *Craig v. Boren*, supra n. 13, while actions that burden a suspect classification must serve a `compelling' governmental goal. *Cleburne*, supra n. 14.

16 The connection between the discriminatory action and the governmental goal must be more than merely `rational': for quasi-suspect classifications the relationship must be `substantial,' *Craig v. Boren*, supra n. 13, and for suspect classifications the discriminatory action must be `precisely tailored' to the governmental interest at issue. *Plyler v. Doe*, 457 U.S. 202, 217 (1981).

17 As it appears from the decided cases, the justifications asserted by the government are several. First, it is argued that the presence of homosexual personnel arouses `tensions and hostilities' and inspires a lack of confidence and respect for homosexual officers. The military has also contended that homosexuals would be unable to effectively perform their duties as a consequence of their emotional involvement with other homosexuals and fear of disclosure. Other factors relate to anticipated disruption of the command structure that could result from homosexual relationships with subordinates, the possibility that heterosexuals would be discouraged from enlisting, and the threat of adverse foreign reaction to homosexual military personnel stationed abroad. Finally, one court has opined that `toleration of homosexual conduct, as expressed in a less broad prohibition, might be understood as tacit approval.' See, e.g., *Beller v. Middendorf*, 632 F.2d 788, 811 (9th Cir. 1980); *Dronenberg v. Zech*, 741 F.2d 1388 (D.C.Cir. 1984).

Most recently, the federal district court in *Steffan v. Cheney*, 780 F. Supp. 1 (D.D.C. 1991), upheld the forced resignation of a Naval Academy midshipman who though not charged with homosexual behavior had admitted his homosexual orientation just weeks before graduation. Judge Oliver Gasch ruled that the regulations were rationally related to the military interest in protecting soldiers and sailors from AIDS.

Since Congress is empowered to raise and support armies, it may do whatever is necessary to protect the health and welfare of those armies. . . . The power to protect the armed forces from venereal disease is ample to sustain the power to protect them from what is now known to be a fatal and incurable virus.

18 *Supra* n. 17.

19 *Id.* at 812.

20 *Supra* n. 17 at 1398.

21 *Supra* n. 5.

22 963 F.2d 1160 (9th Cir. 1992), *cert. denied* 61 U.S.L.W. 3413 (S. Ct. 12-8-92).

23 The gist of the Ninth Circuit reasoning is revealed in the following passage:

The Army did not discharge Pruitt because she spoke candidly about her sexuality to a newspaper. Nor did it discharge her for publicly expressing her views on a timely and controversial subject, or for demonstrating compassion for and association with homosexuals. The Army discharged Pruitt because she admitted to being homosexual, . . . Pruitt's admission, like most admissions, was made in speech, but that does not mean that the first amendment precludes the use of the admission as evidence of the fact admitted. . . . The question is not whether the Army is free to discharge her for her speech, because it did not do so. The question is whether the Army is entitled to discharge her for her homosexuality--an issue not encompassed by Pruitt's first amendment claim. 963 F.2d at 1163-64.

24 473 U.S. 432 (1985).

25 The Court ruled in this regard that 'mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like.' 473 U.S. at 450.

26 466 U.S. 429 (1984).

27 *Id.* at 448. See also *United States Dep't of Agriculture v. Moreno*, 413 U.S. 528 (1973) (invalidating under the rational basis test a provision of the Food Stamp Act that excluded households containing unrelated individuals because motivated by congressional dislike for 'hippies').

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VETERANS OF FOREIGN WARS

of the United States,
Washington, DC, January 26, 1993.

Hon. Sam Nunn,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

[Page: S1298]

Dear Mr. Chairman: I am writing to express the support of the Veterans of Foreign Wars of the U.S. for your position opposing the removal of the ban on homosexuals serving in the Armed Forces, and for your decision to hold public hearings on this issue.

We believe the President's stated intention to lift the existing ban on homosexuals was made without due consideration for its impact on the Armed Forces and without proper consultation with military and Congressional leaders.

We support the current ban and we support your courageous decision to convene Senate hearings on this issue. The hearings will give the Service Chiefs and others the opportunity to describe the impact of the proposed policy change and to openly discuss their concerns before the Congress and the American people. Moreover, your decision will remind all that the Congress shares in the authority and formulation for such a major policy change affecting our Armed Forces.

Senator Nunn, you have our strong support on this issue and all your efforts directed toward maintaining a strong national defense.

Sincerely,

John M. Carney
Commander-in-Chief.

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VFW Remains Opposed to Lifting Military Ban on Homosexuals

Washington, DC, January 21, 1993: Upon hearing reports that President Clinton planned to act quickly to lift the ban on homosexuals serving in the Armed Forces, the Commander-in-Chief, Veterans of Foreign Wars, John M. Carney of Melbourne, Fla., issued a statement reiterating VFW opposition.

`The VFW, an organization of 2.2 million wartime veterans, opposes lifting the current Defense Department ban on homosexuals serving in the Armed Forces. Last August, delegates assembled at our National Convention reexamined this issue and again concluded that homosexuality is incompatible with military service.

`This issue is a very serious matter. Our military leaders are gravely concerned about the impact such a change would have on our Armed Forces at this critical time. It is our hope that President Clinton will listen to the wise counsel of the Chairman of the Joint Chiefs of Staff, General Colin Powell and other military leaders on this issue. If he does so we believe he will conclude, as we have, that the ban should remain in place.'

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Resolution No. 416 as Amended

Whereas, because of the past experience of many veterans, we urge opposition to the effort of homosexual organizations, both male and female, to force the military services to accept and retain homosexuals; and

Whereas, the policy of the Department of Defense states that homosexuality is incompatible with military service and that the presence of homosexuals in such an environment seriously impairs the accomplishment of the military mission; and

Whereas, the Uniformed Code of Military Justice, Article 125, 10 USC, Section 925 (1976), specifies that sodomy is a crime in the military and the exclusion of homosexuals is a practical means of preventing violations of this Code; and

Whereas, this policy has been subjected to judicial challenge in numerous federal lawsuits with the goal of permitting homosexuals into the Armed Forces; now, therefore

Be it resolved, by the 93rd National Convention of the Veterans of Foreign Wars of the United States, that we express our deep concern over the impact this change of policy would have on our Armed Forces; and

Be it further resolved, that we unequivocally oppose the efforts of homosexual organizations to force the military services to accept or retain homosexuals and urge the Departments of Defense and Justice to take this matter before the Supreme Court to seek final judicial reaffirmation of the homosexual exclusion policy; and

Be it further resolved, that the aforementioned Codes should be rewritten in an effort to dismiss any possible question of the denial of civil rights based on moral, religious or ethical behavior, as it is not the intent to inflict that upon said persons, rather a just concern for the solid stability of our Armed Forces and its operation.

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The American Legion,
Washington, DC, January 29, 1993.

Dear Senator: The American Legion remains steadfast in its opposition to lifting the ban on homosexuals in the military. Now is not the time for procrastination. The choice is clear. The decision should be made

`to stay the course'. This is not a matter of patriotism, loyalty or one's ability to do a job. This is a matter of choosing a lifestyle that is disruptive in a military environment. As wartime veterans, our members understand the necessity for cohesiveness and conformity, leaving no room for alternative behavior.

If the Administration insists on a change, then the decision should be made by means of the legislative process. Enclosed is a copy of The American Legion's most recent press release on this issue.

Sincerely,

Roger A. Munson,
National Commander.

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The Military Coalition,
Alexandria, VA, December 22, 1992.

Hon. John McCain,
Senate Committee on Armed Services, U.S. Senate, Washington, DC.

Dear Senator McCain: The Military Coalition, comprised of nationally prominent military and veterans associations, representing 3.5 million members--active, reserve, retired and veterans--of the seven uniformed services, wishes to inform you that on December 8, 1992 we sent the enclosed letter to President-Elect Clinton concerning the issue of allowing acknowledged homosexuals to serve in our nation's armed forces.

For the reasons expressed in the letter, this issue is of grave concern to us. As we suggested to President-Elect Clinton, such a departure from a long-standing policy banning service by avowed homosexuals should not be made without a careful, extensive and considered examination by the appropriate committees of Congress following a course of hearings. We further recommended that only then, after their recommendations are presented, should a final decision be made.

We urge you to support this recommendation to hold hearings and then make appropriate recommendations to the President. We further request that during your deliberations you solicit testimony from the service Chief's as well as from the Military Coalition, and other appropriate groups.

Sincerely,

PAUL W. ARCARI,

Colonel, USAF Retired, The Retired Officers Association, Co-Chairman.

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C.A. (MACK) MCKINNEY,

Sgt. Maj. USMC Retired, Non Commissioned Officers Association, Co-Chairman.

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The Military Coalition,
Alexandria, VA, December 8, 1992.

President-Elect Bill Clinton,

Governor's Mansion, Little Rock, AR.

Dear President-Elect Clinton: The Military Coalition, a consortium of military and veterans' associations is deeply concerned over the probability of your fulfilling the promise to allow acknowledged homosexuals to serve in the Armed Forces of the United States. The Coalition, representing 3.5 million members of the military community, opposes such a demoralizing move on the part of the Commander-in-Chief of the nation's uniformed services.

Service in the armed forces is a unique calling. Military men and women must be prepared to live anywhere, fight anywhere, and maintain high morale and combat efficiency under frequently adverse and difficult conditions. They are asked to undergo frequent exposure to risk, long hours, periodic relocations and family separations. Additionally, they willingly accept some abridgment of their freedom of speech, their right to privacy, and control over their living and working conditions. These are all part of the very personal price our military personnel pay on a daily basis.

Your pledge, if fulfilled, would strike at the very things which compromise the core of combat efficiency--high morale and discipline. What little privacy now exists for most personnel would be further jeopardized. The result can only be a diminution of their ability to carry out their mission--the defense of our nation.

The Coalition respectfully urges you to accept the sage advice of your military service chiefs and retain the current ban on military service by acknowledged homosexuals. Our top military leaders collectively possess years of experience in handling morale and disciplinary problems. Their knowledge and opinions on what is best for our nation's uniformed services require your careful consideration.

The Coalition, furthermore, strongly suggests that Congress be requested to conduct extensive hearings on this issue and then provide its counsel on a matter with potentially long-term detrimental effects on the All-Volunteer Force. It has taken this action a good many years to develop a well educated quality force of dedicated men and women that comprise the best military organization in the world. Let us keep it the best.

The Military Coalition.

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The Retired Officers Association,
Alexandria, VA, December 15, 1992.

Hon. John McCain,
U.S. Senate, Washington, DC.

Dear Senator McCain: The Retired Officers Association, representing 322,000 commissioned and warrant officers (over two-thirds of the nation's retired military officer community) recently sent a letter to President-Elect Clinton expressing our concern over the issue of military service by avowed homosexuals.

This letter is based on the sentiments of our membership as compiled by the Gallup Organization at the behest of the TROA Board of Directors. The survey results reveal that over 83% of our membership oppose Mr. Clinton's campaign promise to allow avowed homosexuals to serve in the military.

I have taken the liberty of enclosing a copy of the editorial page from our January 1993 edition of The Retired Officer Magazine as well as a copy of the results of the Gallup survey we commissioned. The

editorial contains a letter jointly written by TROA's Chairman of the Board, G. E. R. Kinnear, Admiral, USN-Ret. and me, the original of which was sent to President-Elect Clinton.

As we did with the President-Elect, we urge you to seriously consider the impact of Mr. Clinton's promise and the effect it can and will have on our nation's military forces. Additionally, we urge you and your colleagues to hold hearings on this issue; to hear arguments from all sides and then make an informed decision. Our nation's military forces who have long and faithfully served the defense needs of our great nation should expect no less from its elected representatives.

Sincerely,

T.J. Kilcline,
President.

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The Retired Officers Association,
Alexandria, VA, December 11, 1992.

President-elect Bill Clinton,
The Governor's Mansion, Little Rock, AR.

Dear Mr. Clinton: On behalf of The Retired Officers Association (TROA), we want to congratulate you on your election as president of the United States.

TROA is an organization of 322,000 members who have served as commissioned or warrant officers and 60,000 surviving spouses. We look forward to working with you in maintaining the United States combat-ready armed forces capable of defeating all foreign threats to our national interests and security.

It is from this perspective that we express our profound concern about your reported interest in repealing the current Department of Defense policy on homosexuals in the armed forces. Military service is unique and vastly different in both working and living conditions from private and public sector occupations where employees are free to come and go as they please. The military institution, with its sea duty, field deployments and combat operations, necessarily infringes upon personal privacy and forces intimate living conditions unlike those experienced in any other community or profession. Our years of military leadership experience confirm that when avowed homosexuals are thrust into this environment, the impact undermines morale and discipline to the detriment of the essential mission. This is an even more significant factor at a time when we are undergoing a massive drawdown of the fighting force. The result of this kind of social engineering within our all-important defense community can be nothing but disastrous.

Further, the military institution must act in loco parentis for the young men and women entrusted to its care. Service recruiting efforts to maintain the required vitality and quality of the force can only suffer. Many parents will discourage their sons and daughters from joining an armed service forced to accommodate to the gay lifestyle.

We strongly recommend that you heed the advice of your senior military advisors to retain the long-standing and logically-conceived policy to ban homosexuals from the military and not make a precipitous decision that would seriously impair national security.

G.E.R. KINNEAR II,

Admiral, USN (Ret.),
Chairman of the Board.

T.J. KILCLINE,

Vice Admiral, USN (Ret.),
President.

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NON COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES OF AMERICA,
Alexandria, VA, August 21, 1992.

Hon. John McCain,
U.S. Senator, Subcommittee on Manpower and Personnel, Russell Senate Office Building, Washington, DC.

Dear Mr. McCain: Over the years, the Non Commissioned Officers Association of the United States of America (NCOA) has opposed every legislative attempt to change the policy of denying service in the U.S. Armed Forces to homosexuals and bisexuals. The association has and will continue to be strong in its support of the Department of Defense (DoD) position in the matter. If DoD should, by chance, succumb to public pressure on the issue, NCOA will not alter its position.

In an effort to demonstrate the association's resolve on the homosexuality issue, a copy of a Resolution has been enclosed for your information. This Resolution was approved by NCOA members during the Business Meeting held in conjunction with the association's 31st Annual Convention in Reno, Nevada, in July 1992.

Should public hearings be held on any legislation intended to open the ranks of the military services to homosexuals, NCOA would welcome the opportunity to offer a representative to express opposing views to such legislation. In this regard, invitation may be sent to me at the above address.

NCOA firmly believes that this is a social issue and not one of discrimination as some would lead us to believe.

Sincerely,
MICHAEL F. OUELLETTE,

Sgt. Maj., US Army, (Ret),
Deputy Director of Legislative Affairs.

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Homosexuals in the Armed Forces

Whereas, it has been a long-standing policy of the Armed Forces of the United States to deny service to homosexuals in the uniformed components of the Army, Navy, Marine Corps, Air Force, and Coast Guard;

Whereas, there is currently an organized effort with segments of the public and in the Congress of the United States to have the Armed Forces to amend its policy and authorize the enlistment and retention of homosexuals;

Whereas, the enlistment and retention of homosexuals, is not in the best interest of preserving high morale and good discipline in the Armed Forces of the United States, and is incompatible with maintaining good order among uniformed members of the military services,

Whereas, homosexual conduct is an offense under the Uniform Code of Military Justice;

Therefore, be it

Resolved, That the membership of the Non Commissioned Officers Association of the United States of America, hereby declares its unanimous support for the current Department of Defense policy, DOD DIRECTIVE 1332.14 January 1982, which reads in part:

'Homosexuality is incompatible with Military Service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the military services to maintain discipline, good order and morale; to foster mutual trust and confidence among service members; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security.'

Be it further

Resolved, the Association shall actively oppose legislation or regulation directing the recruitment or retention of homosexuals in the Armed Forces.

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[Page: S1300]

The Retired Enlisted Association,

Government Affairs Office,
Alexandria, VA, June 29, 1992.

Hon. John McCain,
Ranking Minority Member, Subcommittee on Manpower and Personnel, Senate Committee on Armed Services, Washington, DC.

Dear Senator McCain: On behalf of the more than 58,000 members of The Retired Enlisted Association (TREA), I am writing to express our strong opposition to S. Res. 236, a Resolution 'expressing the sense of the Senate that the President rescind DOD Directive 1332.14, section H.1, which bans gay, lesbian, and bisexual Americans from serving in the Armed Forces of the United States.'

It is obvious the sponsors have never lived for years aboard a man-o-war, as so many enlisted Navy personnel do, for example.

Proponents of S. Res. 236 site the costs to DOD when involuntarily separating homosexuals from the Armed Forces. What all neglect to mention is that homosexuals enlisting or receiving a commission have misrepresented themselves and entered into a fraudulent enlistment.

Overlooked, is the potential impact on recruiting. Each year the services recruit tens of thousands of high school seniors into the Delayed Entry Program (DEP). The DEP program allows the service to guarantee a specific school months ahead of graduation from high school. Many of these same high school seniors are 17 years old and thereby require parental consent. This makes one wonder, how many heterosexual parents are going to consent or encourage their young sons and daughters to join the service should S. Res. 236 become law.

We respectfully urge you to offer your strongest opposition to S. Res. 236.

Very respectfully,
JOHN M. ADAMS,

MCPO, USN (Ret.),
Director of Government Affairs.

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P. Resolution No. 93-7

RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

UNIFORMED SERVICES POLICY REGARDING HOMOSEXUALS

Whereas, allowing acknowledged homosexuals to serve in the military will impair the Department of Defense's capability to provide adequate national security; and

Whereas, the Uniform Code of Military Justice, an Act of Congress, prohibits sodomy and other deviant behavior on the part of service personnel; and

Whereas, the special conditions and operational demands related to military service, especially in wartime, are unique to serving in the military and must not be confused with conditions prevailing in society as a whole; and

Whereas, heterosexual personnel experience significant stress when forced to associate with overt homosexuals in close quarters, lacking privacy and during life and death situations; and

Whereas, forcing heterosexual military personnel to serve with overt homosexuals threatens morale, discipline, and esprit de corps, that which is at the core of combat effectiveness; and

Whereas, service in the armed forces is not a right but a unique calling, entered into by those who meet stringent physical and mental requirements; and

Whereas, discrimination related to behavior and lifestyle must not be confused or equated with that based on gender, race or religion; Now, therefore, be it

Resolved, That the Reserve Officers Association of the United States, chartered by Congress, urge the Congress and the uniformed services to sustain policies excluding homosexuals from the uniformed services.

This supersedes Resolution No. 91-57.

Note: This is not an official ROA resolution until adopted by the National Council/Convention.

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American Security Council,
Washington, DC, January 29, 1993.

Hon. John McCain,
Russell Senate Office Building, Washington, DC

Dear Senator McCain: We are writing to strongly urge you to vote in favor of the amendment that will be offered by Senators Bob Dole, Strom Thurmond, and Dan Coats in support of the current ban on homosexuals in the armed forces. We have been in contact with ASC members and supporters throughout the nation, and we can tell you they are vigorously opposed to President Clinton's decision.

For 37 years the American Security Council and its members have worked to safeguard U.S. national security interests while promoting a world of free nations at peace. Today, we are focusing our efforts on developing a bipartisan strategy for the 21st Century--a strategy for 'winning the peace' in a post-Cold War world. We believe a key element to our success in the Cold War, and a critical element in maintaining peace in the future, is the readiness, morale, and professionalism of our armed forces.

Because of this, we were very dismayed by President Clinton's decision to issue an Executive Order repealing the current ban on homosexuals in the armed forces. We strongly urge you to weigh carefully the concerns and difficulties which have already been expressed to you by the entire national security community. These are thoughtful men and women whose professional lives have been devoted to improving the quality of our fighting forces. They are open-minded and compassionate, and they have the best interests of the country and military at heart.

As you may know, the American Legion, the Veterans of Foreign Wars, the Association of the U.S. Army, the Navy League, the Air Force Association, the National Guard Association, the Marine Corps League, the Reserve Officers Association and the Retired Officers Association have all joined ASC in going on record in support of the ban. Letters, statements and resolutions from all of these groups have already been sent to your office.

Our nation's veterans groups urged President Clinton not to issue this Executive Order before the men and women most affected by this proposal had an opportunity to be heard and their concerns addressed. This is a major policy change with far-reaching implications, and we regret that the President acted so suddenly.

Military service is unique and vastly different in both working and living conditions from private and public sector occupations where employees are free to come and go as they please. The military institution, with its mandatory sea duty, field deployments and combat operations, necessarily infringes upon personal privacy and forces intimate living conditions unlike those experienced in any other community or profession.

Years of military experience suggest that when homosexuals are thrust into this environment, the impact undermines morale and discipline to the detriment of the essential mission. This is an even more significant factor at a time when we are undergoing a massive drawdown of the fighting force. The result of this kind of social engineering within our all-important defense community can be nothing but disastrous.

Further, the military institution must act in loco parentis for the young men and women entrusted to its care. Recruiting efforts can only suffer, risking the vitality and quality of the forces. Many parents will discourage their sons and daughters from joining an armed service forced to accommodate gay lifestyles.

The basic issue addressed by the Dole/Thurmond/Coats amendment is national security, not the alleged `rights' of any group of citizens. We strongly recommend that you respect the advice of our senior military officers and all of the nation's veterans groups. We hope you will not vote for a policy that would put our national security at risk.

ROBERT H. SPIRO, JR., PH.D.,

Vice President, Former Under Secretary of the Army, Carter Administration,

JOHN M. FISHER,

Chairman and Chief Executive Officer.

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Navy League of the United States--Board of Directors' Meeting

MINUTES

The meeting was called to order at 8:30 a.m. by the National President, William C. Kelley, Jr.

The following National Directors were present:

NEW ENGLAND REGION

Charles L. Cashin, Jr., Raymond R. Couture, Daniel D. Gallagher, William C. Kelley, Jr., Harry W. Konkel, Ivan R. Samuels, Robert W. Saul, Jr., and Robert W. Selle.

EMPIRE REGION

Earnest G. Campbell, Kenneth A. Deegan, John H. Reilly, Jr., Richard W. Scheuing, Austin N. Volk, Arthur D. Ward, and William E. Weisert.

LIBERTY REGION

Ludevit Cerven, William H. Cowper, John Dalton, Timothy O. Fanning, John D. Faulds, Richard Herb, Edwin E. Kraft, Janet F. MacInnes, Donald R. Misura, Robert Mulford, Albert S. Ogden, John Rogge, John J. Sweeney, Elizabeth W. Trimble, George J. Trimble, and E. Howard York.

MID-ATLANTIC REGION

Donald F. Bartley, Calvin H. Cobb, Jr., Winifred Q. Collins, Burton L. Doggett, Albert H. Friedrich, Larry D. Hamilton, Steven L. Hammer, Michael J. Hutter, Billy Kellum, Lou Kriser, Jerome Rapkin, Stewart E. Reuter, William G. Sizemore, Jacquelyn C. Smith, Ralph Solberg, and Suzanne B. Williams.

SOUTH ATLANTIC COAST REGION

Edith E. Calliham, Gerald F. Corcoran, Dale Lewey, Hugh H. Mayberry, Arlie McNeil, Owen W. Siler, and Robert Van Nuise.

FLORIDA REGION

Herbert A. Jordan, Jr., Robert C. Morrison, Henry C. Petri, G. Rodman Porter, Jr., John J. Spittler, and Stewart R. Sprung.

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SOUTHERN REGION

Boykin R. Dodson and Walter H. Reese.

SOUTHWEST REGION

Ronald W. Bradley, Carter B. Conlin, Raymond L. Nelson, J. Wayne Trimmer, J. Frank Williams, and Tommy C. Wimberly.

GREAT LAKES REGION

George E. Burlingame, Fred D. Carl, Margaret D. Christie, John D. Crawford, Howard R. Doud, Rosalind K. Ellis, Morgan L. Fitch, Jr., James A. Hotham, Robert W. Mitchler, Sarah J. Whitlock, and Roycealee Wood.

UPPER MIDWEST REGION

Gordon E. Loffhagen.

CENTRAL MIDWEST REGION

Charles W. Boswell.

ROCKY MOUNTAIN REGION

Joseph Y. Miller IV and Paul R. Streich.

CARIBBEAN REGION

Joseph S. Galbraith and Wallace Valencia.

PACIFIC SOUTHWEST REGION

Pamela K. Ammerman, John R. Anderson IV, Mary E. Barrett, Jewell H. Bonner, Patricia Ann Brill, James C. Cecil, Jr., John R. Fisher, Walter F. Heisey, Frances Z. Heppe, Herbert Hirsch, Glen J. Huber, Seymour Knee, Donald A. Lambe, Raymond W. Lusby K. A. Moras, Jack H. Morse, Robert L. Murphy, Anthony Pearson, Dwight D. Perry, Edna M. Ralston, John M. Rau, Katherine O. Rogerson, William R. Sammons, Mildred A. Talley, and Charlotte Thompson.

PACIFIC CENTRAL REGION

David M. Albin, Evan S. Baker, Charles J. Beasley, Leonard H. Bregman, Genie Cancellier, William N. Durley, Stanley E. Ellexson William R. Gaynor, T. Cole Hackley, Paul E. Hazelrig, Sr., Ralph P. Hill,

Lorraine D. Hughey, Josephine M. Hutchinson, Willis E. Reed, John H. Roscoe, Henry J. Warren, Robert C. Whitten, Jr., and Jacquelin G. Wilson.

NORTHWEST REGION

Robert E. Bateman, Marilyn E. Crist, Steven D. Gann, Hubert Glenzer Dewitt James Griffin Charles E. Krischano, Jean Look-Krischano, Henry M. Robinett, and Harold H. Vlist.

PACIFIC AREA REGION

Pasha Baker, Ted M. Damron, Harold B. Estes, Alexander Gaston, J. Walsh Hanley, Myron Haynes, Jonathan Hodgkinson, Alan S. Lloyd, and Paul A. Nelson.

EUROPEAN AREA REGION

Guy M. Newland and Robina Townes-Cornille.

The President stated that a quorum was present.

`Now therefore be it resolved, by the National Directors of the Navy League of the United States at their meeting on November 16, 1992, that the Navy League of the United States supports the statement of the Chairman of the Joint Chiefs of Staff who said `The Joint Chiefs of Staff and the senior commanders continue to believe strongly that the presence of homosexuals within the armed forces would be prejudicial to good order and discipline.'

LINDA TRUMP,

Director, Executive Services.

WILLIAM G. SIZEMORE,

Corporate Secretary.

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Alexandria, VA,
November 24, 1992.

President-elect Bill Clinton,
Governors' Mansion, Little Rock, AR.

Dear President-elect Clinton: I am writing you to express my deep concern over your pledge to lift the current order which bans homosexuals from serving in the military.

I am a 1974 graduate of the U.S. Military Academy at West Point. I served for 5 years in the Army in various assignments as a combat arms officer. These assignments included Korea and the 3rd U.S. Infantry, otherwise known as the Old Guard of the Army. I currently reside in the Northern Virginia area and work as a consultant within the information technology field.

My concern over your pledge goes to the very core of the future readiness of our nation's defense as well as to the moral climate within our nation. I can best reflect my concerns by raising other questions which you as the Commanded-in-Chief and other military commanders will be faced with:

1. Recognizing that the sexual drive within us is one of the strongest (if not the strongest), how will soldiers feel when they are faced with the prospect of sharing the most intimate of environments with people who potentially could find them sexually attractive?
2. Given these attractions, how will units function properly when such attractions lead to unwanted sexual overtures by one soldier towards another, thus breaking down the trust that is so critical for a unit to function during combat?
3. How will the military address the likely prospect of homosexuals seeking such privileges as dependent medical and dental care for their partners in much the same way as cities such as San Francisco have mandated within 'domestic partner' programs?
4. Once homosexuals are given the privilege to serve within our nation's military, how will the military respond to the requests of bisexuals to be given the same privilege?
5. How will the service academies handle openly homosexual students?

This list goes on and on. I know I speak for many when I say that lifting the current ban will be tantamount to destroying the cohesiveness that is vital for our nation's defense personnel.

I would like to add one more point: As a black American, I find it extremely offensive and disparaging for anyone to compare the lifting of this ban to that of the racial integration of the services which began in the late 40's. It indeed tarnishes the valor and memory of all those brave soldiers who served under conditions that I never had to experience in order to pave the way for me to attend one of the most prestigious schools in America.

I strongly urge you to re-consider this pledge for the good of our military, its readiness, and for the good of our nation.

Sincerely,

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Brandywine, MD,
January 12, 1993.

Hon. John McCain,
Washington, DC.

Dear Senator McCain: I am an Army Captain, and I want to encourage you to do everything possible to stop President-Elect Clinton's proposal to lift the ban on homosexuals in the military. I believe this action would have a dramatically negative effect on military morale, discipline and readiness as well as undermining public confidence in our armed forces.

Everyone has rights, but not everyone has the right to serve in the military. The military discriminates against the handicapped, drug users, and criminals, with good reason. Imagine the consequences of

nearsighted pilots, chemically dependent tank drivers or soldiers who are forced to depend on the actions of a known criminal. They do not belong in the military and neither do homosexuals.

In ten years I have seen hundreds of training hours lost to sexual discrimination cases. If the ban on homosexuals is lifted the number will increase ten fold. Every time a homosexual soldier receives even a slightly negative report he will be able to claim sexual preference discrimination. This will only further detract from training and add to an already burdensome amount of paperwork.

Heterosexual male soldiers will not follow homosexual leaders. I base this claim, not just on hypothesis but examples in units in which I have served. Soldiers, especially those in combat arms, will not tolerate known homosexuals in their unit. It is detrimental to morale and order to have soldiers worry about their bunkmates' sexual preferences. The result of such situations is usually violence. Comrades of mine in the Navy are particularly worried about their rights as heterosexuals, when they are forced to share crowded ship-board quarters with known homosexuals.

The military is aware that there are homosexuals presently serving and this has already created unit disruptions. My wife served for four years in the Marines and was approached by lesbians several times. One even threatened to kill herself if my wife did not give in to her advances. That did not improve the morale of her unit. The trust that creates cohesion and fighting spirit is lost. How much more common will this scene become when homosexuality is condoned?

I believe the military is supposed to represent the finest ideals of American society not the opinions of a deviant minority. Basic biology demonstrates that homosexuality is unnatural. If the military is not allowed to discriminate against `sexual preference,' will homosexuality be the limit or will other sexual preferences like bestiality and pedophilia be accepted as well? Will they soon be considered normal behavior too? Will the military soon be unable to discriminate against anyone? Like dozens of other officers I have spoken with, I will seriously consider resigning if this new measure is put into effect.

I adamantly urge you to do everything you can to stop this proposed measure. If you do not believe me, believe General Powell, this is not a good idea.

Sincerely,

S.A. Underwood,
Captain, U.S. Army.

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Phoenix, AZ,
January 25, 1993.

Mr. Les Aspin,
Secretary, DOD, The Pentagon, Washington, DC.

Dear Mr. Secretary: I write with the strongest of objection to the fact the President wishes to change the Military's rules re gay individuals.

I served as an enlisted man with world War II and Korean service. I have watched the great improvement in our services the past decade.

It is simply wrong to create special rules or circumstances for the gay. These people choose their life style. Will we see special Army units exclusively of gays or perhaps an air force wing manned by gays?

How do you expect our military leaders to develop pride, morale and teamwork with their officers and men with special rules and or treatment?

Homosexuality is immoral. It contributes to the present problem of AIDS in our country. As a person I would not want to serve in a military that has special rules for gays. I would not want my children to serve either. Aboard ship the quarters are close. In training, work and combat our men and women must depend on one another to perform duties. I would not want to rely on an individual or group that I knew to be gay.

It is just as shameful that apparent political expediency results in such requests. I am saddened to think our nation must stoop to such low depths. Please remember our military is vital and should be treated honorably, not shabbily. Also, I remind you New York, San Francisco and the Washington beltway are just part, not all of America.

Cordially yours,
Richard Wagner.

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From the Wall Street Journal, Dec. 2, 1992

[FROM THE WALL STREET JOURNAL, DEC. 2, 1992]

Gays in the Military? A Cautionary Tale

(BY KEVIN M. MCCRANE)

Bill Clinton's desire to lift the ban on homosexuals in the military brings to mind a troubling incident from my own military experience more than a generation ago.

When I turned 18 late in 1945 I discovered that I had missed the war but not the draft. After five weeks of boot camp, I was shipped to San Francisco's Treasure Island, the Navy base where new recruits waited to receive their orders.

It was dark and raw as only San Francisco can be in January when five of us mustered on a pier to await a ship's boat from the USS Warrick. The new recruits were told the Warrick was an Attack Cargo Auxiliary, which sounded promising. We soon discovered this was a fancy name for a cargo carrier. Even so, we were excited at the prospect of shipping out. Lugging our bags, we arrived on board late at night. We unhooked our berths from their vertical positions and settled down to sleep.

The awakening was sudden, panic-filled. A hand was caressing my leg, running up the inside of my thigh. A dim figure ducked away as I lashed out, kicking, swinging a fist and striking air. There was no more sleep that night.

Our voyage began the next day, our destination Honolulu. But the excitement was gone, at least for me. At the end of a long day riding the sea's rolling swells, I took a 12-inch box end wrench from the engine room and retreated to my berth. Hanging on to the wrench under my pillow, I slept.

My sense of unease did not go away even when the seasickness passed. On the fourth day at sea I visited the ship's post office. The second-class petty officer manning the tiny cubicle greeted me warmly.

Grinning broadly, he stepped back from the counter, dropped his dungarees, fondled himself and made an obscene invitation. I walked away.

Whom do you tell? I chose a third-class petty officer on my watch. He laughed at what I told him. 'You're on a French cruiser, kid.' He told me to watch out.

It was in the open now, a subject for discussion among the new recruits. Each of us had been accosted, patted, propositioned. Though we were in different divisions, we flocked together for meals, averting our eyes when one of 'them' leered in our direction.

There were five such aggressive homosexuals that we knew of on board this ship with almost 250 men. They were all petty officers. Their actions were enough to poison the atmosphere on the Warrick. Meals, showers, attendance at the movies, decisions about where you went on the ship alone--all became part of a worried calculation of risk.

After two weeks at sea, I received the whispered news that the smallest and most vulnerable of our 'team' had been sodomized in the paint locker. When I looked at the bearer of this news, I saw that there were tears in his eyes. 'Why are they doing this to us?' he asked.

It was a good question. The comments of some petty officers suggested that the rapid discharge of so many veterans at the end of the war had brought with it a slackening of discipline. On board the Warrick this disciplinary neglect had loosened the restraints on homosexual behavior--the threat of discharge was the surest of these--and created an atmosphere where exhibitionism and lewd action were commonplace.

All homosexuals aren't rapists. But in this closed male society, with its enforced communal living, unchecked homosexual appetites wrought havoc. The atmosphere on the USS Warrick in January of 1946 does have a present-day parallel--the atmosphere of fear that rules in today's prisons.

Is there a lesson here for Mr. Clinton? I think so. The U.S. Navy certainly won't turn into a collection of horror ships like the Warrick if he succeeds in ending the ban on homosexuals in the military. But my experience does suggest that military officials are right to worry that 'good order and discipline of the services will be impaired' if the ban is lifted.

A postscript: When the Warrick reached Pearl Harbor in that long-ago winter, a new executive officer reported aboard. On the sixth day in port the PA system blared a summons 'for all those personnel being transferred to assemble at the quarterdeck.'

I joined the rush topside to see who was going ashore. The ship's rail was lined with crewmen cheering as five petty officers debarked into a P-boat.

I went below decks and ran back up. When the P-boat cleared the side, I dropped my box-end wrench in to the blue waters of Pearl Harbor.

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Tucson, AZ,
January 22, 1993.

Hon. John McCain,
U.S. Senator, Tucson, AZ.

Dear Senator McCain: I am writing this letter to urge you to oppose the proposed action of President Clinton that would allow known homosexuals to remain in or be allowed to join the United States Military.

I am a military wife. My husband has proudly served this nation for 21 years. I am a registered voter in the state of Arizona, and we are stationed at Davis-Monthan AFB. However, my husband has recently been sent to Saudi Arabia.

Through the Uniformed Code of Military Justice [UCMJ], active duty personnel may not strike, organize protests, or any other such activity that is the normal right of the American population. This is the very code of laws enacted by Congress that an Executive Order allowing homosexuals in the military would violate. We have only our representatives in Congress to help us fight our political battles.

Although we feel that there should be supportive government programs to help rehabilitate the people who suffer from this very sad physiological psychological illness, remaining in the military should not be allowed. If we had effective rehabilitating programs, these patients could then take their rightful place in any society.

We have programs to rehabilitate substance abusers and child abusers, in the hope that these programs would allow people to be rehabilitated and stop the cycle of these problems. So to with the homosexual. If we can control this illness and break the cycle, we will then be able to get an upper hand on other illnesses, such as AIDS.

By the very nature of the military lifestyle (i.e. barracks living, combat living arrangements, etc.), this is not an environment that would benefit the homosexual.

Senator McCain, I urge you to help fight this proposed violation of the Uniform Code of Military Justice that our military personnel must be ruled by. Please seek alternative measures to help the victims of this illness.

Sincerely,
Carla S. Dupuy.

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January 29, 1993.

Hon. John McCain,
Senate Office Building, Washington, DC.

Dear Senator McCain: As a World War II veteran, decorated for valor, authorized to wear the Purple Heart with a cluster, a former rated military paratrooper and pilot, who has served in virtually all enlisted and officer grades from Private to Lieutenant Colonel, I urge you and your colleagues in the Senate not to allow a naive, draft-dodger President to over rule the wisdom of the Joint Chiefs of Staff of the United States on the matter of `gays.'

My personal philosophy allows me to believe that any relationship between two consenting adults is acceptable. However, this liberal philosophy does not allow me to accept the arbitrary imposition of `gays' on the finest military establishment in the world, against the advice of the Joint Chiefs of Staff, by a President whose qualifications to make such a decision are totally absent in the face of his experience.

It is not the rights of `gays' that are at issue, but the rights of `non-gays.' Moreover, beyond the issue of `gays' entitlements to serve are a myriad of other related and associated issues which ought to be fully examined prior to the proposed decision of an inexperienced President.

Therefore, I urge that you and your colleagues in the Senate move to prevent the President from making a premature judgement, one that could have a significant impact on the morale and attitude of the national military establishment, without a comprehensive examination of the matter and the full support of the Joint Chiefs of Staff.

Respectfully yours,
Stanley C. Waldner,

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Paradise Valley, AZ,
January 19, 1993.

President William J. Clinton,
The White House, Washington, DC.

Dear President Clinton: On the eve of your inauguration I am saddened by the thought that I may no longer be able to encourage my grandchildren to follow in my footsteps by seeking appointments as cadets at the country's military academies. That change in my position will certainly occur if homosexuals are knowingly allowed in the military.

Having served this country in ranks from private to colonel of infantry and commanded all units from squad through brigade, I have a pragmatic understanding of the trauma which can be inflicted upon young men who are naive and/or physically, mentally, or morally weaker than others. I offer three examples of which I have personal knowledge.

While attending officers candidate school at Fort Benning in 1946-1947 I was in a company in which more than twenty young men (mostly 18 to 20 years old) were first invited singly and in pairs to parties in the local community. After they consumed copious amounts of alcohol they were inducted into homosexual activities. The civilian homosexual organizers of the party photographed them, then threatened the photos would be sent to the soldiers' commanding officer if they did not bring more of their unsuspecting barrack mates to the next round of parties. Fortunately, one young man did not comply. Instead he informed his commander and the Georgia Bureau of Investigation. The lives of the more than twenty men who were discharged from OCS were undoubtedly negatively affected. Whether any went on to practice homosexuality and lure more young men into that practice, I do not know. However, it is fair to say that all those young men were negatively impacted by the events described. I believe that many suffered from changes in self-image and loss of self-esteem. If you want to verify that story, check the Infantry School's archives for OCS Class 536, graduated March 28, 1946.

A second threat to young military men is persuasion or coercion by a homosexual officer into accepting his sexual advances. I personally saw that type of mistreatment in my first troop assignment out of West Point. My company commander always had two or three specially selected recruits as his messengers or aides. When the unit went to the field for training, he and his young group would stay in barracks. When unable to avoid field duty, he had a large tent set up where he and his `aides' stayed. At the time I was too naive to realize what was happening. It was only after leaving that assignment that I read the commander had been discharged as a homosexual. I suppose one of his aides objected to the inappropriate personal attention. Or perhaps one of them reported him in a rage of jealous spite. Whatever the reason, hundreds of young recruits passed through that unit for training every eight weeks, so the homosexual company commander had a wide selection

of young men to prey upon while neglecting his duties to the rest of his men and to his country. Command authority over others is very persuasive and can be intimidating. To misuse it is a grave disservice to all involved.

A third and different kind of episode occurred much later in my career. This was a typical case of the barracks bully. It seems that when men are placed in close quarters, as they are in a 40 to 60 man barrack, there is often a struggle to determine who is strongest, toughest and meanest. When that has been determined, that barracks bully often dominates all others in every way. He selects a few other toughs and rules the barrack when the non-commissioned officers are not there. So it was when I commanded a battalion at Fort Lewis. It was reported to me that such a bully and his henchmen were pulling young soldiers out of bed at night, taking them to the latrine and forcing them into sodomy and oral sex acts. When told of this, I immediately had the bully arrested. Subsequently it was learned he had murdered his brother and so was returned to his home town for prosecution. Although the bully was gone, he had left some shattered, shamed and forever changed young men in his wake.

I know these examples are unsavory and perhaps gross; but they are real stories of the kind of things that happen when people with unnatural and unfettered sex drives are placed in a position to be able to influence, coerce and bully young, immature and often innocent men. I believe strongly that we are obligated to protect our young servicemen from unwanted attentions similar to those described above. Placing them under command of homosexuals, or in barracks, foxholes, ship berths, or other close quarters with other men who seek sexual pleasure with other men is to purposely expose them to sexual advances which negatively and severely impact their lives, and those of their loved ones, forever. We certainly would not allow men who are naturally sexually attracted to females to live in open barracks with them.

On the battlefield soldiers often mix their blood as they tend their fallen comrades, or are tended by them. How will their exposure to long-term death from AIDS be rationalized if homosexuals are allowed to serve? Since it is well known that male homosexuals are the largest population of AIDS carriers in the country, it would seem extremely injudicious, if not reckless, to expose servicemen to their blood. The battlefield is not a neat place where gloves and masks can be worn.

If homosexuals are accepted in the armed services and their lifestyle accepted as an 'alternative', how does a commander prevent open sexual coercion by subordinate commanders of their subordinates? How do commanders control open homosexual acts in barracks, since they would then be accepted as an 'alternate lifestyle'? How do commanders get rid of barracks bullies who force themselves on others and then coerce them into silence?

The young servicemen who are affected by your decision may one day fight, be maimed, and die as a result of world events and your decisions. If they are expected to make those sacrifices, let them understand you respect them and their right to security in what little private life they have, that they need not fear sexual harassment by their officers, nor fear undue exposure to AIDS in peacetime, or on the battlefield.

It has been a great privilege for me to serve with and fight alongside our magnificent American infantrymen. They are tough, dedicated and skilled soldiers, on whom we place onerous burdens of killing and being there when their friends fall in combat. They will carry those burdens born of battle with them for the rest of their lives. The scars can never heal. I implore you not to add further burdens and scars on their psyches by exposing them to homosexuality as an acceptable lifestyle in our armed services.

Sincerely,

Robert L. Sears,

Colonel, Infantry, U.S. Army, retired, U.S. Military Academy, class of 1952.

[Page: S1303]

P.S: It is with great sadness that I just read of your decision to implement a two phase plan for integration of homosexuals into our armed services. By that act you have diminished greatly the effectiveness of our armed services as effective implements of the extension of political power. You have already demonstrated quite clearly that you are unworthy of being Commander in Chief of our armed services.

I, and others who proudly served are saddened and dismayed by your decision.

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January 29, 1993.

From: Dennis Roos, Hewitt, NJ.

To: Senator John McCain, Washington, DC.

Dear Sir: I am a proud veteran of the US Army. I had the distinct privilege to serve while President Reagan was the Commander in Chief. I come from a family that believes very strongly in the American ideals of God, country & family. That the American dream is alive for all who will work for it, it was not something for the government to hand out to everyone.

My father instilled all this into us as well as the ideals of the Republican Party. Having served in the military, as you have, I am offering you my support in your fight against lifting the ban on homosexuals in the armed forces. I firmly believe what Mr. Clinton wants to do with this ban will have the most adverse affect on the moral, discipline, & cohesivness of our armed forces.

I do not believe that the homosexuals constitutional rights are being infringed upon. If a person was joining the military and is either over weight, or a single parent, or does not have a highschool diploma, these are grounds for not being admitted to the military. Are their rights not being infringed upon also? Of course not. It is being done for the betterment of the armed forces.

I only hope your leadership, as well as the leadership of the other Republican Senators and Congressman will be enough to stem this social experimentation madness with the military. I wish that I had a Congressional Representative of your caliber instead of the Liberal Democrats that do represent the State of New Jersey. God help this country if Mr. Clinton and the other liberals that did not have the guts to serve his country when they were called upon, but now think they understand have the military should be run, get their why. If their is anyway that I may be of service to you to help thwart the democrats shenanigans on lifting the homosexual ban in the military, I would only be to happy to assist you. Good luck and Godspeed to you.

A great admirer of yours.

Sincerely,
Dennis Roos.

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Tucson, AZ,
January 26, 1993.

Hon. John McCain,
U.S. Senate, Washington, DC

Dear Senator McCain: If you think well of the enclosed letter, would you be kind enough please to enter same in the Congressional Record in order that it might be seen by every member of the U.S. Congress?

Thank you ever so much.

Respectfully,
J.B. Chickering.

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Tucson AZ,
January 26, 1993.

Hon. William Jefferson Clinton,
President of the United States, The White House, Washington, DC.

Dear Mr. President: Please allow me to add my voice to the legions beseeching you to reconsider your plan to admit homosexual people into the Armed Forces of our blessed nation.

On January 25, 1993, your distinguished Communications Director Mr. George Stephaopoulos referred to your plan as 'progress in civil rights, in ending discrimination.' Civil rights are vital, to be sure. However, Mr. Stephanopoulos' expression misses the mark in two vital respects: (1) there is crucial distinction between civilian life and military life, which will be ignored, through ignorance or otherwise, to our national peril; and (2) U.S. Constitutional law does not prohibit 'discrimination' but prohibits 'unreasonable discrimination.' Indeed, reasonable discrimination abounds, lest anyone could practice medicine or play pro football or drive a car, etc. etc. The issue at hand is not whether it would be discriminatory to bar 'gays' from the Armed Forces, but whether it would be 'reasonably' or 'unreasonably' discriminatory to do so. And intelligent resolution of the issue is manifest in the lessons of history, religion, experience and morality.

The secular lessons of history record that each and every nation or civilization which has ascended to world leadership throughout all time has ultimately declined and fallen therefrom via moral devaluation. The British historian Arnold Joseph Toynbee, in referring to this phenomenon as 'psychological indolence,' aligned his thesis with the decay theory of the German Philosopher of history Oswald Spengler, author of 'The Decline Of The West.' Like Spengler, Toynbee saw the development of historical happenings in terms of civilizations rather than nations per se; but unlike Spengler, Toynbee did not see such civilizations as organically doomed, but with destinies dependent upon their reactions to certain challenges, i.e. their ability, or their inability, to strike a healthy balance between the extremes of excess; (Nazism is an apt illustration of one such extreme; Sodom and Gomorrah's exaggerated emphasis upon 'rights,' to the exclusion of responsibilities, illustrates another).

What do religion and its moral correlatives teach? Without belaboring the entire Old and New Testaments, as I believe that you stand four-square with our Judeo-Christian heritage and ethic, may I simply cite one passage from each:

'* * * if a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination* * *' (Leviticus 20:13)

'And likewise also the men, leaving the natural use of the women, burned in their lust one toward another; men with men working that which is unseemly * * * they which commit such things are worthy of death.' (Romans 1:27-32)

Nor do I find a single passage of Scripture contrariwise.

What about the lessons of experience? To those of us who have experienced the military, those who fought in the trenches via five-decker bunks sardined within the holds deep in the bowels of a troopship in submarine-infested waters, those who huddled together in the mud dodging bullets, bombs and mortar fire, those who barracked in miserably close quarters at sea or on makeshift airstrips, and indeed those who kept the faith at home even as they coveted the opportunity to fight abroad for Old Glory, to all of these and many more, it is inconceivable that any experienced and knowledgeable military commander would break faith with his charges and countenance such perversion as your plan envisions vis-a-vis the unique military force structure requirements, demands and mission.

It appears that the Hon. Secretary of Defense Les Aspin has followed your lead, but question marks appear even here as each time Mr. Aspin presented himself on television and refers to nuclear weapons, he cites same as 'new-kew-ler' (phonetic) weapons instead of 'new-kee-er' weapons.

Just so, some television 'anchors' and reporters are wont to opine that there are 'tens of thousands of gays already in the military.' None of these reporters, however, has ever presented even unsupported evidence to reinforce their allegations, let alone credible evidence documenting same. I can only say that in my decades of military service (prior to my years in academia, in the practice of law, and as an Administrative Law Judge), I never once encountered a single one of these 'tens of thousands of gays,' nor, to my knowledge, did any of my many military friends, classmates and colleagues.

I respect the fact that you have made a pledge, but surely you will agree that upholding a pledge simply for the pledge's sake, and without a cogent underpinning rationale therefor, is risky at best. Nor is there any germane rationale to support the subversion of military imperatives for the sake of someone's demented social agenda, particularly one supported by far less than a majority of the American electorate. Moreover, what more disastrous and grotesque signal could be sent to our American youngsters, the very fabric of America's future. Have we not even yet reached the bottom of the barrel in our callous and negligent treatment of and regard for our young people? (Cf. William J. Bennett's 'The De-Valuing Of America--The Fight For Our Culture And Our Children,' Summit Books, Simon and Schuster Bldg., Rockefeller Center, NYC, 1992)

I pray that you might reconsider your above-identified plan, just as you have had the wisdom to reconsider other campaign plans and appointments, in the light of seasoned reflection and competent counsel by those who have 'been there' in the military leadership that has served America so well and throughout her history; that you might heed America's history under the tested and proven leadership of Washington, Lincoln, Roosevelt, Truman, Kennedy, and Bush; at Valley Forge, Gettysburg, on the beaches of Normandy and Iwo Jima, at Coral Sea and Inchon, in Indochina and the Persian Gulf; and that you will answer the call of the majority of Americans, who would appeal to reason and would have you do so, and to reasonable discrimination, at this turning point, up or down, in American history. Where and when otherwise are we to ever to draw the line in our ongoing abdication of our better natures?

Respectfully,
J.B. Chickering.

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Tucson, AZ,
January 22, 1993.

Hon. John S. McCain,
U.S. Senate, Washington, DC.

[Page: S1304]

Dear Senator McCain: I am extremely concerned about the President's stated view on lifting the ban for homosexuals in the military. Having spent 21 years as an Air Force pilot, I assure you that this action will be devastating to the military. I realize that there are jobs and situations that could probably be conducted with little consequence to morale and performance. Unfortunately, national emergencies (times of increased readiness that require temporary quarters with high stress levels and nonexistent privacy) based on my experience, would be an untenable situation. The President's proposal will result in severe degradation of the Armed Forces. I urge you to use any and all measures available to you to see that the President doesn't pursue this potentially disastrous action.

Sincerely,
Billy Towles.

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January 15, 1993.

Dear Senator McCain: Sir, I am not from Arizona. I am from Florida and I am a Sailor. I have written Senator Mack from my state and also to Senator Nunn on the Armed Services Committee along with my Congressman from my district.

I am going to share some of this information with you because you are also on the Armed Services Committee and you have served in the Navy, and now it looks like they are going to name a Burke class destroyer after you.

I feel that you of all people can understand the feelings of myself and a lot of other sailors out there that don't want homosexuals in our Navy. I can't foresee myself having to live under conditions that have been forced on me by a President that has no comprehension of what it is like to serve in the close confines of a ship that both you and I know about quite well. Secondly, why do I have to put up with this new and ungodly lifestyle. Senator, I am going to tell you what I am going to do. I'm not! Recall that 15 year retirement that Senator Nunn proposed? Looks like President elect Clinton likes it, and I am going to take it and go.

The Navy has changed a lot in the past 14 years since I joined up at 18 but, this is one change that I am not going to put up with. It is not just me. There is a whole lot of Sailors and Marines that I have talked to over at the Pentagon where I work at that are going to either get out or take the 15 year retirement offer. If Mr. Clinton wants to reduce the size of the forces putting homosexuals among our ranks is one way to do it.

What I can see happening is a mass exodus of personnel leaving the service that it will put us below the force manning requirements. This is just the way that I see it starting to shape up. God only knows what they are saying out in the fleet.

Senator, there are a lot of Sailors out there that do think the same way that I do but they won't write to their Congressmen and Senators. So I am kind of writing this for a lot of them too. I am urging you to please do just like what you have done in the past and stand up for us. You have been there, and you know that we don't want this executive order pushed on us.

Thank you for your time and keep the wind at your back and one hand on starboard rail.

Very Respectfully,
Michael F. Allinder, RMI (SW).

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Lifting the Ban on Homosexuals in the Military: What Military Leaders Say

In the debate on whether to allow the President's lifting of the ban on homosexuals in the military to stand, it is important to consider the opinion of current and former military commanders.

General H. Norman Schwarzkopf, U.S. Central Command (Ret.):

`It has nothing to do with sexual preference. It has nothing to do with discrimination against someone because they're gay * * * [W]e learned a long time ago that when gays openly are in small organizations, it tends to polarize that organization completely. Yet, we know that when you go into battle, the most important thing that holds you is the cohesion in the unit, fighting for the buddy on your left or right. So, polarization in units is not in the best interests of the unit.' [Larry King, 9/30/92]

`The experience in the Army has been * * * when you have an open, out of the closet, gay or gays within your organization, and that freely admit that, within your organization it tends to break down the cohesion. So it is not a question of a personal sexual expression, it is a question of cohesion within the organization and that is what makes organizations fight.' [ABC, `20/20', 9/25/92]

`[W]hen men go into battle and fight, they don't fight for God, country, mom, and apple pie. That's maybe what got them into the battlefield, but generally, it is the unit cohesion, it's your buddy on your left and your right, and you're not wanting to let the unit down, that causes you to really end up fighting the enemy.' [ABC, `20/20', 9/25/92]

`We have always discriminated and surrendered civil rights as members of the armed force * * * We discriminate on the basis of age and sex.' [Associated Press, 1/29/92]

General Colin Powell, Chairman, Joint Chiefs of Staff:

`It's just my judgment, the judgment of the Chiefs, that homosexual behavior is inconsistent with maintaining good order and discipline.

`What do I mean by that? I mean that it's difficult in a military setting, where there is no privacy, where you don't get choice of association, where you don't get choice of where you live, to introduce a group of individuals who are proud, brave, loyal, good Americans but who favor a homosexual lifestyle and put them in with heterosexuals who would prefer not to have somebody of the same sex find them sexually attractive, put them in close proximity, ask them to share the most private of their facilities together--the bedroom, the barracks, the latrines, the showers. I think it would be prejudicial to good order and discipline to try to integrate that into the current military structure, and I think that's the significance.' [Hearing of the House Budget Committee on the FY 1993 Budget, 2/5/92]

`Skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.' [Text of letter to Representative Pat Schroeder, Reprinted in Army Times, 5/25/92]

`It is a very big problem for us, and it is not just the generals and the admirals who are saying it. We're hearing it throughout the force.' [Washington Times, 11/19/92, p. 3]

`Gays now exist in the military but they are not openly practicing--they're not openly gay. They have not come out of the closet and that's quite different from them being openly gay * * * With respect to gays--when you're putting two people who have different sexual orientations into that kind of close environment,

can you make it, should you make it involuntary? And which case is that closer to? The racial case or the case of sexual difference?

`I submit that it is somewhere closer to sexual difference and we have to think through very carefully the situation where you are going to place a heterosexual male or female serviceperson into an involuntary intimate arrangement, in terms of privacy, with somebody who is gay.' [`Newsmaker Saturday', 12/5/92]

General Carl E. Mundy, Commandant, U.S. Marines

`I do support the ban against homosexuals in the military * * * I believe that homosexual conduct, that the gay lifestyle, embodies those things that are contrary to good order and discipline in the military.' [`This Week with David Brinkley', 12/6/92]

Admiral Frank Kelso, Chief of Naval Operations

`I believe the current Department of Defense policy on homosexuality is best for the readiness of our Armed Forces.' [LA Times, 1/9/93]

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Washington, DC,
May 8, 1992.

Hon. Patricia Schroeder,
House of Representatives, Washington, DC.

[Page: S1305]

Dear Pat: Thank you for your recent letter concerning the position I took before Congress in February concerning homosexuals serving in the Armed Forces. I have given a great deal of thought to my position and continue to hold the view that the presence of homosexuals in the military is prejudicial to good order and discipline.

This is the policy of the Department of Defense and is supported by all of the Joint Chiefs of Staff. It is also a view held by experts who have studied the sociology of the military for many years. I am including a recent article by Charles Moskos on the subject.

I am well aware of the attempts to draw parallels between this position and positions used years ago to deny opportunities to African-Americans. I know you are a history major, but I can assure you I need no reminders concerning the history of African-Americans in the defense of their Nation and the tribulations they faced. I am a part of that history.

Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument. I believe the privacy rights of all Americans in uniform have to be considered, especially since those rights are often infringed upon by the conditions of military service.

As Chairman of the Joint Chiefs of Staff, as well as an African-American fully conversant with history, I believe the policy we have adopted is consistent with the necessary standards of good order and discipline required in the Armed Forces.

Sincerely,
COLIN L. POWELL,

Chairman of the
Joint Chiefs of Staff.

Don't Ignore Good Reasons for Homosexual Ban

The military's ban on homosexuals is under assault. The pressure comes not only from gay rights groups but from civil libertarians and organizations such as the American Council on Education, the American Psychological Association, the Association of American Universities and the Unitarian Church. The exclusion of homosexuals from ROTC commissioning programs has become the new cause on many college campuses. A threshold was crossed in the current Congress with the introduction of House Resolution 271, which calls for the Defense Department to rescind the ban.

Lawrence Korb raised doubts on maintaining the ban against homosexuals in this space ('Cheney remains silent on thorny social issues,' *Commentary*, Feb. 17). To be sure, Korb argues for 'empirical research' to ascertain if homosexuals can function in military units. Like all opponents of the ban, Korb holds that judgments about individuals should be based on performance, not sexual orientation. When a former assistant secretary of defense for manpower brings the ban into question, something is indeed in the air.

Certainly some of the reasons for excluding homosexuals do not stand up to scrutiny. The assertion that AIDS will be a greater threat if homosexuals are allowed in the military is a facade argument. HIV testing in the military makes the health argument untenable. Further, what if a cure or prevention for AIDS were to be discovered tomorrow? Is the way then clear for homosexuals in the military?

The argument that homosexuals are susceptible to blackmail is logically inconsistent. If one's sexual proclivities do not have to be concealed, they can hardly be the basis for extortion. No evidence exists, moreover, that homosexuals, even under the present rules, have been greater security risks than anyone else. As Defense Secretary Dick Cheney put it, in his now famous words, the blackmail argument is indeed 'an old chestnut.'

Further, no one can seriously argue that homosexuals across the board are ineffective soldiers, sailors, airmen or Marines. Any neutral observer would agree that not only have hundreds of thousands of homosexuals served in the armed forces, but many have done so with distinction. Likewise, no one can deny that some number of homosexuals are serving in the military.

What is at issue is allowing declared gays and lesbians into the military. This is an entirely different kettle of fish from the service of discreet homosexuals in uniform. (Though all are not that discreet, since nearly 1,000 homosexuals are discharged from the military each year.)

Proponents of lifting the gay ban are quick to draw an analogy between the current exclusion of homosexuals and the earlier resistance to racial integration in the armed forces. This is a nice debating point, but the comparison does not stand. A racial category is not a behavior category. Indeed, to lump blacks with homosexuals is an affront to most African-Americans.

The proper analogy between homosexuals and heterosexuals is that between men and women. Sexual orientation is, after all, sexual orientation. Erotic urges are powerful human drives and recognized as such.

Sex between service members does undermine order, discipline and morale. So does invasion of sexual privacy. That is why the military separates the living quarters of men and women. Even in field conditions, the privacy of men and women is maintained to the maximum degree possible.

Nowhere in our society are the sexes forced to endure situations of undress in front of each other. Should we have `empirical research' on the effects on military efficiency of mixed male/female bathing? Most women--and many men--dislike being stripped of all privacy before the opposite sex. Similarly, most heterosexual men and women dislike being exposed to homosexuals of their own sex. If feelings of privacy for women are respected regarding privacy from men, then we must respect those of straights with regard to gays.

Anybody who wants to allow homosexuals into the military must make the same argument for breaking down privacy barriers between the sexes. If members of the armed forces were able to go their own way off duty, as in the case with most civilian occupations, there would be no serious argument against incorporating open homosexuals in the armed forces. But the military is different. It is an institution that requires enforced intimacy and lack of privacy.

Of course there are concealed homosexuals in the military who function just fine. But that is the point. Closet gays do not cause feelings of invasion of privacy precisely because they are covert. One could argue that homosexuals can be accommodated in today's military by rearranging living areas as we already do for men and women. We could have separate homosexual and heterosexual living quarters. Whatever such arrangements might do in the name of abstract individual rights, they raise more problems than they solve. It boggles the mind to think of the stigmas and nicknames that would accrue to all-homosexual groups. In any event, gay rights advocates have never seriously pushed for this option. Separate living arrangement for homosexuals is clearly a non-starter.

So where does this leave us? Because there are foolish reasons for excluding gays from the armed forces should not let us ignore the good ones. Most feminists would not advocate forced intimate living between the sexes. Likewise, enlightened gay advocates should not argue for compulsory intimacy among persons of openly different sexual orientations. The military's ban on homosexuals still makes good sense.

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From the Washington Post, Feb. 6, 1992

[FROM THE WASHINGTON POST, FEB. 6, 1992]

Powell Says Discipline Is Basis of Military Homosexual Ban

The chairman of the Joint Chiefs of Staff said yesterday the military maintains its ban on homosexuals because of potential problems of discipline and morale.

Gen. Colin L. Powell told the House Budget Committee he agrees with Defense Secretary Richard B. Cheney's view that the ban is not justified by the department's onetime contention that homosexuals pose a greater security risk.

Rather, Powell said that homosexual behavior `is inconsistent with maintaining good order and discipline.'

`It's difficult in a military setting where there is no privacy . . . to introduce a group of individuals--proud, brave, loyal, good Americans, but who favor a homosexual lifestyle--and put them in with heterosexuals who would prefer not to have somebody of the same sex find them sexually attractive.' Powell said.

`I think it would be prejudicial to good order and discipline to try to integrate that into the current military structure,' Powell told the panel.

All branches of the military ban homosexuals.

Last July, Cheney said he had `inherited a policy that has been in the department now for many years' and that the policy was `based upon the proposition that a gay lifestyle is incompatible with military service.'

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From the Washington Post, June 28,1992

[FROM THE WASHINGTON POST, JUNE 28,1992]

The Case for a Military Gay Ban

(BY DAVID HACKWORTH)

Rep. Pat Schroeder of Colorado wanted to give women `equality and opportunity' by making them rucksack-toting grunts. Now she aims at putting homosexuals in the foxholes to `end the final bastion of discrimination.'

I cannot think of a better way to destroy fighting spirit and gut U.S. combat effectiveness. My credentials for saying this are over four decades' experience as a soldier or military reporter.

Despite the ban on service by homosexuals, gays have long served in the armed forces, some with distinction. Many perhaps felt no sexual inclination toward their heterosexual fellow soldiers. If they did, they had their buddies' attitudes and the Uniform Code of Military Justice hanging over their heads. Still, I have seen countless examples of inappropriate and morale-busting behavior.

In Italy, for example, in the post-war occupation, a gay soldier could not keep his hands off other soldiers in my squad. He disrupted discipline, mangled trust among squad members and zeroed out morale. In the same unit, the personnel major was gay. He had affairs with ambitious teenage soldiers in exchange for kicking up their test scores. This corrupted the command's promotion system and led to the commissioning of William Calley-like lieutenants not fit to lead combat soldiers.

During my second tour in the Korean War, a gay commanding officer gave combat awards to his lovers who had never been on the line. In Vietnam, a young captain in my unit was asked by the commander to go to bed with him. This almost destroyed the esprit of a fine parachute unit.

These are not isolated incidents: During my Army career I saw countless officers and NCOs who couldn't stop themselves from hitting on soldiers. The absoluteness of their authority, the lack of privacy, enforced intimacy and a 24-hour duty day made sexual urges difficult to control. The objects of their affection were impressionable lads who, searching for a caring role model, sometimes ended up in a gay relationship they might not have sought.

A majority of American citizens, according to polls, support Schroeder's bill. Many people look at the armed forces as they do the post office, the Bank of America or General Motors--an 8-to-5 institution where discrimination on the basis of sexual orientation is against basic freedom, human rights and the American way of life. If these polls are true, a lot of people don't understand what war is about.

Sure, banning gays from defending their country is discriminatory. But discriminations are necessary when a larger public purpose is being served. Civilian standards of fairness and equality don't apply down where the body bags are filled.

On the battlefield, what allows men to survive is combat units made up of disciplined team players, who are realistically trained and led by caring skippers who set the example and know their trade. When all of these factors are in synch, a unit has the right stuff. It becomes tight, a family, and clicks like a professional football team. Spirited men who place their lives in their buddies' hands are the most essential element in warfare. The members of such combat teams trust one another totally.

One doesn't need to be a field marshal to understand that sex between service members undermines those critical factors that produce discipline, military orders, spirit and combat effectiveness. Mix boys and girls, gays and straights in close quarters such as the barracks or the battlefield; and both sexual contact and the consequent breakdown of morale are inevitable.

Many bright people are pushing for the ban to be lifted. I suspect that few if any have been down in the trenches, but I have no doubt their psychological/sociological/political clout will have considerable influence even if they don't have a clue what combat is about.

Unfortunately, most of the top brass won't sound off. They duck and weave and offer hollow and spurious Pentagonese double-talk reasons for continuing the ban--reasons that only fuel the pro-gay argument. But they have told me in the 'G' ring of the Pentagon that they're 'against it, but sounding off would be the kiss of death, like opposing women in combat--a career killer, you know.'

I hope that our lawmakers will visit Quantico and Fort Benning before they vote, and ask Marine gunnery sergeants and Army platoon sergeants what a few gays would do to the fighting spirit of units. These pros told me: Gays are not wanted by straight men or women in their showers, toilets, foxholes or fighting units. They say that in combat young men face death constantly, and what allows them to make it through the hell of it all is a feeling of toughness, invincibility and total trust in their buddies.

My experience with warriors in over eight years of roaming the killing fields in seven wars confirms what these old salts are saying.

A serving lieutenant general recently wrote to me, 'Ask Pat Schroeder if she'd like her kids under a gay first sergeant who might use his rank and authority to demand sexual favors from his subordinate 18-year-old kids. We just had that occur in my command.'

No doubt advocates of gays in combat units will argue that they don't approve of demanding sexual favors and that the first sergeant deserved what he got--a court-martial. The problem is, all the court-martials and regulations in the world can't prevent the kind of morale problems that a change in the law is bound to create. Sure, the first sergeant is serving hard time at Fort Leavenworth, but Pat Schroeder and the two dozen law-makers who support her bill must also ask themselves what happened to the morale and fighting spirit of his unit.

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From the Wall Street Journal

[FROM THE WALL STREET JOURNAL]

Will Courts Uphold Military Ban on Gays?

(BY JUNDA WOO)

Are the courts likely to overturn the ban on gays in the military if Congress doesn't let the Clinton administration do so?

Defense Secretary Les Aspin said Sunday that he warned the Joint Chiefs of Staff that the courts would, indeed, get around to it 'sooner or later' and that the military would be better off cooperating now with the president's proposal to lift the ban.

But gay-rights lawyers say the history of such cases in the courts so far suggests no such legal outcome is imminent. 'It's absolutely not true that the courts are on the verge of striking down this policy,' said Paula Ettelbrick, legal director of the Lambda Legal Defense and Education Fund, a gay-rights legal group.

Only once has a court overturned a military discharge for homosexuality, and that case was decided on narrow grounds. The Ninth U.S. Circuit Court of Appeals ruled in 1989 that equitable rules of fairness barred the Army from discharging a man whom the Army knew was gay when he was drafted. The man had passed several reviews despite the Army's knowledge of his homosexuality.

Attorneys for lesbians and gay men have won some cases in lower courts but have lost on appeal. The courts of appeals in Washington and Chicago have said outright that the military's ban is constitutional, said John I. McGuire, a Los Angeles attorney representing a 12-year Navy veteran discharged in May after publicly declaring his homosexuality.

Ms. Ettelbrick said many military-discharge lawsuits were put on hold in the hope that President Clinton will lift the ban. But if there is a delay, 'we have to think about whether we want to push these in the courts,' she said. 'We don't want to, because we don't think we're going to win.'

One new variable, though, could affect future cases, lawyers say. If the Clinton administration asserted in court that the executive branch no longer wanted the ban, and started making constitutional arguments against it, some judges might change their own analyses of the issues, the lawyers suggest.

Attorneys for lesbians and gay men generally have argued in the court cases that the 14th Amendment's equal-protection clause bars the military from treating homosexual service members differently. The government thus far has always responded that it has legitimate reasons to do so because allowing open homosexuals in the military would harm morale and good order and would allow security breaches. Openly lesbian and gay service members also would face prejudice and even violence, the government has said.

Even outside the military context, gays as a group typically haven't been afforded special protection under the equal-protection clause, unlike, for example, racial or religious groups.

Lawyers for lesbians and gay men are pinning their hopes on *Pruitt vs. Cheney*, a lawsuit in which the Ninth Circuit ruled in 1991 that the government must prove that its arguments on the impact of lifting the ban are grounded in fact. The case, involving a former Army captain discharged after revealing that she is a lesbian, is awaiting trial in California.

The Canadian government, after facing a similar ruling in a Toronto lawsuit last year, opened its military to lesbians and gays just before the case was set to go to trial. The Canadian government, in a decision noted by Mr. Aspin on CBS's 'Face the Nation' program, said it didn't have the facts to back up its arguments. 'You can object and stonewall,' Mr. Aspin said, 'but one of these days we're going to have, like it happened in Canada, where the court suddenly comes in and says, 'You have to, that this is unconstitutional.'

In the Pruitt case, gay-rights lawyers plan to counter government arguments about morale with the Ninth Circuit's statement that it won't accept prejudice within the military as a rationale for a ban. But even if Ms. Pruitt prevails, gay-rights lawyers fear that she would ultimately lose on appeal.

'The Supreme Court is a serious obstacle,' said Kathleen M. Gilberd, co-chair of the Military Law Task Force, a San Diego advocacy group for lesbians and gay men in uniform. The high court has never addressed the issue directly, but gay-rights attorneys believe it won't be sympathetic.

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The Retired Officers Association, Alexandria, VA, December 1992

[THE RETIRED OFFICERS ASSOCIATION, ALEXANDRIA, VA, DECEMBER 1992]

Homosexuals in the Military Research Study

(PREPARED BY SCOTT S. AHLSTRAND, SENIOR ANALYST, THE GALLUP ORGANIZATION, PRINCETON, NJ)

INTRODUCTION

The Gallup Organization of Princeton, New Jersey conducted market research for The Retired Officers Association (TROA) of Alexandria, Virginia. The overall purpose of this market research was to determine, among current TROA members, their attitudes and opinions with regard to the issue of allowing homosexuals in the military.

METHODOLOGY

To accomplish the objectives of this study, The Gallup Organization interviewed 1,013 current TROA members across the continental United States. TROA members were randomly selected from a list of current TROA members provided by the organization.

Respondents were interviewed by telephone between November 27 and December 1, 1992. The Gallup Organization used a multiple-callback methodology in which up to five callbacks were made to the same telephone number in order to eliminate bias in favor of those respondents easy-to-reach. Gallup provided experienced, professionally trained interviewers under the exclusive employment of Gallup. All interviewers involved in this project were briefed specifically as to the objectives and methodology of the study.

All field work was validated at the 10% level by supervisory callbacks. Telephone interviews were monitored internally as part of the ongoing Gallup process for evaluating interviewers. Completed questionnaires were edited and coded independently as a quality-control measure.

SURVEY INSTRUMENT DEVELOPMENT

Items included in the questionnaire were mutually agreed upon by The Gallup Organization and TROA. TROA had responsibility for identifying question areas and information desired. Gallup had responsibility for ensuring that all items were written technically correct and without bias.

STABILITY OF RESULTS

At the 95% level of confidence, the maximum expected error range for a sample of 1,013 TROA members is 3.1%. Stated more simply, if 100 different samples of 1,013 TROA members were chosen randomly from a national sample of TROA members, 95 times out of 100 the results obtained would vary no more than 3.1 percentage points from the results that would be obtained if the entire population of TROA members were interviewed.

REPORTS PREPARED

TROA has been provided a complete set of tabular results by frequency and percentage for each of the major classifications. These tabular results should serve as reference material and be consulted before important decisions are made. This narrative report focuses on what are felt to be the most meaningful findings of this study.

'How familiar are you with the issue of allowing homosexuals in the military? Are you very familiar, somewhat familiar, not too familiar, or not at all familiar with this issue?'

Table 1: Familiarity With Issue of Homosexuals Being Allowed in the Military (n=1,013)

Response:

Very familiar

58

Somewhat familiar

36

Not too familiar

4

Not at all familiar

1

Don't know

1

In general, the respondents showed a high degree of familiarity with the issues of homosexuals being allowed in the military. More than nine-tenths (94%) of the retired officers said they were either very familiar (58%) or somewhat familiar (36%) with the issue of allowing homosexuals in the military.

'Currently, homosexuals are not allowed to serve in the military and an admission of homosexuality is sufficient evidence for discharge. President-elect Bill Clinton has said that he will lift the ban and open the military ranks to homosexuals. In general, would you say that you favor or oppose allowing homosexuals in the military?'

Table 2: Favor/oppose allowing homosexuals in the military

Response:

Strongly favor

3

Favor

10

Net (strongly favor/favor)

13

Oppose

16

Strongly oppose

67

Net (strongly oppose/oppose)

83

Don't know

2

Refused

2

The great majority (83%) of retired officers said they either strongly opposed (67%) or opposed (16%) allowing homosexuals in the military. Respondents in the Navy (85% strongly opposed/opposed), respondents who did not have postgraduate education (85%) and respondents who had recommended the military as a career to either a family member or friend were particularly opposed to allowing homosexuals in the military.

Less than one-seventh (13%) of the respondents said they either strongly favored (3%) or favored (10%) allowing homosexuals in the military.

It should be noted, for the most part, that most respondents had a set opinion with regard to the issue of allowing homosexuals in the military. Only two percent (2%) of the respondents said they did not know whether they favored or opposed allowing homosexuals in the military.

'Currently, homosexuals are not allowed to serve in the military and an admission of homosexuality is sufficient evidence for discharge. President-elect Bill Clinton has said that he will lift the ban and open the military ranks to homosexuals. In general, would you say that you favor or oppose allowing homosexuals in the military?'

TABLE 3: FAVOR/OPPOSE ALLOWING HOMOSEXUALS IN THE MILITARY--BY KEY GROUP
[In percent]

	Strongly favor/favor	Strongly oppose/oppose
Branch of Service:		
Army (n=391)	14	82
Air Force (n=326)	16	80
Navy (n=234)	11	85
Education:		
Less than college degree	13	84
College graduate	11	85
Postgraduate work/degree	15	81
Total (n=1,013)	13	83

`Why do you oppose allowing homosexuals in the military?'

Table 5: Reasons for opposing allowance of homosexuals in the military (n=836; those who strongly oppose or oppose allowing homosexuals in the military)

Response:

Could have a negative effect on morale

20

Could have a negative effect on discipline

11

Close living quarters

7

Don't fit/don't belong

6

I oppose the lifestyle

6

Causes problems we don't need

5

Bad past experience with homosexuals

5

Disruptive

4

Will not work

4

Could affect combat readiness

3

Don't like homosexuals

3

Wouldn't be accepted by other soldiers

3

Don't think it is right

3

Other

20

Don't know

(1)

1 Less than 1 percent mention.

Respondents tended to cite a wide variety of reasons for opposing allowing homosexuals in the military. In fact, they cited so many different reasons, that only two--could have a negative effect on morale (20%) and could have a negative effect on discipline (11%)--received more than seven percent (7%) mention.

In general, respondents who opposed allowing homosexuals in the military tended to cite a disruptive negative effect (on morale, on discipline, combat readiness, lack of acceptance, etc.) as being the primary reason why they opposed allowing homosexuals in the military.

Have you ever personally recommended a military career to a friend or family member? (n=1,013).

Yes--85 percent.

Don't know--12 percent.

No--13 percent.

Approximately five-sixths (86%) of the respondents said they had personally recommended a military career to a friend or family member. This level of recommending military service was consistent across all branches of service and officer types.

If homosexuals were allowed to serve in the military, do you think you would be more likely or less likely to recommend a military career, or would it make no difference on your likelihood to recommend a military career to a friend or family member?

Less likely--51 percent.

Refused--1 percent.

Don't know--4 percent.

No difference--44 percent.

Total population, (n=1,013).

Less likely--53 percent.

Refused--1 percent.

Don't know--4 percent.

No difference--42 percent.

Those who have recommended a military career (n=874).

Approximately one-half (51%) of the respondents said they would be less likely to recommend a military career to a friend or family member if homosexuals were allowed to serve in the military. Slightly less than one-half (44%) said that it would make no difference in their recommendation of a military career, while only three respondents (less than 1%) said that allowing homosexuals in the military would make them more likely to recommend a military career.

Among respondents who had previously recommended a military career to someone, 53% said they would be less likely to recommend a military career in the future if homosexuals were allowed in the military.

'If the ban on homosexuals in the military was lifted, do you think it would have a positive effect, a negative effect, or make no difference for the following? How about ()?'

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TABLE 6--EFFECT ON ALLOWING HOMOSEXUALS IN MILITARY ON VARIOUS FACTORS (N=1,013)
[In percent]

Factor	Positive effect	Make no difference	Negative effect	Net difference
(positive minus negative)	Don't know			
The morale of the military	3	17	78	-
75 2				
Military pride	3	22	72	-
69 2				
The level of trust of troops for one another	4	20		
73 -69 3				

The discipline of the military	4	22	70	-
66	3			
The United States' Combat Capabilities		3	26	
66	-62	4		
The number of individuals signing up for military service		4	29	
58	-54	8		
The right of privacy of individuals on active duty		7	29	
53	-46	9		
The number of resignations from military service		10	29	
49	-39	11		

Respondents were asked to indicate whether or not they thought allowing homosexuals in the military would cause a positive effect, a negative effect or make no difference on various factors involving the military. By taking the number of respondents who said that allowing homosexuals in the military would cause a positive effect on the factor and subtracting out the respondents who said that such an allowance would cause a negative effect, we generate a 'net difference.' All eight of the tested factors in this study had a negative 'net difference' (indicating that for each one, the number of respondents saying that allowing homosexuals in the military would cause a negative effect was greater than the number of respondents saying it would cause a positive effect). Those factors that were most negatively affected (according to the respondents) by the allowance of homosexuals in the military were: the morale of the military (-75% net difference), military pride (-69%), the level of trust of troops for one another (-69%), and the discipline of the military (-66%).

Those factors that respondents believed would be least negatively affected by allowing homosexuals in the military were: the number of resignations from military service (-39%), the right of privacy of individuals on active duty (-46%), and the number of individuals signing up for military service (-54%).

Only one of the eight tested factors--the number of resignations from military service--had at least ten percent (10%) of the respondents say that allowing homosexuals in the military would have a positive effect on that factor.

EFFECTS OF ALLOWING HOMOSEXUALS IN THE MILITARY ON VARIOUS FACTORS (N=1,013), NET DIFFERENCE.

The number of resignations from military service, -39 percent.

The right of privacy of individuals on active duty, -46 percent.

The number of individuals signing up for military service, -54 percent.

The United States' combat capabilities, -62 percent.

The discipline of the military, -66 percent.

The level of trust of troops for one another, -69 percent.

Military role, -69 percent.

The morale of the military, -75 percent.

CRS Report for Congress, Jan. 14, 1993

Homosexuals and U.S. Military Personnel Policy

(BY DAVID F. BURRELLI, ANALYST IN NATIONAL DEFENSE, FOREIGN AFFAIRS AND NATIONAL DEFENSE DIVISION)

SUMMARY

Department of Defense policies concerning homosexuals in military service have recently been the subject of increasing scrutiny and debate. In the 1992 presidential campaign, candidate Clinton indicated that as President he would rescind or modify the military policy excluding homosexuals from military service while maintaining strict limits on the behavior of those who serve.

Current military personnel policy bars homosexuals from entering or serving in the armed forces. Under this policy, individuals who state they are homosexual, engage or intend to engage in homosexual behavior or attempt to marry someone of the same sex are administratively discharged from the military service. In addition, homosexual or heterosexual acts of sodomy or 'disorders and neglects to the prejudice of good order and discipline in the armed forces' are punishable by court-martial.

Advocates for removing the policy view it as a violation of civil rights and fair treatment. They contend that it is unfair to separate individuals from the armed services merely as a result of their 'sexual orientation.' Proponents of the policy cite the need to maintain cohesion, discipline and morale within the working and living conditions imposed as a result of military service. They contend that allowing homosexuals into the service would prove disruptive to unit cohesion and, ultimately, to military readiness.

While an undetermined number of homosexuals have served in the military, such service has been performed without an open acknowledgement of their homosexuality. The question confronting policy makers remains, 'To what extent, if any, would open homosexuality be disruptive to morale, cohesion and readiness in the ranks, and to what extent does any disruption justify discrimination?' Many military leaders, familiar with the military society and its rules believe that the presence of open homosexuality would prove sufficiently disruptive to justify continuing the policy. Homosexual rights advocates, many of whom have also served in the military, believe that not only will disruptions be minimal but that the overall effectiveness and readiness of the force will improve by allowing homosexuals to serve.

Advocates for repealing the policy have generally held that restrictions should be maintained on behavior but that a homosexual 'orientation' alone should not be grounds for dismissal. Distinctions between orientation and behavior, seemingly clear in the abstract, may prove difficult to make in the complex realities of everyday life.

In addressing this issue, President-elect Clinton has suggested that he will consult with a 'committee' and military leaders. Senator Nunn has suggested that hearings will be held on the issue. Congress may also consider other options including the formation of a commission or the enactment of specific legislation. Some observers believe that such military personnel policy changes may be made by President Clinton via either an executive order or what has been termed a 'memorandum of understanding.'

EXECUTIVE SUMMARY OF KEY OBSERVATIONS

Context

The Department of Defense (DoD) policy excluding homosexuals from serving in the armed forces has recently been the subject of increasing scrutiny and debate. This issue has been addressed in a number of fora including the media, college campuses, the courts, Congress, within the Executive branch itself,

among military members, veterans and civil rights organizations, and as an issue in the 1992 presidential campaign. In the 1992 presidential campaign, the Democratic candidate for President stated that, if elected, he would rescind the policy on homosexuals in the military. ¹ Following his election in November, President-elect Clinton has maintained his position on rescinding the policy while considering strict limits on behavior.

Current military personnel policy (see Appendix) excludes homosexuals from entering or serving in the armed forces. Under this policy, persons identified as homosexuals (either through the individual's own statements, attempts to marry someone of the same sex or, by engaging or attempting to engage in homosexual acts as defined) are administratively discharged from the military. Four bills were introduced in the 102d Congress that would eliminate, or encourage the President to rescind, the military policy on homosexuals. While efforts to abolish the policy against homosexuals serving in the military have increased, previous efforts to change the policy have been unsuccessful in Congress. However, it appears that hearings may be held to address the issue in the 103d Congress. ²

Advocates for rescinding the policy view it as a violation of civil rights and fair treatment. They contend that it is unfair to separate individuals from the armed services merely as a result of their sexual orientation. They note that many homosexuals have served with distinction but must live under the constant threat to being exposed and removed from the service. Proponents of the policy cite the need to maintain cohesion, discipline, and morale within the unique environment of military service. They contend that allowing homosexuals into the service would prove disruptive to unit cohesion and, ultimately, to military readiness.

Purpose and scope

This report examines the historical background of laws and DoD policy on homosexuals. Current Defense Department regulations and articles under the Uniform Code of Military Justice are discussed. Next are analyzed various important aspects of the issue including: origins of homosexuality, prevalence of homosexuality, homosexual orientation v. behavior, open v. covert homosexuality, fairness and discrimination, military readiness, sexual harassment, and foreign military experiences with homosexuality.

Other issues of immediate effect relating to the homosexual policy are also analyzed. These include: public opinion, effects on ROTC and recruitment advertising, the use of homosexuality as a means of avoiding service, and the deployment of homosexuals during time of war or crisis.

Finally, this report considers and discusses the issues confronting Congress in the context of a presidential pledge to rescind or modify the military policy excluding homosexuals.

In addition to the sources cited throughout this report, a large number of interviews were conducted with knowledgeable sources, including individuals for and against the current policy. This report considers and analyzes the various issues raised and arguments in favor of or against particular policy positions. However, their inclusion and subsequent analysis should not be considered, in this context, as evidence of congressional support or opposition. Instead, this report is intended to provide a range of views on competing perspectives regarding proposals to change or maintain the current policy on homosexuals in the military.

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HISTORICAL BACKGROUND

Prior to World War I, U.S. military law did not address homosexuality. Although commanders had great discretion in the control and disciplining of their troops, specific laws, regulations or policies addressing homosexuality did not exist. The Articles of War of 1916 (effective March 1, 1917) restricted consideration

of sodomy to cases of assault with the 'intent to commit' sodomy. 3 In 1951, the Uniform Code of Military Justice introduced Article 125 specifically banning sodomy (between members of the same or opposite sex) itself. Cases of assault with the intent to commit sodomy were charged under Article 134, or the General Article.

Despite a lack of laws specifically addressing the issue, numerous policies and regulations allowed for differential treatment of homosexuals or those who manifested homosexual behaviors. Prior to World War II, homosexuals were admitted into the services and, in the case of those who evidenced cross-gender mannerisms, often assigned tasks deemed relevant to the individuals' behavior and lifestyle. ('Effeminate' men were assigned away from the combat arms, for example, and placed in jobs not considered to require particularly masculine qualities, such as clerk, hospital corpsman, chaplain's assistant or camouflage specialties. 4

During World War II, psychiatrists, who at the time tended to view homosexuality as a mental illness, attempted to identify and 'treat' homosexuals in uniform. Numerous efforts to identify and treat homosexuals had mixed results. Failure to respond to treatment often resulted in a Section VIII discharge ('inaptness or undesirable habits'). With the social taboo against homosexuality (resulting in its concealment), the relative flexibility of personnel regulations, the need for personnel during wartime, and the inability of psychiatrists to determine who was homosexual (especially in an era of rushed wartime medical entrance examinations), meant that an undetermined number of homosexuals passed through the services without difficulty.

The policies concerning homosexuality shifted gradually from the 1940s to the 1970s. Early policies were based on a treatment and retention model. Later policies continued to accept treatment but moved increasingly toward separation (and in certain cases, punishment) of known homosexuals. Flexibility was maintained to the extent that certain homosexuals could be retained in situations involving 'heroic service.' Nevertheless, until the mid-1970s, efforts to address the issue remained under a medical model of illness, treatment, and integration into or, later, exclusion/separation from the services.

'In 1966, for example the Army required a psychiatric examination prior to separation for homosexuality. In 1970 the homosexuality regulation was superseded and was integrated into regulations that covered all types of unfitness and unsuitability. Unsuitability could be demonstrated by evidence of homosexual 'tendencies, desires, or interests' * * *.'

'The regulatory scheme was significant because separation boards * * * generally had the authority to recommend retention of soldiers being processed for elimination, and commanders could disapprove a board's recommendation to separate * * *. Indeed, prior to February 1977, the Army's posture was that there was discretion to retain homosexuals.' 5

In the late-1970s, the Report of the Joint Service Administration Discharge Study Group was completed.

'Two of the study group's recommendations concern homosexual behavior. One recommendation [was] to reaffirm the long-established ban on gays in the military. Specifically, the study group [had] proposed that the phrase 'homosexuality is incompatible with military service' and 'processing (for separation) is mandatory unless * * * the allegations are groundless' be included in all subsequent DOD directives on personnel separations. The second recommendation [was] that, in cases of 'unsuitability,' i.e., those involving homosexual tendencies or homosexual acts between consenting adults, individuals receive an *honorable* discharge.' 6

Created in a period of legal challenges to its policies on homosexuality (see court section below), the recommendations of this study group were used as the basis of current DoD policy.

Summary of Key Observations

The military has generally been characterized as a separate institution governed by rules that may or may not be acceptable in civilian society. Differential treatment of military personnel has generally been justified on the basis of the uniqueness of the military mission. Discrimination on the basis of this mission and the unique nature of military society has been upheld, generally, in the courts. Discrimination on other basis has generally not been justified.

While many homosexuals have served in the military, such service has been performed in most instances without open acknowledgement of their homosexuality. The question confronting policy makers remains: 'To what extent, if any, would open homosexuality be disruptive to morale, cohesion and readiness in the ranks, and to what extent does any such disruption justify discrimination?' Many military leaders, familiar with the military society and its rules believe that the presence of open homosexuality would prove sufficiently disruptive to justify continuing the policy. Homosexual rights advocates, many of whom have also served in the military, believe that not only will disruptions be minimal but that the overall effectiveness and readiness of the force will improve.

Advocates for repealing the policy have generally held that restrictions should be maintained on 'behavior' but that a homosexual 'orientation' alone should not be grounds for dismissal. However, distinctions between orientation and behavior, seemingly clear in the abstract, may prove difficult to make in the complex realities of everyday life.

Issues of privacy for heterosexuals, whether real or perceived, remain contentious.

Comparisons to foreign military policies appear informative, inconsistent and of problematic application.

Historically, the U.S. military has been in the forefront of some major social changes. The successful integration of blacks is widely viewed as a positive indication of the military's ability to make important social changes. However, some have questioned using the military as a vehicle of social change (see Project 100,000 7). Among the question policy makers may consider is not whether the military can or should be forced to change, but whether society as a whole supports this change and whether the military is the appropriate vehicle for such a change? What impact, if any, would this change have on military readiness? Indeed, issues concerning civil rights and the definition of acceptable behavior may be raised both inside and outside of the military.

Under the Constitution, Congress has the authority 'to make rules for the government and regulation for the land and naval forces.' Congress, subject to presidential veto, has authority to create military rules and laws. Changes concerning repealing or modifying DoD policy on homosexuals in the military might also be made by executive order of the President, but in any case would likely present Congress with a range of legislative considerations including: equal opportunity/anti-discrimination issues; questions concerning military compensation and benefits particularly with regard to homosexual 'partnerships' and definitions of dependency and family; issues concerning the separation of church and state; and, questions of fairness in maintaining morale and discipline under rules regulating conduct.

DEPARTMENT OF DEFENSE POLICY

The DoD policy addressing homosexuals is dealt with in three directives (on 1. Enlisted Administrative Separations, 2. Separation of Regular Commissioned Officers for Cause, and, 3. Physical Standards for Enlistment, Appointment, and Induction). In addition, the Uniform Code of the Military Justice regulates behavior concerning sodomy and general disorders and neglects to the prejudice of good order and discipline. Each of these is discussed below.

Administrative Regulations

The January 1982 directive on Enlisted Administrative Separations (discharges) establishes the DoD policy for enlisted administrative separations and is, therefore, the most often cited and disputed statement of this policy:

'Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain the public acceptability of military service; and to prevent breaches of security. 8'

Based on this policy, individuals who engage in homosexual conduct or exhibit an intention of engaging in such conduct are deemed to affect adversely the ability of the military to accomplish its mission. Such conduct is considered a threat to morale, good order, discipline, mutual trust, privacy, the ability of the services to attract and retain members, and public acceptability of military service.

As used in DoD policy, homosexual means 'a person who engages in, desires to engage in, or intends to engage in homosexual acts' (or homosexual and heterosexual acts in the case of bisexuals). A homosexual act is defined as 'bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.' (See Appendix). In order for an individual to be subjected to administrative discharge procedures, at least one of the following findings (with certain exceptions) must be made:

- (1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts;
- (2) The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.
- (3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual and that the purpose of the marriage or attempt was the avoidance or termination of military service.

This directive addresses homosexual administrative discharges from a behavioral perspective, or 'behavioral intent,' perspective. In other words, 'persons who *engage in homosexual conduct* or who, *by their statements, demonstrate a propensity to engage in homosexual conduct*' are considered, under this directive, eligible for separation. From a technical point of view, an individual must have engaged in, or stated a desire or intention to engage in, homosexual behavior. Statements that acknowledge an individual's homosexuality are considered reasonable grounds of intention but may not be sufficient to warrant a discharge, i.e., the member may be attempting to avoid service. To this end, an investigation is required. Such an investigation would need to determine if an individual had engaged, or intends to engage, in such behavior, or if such a statement is being used solely as a means of avoiding military service. Thus, the admission of being a homosexual is not treated as an *ipso facto* indication of a propensity to engage in homosexual behavior. Rather it is considered a reasonable cause for conducting an investigation. (It remains possible that an individual is both homosexual and attempting to avoid service.)

This directive provides exceptions to this policy including provisions that allow a member to remain in the service when it is in the service's interest and when it can be found that the member does not desire or intend to engage in homosexual behavior.

Generally speaking, when an individual is administratively discharged for homosexuality alone, an Honorable or General Discharge is issued. This directive lists those instances in which certain homosexual behaviors would result in a discharge Under Other Than Honorable conditions. 9 These conditions include the use of force, homosexual acts with a minor, and fraternization that is deemed sufficiently disruptive to good order.

Lastly, this directive provides direction concerning the procedure for such separations. In each of these, there needs to be a 'finding,' 'probable cause,' or 'circumstances authorizing' such a separation. Without such, an administrative board is directed to retain the member. Under these rules, an individual may be separated with a finding of conduct or intended conduct (including self-made statements) consistent with the definition of homosexual, bisexual and/or homosexual act as provided in this directive. Furthermore, '[T]he burden of proving that retention is warranted under the limited circumstances * * * rests with the member except in cases where the member's conduct was solely the result of a desire to avoid military service.' Therefore, the service concerned must provide findings of probable cause of homosexual behavior or intended behavior, or determine that such statements or behavior are being used as a means of avoiding service. With the finding of such behavior or intention of behavior, the member must prove that retention in the service is warranted. 10

While the above pertains to enlisted personnel, officers may also be separated (see the text of the directive on the Separation of Regular Commissioned Officers for Cause in the Appendix). The rules that apply to officers generally reflect the policy on homosexuality. However, these regulations are somewhat different than those pertaining to enlisted personnel due to procedural differences in the separation of officers.

Under the third directive, on Physical Standards for Enlistment, Appointment, and Induction (see Appendix), prospective service members may be denied entry into the service for homosexual activity. During the screening process, individuals are asked if they are homosexual. An affirmative answer, technically, is sufficient grounds to deny entry into the service. Thus, a recruit who states that he is a homosexual is reasoned to have been engaged in, or to have intended to engage in homosexual behavior. It is important to remember that under the 'separation directive' the burden of proof lies with the service member, or in this case with the recruit, once homosexuality is acknowledged. It may be impossible to prove that an individual has not and will not engage or intend to engage in homosexual activity. It should also be noted that neither of the above two directives require 'proof beyond a reasonable doubt' but are based on the less restrictive standards of an administrative finding of fact.

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Statutes

The Uniform Code of Military Justice (UCMJ), as enacted by Congress, lists sodomy and 'disorders and neglects to the prejudice of good order and discipline' as grounds for conducting a court-martial proceeding (see Appendix). As such these regulations of behavior, in theory apply to both homosexuals and heterosexuals. Under these articles, legal rules of evidence apply. Unlike the directives described earlier, the results of findings by a court-martial may entail punitive sanctions. The threat of punitive actions under these articles may be used as leverage in getting service members to divulge homosexual activities. In other words, individuals apprehended under one of these articles, or acknowledged homosexuals who, subject to an investigation, are found to have fraternized with subordinates in such a manner as to endanger good order or morale, may be offered an administrative discharge (rather than court-martial and punishment) if they cooperate in providing evidence against themselves or other service members. Investigations of criminal behavior often require seeking confessions, or corroborating testimony. To this end, plea bargaining a punishable offense under the UCMJ to an administrative discharge, for example, is a legal tool for gaining evidence and expediting cases. As noted above, since certain individuals may resign from the military and thereby avoid prosecution, the manner and extent to which these statutes are used is not clearly known.

Under the above DoD directives, homosexuals are excluded from enlistment, appointment, and induction into the armed forces. Such individuals found to be serving in the forces may be administratively separated. Under the UCMJ, individuals (whether homosexual or heterosexual) found guilty of violating either of the above articles may be punished as the court martial may direct.

Under current practice, individuals who admit a homosexual orientation, admit past behavior of a homosexual nature, or who have been apprehended for behavior related to homosexual acts as described may be denied entry into the armed forces or separated from the armed forces. Thus, under current practice, merely stating one's homosexuality or having a homosexual orientation is sufficient grounds for denying enlistment to or removing a person from the armed forces.

BROAD POLICY ISSUES AND ARGUMENTS

The following discussion of military policy on homosexuals is divided into two major sections. The first one addresses the general context and broadly relevant aspects of the issue. The second major section addresses specific issues of more immediate effect. Such a distinction is not perfect nor mutually exclusive and, therefore, a certain degree of overlap between the two sections is unavoidable. In this first section, policy issues considered and analyzed include: the origins of homosexuality, estimates of the prevalence of homosexuality, orientation v. behavior, covert and overt homosexuality, social legitimacy considerations as well as consideration of fairness, and policies of other nations.

The origins of homosexuality

Attempts to ascertain the origins of homosexuality have proven inconclusive and no generally agreed causality has been established. Numerous research endeavors have been undertaken to determine factors that cause homosexuality or heterosexuality including genetic/biological, psychological and socio-cultural. 11 Difficulties in methodology, experimental controls and sampling have complicated these efforts. While each academic discipline has made certain 'discoveries' or observations concerning the differences between homosexuals and heterosexuals, such findings 1) are not universal (or statistically significant), 2) can be explained by various factors or phenomena, and or 3) are unable to discern temporal considerations (i.e. which came first: the associated factor or homosexuality).

Since no one area appears to adequately explain the entire range of sexual behaviors (including homosexuality), many researchers have assumed a more expansive explanation: '*** the diversity among sexual orientations is likely to be understood from a combination of sociological, cultural and biological factors. 12

Efforts to discern 'causes' for homosexuality or heterosexuality have been further complicated by one additional reality: the existence of bisexuality. 13

Findings of a link between genetics and sexuality have been used by some to argue that homosexuals represent a class meriting protection under the law, or that homosexuality is an immutable characteristic (as is race, for example). These arguments are made in pursuit of legal protection as a legitimate minority but are based on scientifically disputed theses and courts have been generally unwilling to grant special protection for homosexuals (see Court section below).

Estimates of the prevalence of homosexuality

The number of homosexuals in society or the military at any given time has not been reliably measured. Reports in the media have assumed that the proportion in the military is roughly equivalent to the number in society. (The validity of such an assumption cannot be measured.) Estimates of the numbers of homosexuals in society tend to be based on definitional considerations of who is homosexual. The most commonly cited number is 10 percent of the population. This number is based on one datum supplied by the 1948 Kinsey study. According to Berube:

'Kinsey found 4 percent of the white males he surveyed to be 'exclusively homosexual throughout their lives' after the onset of adolescence, and 10 percent to be 'more or less exclusively homosexual' for at least three years between the ages of sixteen and fifty-five. 14 '

Although it can be argued that 4 percent is as relevant a finding as 10 percent, media sources and homosexual rights groups tend to cite the higher figure. (Kinsey's data have been criticized for various reasons, including the 'unrepresentativeness' of his sample.) More recent data provided by Smith found the percentage of a national sample of sexually active adults to be somewhat smaller: '*** results show that 98.4 percent of sexually active adults reported that they were exclusively heterosexual during the year preceding the survey. *** This percentage is substantially higher than the commonly cited level of 90 percent, but concurs with the best available estimates. 15 '

Using the definitions and data obtained by Smith, fewer than two percent of those men and women sampled could be considered homosexual or bisexual.

The proportion of military personnel who are homosexual remains unknown in part because of the policy excluding homosexuals from service. As a result of the policy, individuals in uniform who are homosexual are less likely to acknowledge their orientation or behavior. It can also be argued, however, that the policy discourages homosexuals from joining in the first place. Conversely, certain aspects of military service, including sexual segregation, physical aggressiveness, authoritarian atmosphere, may appeal to both men and women as well as to certain heterosexuals and homosexuals. 16

The extent to which homosexuality exists in the military is, in part, dependent upon the definition of who is homosexual or what behavior constitutes homosexuality. The Department of Defense has outlined specific definitions as a part of its policy. Since this definition is likely to be different from others in use, it is unlikely that there will be agreement on the proportion of military personnel who are homosexual. (In the context of discussing the military's policy on homosexuals, the definition used by DoD applies.)

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Homosexual orientation and homosexual behavior

'Orientation' is defined as 'the act of determining one's bearings or settling one's sense of direction, *** the settling of one's sense of direction or relationship in moral or social concerns or in thought or art, *** awareness of the existing situation with reference to time, place, and identity of persons.' 17 'Behavior' is associated with the particular action or reaction of an individual. Thus, homosexual orientation implies only that an individual has determined himself/herself to be homosexual without necessarily entailing a homosexual act. Interestingly, DoD policy concerning enlistment, while generally excluding homosexuals from entering the military, does allow certain individuals to enter the service who have committed or been a party to a homosexual act. 18 An admitted homosexual is also barred from the service despite the fact that such an individual may not have participated in such an act. In the case of *Shalom v. Marsh*, the court upheld the Army's right to administratively discharge an acknowledged lesbian based only upon her statement that she was a lesbian.

Plaintiff's lesbian acknowledgement, if not an admission of its practice, at least can rationally and reasonably be viewed as reliable evidence of a desire and propensity to engage in homosexual conduct. * * * [T]he regulation does not classify the plaintiff based merely upon her status as a lesbian, but upon reasonable inferences about her probable conduct in the past and in the future. * * * Plaintiff has admitted that she has a homosexual desire, but not necessarily that she intends to commit homosexual acts. The Army need not try to fine tune a regulation to fit a particular lesbian's subjective thoughts and propensities. 19

'In the Closet' and 'Out of the Closet'

Social taboos, legal restrictions and moral intolerance have historically forced individuals to hide or deny their homosexuality (i.e., keep their homosexuality 'in the closet'). With increasing efforts toward gaining civil rights and social acceptance, increasing numbers of homosexuals are 'coming out of the closet' or publicly proclaiming their identity. Definitions of 'in the closet' or 'out' are somewhat situational in actual practice. Individuals may 'come out' with close friends or siblings but remain in the closet with employers, a spouse, parents or more distant relatives. 'Outing' can be personal (i.e., a proclamation of self-identification), or forced by others (i.e., activists may proclaim a public figure to be homosexual without his or her consent). While military discharges have arguably 'outed' thousands of homosexuals, many have simply been allowed to resign, in effect, protecting the individual's privacy by allowing him/her to 'stay in the closet.' Conversely, the decision to be 'out of the closet' often is both personal and political (particularly in those instances where homosexuals seek to challenge the military's policy on homosexuals--see Court section in Appendix).

The concept of 'in' or 'out' of the closet should not be confused with issues relating to orientation or behavior. Consider the heuristic diagram 2 x 2 diagram below:

HEURISTIC FIGURE 1.

Status	Orientation Behavior	
'In the Closet'	A	B
'Out of the Closet'	C	D

Individual homosexuals may find themselves to be exclusively in one cell or, given particular circumstances, in more than one cell. For example, certain individuals may have a homosexual orientation and choose to be 'in the closet' with employers (cell A), but 'out' with close friends (cell C). Still others may wish to remain behaviorally in the closet (cell B, but remain, de facto, 'out' with partners). Finally, cell D represents those who not only have 'come out' but who also manifest public behaviors (including, for example, marching in homosexual rights parades, 'marriage' to a same sex partner, political 'street theater' protests, or certain illegal behaviors). It is those individuals in cell C that homosexuals acknowledge most often in attacking the military's policy on homosexuals.

In the military context, most homosexuals are in cells A and B. Due in part to military restrictions, these individuals are forced to keep their homosexuality largely secret. Efforts to change the policy have, in most cases, concentrated on allowing individuals to acknowledge, through statements, their orientation without prejudicial action resulting. Other advocates claim that on orientation alone (cells A and C) or private sexual acts between consenting adults (cell B) should not be grounds for discharge. Certain advocates have argued that sodomy laws should be revised.

(Some observers have claimed that the military, technically, does not have a 'ban' on homosexuals since individuals who would fall into cell A or B are allowed to serve. These claims, however, have been attacked as being disingenuous since the military requires statements to be made about a recruit's sexuality. In addition, those in certain pre-commissioning programs must sign statements that they are not homosexuals--see ROTC section below. Also, those subject to review for security clearances are also asked about their sexuality. From this perspective, individuals are 'allowed' to serve provided that they are willing to deny their homosexuality and thereafter live under threat of discovery.)

Although presented for analytic purposes, the above chart can be misleading. Homosexuals who only have an orientation but participate in political debates on homosexual rights or 'street theater,' 20 could be placed in cell D. (It is important to note that many of the participants in political debates include heterosexuals as well.) As such the distinction between orientation and behavior is, at best, subjective, and at worst, a rhetorical obfuscation. Indeed, definitions of 'acceptable behavior' remain a contentious issue for policy makers and those charged with enforcing laws, rules and regulations.

Advocates for removing or modifying the policy on homosexuals in the armed forces state that those who have a homosexual orientation should not be discriminated against based on their orientation alone. They argue that sexual orientation is non-threatening and to force individuals to divulge their private thoughts and emotions on such matters represents an invasion of the individuals' rights to privacy. In essence, since the services prevent those with such an orientation from entering the military, those so prevented are judged not on their behavior but on their very existence. Such individuals are, it is argued, 'found guilty' without having performed an act beyond stating their sexual orientation. Many advocates state that it is not their intention to change those rules, regulations and laws regarding behavior. 21 In other words, some advocates have stated that homosexuals, and others, should be judged on the basis of what they do, not who or what they are. Those individuals who have proclaimed an 'orientation' and are otherwise fit for duty should not be discriminated against. It is believed that such a reform would prevent many otherwise outstanding service members from being forced out of the service merely as a matter of their sexual orientation.

Other advocates believe that once the policy on homosexuality is modified to recognize or tolerate orientation, other related policies may also be modified. As discrimination against homosexuals is eliminated, these advocates believe that legal restrictions pertaining to certain sexual acts of consenting adults, now termed sodomy, will be eliminated.

Finally, certain advocates have supported overturning the statutory language pertaining to behavior as the first step to eliminating discrimination against homosexuals.

' * * * [G]ay rights activists say the military's chief weapon to force out homosexuals is not the regulations [administrative discharge directive], but the threat of criminal prosecution under a 1956 military sodomy law.

' Such pressure tactics in military investigations create a climate of fear that make it easy for the military to separate anyone suspected or even rumored to be homosexual, the activists say. And no service member is safe, they say, as long as the military has the power to make intimate acts between consenting adults a crime.' 22

From this point of view, once privacy is recognized and non-intrusive behavior (including sodomy) between consenting adults is decriminalized or afforded privacy protection, the arguments for maintaining the policy will be insupportable.

Proponents of maintaining the current policy state that 'allowing declared and open homosexuals to join and remain in the military * * * would be quite a different kind of social chemistry than the present situation, where homosexuals who do serve in the military are discreet about it.' 23 Formally recognizing homosexuals would allow many 'to come out of the closet' so long as they did not engage in homosexual behavior. Rescinding the policy on the basis of orientation alone would allow homosexuals legitimacy while maintaining the illegal nature of their sexual behavior. (Also, it is not clear what effect changing the policy would have on homosexual 'political behavior' in the services--such as forming organizations to advocate homosexual rights.) Under the first proposal, gays and lesbians would be permitted to join and stay in the military so long as they remain sexually inactive, 'celibate,' or, behaviorally 'in the closet.' This places homosexuals in the position of being recognized for their orientation and punished for the behavior that orientation may entail. (Some advocates of homosexual rights also acknowledge that once the homosexual orientation is officially accepted, restrictions on relevant behaviors will also be challenged.)

Thus, critics view the focus on orientation as a deception that would recognize homosexuality and lead to the inevitable recognition of homosexual behavior as 'normal.' These critics contend that the sexual drive is perhaps one of the most innate and profound human characteristics and that it would be foolhardy to acknowledge the homosexual orientation and continue to deny the ensuing behavioral manifestations.

H.R. 5208 and S. 3084

The 'distinction' between orientation and behavior has been incorporated into proposed legislation. H.R. 5208 and S. 3084²⁴ would remove discrimination against homosexuals based on orientation while maintaining restrictions on certain unspecified behaviors (see Appendix). In other words, this proposed legislation would require the services to remove any prohibitions barring an individual from remaining in the service or seeking to join the military on the basis of sexual orientation. Also, this language would maintain standards in law, regulation or policy preventing sexual misconduct (i.e., rape, harassment, sodomy, sex with minors, relations on duty as prescribed, etc.). These rules may not be applied, under this language, in a manner that discriminates on the basis of sexual orientation. Thus, homosexual conduct would be permitted provided that rules and regulations pertaining to conduct apply equally to heterosexuals. In other words, nothing in this language would permit sexual relations aboard a ship, for example, since such behavioral restrictions would apply to both heterosexuals and homosexuals. In fact, nothing in this language would allow 'unnatural carnal copulation with another person of the same or opposite sex' as prescribed under article 125 of the UCMJ. Presumably, any undefined conduct, as considered by a court martial which violates the customs and traditions of the armed services, deemed to be 'prejudicial to good order and discipline' remains illegal provided that such standards would apply equally to heterosexuals and homosexuals. (Without a clear definition of acceptable behavior, certain problems may arise. For example, asking for a date may be protected, arguably, unless a fight broke out. Harassment and solicitation would not be protected.) Instances of fraternization sufficient to threaten discipline, whether homosexual or heterosexual, may be resolved by court martial and/or discharge.

Proponents of this proposed legislation note that this language would remove discrimination and unfair treatment based on sexual orientation while keeping in place those rules, policies and laws pertaining to behavior. Under this language, discipline and good order would be maintained since behavior would be controlled. Court martial and discharge options remain available in those instances, heterosexual and homosexual, involving violations of rules, regulations and laws pertaining to conduct. Proponents point out the success that has resulted in those instances where restrictions against homosexuals have been removed (i.e., in the civilian workplace). It can also be argued that although some personnel, homosexual and heterosexual, will behave in a manner that is deemed inappropriate, these cases will be more than offset by the increase in the number of professional and dedicated service members who would be allowed to enter the military and remain on active duty. That is, a homosexual orientation alone should not be considered an adequate indication of a behavior problem. Under current policy, many of those forced from the service 'involve a soldier, sailor or airman who but for being homosexual, is outstanding in every respect.'²⁵ Such a change, advocates believe, would ultimately enhance military readiness.

Critics view this language (H.R. 5208 and S. 3084) as going beyond efforts to merely protect those with a homosexual orientation. Narrowly interpreted, most, if not all, homosexual activity, critics argue, has been and will likely continue to be defined as 'unnatural.' This proposed language allows homosexuals into the service provided that they remain, for the most part behaviorally asexual. Such a situation places homosexuals in a position of being able to 'come out of the closet,' acknowledge their sexual orientation and then refrain from acting on that orientation. Critics note that given studies of male homosexual behavior and given the sexual segregation of the services, instances of such behavior will increase substantially if this legislation were to be enacted.²⁶ In other words, removing the stigma of homosexuality or rules that exclude homosexuals from the military will increase instances of and opportunities for such behavior in the services, leading to morale and discipline problems and disruptive of good order.

Broadly interpreted, this 'same treatment standard' could be construed to allow for homosexual cohabitation in the receipt of military housing benefits, homosexual marriages performed by military chaplains, co-location of homosexual military couples, and the extension of military benefits such as health care, survivor benefits and adoption to a homosexual couple. In other words, although proponents suggest that this legislation focuses only on orientation, broader issues involving behavior and definitions of family or dependents may be involved. The ability of commanders to maintain discipline and morale under this language could, it is argued, prove onerous.

While it can be asserted that removing such restrictions in civilian society have not brought about many problems, critics note that the military institutional environment (including geographic isolation, sexual segregation, and the lack of privacy) is very different and will intensify the likelihood of both homosexual acts and violent clashes with heterosexuals. Others believe that this language is the first step to repealing restrictions against not only homosexuality but also homosexual behavior. Finally, critics argue that in the interest of protecting homosexuals, the privacy and morality of heterosexuals, as well as readiness, would be sacrificed by this language.

Military service and the social legitimacy of open homosexuality

It is said that efforts to eliminate or modify the military policy are but one part of a larger effort to gain a more universal acceptance of homosexual rights. From this perspective, proponents and critics alike contend that the movement for equal rights in the military (as with the civil rights movement) is a stepping stone to gaining greater acceptance in other fora including Federal and state courts, and legislative bodies. The argument is based on the concept that recognition by a major Federal institution, i.e., the military, would enhance and provide support for greater recognition of homosexuals' rights. According to some observers, this claim is similar to arguments pressed during the civil rights movement that it is unfair to allow blacks and other minorities to bear the burden of citizenship (i.e., military service, paying taxes, etc.) without allowing them to share equally in the benefits such citizenship has to offer. Such recognition would provide support for 'partnership legislation' 27 and other issues of interest to the homosexual rights community and civil libertarians. As such, removing the military policy on homosexuality would represent a step toward the attainment of equal rights and opportunities as well as equal responsibilities for homosexuals.

There are indications that social acceptance of homosexuality has increased in recent years. Some consider rescinding the military policy a natural extension of these changes. Others view rescinding the military policy as a means of allowing or forcing the military to take the lead on this issue, i.e., using the military as the engine for social change. In this latter sense, removing the policy is criticized as the means and not necessarily the result of the 'homosexual rights agenda.' The military has been the means of social change in the past. 28 In contrast, military leaders believe that such changes should be justified on the basis of military needs and readiness. Critics view the use of the military as a vehicle for social change without consideration of readiness issues as feckless and unwise. As stated by Gabriel: 'It will avail us little if the members of our defeated force are all equal. History will treat us for what we were: a social curiosity that failed. 29 '

Not surprisingly, arguments against the policy focus on its unfairness and discriminatory basis. The denial of homosexuals the option to serve is arguably a prejudicial self-fulfilling prophecy which makes it impossible for homosexuals to prove their military value. While many homosexuals have served, the scenario of homosexuals openly serving can not be evaluated unless the policy is removed. Removing the policy may allow homosexuals to prove their military worth and gain greater social legitimacy. However, should presumed problems of discipline and morale prove to be true, it may be politically impossible to reinstate the current policy. Nevertheless, removing the policy in the military context may create a sense of increased social legitimacy for homosexuality generally and, thereby, foster changes in other areas.

The relevance of 'fairness' and 'readiness'

As described above, arguments for and against the policy on homosexuals are often considered on the basis of their effects on the military and on issues of fairness. Proponents of maintaining the military policy on homosexuals are concerned with the extent to which acknowledged homosexuality (whether orientation or behavior) would prove disruptive to unit cohesion, morale and discipline. Studies of soldiers in battle have shown that the existence of close and interpersonal relationships are of equal or greater importance (for military effectiveness) than training, physical conditioning, leadership, etc. S.L.A. Marshall states:

` * * * [I]t is far more a question of the soldier's need of physical support from other men. He must have at least some feeling of spiritual unity with them . . . Should he lack this feeling for any reason, whether it be because he has lost physical contact or because he has been denied a chance to establish himself with them, he will become a castaway in the middle of a battle and as incapable of effective offensive action as if he were stranded somewhere without weapons. 30 '

Shils and Janowitz found interpersonal relationships to be a critical factor in a unit's ability to fight. Once these relationships have been disrupted, unit effectiveness disintegrated leading to desertion, surrender, and/or death. 31 Military leaders' concerns over the potentially disruptive effects of homosexuality relate, in large measure, to its effects on the development of these interpersonal relationships. While it is true that many homosexuals have served ('in the closet') in the military without incident, there are individual and legal accounts in which the effect of homosexuals in the ranks has proven disruptive. 32 The extent to which open homosexuality in the ranks would prove sufficiently disruptive to justify continued discrimination is not known.

Efforts to rescind the policy are rooted in a number of convictions, civil rights concerns, and social movement objectives. These efforts either ignore concerns over effectiveness or argue that there will be relatively little change in effectiveness. The most common source of objections to the policy is its perceived basic unfairness. According to Snyder and Nyberg:

` * * * [E]xisting policies [concerning homosexuality] are not being applied consistently; [closeted] gays continue to serve in the armed forces, apparently quite satisfactorily, despite the ban on their service (Lester, 1974: 5-13). This inconsistency creates the basis for a legal or political challenge to existing policies. 33 '

In addressing this issue, the military has taken the approach of excluding all admitted homosexuals, even if this means excluding some individuals who would otherwise make good soldiers, airmen, sailors or marines. Such exclusion is justified by the services as being directly related to national defense considerations.

The military policy has been attacked variously on the issues of 'fairness.' These include the arguments that the policy (1) leads to 'witch hunts,' (2) is similar to the prejudice that kept blacks out of the service, (3) allows for differing treatment of civilian and military DoD employees, and (4) encourages the harassment of women. Each of these is considered and analyzed.

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'Witch hunts'

While DoD policy is explicit in terms of conducting investigations and providing for administrative discharges, actual practices may vary. According to some observers, the decision to investigate and discharge individuals for homosexuality can be discretionary and, therefore, arbitrary. Commanding officers who find such behavior problematic in terms of unit morale, or who have a personal or moral philosophy against such behavior, may choose to aggressively pursue the removal of homosexual service members from their units. Conversely, commanding officers may be more concerned with the day-to-day operation and welfare of their units, including administrative functions, training activities, other disciplinary issues, as well as their own personal, career and family needs, and chose not to spend much, if any, free time searching for 'suspected homosexuals.' Commanders and investigators who do discharge homosexuals out of the service are often charged with conducting 'witch hunts.' 34 Commanders who fail to maintain discipline or follow DoD directives may be charged with dereliction of duty. During an investigation of homosexuality other individuals may be named as homosexuals (regardless of their sexual orientation, service record, or behavior) and may face the intimidation of an investigation, stigma of being labelled, possible court-martial and discharge.

The use of the term `witch hunt' has been applied by some to any attempt to discharge homosexual members whether or not the behavior at issue is flagrant or illegal. When such behavior comes to the attention of a commanding officer or investigators, it is nearly impossible for them to ignore it without being held accountable for dereliction of their duties. Such commanders may find themselves forced to conduct such investigations or bring their own careers into question. 35

It can be argued that removing the policy would eliminate the exclusion of individuals who are otherwise performing their jobs, eliminate the unfair and disruptive effects of `witch hunts,' and remove the threat to commanders' careers. Conversely, it can be argued, removing the policy would shift the unfairness to those who find their sense of morality (based on social, cultural or religious beliefs) and emotional and physical privacy violated by the presence of homosexuals in the close confines imposed by military service.

The services recruited, appointed, or commissioned approximately 330,000 people each year during the period 1980 to 1990. If the ten percent figure for homosexual prevalence widely reported in the media is accepted, approximately 33,000 homosexuals were included in that number. If so, it can be estimated that the service brought 330,000 over a ten-year period. According to the General Accounting Office, 36 during this ten-year period, the services discharged approximately 17,000 service members under the category of homosexuality. This represents approximately five percent of a presumed (if disputed) number of homosexual accessions. Numerous conclusions may be reached: (1) homosexuals are extremely adept at avoiding detection, (2) notions of a `witch hunt' are greatly exaggerated, (3) the services are doing a poor job of eliminating homosexuals from the ranks, (4) in most cases, the presence of homosexuals in the ranks does not constitute a problem requiring formal action, (5) estimates of the existence of homosexuality in society and the services are inflated, and/or (6) homosexuals may be discharged, denied reenlistment, allowed to resign for other reasons, including to avoid an investigation of suspected homosexuality. (If a lower estimate of the prevalence of homosexuality is used, say 1.6 percent, arguably 52,800 homosexuals would have been brought into the service, or over three times the number discharged during this same period.)

Analogies to the treatment of blacks

Numerous claims have been made that the military policy on homosexuals parallels the prejudice that kept the services racially segregated. Proponents of rescinding the policy view the successful integration of blacks in the military as an example of how the services are capable of overcoming preconceived prejudices and include all members of society as full members. According to the National Gay and Lesbian Task Force: `The rationale for the exclusion of gays and lesbians is almost identical to the rationale used by the Department of Defense for maintaining a racially segregated Armed Services through 1948.' 37 From this point of view, the policy itself supports and perpetuates prejudices against homosexuals. Once the policy is abandoned, it is argued, the services would integrate gays and lesbians in much the same manner as blacks and women have been integrated. Since DoD policy prevents homosexuals from joining the service and allows for the discharging of known homosexuals, continuing the policy is the same as keeping minorities out for who they are, rather than on the basis of their behavior.

Conversely, the Chairman of the Joint Chiefs of Staff, Gen. Colin L. Powell, responding to a letter from Representative Schroeder encouraging him to support efforts to rescind the policy, stated:

`I am well aware of the attempts to draw parallels between this position [excluding homosexuals from the service] and positions used years ago to deny opportunities to African-Americans. I know you are a history major, but I can assure you I need no reminders concerning the history of African-Americans in the defense of their Nation and the tribulations they faced. I am a part of that history.

'Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.' 38

While the letter arguably can be criticized for erroneously presuming that sexual orientation usually has behavioral manifestations, it notes that race and behavioral manifestations are independent 39 and that by attempting to equate the behavioral consequences of race with sexual orientation such comparisons can become problematic. Such comparisons can be viewed as insulting to minorities and women. Critics contended that if the two are similar, homosexual rights advocates are presuming that merely being black or a women is the same as having a specific and identifiable 'orientation.'

In at least one way, the integration of homosexuals would well parallel the experience of expanding the numbers of women in the services: increasing opportunities for fraternization. 40

Differing standards for DoD uniformed and civilian employees

Differing treatment of military and civilian personnel has been cited as justification for rescinding the policy. During the Persian Gulf War, a highly placed civilian official at the Department of Defense was 'outed.' 41 No effort was made to remove this individual from his post. 42 Critics of the policy cite this as a double standard. In other words, DoD 'plays by two sets' of rules when it suits their purposes. It is blatantly unfair, critics contend, for gays to be forced from the serving their country in uniform, and in some cases rehired by the Department of Defense or one of the services immediately after discharge.

Comparisons of civilian working environments to the military sometimes overlook the distinctive nature of the military. According to scholars, the military has traditionally been viewed in the framework of an institutional model.

'(A)n institution is legitimated in terms of values and norms, i.e. a purpose transcending individual self-interest in favor of a presumed higher good. Members of an institution are often viewed as following a calling; they generally regard themselves as being different or apart from broader society and are so regarded by others.' 43

This unique institutional environment, resulting in part from the peculiar mission of the military--to prepare for and to fight wars, is recognized as a legitimate basis for differentiated treatment of military personnel from civilian employees. In *Orloff v. Willoughby*, the Court states 'The military constitutes a specialized community governed by a separate discipline from that of the civilian.' 44

Thus, proponents of the policy note that it only pertains to military personnel for reasons that have to do with the peculiar nature of the military environment and mission. The differences between the military and civilian society are recognized by the courts, Congress and the Executive branch. Civilians are not subject to the same deprivations as military personnel (including privacy) and are not subjected to the need to maintain the same levels of morale, cohesion and discipline under war-time conditions. Thus, the very purpose of the policy is not relevant to civilians. It would arguably be unfair to subject civilians to a similar policy for reasons that only apply to military personnel.

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The homosexual policy and sexual harassment of women

Critics of the policy have posited that the current policy encourages the harassment of women in uniform. They argue that women who refuse sexual advances by their male counterparts are labelled, or threatened to be labelled, lesbians. In one case, an Army staff sergeant finally confided to a friend that she was a lesbian in an attempt to deflect his sexual advances. This revelation was turned over to the 'Criminal Investigation Command which launched a three-month investigation * * * into [the staff sergeant's] sex life that those involved say included telephone taps and hostile interrogations' resulting in

the staff sergeant's administrative discharge. 45 In other reported incidents, lesbians in uniform have 'married' men in an effort to protect themselves from sexual advances or suspicious investigators. 46

In rebuttal, it has been argued that sexual harassment, for whatever purpose, is against military regulations. While the services have been under vigorous scrutiny following revelations of incidents concerning sexual harassment, 47 the contention that a woman can be harassed via threats of exposing her as a homosexual (i.e., lesbian-baiting) have been made. In these instances, DoD policy excluding homosexuals is viewed as a vehicle for sexual harassment.

Critics claim that lecherous individuals may use threatened revelations of drug use or other illegal behavior in an attempt to extort sexual favors. However, no one has argued that drug use should be made legal in order to avoid any chance that it could be used as a means of sexual harassment. The problem, it can be argued, is sexual harassment. Changing the policy on homosexuality (or drug abuse) will not 'fix' the problem of harassment. It can also be argued that changing the policy may actually expand the problem for women and men. According to these claims, problems of harassment disproportionately involve women as victims. Removing the policy does nothing to limit and may actually make possible (although not sanctioned) the opportunity for broader incidents of harassment. Such harassment could include the harassment of male and female homosexuals by heterosexuals (gay bashing), 48 unwanted sexual advances by gays and lesbians toward heterosexuals, 49 and/or sexual harassment of homosexuals by other homosexuals in uniform. From this point of view, eliminating the policy on homosexuals would not end harassment and may actually broaden the number of forms it can take.

The relevance of foreign-military comparisons

Lastly, proponents of rescinding the policy note that many nations do not exclude homosexuals from entering the military service. GAO reviewed the policies of 17 nations.

'These nations had various, sometimes diametrically opposed approaches to and legislation affecting the presence of homosexuals in their armed forces. The attitudes ranged from the view held by the United States to less strict ones in other countries. Some, in fact, do not view homosexuality as a legal or military issue. Four of the 17, or 24 percent, had policies that specifically exclude homosexuals from serving in the armed forces. Four of the remaining 13 restricted homosexuals' duties or relieved them from duty for disruptive behavior. Seven of the 17, or 41 percent, had no written policy addressing homosexuality. Two of the 17, or 12 percent, stated that during the recruiting process, the question regarding the individual's sexual orientation was not asked. 50 '

Davis, citing Tielman and de Jonge, 51 notes that in 60 countries, homosexual behavior is not illegal (although it may be regulated to some extent) and that in 55 countries, homosexual behavior is illegal.

'A number of countries have tackled the issue of whether homosexuals should be allowed in the military. Many countries do not allow homosexuals to serve, in spite of the fact that they consider homosexual acts between consenting adults to be legal. These countries include Canada, Peru, Venezuela, New Zealand, Italy, Great Britain, and Northern Ireland. 525 '

In fact, many nations do not have formal policies on homosexuals in the military. In other cases, policies differ widely in that some nations may allow certain homosexuals to serve, but only in limited ways or subject to certain, arguably discriminatory, career restrictions. In certain nations, homosexuality that proves disruptive may or may not be dealt with administratively by commanding officers. It is possible, therefore, for different individuals to look at these foreign military situations and arrive at different conclusions as to whether they allow or prohibit homosexuality in the ranks. 53

Comparisons of the U.S. policy to foreign military policies is based on qualitative comparisons that must consider differences in culture (particularly with regard to historic considerations of sexuality and varying

definitions of what constitutes homosexuality 54), military policies overall (internal force versus a force that is routinely sent or stationed overseas in countries that may or may not have similar views concerning homosexuality), as well as the considered opinions and judgments of those in charge of the military. These `analyses' of other nations' policies generally do not consider the effect open homosexuality has on the fighting capabilities of their armed forces nor do they consider what problems, if any, have occurred as a result of open homosexuality in the ranks. 55 Generally speaking, no effort is made to make an argument based on comparisons for strategic or national security purposes. Arguably, a more in-depth study of foreign experiences could prove instructive, but given differing cultural and social norms, its direct relevance might be scant or considerable.

One observer has concluded that when considering the policies of foreign nations, `(A) closer look reveals that supporters and opponents of the gay ban alike are clouding the debate with misleading statements. Citing laws and regulations alone is not enough to under the situation. In many countries there is a vast difference between what is written and what is day-to-day reality.' 56

CURRENT ISSUES CONCERNING THE HOMOSEXUALITY POLICY

In this section of the report, specific issues concerning the military's policy on homosexuals are considered. These include court challenges, public opinion surveys and polls, health issues, and the effects the policy has had on educational institutions vis-a-vis Reserve Officer Training Corps and recruiting. Also, the current policy is analyzed and scrutinized with regard to its use to avoid service and the deployment of homosexuals during war or crisis.

DOD policy and the courts

The military policy of excluding homosexuals has, generally speaking, survived legal challenges in the courts. Challenges to this policy have been made on constitutional grounds including: due process, equal protection, free speech, and right to privacy. In one unusual instance, the court disposed of the case on equitable estoppel 57 grounds without making any determination of the constitutional issues raised. For a more thorough and detailed discussion, see the legal analysis `DoD Policy and the Courts--Legal Analysis,' by Charles Dale, in the Appendix.

Public opinion and the policy

Some polls have shown an increasing social acceptance of homosexuality. GAO reported the findings of a national Gallup poll showing the percentage of the public who believe that homosexuals should be hired for various jobs. 58

GALLUP POLL, PERCENT WHO BELIEVE HOMOSEXUAL HIRING IS ACCEPTABLE FOR VARIOUS JOBS BY YEAR

Job/year	1977	1982	1985	1987	1989	1991
Salesperson	68	70	71	72	79	89
Armed forces member	51	52	55	55	60	69
Doctor	44	50	52	49	44	54
Clergy member	36	38	41	42	44	54
Elem. school teacher	27	32	36	33	42	52
High school teacher	(1)	(1)	(1)	(1)	47	60

[Footnote] 1 The poll did not address this category between 1977 and 1987.

Another poll conducted in 1991 (cited by GAO) found that 81 percent of Americans believed that homosexuals should not be discharged from the military based solely on their sexual orientation while 14 percent believed homosexuals should be discharged. 59

These data show that from 1977 through 1991, a growing majority of Americans believe that homosexuals should be allowed to serve in the military. The level of support among Americans has increased by 18 percent. Given the increasing level of support as reflected by polling data and public ordinances, many argue that refusing to allow homosexuals to serve runs against popular sentiments and, therefore, is not supported as being the 'will of the people.'

However, according to a recent telephone poll conducted by USA Weekend, only 33 percent of the respondents were in favor of repealing the current military policy. 60 Of arguably greater importance is the issue of how those in the military view such a change, since it is, after all these very individuals who will be directly affected. 'All the service chiefs oppose lifting the ban.' 61 In a speech at the Naval Academy, Secretary of Defense Cheney defended the policy of discharging homosexuals from the military. 'Four thousand midshipmen gave him a standing ovation.' 62 Finally, the Air Force Times published an editorial in support of eliminating the policy. In response, the Air Force Times published letters to the Editor (under the title 'Readers strongly oppose accepting gays in service.')

63 While not a valid survey of military opinions, (perhaps only those who write are those against the position taken by the A.F. Times), it does at least suggest that military members have strong opinions on the issue. The Air Force is currently conducting a survey to find out what its enlisted personnel and officers think of 'serving alongside openly gay men and women' * * * 64

A November Newsweek poll suggested that public support for overturning the policy is 'softer' than originally reported. When asked: 'Should Clinton delay lifting the military restrictions on gays if there are strong arguments that it will produce serious morale and readiness problems?', '61 percent state 'Should delay (28 percent stated 'Should not'). 65

By the middle of December, 1992, polls showed that Americans are split over lifting the policy. According to the Associated Press, 'forty-five percent said lesbians and gay men should be forbidden from joining, while 44 percent said they should be allowed into the military. The rest were not sure or would not answer the question.' 66

According to a Gallop telephone survey commissioned by the Retired Officers Association (conducted among the association's members from Nov. 27 through December 1, 1992), 83 percent opposed allowing homosexuals into the service. Although 86 percent said they had recommended a military career to a friend or family member.

'53 percent said they would be less likely to do so if homosexuals were allowed to join. Some 42 percent said it would make no difference, Slightly more than a third of the respondents said they had to deal administratively with a homosexual incident during a tour of duty. Of these, 50 percent said the experience was a major disruption to normal operations of their command, 34 percent considered it a minor disruption while 14 percent said it was not a disruption. 67 '

In part, the variations in responses are somewhat affected by the type of question that is asked. A survey that considers the military policy (as cause for administrative separation: same-sex marriage, statements or behavior) may prove instructive.

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Homosexuality and health

Critics of admitting homosexuals into the armed forces cite the high incidence of sexually transmitted illnesses, particularly AIDS, 68 as a reason for the policy. Critics contend that the incidence of transmittable illnesses will affect morale and threaten the military's 'walking blood bank.' In addition, these critics argue that the spread of such illnesses ultimately threatens military readiness. In part, these concerns are based on the reported levels of male homosexual promiscuity 69 and some have argued that given the high incidence of venereal diseases, in general, and HIV-1, in particular, among male homosexuals, the current policy should be expanded to include considerations of the health of the force

as a reason for excluding homosexuals from the military. (In one case, a judge cited the need to protect military personnel from HIV-1/AIDS as a justification for the policy--an argument not made by the military. 70)

The military policy excluding homosexuals is not predicated on health care issues. Health care is generally treated as a medical concern and not necessarily a personnel issue. 71 Individuals are screened for health problems to ensure readiness. Health care is dependent upon illness, not the probability that an individual may become ill. (It would be equally inappropriate to refuse to enlist smokers on the basis that they, as a group, have a higher incidence of certain illnesses.) Thus, individuals who are unfit for service (or who have a history of certain illness with a substantial rate of reoccurrence) may be barred from entering the military.

Arguments concerning the military's homosexual policy and AIDS provide examples of the confusion brought about by combining these two issues. Generally speaking, in the United States, male homosexuals have a much higher incidence of human immunodeficiency virus (or HIV-1, the virus that causes Acquired Immune Deficiency Syndrome). Conversely, lesbians have a much lower incidence of HIV-1 infection rates than male homosexuals or heterosexuals. On the basis on limiting HIV-1, as argued by the above critics (and something that is not being considered here), the service could consider attracting more lesbians. 'Only one case [of HIV infection] has been described as being transmitted by female homosexual contact.' 72

In order to prevent the spread of HIV-1, the military has introduced one of the most comprehensive screening and educational campaigns. Under this policy, individuals who show evidence of HIV-1 infection are not allowed to join the armed forces. Uniformed personnel are provided educational information on how to avoid infection. HIV-1 infected individuals in the military are counseled, provided health care and monitored. For this reason, the risk of contracting HIV-1 is reportedly better controlled in the military environment than elsewhere. (Ironically, for this reason, the military is perhaps one of the safest places to participate in 'high-risk' behaviors--such as sodomy.) 73

AIDS, HIV-1 and other sexually transmitted diseases are medical issues. As such, for the services they remain unrelated to policies concerning homosexuality. Contracting HIV-1 or any other illness is not based on whether an individual is homosexual or heterosexual, but the risks of infection to which the person is exposed (i.e. the nature of sexual activity and the level of promiscuity). Some argue that keeping homosexual behavior illegal or punishable (or making heterosexual promiscuity punishable) under regulations may increase the chances for infection because such behavior (and the subsequent illness) is forced 'underground' and therefore not subject to medical surveillance. 74 Under such a scenario, infected individuals are unlikely to seek medical care for fear of reprimand. (It is occasionally argued that should AIDS or other such illnesses be cured, it is unlikely that critics who cite these arguments would change their minds on allowing homosexuals to join the military.)

The homosexual policy, ROTC, military recruiting, and educational institutions

With increasing calls for increased civil rights for homosexuals, numerous colleges and universities have sought to challenge the Department of Defense policy excluding homosexuals. These challenges have occurred as college and university (and in some cases, high school) deliberative bodies have sought to include rights and protection for those with homosexual orientations on the same basis as are provided racial and ethnic minorities, disabled, women, etc. Such changes have brought about conflicts on those campuses that maintain Reserve Officer Training Corps (ROTC) units. ROTC prohibits homosexuals from receiving scholarships (that inherently include an obligation to serve in the military). 75 Individuals applying for ROTC are required to sign documents stating that they are not homosexuals. Thus, certain campuses have recognized or supported homosexual rights that are at odds with ROTC policies.

On a number of occasions, campus administrators have been urged to remove ROTC units from the campus; and in one case they have done so. 76 Advocates of the removal of such units argue that it is

improper to allow outside agencies to dictate campus policy or to conduct business (such as research or recruitment 77 or training) with agencies whose policies are antithetical to campus policy with regard to discrimination. In a number of instances, efforts have been made to ban military recruitment advertising from campus newspapers and other publications.

Such challenges to DoD policy have had relatively little impact on military recruiting or ROTC enrollment. (This is especially the case given the recent drawdown in force size and efforts to reduce inductions-- including commissions via ROTC.) It has been argued that the only individuals harmed by removing these units from campus are those who sought ROTC training in the first place, including minorities, as well as the campus bursars. For example, the University of Wisconsin brings in more than \$2 million in ROTC scholarships and salaries. ROTC scholarships are strong incentives for attracting minority students, a perpetual problem for Midwestern schools. Added to this are the millions the Pentagon provides universities in research grants, which might be spoiled by sour relations with ROTC. * * * And there's another problem. Land grant universities such as Wisconsin and Minnesota are required by law to offer military instruction.' 78 Given these circumstances, it is easy to see why university administrators feel caught between the competing demands of student relations, economic necessity, equal opportunity enrollment, and law (specifically with regard to states interfering with Federal interests). 79

The issue of homosexuality and ROTC recently surfaced with regard to a student who had participated in ROTC (including the receipt of an ROTC scholarship) and then announced that he was homosexual. After investigating, the Army determined that the student was not making such a claim to avoid a service obligation. The service initially sought to recoup its scholarship payments from the student (approximately \$25,000). Army officials ultimately decided to discharge the cadet from ROTC, deny him a commission, and not seek recovery of his scholarship. Army officials stated that the decision not to seek recoupment was particular to the circumstances surrounding this case. 80 Such a decision created debate in the sense that any student could receive a scholarship and later acknowledge being a homosexual and free himself/herself from any service obligation. It appears likely, however, that should this situation occur again, the service involved would seek recoupment of scholarship funding and continue to deny commissioning.

What effects, if any, lifting the policy will have on military recruiting remains unknown. Some have suggested that heterosexual young people will be discouraged from joining the military if such service means living and working with openly homosexual personnel. Others argue that the willingness to serve will depend on how well the military (and those serving) maintain discipline and restrictions on behavior. Lastly, there is no known indication of the number of otherwise qualified homosexuals who will join should the policy be removed.

Homosexuality as an excuse to avoid military service

Under current policy, homosexuality may be used as a means of avoiding service. Individuals may join the service, and then at some later point decide to leave by acknowledging or claiming to be homosexual. The ability to use the homosexual policy as means of avoiding service, whether the claim of being a homosexual is legitimate or a ruse, is documented in other areas. During the draft era, for example, Baskir and Strauss cite incidents where young men were instructed on how to receive an exemption during the psychiatric interview at the induction station. The ability of psychiatrists who were at least somewhat suspicious of such behavior led to unexpected results. According to Baskir and Strauss:

'Homosexuality was a common ground for a psychiatric exemption and [one] antidraft pamphlet advised how to fake it[.] [Indeed,] San Francisco draft counselor Paul Harris recalled that 'all clients who faked it got their exemptions, but they drafted the one fellow who really was gay.' 81

Even though the current policy is intended to prevent individuals from using homosexuality to avoid service, it may not necessarily work out that way. Under current policy, homosexuals can and do serve

provided that they do not violate military regulations. Indeed, any change in the policy on homosexuality that maintains restrictions on behavior will allow certain individuals to avoid service (see also the French, German and Italian policies presented in the Appendix). Homosexuals need only admit to violating these restrictions; heterosexuals must bluff or violate these restrictions in order to seek the same escape.

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Deployment of homosexuals during a war or crisis

Instances have been cited during the mobilization for the Persian Gulf War, wherein suspected or acknowledged homosexuals were sent to the Gulf only to be discharged upon their return. 82 In these cases, the individuals involved may have been under investigation or had acknowledged their homosexuality. On going personnel actions were placed on 'hold' until their return. Many have concluded that DoD's position is that homosexuals can fight and possibly die when DoD needs them, but that they are otherwise to be treated with prejudice and forced out of the service once the crisis has passed.

DoD argues that its primary mission is to be prepared for and to fight wars. Once a conflict has begun, it is necessary for the Department to treat national security concerns as paramount relative to personal issues. For this reason, individuals who claim to be, or are under investigation as, homosexuals are deployed first while the issue of their homosexuality is investigated under proceeding prescribed. As such, this policy discourages service members from using homosexuality as a means of avoiding service.

During the mobilization for Desert Shield/Desert Storm, President Bush invoked a 'stop-loss' order. 83 Under these provisions, administrative procedures deemed to be at cross-purpose with national defense may be suspended. To some extent, discretionary decisions are involved. Consequently, some individuals covered under the Secretary of Defense's Memorandum may have certain administrative actions (including separation for homosexuality) put on hold. Under this law, the President is provided with the authority to override various personnel actions. The practice can prevent individuals, who are about to be deployed, from using certain administrative policies (such as the policy on homosexuality) from avoiding military service during a time of crisis. Once the crisis has passed, administrative procedures involving promotion, retirement and separation will be put back in place.

It has been argued that allowing individuals to avoid their service obligation at a time of crisis (whether they are homosexuals or merely making such a claim to avoid service) may wreak havoc on the morale, cohesion and ability of certain units to function. In addition, it is considered unfair to the taxpaying citizens to train and pay service personnel and then allow them to walk away when their services are most required. Thus, it is argued that the deployment of personnel who are under investigation as, or claim to be, homosexuals need not necessarily imply that the services condone homosexuality. Instead, these policies demonstrate that homosexuality cannot reliably be used as a means of being excused from an active duty commitment made under voluntary circumstances during a time of crisis. These policies ultimately maintain DoD's commitment to national security as its first priority.

However, the situation that arises during time of deployment because of the homosexual policy arguably places homosexual service members in a no-win situation. They are allowed or ordered to serve at the risk of their own lives with the probability of a forced discharge when hostilities end. Perhaps no other scenario subjects the policy of excluding homosexuals to greater scrutiny. By deploying homosexuals with their units, the services bring into question their own argument that the presence of homosexuals 'seriously impairs the accomplishment of the military mission.' 84 In no other situation are a lack of privacy, the need for cohesion and morale, and the integrity of the system of rank and command more compelling than in time of war. If homosexuals pose such a threat, it seems fair to argue that they should not be deployed. Nevertheless, DoD has deployed them and has raised no questions on their abilities to serve. It can be argued that DoD's actions of investigating and/or threatening to remove these individuals does more harm to morale and cohesion than would be the case had they been left alone in the first place. It remains unknown whether eliminating known homosexuals would have improved service performance or lead to a reduction in discipline problems.

It is possible that, if the policy on homosexuality is altered, homosexuals and others may continue to use homosexual *behavior* as a means of getting out of the service. Again, assuming certain restrictions remained on behavior, those seeking to avoid military service, say at times of mobilization, need only 'disclose' such acts and seek a discharge. Such a confession, however, may in some cases, risk more severe sanctions via court-martial.

ISSUES FOR CONGRESS

With President-elect Clinton's stated support for rescinding the policy on homosexuals in the military, Congress is likely to be confronted with a number of direct and associated issues. Depending on the nature of the alteration of policy made or proposed, Congress may need to consider: laws and legislation regulating behavior and misconduct, and military compensations as they relate to homosexuals and their partners.

Given past experiences on integration, base closures, and women in combat, it is possible that hearings will be held and/or a committee or commission will be formed to consider these issues. The formation, direction and scope of such deliberations may entail congressional oversight or direct participation. This section discusses each of these after first considering how the policy may be repealed.

An executive order repealing the policy

Following the election, President-elect Clinton reiterated his campaign commitment to repeal the military policy on homosexuals in the military. Such a repeal could be made via an executive order.⁸⁵ Under this authority, a President has the discretion to issue orders that would rescind or modify the policy (including modifications that may increase restrictions). For example, in 1948, President Harry Truman issued an executive order terminating racial segregation in the military. With minor modifications, similar language could be used to repeal, modify or strengthen the policy on homosexuals. (For the text of President Truman's Executive Order, see the Appendix.) The effective implementation of any hypothetical executive order could be made contingent (as was the case with Truman's executive order) upon the actions of a committee created for that specific purpose.

Beyond an executive order explicitly rescinding the policy, the Secretary of Defense could modify DoD directives that effectuate any changes. These changes could involve administrative procedures concerning investigations, discharges, administrative review boards, etc. Any changes made by these subordinates would require at least tacit approval of the President.

Any such change brought about by a President or appropriate subordinate would be subject to congressional oversight.⁸⁶ It is possible for a President or Secretary of Defense to modify current policy, only to have such a modification, itself, modified, enhanced, or rescinded by legislation. An attempt to rescind the policy against homosexuals, to make it more restrictive, or otherwise change it, could hypothetically prompt Congress to exercise its constitutional responsibility to make rules and regulations for the armed forces. Such legislation, of course, would be subject to presidential veto. For example, the President could issue an executive order rescinding the policy. Congress could consider legislation that would block the executive order by refusing the use of appropriated funds for its implementation, or reinstate the policy, in whole or in part, or as modified. If passed by both houses of Congress, this new language would be sent to the President to be signed into law. The President could sign or veto the bill. If vetoed the legislation would then be returned to Congress. To override the veto, both the House of Representatives and the Senate would need to pass the legislation again with a two-thirds majority in each chamber. Failure to gain such a majority in both chambers would mean defeat for the bill. Attaining such a majority would pass the bill into law over a presidential veto.

As a tactical matter, should such a scenario occur, it is likely that congressionally preferred modifying language would be incorporated in a larger bill (such as the annual National Defense Authorization Act of the DoD Appropriations Act). The President (lacking a line-item veto) would have to veto the entire bill

(leaving the Department of Defense without authorization or funding) or accept the congressional language.

Whatever the outcome (i.e., passed, vetoed, rejected), the legislation can be further modified by Congress and, subsequently, reconsidered. Unlike legislation, executive orders may only make modifications to the extent that such modifications do not conflict, or at least are consistent, with existing law. Thus, the ultimate oversight responsibility rests with Congress. The President may modify the current language regarding homosexuals and military service, but such modifications remain subject to congressional oversight and constitutional challenges.

Law regulating behavior and misconduct

Articles 125 (Sodomy) and 134 (General Article) of the Uniform Code of Military Justice may or may not be directly at issue. Explicit congressional action is required for these to be modified or struck from title 10, United States Code and the President alone cannot modify these articles. However, the enforcement of these articles remains under executive (presidential) control. Such enforcement is expected to be conducted in conformance with congressional intent. Failure to regulate conduct, consistent with congressional intent, could invite congressional action.

Military compensation and homosexual partnerships

The issue of `partnership' recognition may have more far reaching effects than generally recognized. The laws concerning domestic relations, including marriage or partnership, for example, are usually under state domain. Federal laws and regulations consider domestic relationships in terms of providing Federal employment benefits. Under Federal law, 87 familial relations or definitions of dependency are used to determine eligibility for Federal benefits including military health care, commissary and exchange privileges, housing and subsistence allowances, life insurance, survivor and death benefits, moving and transportation allowances, separation pay, adoption benefits, former spouse benefits, and Dependency and Indemnity Compensation and other veterans' benefits. Should the DoD policy on homosexuality be lifted, it is not clear how Federal regulations would be interpreted in situations where a state or municipality recognizes a homosexual partnership for the purposes of providing employer benefits. State regulations do not normally supersede Federal laws. Clearly, conflict and confusion may result if a state recognizes such a relationship and the Federal government does not. Congress may well be lobbied to reconsider family or dependency benefits for homosexuals. Failing this, it is possible that should the policy be lifted, limiting benefits to only heterosexual partners (marriages) or dependents would be challenged in court as unfair to those homosexual relationships that are recognized under other ordinances, regulations or laws. 88

Changing the policy may also involve congressional or administrative consideration in other areas. For instance, should the Department of Defense Dependent Schools provide information on homosexuality in its curricula? 89 And, if so, at what age? How should benefits be taxed under `partnership' situations? Should partners receive employment preferences on the same basis as heterosexual spouses? Could military chaplains be compelled to perform homosexual weddings? These questions suggest the scope of the issues that are likely to arise.

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Commissions, committees, hearings and studies

Although it appears likely that President-elect Clinton will make some modifications, there are indications that he may consult with, or form, a committee or commission to study the issue. 90 Congressional leaders have urged Clinton to proceed with caution. 91 Senator Nunn (chairman of the Senate Armed Services Committee), has agreed to hold hearings on the issue. Members of the Joint Chiefs of Staff have reportedly had input: `working through retired Adm. William J. Crowe Jr. and Rep. Dave McCurdy (D-Okla.), to convince Clinton that he will face serious repercussions in military ranks if he makes the

change. Army Gen. Gordon R. Sullivan and other chiefs are urging Clinton `to study it for a year or two,' * * * 92

The use of a commission remains an option (given the recent precedents including one on the role of women in the military and another on base closures). However, choosing commission members is, itself, a political issue. Members for the base closure commission were selected by the President subject to House of Representatives and Senate advice. Members of the commission on women were also selected by the President. The latter commission was criticized because of this method before it finished its work or filed a report. 93

In the final analysis, whatever approach is taken to consider or actually make any changes in DoD policy, including committees, commissions, hearings, executive order, legislation, it appears likely that both the executive and legislative branches of government will share responsibility for the final outcome.

APPENDIX

Text of Current Directives Related to Homosexuality

Directive on enlisted administrative separations

This Directive provides the policy rationale concerning homosexuals and military service. This Directive is divided into three main parts. Part 1 gives the Basis for providing administrative discharges; part 2 provides guidance concerning the characterization and description of such discharges; and, part 3 outlines the procedures that are to be followed to administer or execute such discharges.

According to the Department of Defense Directive 94 on providing enlisted administrative separations (section H, cited verbatim except those parts enclosed by brackets-[]-for clarification purposes):

1. Basis

a. Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affect the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain the public acceptability of military service; and to prevent breaches of security.

b. As used in this section:

(1) Homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts;

(2) Bisexual means a person who engages in, desires to engage in, or intends to engage in homosexual and heterosexual acts; and

(3) A homosexual act means bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

c. The basis for separation may include preservice, prior service, or current service conduct or statements. A member shall be separated under this section if one or more of the following approved findings is made:

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that:

(a) Such conduct is a departure from the member's usual and customary behavior;

(b) Such conduct under all the circumstances is unlikely to recur;

(c) Such conduct was not accomplished by the use of force, coercion, or intimidation by the member during a period of military service;

(d) Under particular circumstances of the case, the member's continued presence in the service is consistent with the interest of the Service in proper discipline, good order, and morale; and

(e) The member does not desire to engage in or intend to engage in homosexual acts.

(2) The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual and that the purpose of the marriage or attempt was the avoidance or termination of military service.

2. Characterization or description. Characterization of service or description of separation shall be in accordance with the guidance in section C. of Part 2 [Characterization of Service or Description of Separation]. When the sole basis for separation is homosexuality, a characterization Under Other Than Honorable Conditions may be issued only if such a characterization is warranted under section C. of part 2 and there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act in the following circumstances:

a. By using force, coercion, or intimidation;

b. With a person under 16 years of age;

c. With a subordinate in circumstances that violate customary military superior-subordinate relations;

d. Openly in public view;

e. For compensation;

f. Aboard a military vessel or aircraft; or

g. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

3. Procedure. The Administrative Board Procedure (section C. of Part 3) shall be used, subject to the following guidance:

a. Separation processing shall be initiated if there is probable cause to be separation is warranted under H.1.c., above.

b. The Administrative Board shall follow the procedures set forth in subsection C.5. of Part 3, except with respect to the following matters:

(1) If the Board finds that one or more of the circumstances authorizing separation under paragraph H.1.c., above, is supported by the evidence, the Board finds that retention is warranted under the limited circumstances described in that paragraph.

(2) If the Board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph H.1.c. has occurred, the Board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

c. In any case in which characterization of service Under Other Than Honorable Conditions is not authorized, the Separation Authority may be exercised by an officer designated under paragraph B.4.a. of Part 3.

d. The Separation Authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary concerned with a recommendation that the Secretary separate the member under the Secretary's authority (section O of this Part [Secretarial Plenary Authority]).

(2) If the Board recommends separation, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

(1) There is insufficient evidence to support the finding; or

(2) Retention is warranted under the limited circumstances authorizing separation under paragraph H.1.c. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in paragraph H.1.c., above.

(3) If there has been a waiver of Board proceeding, the Separation Authority shall dispose of the case in accordance with the following provisions:

(a) If the Separation Authority determines that there is not sufficient evidence to support separation under paragraph H.1.c., the Separation Authority shall direct retention unless there is another basis for separation of which the member has been duly notified.

(b) If the Separation Authority determines that one or more of the circumstances authorizing separation under paragraph H.1.c. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in that paragraph.

e. The burden of proving that retention is warranted under the limited circumstances described in paragraph H.1.c. rests with the member, except in cases where the member's conduct was solely the result of a desire to avoid military service.

f. Findings regarding the existence of the limited circumstances warranting a member's retention under paragraph H.1.c. are required only if:

(1) The member clearly and specifically raises such limited circumstances to justify the member's retention.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary concerned to take appropriate action in a case to ensure that there has been compliance with the provisions of this Directive;

(2) Precludes retention of a member for a limited period of time in the interests of national security as authority by the Secretary concerned;

(3) Authorizes a member to seek Secretarial review unless authorized in procedures promulgated by the Secretary concerned;

(4) Precludes separation in appropriate circumstances for another reason set forth in this Directive; or

(5) Precludes trial by court-martial in appropriate cases.

Under this same Directive, Part 2(C)2(b) provides the following description of each type of discharge:

Honorable. The Honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

General (under honorable conditions). If a member's service has been honest and faithful, it is appropriate to characterize that service under honorable conditions. Characterization of service as General (under honorable conditions) is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

Under other than honorable conditions. (a) This characterization may be issued in the following circumstances:

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1. When reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of members of the Military Services.

2. When the reason for separation is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of members of the Military Services. Examples of factors that may be considered include the use of force or violence to produce serious bodily injury or death, abuse of a special position of trust, disregard by a superior of customary superior-subordinate relationships, acts or omissions that endanger the security of the United States or the health and welfare of other members of the Military Services, and deliberate acts or omissions that seriously endanger the health and safety of other persons.

(b) This characterization is authorized only if the member has been afforded the opportunity to request an Administrative Board, except as provided in section L. of Part 1. (Separation in Lieu of Trial by Courts-Martial).

(Other discharge characteristics include Bad Conduct and Dishonorable. Both of these require a finding of unlawful behavior by a court-martial and are not therefore included in the directive or administrative separations. Generally, speaking, those discharged under the characterization of General, retain eligibility for many of the same benefits as those discharged under the characterization of Honorable.)

Directive on the separation of commissioned officers for cause

According to the DoD Directive on the Separation of Commissioned Officers for Cause. 95

B. ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION

A commissioned officer may be separated from a Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when he or she is found to have committed an act or acts of misconduct or moral or professional dereliction, which include (but are not limited to):

4. Homosexuality. The basis for separation may include preservice, prior service, or current service conduct or statements. A commissioned officer shall be separated under this provision if one or more of the following findings is made:

a. The officer has engaged in, has attempted to engage in, or has solicited another to engage in a homosexual act or acts, unless there are further findings that:

(1) Such conduct is a departure from the officer's usual and customary behavior.

(2) Such conduct under all the circumstances is unlikely to recur.

(3) Such conduct was not accomplished by use of force, coercion, or intimidation by the officer during a period of military service.

(4) Under the particular circumstances of the case, the officer's continued presence in the Service is consistent with the proper discipline, good order, and morale of the Service.

(5) The officer does not desire to engage in or intend to engage in further homosexual acts.

b. The officer has stated that he or she is a homosexual or bisexual unless there is a further finding that the officer is not a homosexual or bisexual.

c. The officer has married or attempted to marry a person known to be of the same sex (as evidenced by the external anatomy of the persons involved), unless there are further findings that the officer is not a homosexual or bisexual and that the purpose of the marriage was the avoidance or termination of military service.

Directive on physical standards for enlistment, appointment, and induction

Although the above Directives only address separations from the armed forces, this third Directive (Physical Standards for Enlistment, Appointment, and Induction) includes among the causes for rejection for appoint, enlistment and induction:

a. Homosexual Behavior. This includes all homosexual activity except adolescent experimentation or the occurrence of a single episode of homosexual behavior while intoxicated. 96

TEXT OF UNIFORM CODE OF MILITARY JUSTICE PROVISIONS RELATED TO HOMOSEXUALITY

Title 10 United States Code (U.S.C.) contains two sections under the Uniform Code of Military Justice (UCMJ) under which certain behaviors may be prosecuted. 97 In other words, there is no law against being a homosexual. However, certain behaviors may be proscribed by law.

A. Article 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

B. Article 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. (Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

The current definition of sodomy (above) differs from that used in 1917. According to the Manual for Courts-Martial (United States, 1917, para. 443): 'Sodomy consists in sexual connection with any brute animal, or in sexual connection, per anum, by a man with any man or woman. . . . Penetration of the mouth of the person does not constitute this offense. Both parties are liable as principals if each is adult and consents; but if either be a boy of tender age the adult alone is liable, and although the boy consent the act is still by force. Penetration alone is sufficient. An assault on a human being with intent to penetrate his or her person per anum.' (See Davis 1991).

DOD policy and the courts--legal analysis 98

The military policy of excluding homosexuals has been judicially challenged, largely without success, on a variety of legal and constitutional grounds. Most of the early cases involved personnel suspected of homosexual conduct who argued that the policy violated the constitutional right of privacy; 99 that it was prohibited by the Equal Protection Clause because only homosexual sodomy was prosecuted while similar heterosexual conduct was not; 100 or that the procedure applied by the services to effect discharge did not conform to procedural due process requirements. 101 Later cases also raised First Amendment free speech claims when brought by admitted homosexuals who had been discharged not for alleged sexual conduct but rather because of their 'status' as revealed by voluntary statements to colleagues, or in the press and other public fora. 102

Due process challenges predicated on the right of privacy have been uniformly rejected by the courts in these cases, particularly after the U.S. Supreme Court in *Bowers v. Hardwick* 103 sustained a Georgia statute criminalizing sodomy as applied to consenting homosexual adults in the privacy of the home of one of them. The Court there expressed the view that homosexual sodomy was neither a fundamental liberty 'implicit in the concept of ordered liberty' nor is it 'deeply rooted in the Nation's history and tradition.' 104 On parallel reasoning, the courts generally have refused to apply heightened scrutiny to the equal protection claims of discharged homosexuals according to the constitutional standards traditionally

applied in cases of governmental discrimination based on race, ethnicity or other 'suspect' classifications. 105 First Amendment challenges to the military policy have fared little better. Thus, statement by a service person of his/her homosexuality, whether in the media or otherwise, has not generally been accorded First Amendment protection since it does not implicate the exchange of information and ideas on homosexuality as a matter of 'public concern.' 106 An important element in each of these decisions was the history of judicial deference to military judgments that is now firmly entrenched in our legal tradition. 107

Accordingly, to date, successful judicial challenges to the military's policy regarding homosexuals have been few in number and of relatively narrow legal significance. For example, *Matlovich v. Secretary of the Air Force*, 108 involved an admitted homosexual with an 'outstanding' 12-year record of military service who had not been charged with any homosexual activity on base or with other servicemen. Neither the court of appeals nor the federal district court on remand ever decided the main constitutional challenge asserted by the petitioner based on the right to privacy. Instead, the Air Force policy, which at that time permitted retention of homosexual personnel in 'unusual circumstances,' was held procedurally defective for its lack of fair and objective standards governing discharge. In other words, the petitioner was entitled to an explanation of why the exception did not apply to him. Subsequent to this decision, and a similar one concerning Navy regulations, 109 the Department of Defense issued revised regulations clarifying exceptions to the policy of mandatory discharge of homosexual service members which effectively preempted any defense based on quality of performance in future cases.

In a more recent and highly publicized decision, *Watkins v. United States Army*, 110 condemnation of the DOD policy as violative of the Fifth Amendment right to equal protection and instead ordered reinstatement of a homosexual 16-year veteran on equitable estoppel grounds. The earlier panel ruling had determined that lesbian and homosexual persons constitute a 'suspect class' and employed heightened equal protection scrutiny to invalidate the Army policy. On rehearing, however, the full court held that the Army could not refuse reenlistment to a highly rated serviceman who had openly acknowledged his homosexuality at the time of initial enlistment and who had consistently been reenlisted despite the Army's awareness of his sexual orientation. Because it disposed of the case on equitable estoppel grounds, based on the specific factual circumstances before it, the en banc court avoided making any determination of the constitutional issues raised. Consequently, the decision is likely to have minimal impact upon current military policy.

Judicial analysis of federal equal protection claims fall into three basic modes. First is the traditional 'rational basis' standard that will uphold most legislative or executive action that classifies individuals as long as the classification is reasonable and rationally related to a legitimate governmental objective. Certain classifications are deemed 'suspect' or 'quasi-suspect,' however, and governmental actions based on such classification will be subjected to rigorous or 'searching' judicial scrutiny. 111 Governmental actions that burden members of a suspect or quasi-suspect class call for a higher level of justification both in terms of the weight of the government's interest 112 and the degree of relationship to the interest served. 113 The federal courts of appeals to date have generally refused to apply the so-called 'strict scrutiny' test, or other heightened equal protection standard of judicial review, to the military policy regarding homosexuals.

Applying the more lenient equal protection standard, the courts have usually had little difficulty accepting as 'rational' the military's justifications for its homosexual policy. 114 In *Beller v. Middendorf*, 115 the Ninth Circuit accepted all of the military's justifications and upheld the Navy policy as applied to the discharge of three enlisted personnel who had engaged in homosexual acts. Judge (now Justice) Kennedy wrote that:

'The Navy can act to protect the fabric of military life, to preserve the integrity of the recruiting process, to maintain the discipline of personnel in active service, and to insure the acceptance of men and women in the military, who are sometimes stationed in foreign countries with cultures different from our own.'

Furthermore, although he felt the policy was 'perhaps broader than necessary to accomplish some of its goals,' Judge Kennedy concluded that it 'represents a reasonable effort to accommodate the needs of the Government with the interests of the individual.' 116 In *Dronenburg v. Zech* 117 Judge Bork wrote for the D.C. Circuit in another case involving homosexual conduct that '[t]he effects of homosexual conduct within a naval or military unit are almost certain to be harmful to morale and discipline.' Finally, in *Ben-Shalom v. Marsh*, 118 a status (not conduct) case, the Seventh Circuit ruled that military discharge due to a declaration of lesbianism did not violate the First Amendment, and that the Army regulation barring homosexuals passed rational basis equal protection review.

A recent judicial development that may forecast invigorated scrutiny into the military's justifications for excluding homosexuals is the Ninth Circuit decision in *Pruitt v. Cheney*. 119 *Pruitt* was an officer in the U.S. Army Reserve with an 'outstanding' record in both active and reserve duty. Although it had no evidence of homosexual acts on her part, the Army moved to revoke *Pruitt's* security clearance and discharge her after she revealed, in a Los Angeles Times interview, that she was a lesbian and had twice participated in ceremonies of marriage to other women. *Pruitt* thereafter challenged the Army's actions, which were based solely on her own admissions of homosexuality as a violation of free speech rights. This First Amendment claim was rejected by both the district and appellate court on the rationale that *Pruitt's* admission of her homosexual status was not protected speech. 120 The appeals court did hold, however, that the Army had to demonstrate a rational basis for its regulation and remanded the cases for appropriate proceedings. Moreover, the decision departs from *Beller* and related precedent by relying on two Supreme Court rulings which stand for the principle that governmental denial of equal protection is never justified by the antipathy of others towards the group adversely affected.

In the more recent of these, *City of Cleburne v. Cleburne Living Center, Inc.*, 121 the Court invalidated under rational basis equal protection analysis the refusal of a city to permit construction of a group home for the mentally retarded. Although neither a suspect nor quasi-suspect class was involved, the city's justifications for denying a permit were rejected. The desire to avoid negative reactions of neighbors was found to be an unacceptable basis for discriminatory treatment, 122 and even the legitimate goal of relieving congestion could not be achieved by prohibiting only certain types of group homes while allowing others. *Palmore v. Sidoti* 123 was an earlier case which struck down a denial of child custody based upon social disapproval of the interracial marriage of the mother. The Supreme Court declared that '[t]he Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.' 124

The Court's refusal in these cases to accept asserted governmental goals as legitimate, and its more than perfunctory scrutiny of the means by which the governmental body pursued its legitimate goals, may have important implications for future judicial review of military policies regarding homosexuals. At the very least, if applied in this context, it could mean that the military faces a weightier burden than heretofore in terms of justifying its policies as rational and reasonable based on factual evidence presented to the court. In this regard, the courts may be less willing to accept as rational the offer of any proof which reflects popular antipathy toward or stereotypical views concerning homosexuality.

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SUMMARIES AND SUMMARY CRITIQUES OF PREVIOUS STUDIES ON HOMOSEXUALITY AND THE MILITARY

The U.S. General Accounting Office recently released a report entitled 'Defense Force Management: DoD's Policy on Homosexuality.' 125 Some of these findings have been considered in the text of this report. The general findings are presented and discussed below. GAO states:

'On the basis of its policy of excluding homosexuals from the military, DOD annually expelled an average of about 1,500 men and women between 1980 and 1990 under the separation category of

'homosexuality.' These expulsions reached a high of about 2,000 in 1982 and a low of about 1,000 in 1990. Separations for homosexuality do not require a determination that an individual's behavior affects the military's mission. In terms of rank, gender, and race/ethnicity, the majority of those expelled were enlisted personnel; most were men (about 78 percent); and most were white. When challenged, these discharges have been routinely upheld in the military adjudication and civil court systems.

'DOD does not maintain records of the costs associated with administering its policy; nor does it record the costs of investigating alleged cases of homosexuality. Accordingly, our analysis was limited to estimates of the costs of recruiting and training individuals to replace personnel discharged for homosexuality.

'Major psychiatric and psychological organizations in the United States disagree with DOD's policy and believe it to be factually unsupported, unfair and counterproductive. In addition, two DOD/service-commissioned study efforts have refuted DOD's position on the potential security risk associated with homosexual orientation as well disclosed information that raised questions about the basic policy. Further, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff have recently acknowledged that homosexual orientation is no longer a major security concern.'

GAO also found that: Recent polls suggest that the public has become more accepting of homosexuality and homosexuals' serving in the military; Some U.S. allied nations have policies similar to that of the United States, and others have policies that permit homosexuals to be members; and, police and fire departments in several major U.S. cities have removed employment restriction without adverse effects on mission. 126

Based on these findings, the GAO report has been cited by opponents of the policy to support their contention that the policy should be rescinded. Some have argued that the costs involved do not justify the policy. This report has not escaped criticism. First, it should be noted that the DoD policy is not predicated on economic issues. Critics contend that it is difficult to make an economic argument for keeping certain individuals on active duty (such as sodomists or those who prove disruptive to good order and discipline). Second, it has been noted that the reports cited by GAO (including the Crittenden Report 127) actually support the DoD policy, or were dismissed because the 'analysis' was flawed, uninformed and represented the opinions of the authors only (PERSEREC 128).

While it stresses the high cost of replacing discharged homosexuals, critics note that GAO fails to consider the costs imposed on the service by rescinding the policy. Costs associated with discipline problems, fraternization, court-martials for sodomy (unless that too is rescinded) reduced morale, invasions of privacy, recruiting and retention difficulties and image problems. 129

GAO has noted that the American Psychological Association, American Psychiatric Association and American Sociological Association have stated their opposition to the policy. This opposition is based on medical/clinical questions concerning the medical status of homosexuals and social equity issues. Critics contend that these positions are not based upon needs for discipline or good order, or on consideration based on combat effectiveness--the very basis for the policy. 130

GAO also noted that among selected police and fire departments officials state that the elements of unit/team cohesiveness, discipline and good order and morale, trust and confidence, and a system of command rank and respect are important to their overall mission. 131

The issue of comparing police and fire departments to military organizations has been raised as the only viable way to gain a perspective into the operation of 'paramilitary-type' organizations and their response to homosexuals in the ranks. Critics contend that this is a false comparison. The living environment, stresses, and issues of privacy available to fire fighters and police officers strain comparison when viewed from a military perspective. (See section above on 'Differing standards for DoD uniformed and civilian

employees.'). While the military has police and fire fighting units, few civilian organizations are deployed for long periods under military conditions.

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NATO POLICIES

The following is reproduced from an Army Times report (see NATO policies on gays in uniform, January 11, 1993, p. 22). These findings are based on information provided by military and embassy officials of each country.

Belgium

Not acknowledged as a relevant issue. Neither conscripts nor volunteers are asked about their sexual orientation. Homosexuality itself does not exempt Belgians from the draft unless there are accompanying psychological disorders as determined by clinical evaluation. Homosexual conduct between consenting adults off-duty is not punished, but inappropriate homosexual and heterosexual behavior can lead to dismissal from military duty or exclusions from certain units and jobs.

Britain

Homosexuals are officially barred from service, but unofficially the British Defense Ministry says the practice of prosecuting gays simply for being gay is rare. Homosexual acts among consenting adults has been decriminalized in military as well as civilian law as long as it is off-duty.

Canada

Was ordered by the Federal Court of Canada to drop its ban on gays in the Canadian Forces in October 1992. Canadian service members were not required to certify they were heterosexual when they enlisted, but openly gay persons were often discharged or had their transfer or promotion opportunities limited. The files of service members who were either discharged or denied promotion because of their sexual orientation are being reviewed for reconsideration by military authorities.

Denmark

Now law or policy. Neither conscripts nor volunteers are asked about sexual orientation. Treated as a personal, private matter.

France

No legislation or written codes. Gays are allowed to serve in the French military as long as they do not harass other members of their units. But gays and lesbians can avoid being drafted by claiming their homosexuality is incompatible with service life.

Germany

Homosexuality cannot be used as a reason not to be drafted, although potential gay conscripts who claim service would be psychologically injurious are evaluated and frequently given alternative mandatory service. Career members of the military who are openly gay do face discrimination, frequently finding promotions blocked and access to top-level classified information denied.

Greece

Homosexuals are banned from military service.

Italy

Homosexuals are deemed unsuitable for military service. During medical examinations, homosexual conscripts will be declared ineligible if found to have behavioral 'anomalies' caused by sexual deviations.

Luxembourg

Homosexuals are not precluded from service. Military service is voluntary and enlistees are not asked about sexual orientation. Improper conduct--whether homosexual or heterosexual--is punishable by discharge or court martial.

Netherlands

Basic law prohibits all discrimination, for any reason. A union represents homosexuals in the military. Unwanted advances are treated as improper behavior. Courses in human relations are conducted for commanders and include homosexual issues. Legislation is pending for homosexual survivor benefits.

Norway

Not considered a relevant issue and no one entering the service is asked about their sexual orientation. Unwanted advances by either homosexual or heterosexual service members are treated as improper behavior contrary to good order and discipline.

Portugal

Not seen as a relevant issue. Homosexuals may serve in the armed forces, although conduct may be punishable.

Spain

There are no codes regulating homosexuals in the military. Like religion, sexual orientation is considered a person's own choice.

Turkey

Homosexuals are not permitted to serve openly in the armed services, although they are not asked about their sexual orientation upon entering the service.

TEXT OF 102D CONGRESS LEGISLATION ON HOMOSEXUALITY AND THE MILITARY

Four bills were introduced in the 102d Congress concerning the issue of homosexuality and military service. Two bills, H.R. 5208 and S. 3084, contain identical language: 132

A bill to prohibit discrimination by the Armed Forces on the basis of sexual orientation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Prohibition on discrimination in the military on the basis of sexual orientation.

(a) In General: No member of the Armed Forces, or person seeking to become a member of the Armed Forces, may be discriminated against by the Armed Forces on the basis of sexual orientation.

(b) Preservation of Rules and Policies Regarding Sexual Misconduct: Nothing in subsection (a) may be construed as requiring the Armed Forces to modify any rule or policy regarding sexual misconduct or otherwise to sanction or condone sexual misconduct, but such rules and policies may not be applied in a manner that discriminates on the basis of sexual orientation.

On September 18, 1992 Senator Metzenbaum introduced the above language as an amendment to the FY 1993 National Defense Authorization Act. 133 After a brief debate, the Chairman of the Senate Armed Services Committee, Senator Sam Nunn, stated:

' * * * I think the subject [homosexuality and military service] ought to be heard before we complete our markup of the [FY 1994 defense authorization] bill. That markup is completed in either May or June of next year. I think before that time we ought to have hearings because this [homosexual policy] ought to be the subject of that [hearing]. I assure [Senator Metzenbaum] we will have hearings on the subject before we mark up our bill.' 134

Following the above statement, Senator Metzenbaum withdrew this amendment.

Two other resolutions, H. Res. 271 and S. Res. 236, were introduced. 135 Although differing in text and scope from the above bills and amendment, both the House and Senate version of this resolution were identical:

Resolution

Expressing the sense of the [House of Representatives/Senate] that the President should rescind Department of Defense Directive 1332.14 section H.1, which bans gay, lesbian and bisexual Americans from military service.

Whereas the effectiveness of the military's mission is hindered when competent and qualified personnel are denied the opportunity to give their services to the armed services of the United States;

Whereas an estimated 1,000 men and women are discharged from the armed services each year simply because of their sexual orientation, costing American taxpayers millions of dollars per year;

Whereas Secretary of Defense Richard Cheney acknowledged that the men and women banned from military service under Department of Defense Directive 1332.14 section H.1 are currently allowed to serve in sensitive civilian jobs at the Department of Defense;

Whereas studies authorized by the Department of Defense have shown that there is no correlation between successful military service and sexual orientation;

Whereas the men and women banned under 1332.14 section H.1 have, in fact, served in the Armed Forces of the United States throughout our history when our Nation has been at peace and at war;

Whereas the men and women banned under 1332.14 section H.1 have, in fact, served in the Armed Forces of the United States and fought in the Persian Gulf War;

Whereas the men and women banned under 1332.14 section H.1 have, in fact, been decorated for their valor and service to our country;

Whereas Secretary of Defense Richard Cheney testified that Department of Defense testified that Department of Defense Directive 1332.14 section H.1 is one that he `inherited`;

Whereas Secretary of Defense Richard Cheney admitted that the security risk rationale for 1332.14 section H.1 is `a bit of an old chestnut`; and

Whereas all Americans who meet the criteria for service in the Armed Forces, regardless of sexual orientation, deserve an equal opportunity to serve in the defense of our country: Now, therefore, be it

Resolved, That the [House of Representatives/Senate] urges the President to rescind Department of Defense Directive 1332.14 section H.1 so that all Americans, regardless of sexual orientation, currently serving their country in the armed services, and those who want to serve, will not be prevented from, or punished for, doing so.

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TEXT OF 1948 TRUMAN EXECUTIVE ORDER ON RACIAL DESEGREGATION 136

EXECUTIVE ORDER 9981

Whereas it is essential that there be maintained in the armed services of the United States the highest standards of democracy, with equality of treatment and opportunity for all who serve in our country's defense:

Now, therefore, by virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed services, it is hereby ordered as follows:

1. It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed service without regard to race, color, religion or national origin. This policy shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale.
2. There shall be created in the National Military Establishment an advisory committee to be known as the President's Committee on Equality of Treatment and Opportunity in the Armed Services, which shall be composed of seven members to be designated by the President.
3. The Committee is authorized on behalf of the President to examine into the rules, procedures, and practices of the armed services in order to determine in what respect such rules, procedures and practices may be altered or improved with a view to carrying out this order. The Committee shall confer and advise with the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, and shall make such recommendations to the President and to the Secretaries as in the judgment of the Committee will effectuate the policy hereof.
4. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Committee in its work, and to furnish the Committee such information or the services of such persons as the Committee may require in the performance of its duties.
5. When requested by the Committee to do so, persons in the armed services or in any executive departments and agencies of the Federal Government shall testify before the Committee and shall make available for the use of the Committee such documents and other information as the Committee may require.

6. The Committee shall continue to exist until such time as the President shall terminate its existence by Executive Order.
Harry S Truman.

The White House, July 26, 1948.

FOOTNOTES

1 The degree to which President-elect Clinton intends to modify current policy is not clear. According to reports quoting Clinton:

'The difficulty, it seems to me,' [Clinton] said, 'is to get people to focus on what I believe the real issue is, to say that we don't have a person to waste. By the way, it's not as simple a question as it seems,' he said, 'because the sexes are segregated in the services to guarantee a certain level of security against sexual overtures, a certain level of cohesion, you know. So it's not a simple issue. But what I think the rule ought to be is in the absence of some inappropriate behavior, if someone has been in service and they're serving well, that alone should not be grounds for dismissal. I want to be very clear about this, because it is not a totally simple issue. There would have to be something besides the simple statement of status. But I think everybody understands that any kind of inappropriate behavior would be grounds for dismissal.' Schmalz, Jeffrey, *Difficult First Step*, New York Times (News Analysis), Nov. 15, 1992: 22.

This statement, and others, have been subjected to interpretations as to what actions the President-elect may ultimately take, and what may be the political ramifications of these actions. See also, *Lift the Ban on Gay Soldiers*, New York Times, November 15, 1992: IV-18; Evans, David, *Clinton's Promise on Gays could Cloud the Military's Future*, Chicago Tribune, October 20, 1992: 25; Matthews, William, *Navy Times, Clinton's Stance on Gay Ban Angers Many*, October 5, 1992: 18.

2 Kenworthy, Tom, Nunn, Dole Urge Caution on Military Gay Policy, Washington Post, November 16, 1992: A12.

3 Davis, Maj. Jeffrey S., *Military Policy Toward Homosexuals: Scientific, Historical, and Legal Perspectives*, Military Law Review, Vol. 131, Winter 1991: 115. (Hereafter referred to as Davis 1991.) For the definition of sodomy in the Manual for Courts-Martial (1917), see Appendix section 'Text of Uniform Code of Military Justice * * *'

4 Berube, Allan, *Coming Out Under Fire: The History of Gay Men and Women in World War II*, New York: Penguin Books (Plume), 1991.

5 Davis, 1991: 76-77. Although Davis notes that Army language concerning 'tendencies, desires, or interests' was later 'found to be unconstitutional' (see p. 77), he provides no court citation. Efforts to locate such a ruling have proven unsuccessful. In addition, in 1973, the American Psychiatric Association voted to remove homosexuality from its list of abnormalities.

6 Snyder, William P., and Kenneth L. Nyberg, *Policy Paper Gays and the Military: An Emerging Policy Issue*, Journal of Political and Military Sociology, Vol. 8, No. 1, Spring 1980: 74.

7 According to Laurence, Janice H., and Peter F. Ramsberger, 'Beginning in 1966, under Project 100,000, some 300,000 low-aptitude men enlisted or were drafted into the rank and file as part of a social welfare program. Responding to President Lyndon Johnson's War on Poverty, then-Secretary of Defense Robert S. McNamara launched this project with the hopes of equalizing the burden of wartime service, while turning the lives of the disadvantaged around through a tour of military duty.' (*Low-Aptitude Men in the Military: Who Profits, Who Pays?*, New York: Praeger, 1991: 1.)

8 U.S. Department of Defense, Directive No. 1332.14, Enlisted Administrative Separations, January 28, 1982: 1-9 through 1-13. For the complete text of this directive, see Appendix.

9 See Appendix for an explanation of discharge characterizations.

10 Under DoD regulations and the UCMJ, a person can not be prosecuted for merely being homosexual. Although a person can be administratively discharged, with an Honorable or General discharge--which is substantively different from prosecution--for making statements confirming that he or she is homosexual, such statements are viewed as acts (see *Ben-Shalom v. Marsh*, 881 F.2d 454, 462 (7th Cir. 1989) as discussed in the Appendix). Merely making a statement, however, is likely to lead to an investigation under the foregoing policy. For example, in one case, a sailor became president of the San Diego Veterans Association--whose membership is largely homosexual--and who advocates changing the military policy but who has not violated any of the provisions of the DoD regulation may be subject to investigation but can not be administratively discharged without a finding of homosexuality based on DoD definitions (see Reza, H.G., Sailor at Odds With the Navy's Anti-Gay Policy, Los Angeles Times (Washington, D.C. Ed.), April 1, 1992: B-2). While such an investigation, and perhaps an ensuing discharge, is not a form of prosecution, these processes have been seen by some as a form of persecution of homosexuals.

11 LeVay, Simon, A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men, *Science*, 258, 1991: 1034-1037; Bailey, J.M., and Pillard R.C., A Genetic Study of Male Sexual Orientation, *Archives of General Psychiatry*, 48, 1991: 1089-1096; Gelman, David, et al., Born or Bred?, *Newsweek*, Feb. 24, 1992: 6; Kinsey, A. W. Pomeroy, and C. Martin, *Sexual Behavior in the Human Male*, cited in Davis, 1991; Voeller, Bruce, Some Uses and Abuses of the Kinsey Scale, in *Homosexuality, Heterosexuality: Concepts of Sexual Orientation*, The Kinsey Institute Series, June Machover Reinisch, ed., Oxford University Press, 1990: 35; Diamant, Louis, (Ed.), *Male and Female Homosexuality: Psychological Approaches*, Washington: Hemisphere Publishing Corp., 1987; Marmor, Judd, (Ed.), *Homosexual Behavior: A Modern Reappraisal*, New York: Basic Books, 1980; and, Pattullo, E.L., Straight Talk About Gays, *Commentary*, Vol. 194(6), December 1992: 21. A number of religion-based organizations exist to help 'homosexuals' in 'going straight,' including Regeneration of Baltimore, MD, and Exodus International of San Rafael, CA., leading some to believe that homosexuality may be based on choice. According to Davis, 1991: 62-63, 'The vast majority of homosexuals never seek treatment. Of those who have, there have been some reports of successfully changing homosexuals into heterosexuals, but the criteria for success often have been 'either vague or considerably less than exclusive heterosexual behavior.' * * * At any rate, the reports on treatment of homosexuality seem consistent with the hypothesis that efforts to change sexual orientation should be minimally effective.'

12 Gladue, Psychological Contributions, in L. Diamant (Ed.), *Male and Female Homosexuality*: 130.

13 Toufexis, Anastasia, Bisexuality: What is it?, *Time*, August 17, 1992: 49-51.

14 Kinsey, Alfred C., *Sexual Behavior in the Human Male*, Philadelphia: W.B. Sanders, 1948: 650-51; cited in Allan Berube, *Coming Out Under Fire: The History of Gay Men and Women in World War Two*, New York: Penguin Books (Plume), 1991: 289.

15 Smith, Tom W., Adult Sexual Behavior in 1989: Number of Partners, Frequency of Intercourse and Risk of AIDS, *Family Planning Perspectives*, Vol. 23, No. 3, May/June 1991: 104. (These data were collected as part of the General Social Survey, 1988 and 1989, by the National Opinion Research Center, University of Chicago. Smith's study was funded by the National Science Foundation.) See also, R.E. Fay et al., Prevalence and Patterns of Same-Gender Sexual Contact Among Men, *Science*, 243, 1989: 338. For a critique of Kinsey's work, see Reisman, Judith, and Edward W. Eichel, *Kinsey, Sex and Fraud: The Indoctrination of a People*, Huntington House Publishers, Lafayette, LA, 1990; Really Dr. Kinsey?, 337 *The Lancet* (British Medical Journal, 547, 1991; and, Kinsey Sex Reports: Dubious, Misleading, Fraud?,

German Medical Tribune, July 19, 1991 (Jurgen Benning Trans.) cited in *Steffan v. Cheney*, 780 F. Supp. 1, (D.C. Cir. 1991).

16 Berube, 1991: 32, 56-57.

17 Webster's Third New International Dictionary of the English Language, Unabridged, Philip Babcock Gove (Ed.), Springfield, Massachusetts: G. & C. Merriam Company, 1971: 199, 1591. For a discussion of this issue in the civilian context, see Eddy, Mark, Prohibiting Discrimination on the Basis of Sexual Orientation: Arguments For and Against Proposed Legislation, Congressional Research Service Report 89-222 Gov, April 10, 1989. Under current DoD policy, no distinction is made on the basis of orientation versus behavior.

18 For example, instances of youthful experimentation or sexual assault victimization may not be considered as grounds for denying an enlistment if there are reasons to believe that these instances do not represent a desire or intent to engage in future homosexual activities. Discretion, therefore, is involved.

19 *Ben-Shalom v. Marsh*, 881 F.2d 464 (7th Cir. 1989). In addition, the Supreme Court held that there was no fundamental right of homosexuals to engage in consensual sodomy and upheld the Georgia statute criminalizing sodomy (*Bowers v. Hardwick*, 478 U.S. at 194-195, 106 S.Ct. at 2846).

20 Dewar, Helen, Nunn Assailed by Gay Rights Groups for Firing of Two Aides, *The Washington Post*, Dec. 8, 1992: A11. 'About a dozen members of the gay rights group Queer Nation conducted a small demonstration--a 'kiss-in'--at Nunn's office on Capitol Hill yesterday to protest what the group's spokesman, Mike Petrelis, called Nunn's 'known homophobia.'

21 Rep. Schroeder, ABC News Nightline, Show #2867, Air Date: May 19, 1992.

22 Willis, Grant, Gay Activists Target Repeal of Sodomy Law, *Navy Times*, August 24, 1992: 21.

23 Charles C. Moskos, Jr. ABC News Nightline, May 19, 1992. General Colin L. Powell, chairman of the Joint Chiefs of Staff: 'I have never been of the view that this would break the armed forces of the United States if we [allowed homosexuals to serve openly in the military]. I'm also not of the view [as] some newspapers are, that there will be mass resignations. I am of the view, and continue to be of the view that it will be prejudicial to good order and discipline because (it will) introduce this added very complex social dimension into [this] institution * * *.' Powell: 'Gays in the Military Far More Complicated Issue,' *Air Force Times*, December 14, 1992: 12.

24 H.R. 5208, Rep. Patricia Schroeder, May 19, 1992; S. 3084, Sen. Howard Metzenbaum, July 28, 1992.

25 See, e.g., *Watkins v. United States Army*, 875 F.2d 699, 702-04 (9th Cir. 1989) (en banc); *Matlovich v. Secretary of the Air Force*, 591 F.2d 852, 854 (D.C. Cir. 1978); cited in Davis, Major Jeffrey S., *Military Policy Toward Homosexuals: Scientific, Historical, and Legal Perspectives*, *Military Law Review*, Vol. 131, Winter 1991: 55.

26 Based on research conducted at the University of Indiana, 75 percent of white male homosexuals reported to have had 100 or more partners, and 28 percent reported 1000 or more. None of the respondents reported fewer than three partners. Bell, Alan P., and Martin S. Weinberg, *Homosexualities: A study of Diversity Among Men and Women*, New York: Simon & Schuster, 1978: 312. According to a University of Chicago survey (Smith, Tom W., *Adult Sexual Behavior in 1989: Number of partners, Frequency of Intercourse and Risk of AIDS*, *Family Planning Perspectives*, Vol. 23(3), May/June 1991: 104.) 'Adults reported an average of 7.15 sexual partners since age 18.'

27 'Partnership legislation' refers to proposals to have employers (including the government) recognize a gay partnership for the purposes of receiving health care and other employer-offered benefits. While a few employers and a small number of municipalities or other jurisdictions already recognize and/or provide limited benefits to 'partners,' most do not.

28 The integration of blacks is generally viewed as a success. (See Moskos, Charles, The Army's racial success story. How do they do it? The New Republic, August 5, 1991:16.) The integration of women remains debated today (Collier, Ellen, Women in the Armed Forces, CRS Issue Brief, IB92008, updated regularly; The Presidential Commission on the Assignment of Women in the Armed Forces, Report to the President, Washington, D.C., U.S. Government Printing Office, November 15, 1992). The attempt to use the military as a means of social mobility for individuals of low-aptitude has been criticized by a number of observers as a failure that perhaps did more damage to those it was intended to help in the first place. (Laurence, Janice H., and Peter F. Ramsberger, Low-Aptitude Men in the Military: Who Profits, Who Pays?, Praeger, New York: 1991.) The services of women and blacks in various forms are not new to the military. Blacks served openly in every war (including as 'Buffalo soldiers' during the Indian Wars) and were in segregated units at least since the Civil War (including Confederate units). By World War II, such segregation was recognized as problematic in terms of effectiveness and efficiency. The integration of women (including the opening of non-stereotypical military occupational specialties), particularly in the 1970s, was in part a result of a need for qualified personnel created during the transition to the All-Volunteer Force. Homosexuals, generally speaking, have not served 'openly' in the military. Critics contend that, although the integration of the military and the expansion of opportunities had social and political underpinnings considering the history of blacks and women in uniform, these changes were justified on military needs. Homosexual rights advocates, critics contend, have not shown a military need or justification for changing the current policy.

29 Gabriel, Richard A., Women in Combat? Two Views, Army, March 1980:

30 Snyder, William P., and Kenneth L. Nyberg, Policy Paper Gays and the Military: An Emerging Policy Issue, Journal of Political and Military Sociology, Vol. 8, No. 1, Spring 1980: 72-73

31 Shils, Edward and Morris Janowitz, Cohesion and Disintegration in the Wehrmacht, Public Opinion Quarterly, 12 (Summer 1948); 280-315.

32 McCrane, Kevin M. Gays in the Military? A Cautionary Tale, Wall Street Journal, Dec. 2, 1992: A10; Hackworth, David, The Case for a Military Gay Ban: My Combat Experience Tells Me It's the Only Sensible Policy, Washington Post, June 28, 1992: C5.

33 Snyder, William P., and Kenneth L. Nyberg: 72.

34 For example, homosexuals who come to the attention of investigators by being caught in homosexual acts may 'plea bargain' to an administrative discharge (rather than face a court-martial) provided that they turn over the names and incriminating evidence against other homosexuals in the service. Providing information on 'partners' needed in part to remove other homosexuals from the service as well as to determine whether the individual is trying to avoid military service necessarily broadens the scope on an investigation.

35 In a recent incident, a vice admiral was censured and was retired at the reduced rank of rear admiral following accusations that he protected a member of his own personal staff 'from disciplinary action resulting from alleged homosexual advances to other staff members.' Burlage, John, The Fetterman Saga: Witch Hunt or Justice?, Navy Times, August 10, 1992: 14.

36 U.S. General Accounting Office, Defense Force Management: DOD's Policy on Homosexuality, B-247235, June 12, 1992, (referred to hereafter as U.S. GAO-1); see also, U.S. GAO, Defense Force Management: Statistics Related to DOD's Policy on Homosexuality, B-247235, June 12, 1992.

37 NGLTF, Policy Institute, Press Kit, Gays and Lesbians in the Military, Department of Defense, Robert Bray, Communications Director, 1734 Fourteenth Street, NW, Washington, D.C. 20009-4309, undated.

38 Powell, Gen. Colin L., Letter to Representative Patricia Schroeder, May 8, 1992.

39 While race is not an indication of behavior nor is behavior an indication of race, the same can not be said of sexual orientation--sexual orientation is not necessarily an indication of sexual behavior (individuals can remain abstinent, for example), sexual behavior is an indication of orientation. It is difficult for someone who has voluntarily participated in homosexual acts to deny being homosexual or bisexual.

40 Swasy, Alecia, Navy Babies, The Wall Street Journal, October 3, 1991, A1. 'Kathleen was one of 36 Navy women who returned home pregnant from their tour on the [U.S.S.] Acadia. The ship was dubbed 'The Love Boat' in a newspaper cartoon.* * * 'Hanky-panky--hetero or homo--is a problem' says Charles Moskos, a military sociologist at Northwestern University. 'Propinquity breeds romance.'

41 'Outing' refers to the involuntary revelation that an individual is homosexual.

42 Suplee, Curt, Pentagon Ban on Homosexuals Exempts Civilians, Cheney Says, The Washington Post, August 5, 1991: A6.

43 Moskos, Charles C., From Institution to Occupation: Trends in Military Organization, Armed Forces and Society, 4(1), 1977: 41-50.

44 345 U.S. 83, 93-94, 73 S. Ct. 540, 97 L.Ed. 842 (1953). Indeed, other courts have noted that restrictive rules demanding conformity, discipline and sacrifice required as a result of military service would not necessarily be viewed as constitutional in the civilian context. In upholding the discharge of homosexuals by the Navy, the court wrote: 'It should be plain from our opinion that the constitutionality of the regulations stems from the needs of the military, the Navy in particular, and from the unique accommodations between military demands and what might be constitutionally protected activity in some other context.' *Beller v. Middendorf*, 632 F.2d 812 (9th Cir. 1980).

45 McIntire, Katherine, Fair Game? Lesbians Protest Army Investigations, Army Times, October 14, 1991: 12. According to a Congressional Caucus for Women's Issues letter (April 24, 1992) to Jean Appleby Jackson (Chair, Defense Advisory Committee on Women in the Service-DACOWITS), 'DACOWITS heard testimony of lesbian-baiting, the practice of harassing and blackmailing service women by threatening to force their discharge by calling them lesbians.'

46 Risser, David, Gays Protest Policy, Daily Press, June 16, 1991, E3.

47 See Smolowe, Jill, An Officer, Not a Gentleman, Time, July 13, 1992: 36.

48 Seigle, Greg, In the U.S.: Fear and loathing, Army Times, January 11, 1993: 11; 'Troops say if gays are allowed in the military, 'they'll get their asses kicked.'

49 Del Maris, James, How to Seduce a straight Man, The Advocate, March 28, 1989: 38.

50 GAO-1: 40.

51 Country by Country Survey, in Second ILGA Pink Book 186, 1988.

52 On Oct. 27, 1992, Canada rescinded its policy on homosexuals serving in the military. (See Lancaster, John, Many Allies Allow Gays in the Military, Canada, Australia are Latest to Drop Exclusionary Policy, Washington Post, Nov. 30, 1992: 1.) It should be noted that GAO concluded that Italy allows

homosexuals to serve while Davis lists Italy among those countries that bans homosexuals from the military. See Davis: 79-80.

53 Philpott, Tom, In Israel: The Hard Reality, 'Gays are allowed to serve in the military but they are not fully accepted' Army Times, January 11, 1993: 11; see related stories in same edition, Israeli's Invisible Soldiers, Gay Israelis avoid ridicule, get ahead by staying in closet (p. 18), and, NATO Acceptance of gays runs full spectrum (p. 20). See Appendix for a reproduction of these findings.

54 'In many Latin societies, men do not consider themselves bisexual or gay unless they take the passive-receptive role during sex.' Toufexis, Anastasia, Bisexuality What is It?, Time, August 17, 1992: 50.

55 Maze, Rick, Study: Integration of Dutch navy not without problems, Army Times, Nov. 30, 1992: 4.

56 Philpott, Tom, In Israel: The hard reality, Army Times, January 11, 1993: 11.

57 In *Watkins v. U.S. Army* 875 F.2d 701 (9th Cir. 1989), the court held that the 'Army was estopped from barring reenlistment (of Watkins) solely because of the serviceman's acknowledged homosexuality; service man had been completely candid about his homosexuality from the start of his Army career, and the Army, with full knowledge of his homosexuality, had repeatedly permitted serviceman to reenlist in the past, despite its long-standing policy that homosexuality is a nonwaivable disqualification for reenlistment.' Thus, the Army's continued violation of its own rules in the Watkins case lead to the estoppel ruling requiring the Army to reenlist Watkins and thereby preventing injury to him (i.e. loss of retirement and other benefits) on the basis of the Army's actions.

58 GAO-1: 39.

59 April, 1991, Penn and Schoen Associated, Inc., conducted this poll for the Human Rights Campaign Fund--a group dedicated, in part, to overturning the ban.

60 How you voted: Keep gays out of the military, readers say, USA Weekend, September 4-6, 1992: 9.

61 Wolffe, Jim, McPeak, Others Split on Handling Gay Ban, Air Force Times, December 14, 1982: 14.

62 Cheney defends Pentagon's Anti-Gay Policy; Midshipmen Applaud, New York Native, October 21, 1991: 10; cited in Family Research Council, 'In Focus,' Homosexuals in the Military: Talking Points, INF29*5/92: 3.

63 Air Force Times, September 21, 1992: 31.

64 Air Force Surveys Itself on Attitudes about Gays, Baltimore Sun, December 4, 1992: 4.

65 Newsweek Poll 19-20, 1992; cited in Newsweek, Nov. 30, 1992: 29.

66 Goldberg, Harold, Poll Shows Country Splits on Gays in the Military, Associated Press wire service, December 17, 1992. In addition, this poll stated that the 'same split occurred when Americans were asked how to treat those already in uniform who are discovered to be homosexual: 44 percent said the military should continue discharging homosexuals, 46 percent said that practice should stop.'

67 Leigh, Julia Hood, TROA Members Nix Homosexuals in Service, The Retired Officer Magazine, January 1993: 21.

68 Jaffee, Keewhan, et al., National Case-Control Study of Kaposi's Sarcoma, etc. in Homosexual Men; Part 1, Epidemiological Results, *Annals of Internal Medicine*, 99(2), 1983: 145-157.

69 See Bell and Weinberg, 1978.

70 See DoD and the Courts--Legal Analysis, *Steffan v. Cheney*, 780 F. Supp. 1 (D.C. Cir. 1991), in the Appendix.

71 For example, see Burrelli, David F., HIV-1/AIDS and U.S. Military Manpower Policy, *Armed Forces and Society*, Vol. 18(4), 1992: 452-475.

72 According to Zajdowicz, R., et al., *The Truth on AIDS & HIV*, Proceedings, December, 1987: 83.

73 Davis, 1991: 70.

74 In recognition of this, under DoD policy, 'information gained as a result of testing [for HIV-1] may not be used as the independent means for an adverse administrative action.' (Burrelli, 1992: 459.)

75 Although ROTC does not discriminate against those who wish to enroll in classes offered, receipt of a scholarship or enlisting as a senior cadet or midshipman is contingent upon being eligible to receive a military commission upon graduation. Those who fail to be eligible for a commission are required to repay their scholarships or serve for a specified period of time in the enlisted ranks--the latter option is unavailable to homosexuals.

76 The National Lesbian, Gay & Bisexual Student Caucus, an affiliate of the United States Student Association, states that Rutgers University was the first school to remove four-year ROTC scholarships 'in protest of anti-gay discrimination.' According to an ROTC official at Rutgers, however, the program is still in place. John Jay University in New York, an ROTC extension center was closed. Other campuses listed as having some form of activities on this issue include: University of Wisconsin at Madison, University of Texas at Austin, University of Arizona (Tucson), University of Connecticut at Storrs, University of Oregon at Eugene, and state-wide activities at USSA-member groups in Wisconsin, Texas, New York and Oregon.

77 Farrish, Katherine, Military Recruiter Barred at UConn Law, *The Hartford Courant*, October 15, 1992: 1.

78 Kosova, Weston, ROTC Ya Later, *The New Republic*, February 19, 1990: 24.

79 Pyle, Amy, Ouster of ROTC Program Rejected at Northridge, *Los Angeles Times*, April 17, 1990: B1.

80 Roth, Margret, Gay ex-ROTC cadet wins \$25,000 battle, *Army Times*, June 4, 1990: 22. More recently, the military has instituted a policy of requiring ROTC cadets to declare that they are not homosexual. Maze, Rick, Forcing ROTC Applicants to Sign Non-Gay Affidavit Protested, *Air Force Times*, December, 14, 1992: 11; 'Since 1986, 28 ROTC candidates have been dismissed because of their sexual orientation * * *. Nine were forced to repay their scholarship money, a decision made on a case-by-case basis * * *.'

81 Baskir, Lawrence M., and William A. Strauss, *Chance and Circumstance: The Draft, The War and The Vietnam Generation*, New York: Knopf, 1978: 45-46.

82 Lambert, Wade, U.S. Military Moves to Discharge Some Gay Veterans of Gulf War, *The Wall Street Journal*, July 30, 1991: B6.

83 10 USC 673c. Authority of President to suspend certain laws relating to promotion, retirement, and separation; Executive Order 12728, August 22, 1990; and, Office of the Secretary of Defense, Memorandum, Delegation of Authority to Suspend Provisions of Law Relating to Promotion, Retirement or Separation:

1. Delegation. * * * I hereby delegate to the Secretaries of the Military Departments for the armed forces within their respective Department authority, within the limitations set forth * * * to (b) determine, for purposes of Section 673c, that members of the armed forces are essential to the national security of the United States.

2. Coverage. The authority granted by paragraph 1 may be exercised only with respect to members of the armed forces who: (a) are, or are about to be, engaged in the conduct of operation in or around the Arabian Peninsula; (b) are, or are about to be, engaged in the direct support of operation in or around the Arabian Peninsula; (c) possess critical skills associated with operations in or around the Arabian Peninsula; or (d) possess skill in short supply in the armed forces.

84 DoD Directive 1332.14.

85 Some Clinton aides suggest that as President he may issue a `memorandum of Understanding.' Although not clearly defined, it is suggested that such a memorandum would have the `same legal force as an executive order * * *, but does not carry with it the same historic significance.' Healy, Melissa, Clinton Aides Urge Quick End to Military Ban on Gays, Los Angeles Times (Washington edition), January 8, 1993: 1.

86 U.S. Constitution, Article I, Section 8, provides Congress with the power to `make rules for the Government and Regulation of the land and naval Forces.' Under Article II, Section 2, the Constitution states `[T]he President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.'

87 10 U.S.C. 1072 et seq., 1447 et seq., and 38 U.S.C. 410 et seq., for example.

88 San Francisco, CA has an ordinance recognizing homosexual marriages. Numerous other municipal and state regulations recognize certain benefits for domestic partners. Recently the District of Columbia passed a domestic partnership bill that would allow city workers to purchase health insurance for his or her same-sex partner. An amendment (no. 2799) included in the District of Columbia Appropriations, 1993 (H.R. 5517), blocked such provisions (see Congressional Record, July 30, 1992: S10902-S10907).

89 E.g. Lacayo, Richard, Jack and Jack and Jill and Jill, Time, December 14, 1992: 52, `In the quest to instill tolerance, schools are increasingly instructing children about homosexuality, What should they be taught--and when?'

90 Clinton stated, `On the issue of Gays in the military, I have made no decision on a timetable except that I want to firmly proceed and I want to do it after consulting with military leaders.' Chibbaro, Lou, Debate over ban ignites, The Washington Blade, November 20, 1992: 1, 15. Others expect that any change short of lifting the ban will involve a political problem for Clinton. Commentator Evan Thomas (same cite) stated `I think in the end, [Bill Clinton] will [lift the ban]. He's got to. I think his fourth largest contributor group was Gays. * * *.'

91 Kenworthy, Tom, Nunn, Dole urge caution, Washington Post November 16, 1992: A12.

92 Gellman, Barton, Clinton Says He'll `Consult' on Allowing Gays in Military, Washington Post, Nov. 13, 1992: A1.

93 Anton, Genevieve, Panel studying women in armed forces rapped, Gazette Telegraph (Colorado Springs, March 14, 1992: 1.

94 U.S. Department of Defense, Office of the Assistant Secretary of Defense (formerly MRA&L, now FM&P), Directive No. 1332.14, Enlisted Administrative Separations, January, 28, 1982: 1-9 through 1-13.

95 U.S. Department of Defense, Office of the Assistant Secretary of Defense (FM&P), Directive, Separation of Regular Commissioned Officers for Cause, No. 1332.30, February 12, 1986, section 2: 2-1, 2-2.

96 U.S. Department of Defense Directive, Office of the Assistant Secretary of Defense (HA), Directive No. 6130.3, Physical Standards for Enlistment, Appointment, and Induction, March 31, 1986: Sec. XVI. Mental Disorders, para. 2-34. Psychosexual Conditions, p. 1-36. The other two subsections cite as reasons for rejection: (b) Transsexualism and Other Gender Identity Disorders, and, (c) Exhibitionism, Transvestism, Voyeurism and Other Paraphilias. It remains a contentious point of fact that DoD and certain foreign countries continue to treat homosexuality as a 'Mental Disorder' despite statements to the contrary by the American Psychiatric Association and the American Psychological Association.

97 10 U.S.C. secs. 925 and 934, respectively.

98 The author of this section, Charles V. Dale, is a Legislative Attorney with the American Law Division, Congressional Research Service.

99 *E.g.*, *Matlovich v. Secretary of the Air Force*, 591 F.2d 852 (D.C. Cir. 1978); *Dronenburg v. Zech*, 741 F.2d 1388 (D.C. Cir. 1984); and *Beller v. Middendorf*, 632 F.2d 788 (9th Cir. 1980), *cert. denied sub nom. Miller v. Weinberger*, 454 U.S. 855 (1981).

100 *E.g.*, *Hatheway v. Secretary of the Army*, 641 F.2d 1376 (9th Cir.), *cert. denied*, 454 U.S. 864 (1981).

101 See, e.g., *Matlovich*.

102 *E.g.*, *Ben-Shalom v. Marsh*, 881 F.2d 454 (7th Cir. 1989), *cert. denied sub nom. Ben-Shalom v. Stone*, 494 U.S. 1004 (1990); *Pruitt v. Cheney*, 963 F.2d 1160 (9th Cir. 1991), *cert. denied*.

103 478 U.S. 186 (1986).

104 *Id.*, at 191-92.

105 See, e.g., *Woodward v. United States*, 871 F.2d 1068, 1075-76 (Fed. Cir. 1989), *cert. denied*, 494 U.S. 1003 (1990) where the appeals court noted that *Hardwick* permitted the criminalization of 'the most common sexual practices of homosexuals.' Because 'there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal,' the *Woodward* court reasoned that, under *Hardwick*, the military's discrimination against homosexuals is constitutional.

106 In *Ben-Shalom v. Marsh*, 881 F.2d 454, 462 (7th Cir. 1989), *cert. denied*, 494 U.S. 1004 (1990), the federal appellate tribunal stated the proposition: '[Appellant] is free under the regulation to say anything she pleases about homosexuality and about the Army's policy toward homosexuality. She is free to advocate that the Army change its stance; she is free to know and talk to homosexuals if she wishes. What [appellant] cannot do, and remain in the Army, is to declare herself to be a homosexual. Although that is, in some sense, speech it is also an act of identification. And it is the identity that makes her ineligible for military service, not the speaking of it aloud' (*emphasis in original*).

See also *Johnson v. Orr*, 617 F.Supp. 170 (E.D. Cal. 1985) (finding for the military), *aff'd mem.*, 787 F.2d 597 (1986); *Pruitt v. Cheney*, (*supra*) n. 5 (same).

107 See, e.g., *Ben-Shalom v. Marsh*, 881 F.2d 454, 461 (7th Cir. 1989) ('The Commander-in-Chief, the Secretary of Defense, the Secretary of the Army, and the generals have made the determination about homosexuality, at least for the present, and we, as judges, should not undertake to second-guess those with direct responsibility for our armed forces. If a change of Army policy is to be made, we should leave it to those more familiar with military matters than are judges not selected on the basis of military knowledge.');

Goldman v. Weinberger, 475 U.S. 503, 507-510 (1986) (Court deferred to the 'professional judgment of military authorities' that Jewish officer's wearing of yarmulke justified a court martial for noncompliance with dress code); *Rostker v. Goldberg*, 453 U.S. 57, 70-71 (1981) ('[J]udicial deference to such congressional exercise of authority is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulation for their governance is challenged.').

Also, *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973); *Orloff v. Willoughby*, 345 U.S. 83, 93-94 (1953).

108 See *Matlovich v. Secretary of the Air Force*; *Dronenberg v. Zech*; *Beller v. Middendorf*; and, *Miller v. Weinberger*.

109 *Berg v. Claytor*, 436 F.Supp. 76 (D.D.C. 1977), *vacated and remanded*, 591 F.2d 849 (D.C. Cir. 1978).

110 875 F.2d 699 (9th Cir. 1989), *aff'g en banc on other grounds*, 847 F.2d 1328 (9th Cir. 1988), *cert. denied* 111 S. Ct. 384 (1990).

111 The Supreme Court has found that classifications based on race, national origin, and in some cases, alienage constitute suspect classifications. See *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439-42 (1985). In addition, classifications based on gender, e.g. *Craig v. Boren*, 429 U.S. 190 (1976), and illegitimacy, *Trimble v. Gordon*, 430 U.S. 762 (1977), are considered 'quasi-suspect' and trigger a form of 'intermediate scrutiny' that is more rigorous than basic rational relationship review. In addition to subjecting suspect or quasi-suspect classification to strict scrutiny, courts will apply strict scrutiny to classifications that burden 'fundamental interests.'

112 These classifications must be supported by more than merely a 'legitimate' interest: governmental actions that burden a quasi-suspect classification must be based on an 'important' interest, *Craig v. Boren*, *supra* n. 14, while actions that burden a suspect classification must serve a 'compelling' governmental goal. *Cleburne*, *supra* n. 14.

113 The connection between the discriminatory action and the governmental goal must be more than merely 'rational': for quasi-suspect classifications the relationship must be 'substantial,' *Craig v. Boren*, *supra* n. 13, and for suspect classifications the discriminatory action must be 'precisely tailored' to the governmental interest at issue. *Plyler v. Doe*, 457 U.S. 202, 217 (1981).

114 As it appears from the decided cases, the justifications asserted by the government are several. First, it is argued that the presence of homosexual personnel arouses 'tensions and hostilities' and inspires a lack of confidence and respect for homosexual officers. The military has also contended that homosexuals would be unable to effectively perform their duties as a consequence of their emotional involvement with other homosexuals and fear of disclosure. Other factors relate to anticipated disruption of the command structure that could result from homosexual relationships with subordinates, the possibility that heterosexuals would be discouraged from enlisting, and the threat of adverse foreign reaction to homosexual military personnel stationed abroad. Finally, one court has opined that 'toleration of homosexual conduct, as expressed in a less broad prohibition, might be understood as tacit approval.' See, e.g., *Beller v. Middendorf*, 632 F.2d 788, 811 (9th Cir. 1980); *Dronenberg v. Zech*, 741 F.2d 1388 (D.C.Cir. 1984).

Most recently, the federal district court in *Steffan v. Cheney*, 780 F. Supp. 1 (D.C.Cir. 1991) upheld the forced resignation of a Naval Academy midshipman who though not charged with homosexual behavior had admitted his homosexual orientation just weeks before graduation. Judge Oliver Gasch ruled that the regulations were rationally related to the military interest in protecting soldiers and sailors from AIDS. 'Since Congress is empowered to raise and support armies, it may do whatever is necessary to protect the health and welfare of those armies * * *. The power to protect the armed forces from venereal disease is ample to sustain the power to protect them from what is now known to be a fatal and incurable virus.'

115 *Beller v. Middendorf* at 811.

116 *Id.* at 812.

117 *Supra* n. 17 at 1398.

118 881 F.2d 454 (7th Cir. 1989).

119 963 F.2d 1160 (9th Cir. 1992), *cert. denied* 61 U.S.L.W. 3413 (S.Ct. 12-8-92).

120 The gist of the Ninth Circuit reasoning is revealed in the following passage: 'The Army did not discharge Pruitt because she spoke candidly about her sexuality to a newspaper. Nor did it discharge her for publicly expressing her views on a timely and controversial subject, or for demonstrating compassion for and association with homosexuals. The Army discharged Pruitt because she admitted to being homosexual, * * * Pruitt's admission, like most admissions, was made in speech, but that does not mean that the first amendment precludes the use of the admission as evidence of the fact admitted. * * * The question is not whether the Army is free to discharge her for her speech, because it did not do so. The question is whether the Army is entitled to discharge her for her homosexuality--an issue not encompassed by Pruitt's first amendment claim. 963 F.2d at 1163-64.'

121 473 U.S. 432.

122 The Court ruled in this regard that 'mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like.' 473 U.S. at 450.

123 466 U.S. 429 (1984).

124 *Id.*, at 448. See also *United States Dep't of Agriculture v. Moreno*, 413 U.S. 528 (1973) (invalidating under the rational basis test a provision of the Food Stamp Act that excluded households containing unrelated individuals because motivated by congressional dislike for 'hippies').

125 U.S. General Accounting Office, Defense Force Management: DOD's Policy on Homosexuality, B-247235, June 12, 1992; see also, U.S. GAO, Defense Force Management: Statistics Related to DOD's Policy on Homosexuality, B-247235, June 12, 1992.

126 GAO estimated that in FY 1990, recruiting and initial training costs associated with the replacement of those discharged for homosexuality was \$28,772 for each enlisted number and \$120,772 for each officer.

127 Officially, the Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals, March 15, 1957.

128 GAO recognizes that this study went beyond its directed task, but does not believe the information should be discounted for that reason alone. Critics have questioned the level of scrutiny GAO applies to the PERSEREC reports, particularly the earlier drafts.

129 Hackworth, David, The Case for a Military Gay Ban, Washington Post, June 28, 1992: C5; Matthews, William, Clinton's Stance on Gay Ban Angers Many, Navy Times, October 5, 1992: 18.

130 Historically, the American Psychiatric Association was a major influence in creating the policy excluding homosexuals from the service. At one time, homosexuality was considered a mental illness by this group and the American Psychological Association. Although homosexuality was dropped from the list of mental disorders in the 1970s, critics contend this change represented a change in these associations' political stance and was based not on scientific or medical concerns but rather on political activism. In addition, it is charged that the protests of these groups is based on medical or sociological opinions and considerations which do not take into account military considerations. These groups (the two APAs and ASA), however, deny these charges and note that efforts to link homosexuality to mental illness have failed. See Hooker, Evelyn, The Adjustment of the Male Overt Homosexual, Journal of Projective Techniques, 21, 1975: 18-31; Male Homosexuality in the Rosrschach, Journal of Projective Techniques, 22, 1958: 33-54; and, A Preliminary Analysis of Group Behavior in Homosexuals, Journal of Psychology, 42, 1956: 217-225.

131 GAO noted that one of the eight departments visited did not have a policy dictating nondiscrimination on the basis of sexual orientation or allowing the employment of homosexuals. GAO made no mention of their findings at this department.

132 H.R. 5208, Rep. Patricia Schroeder, May 19, 1992; S. 3084, Sen. Howard Metzenbaum, July 28, 1992.

133 Amendment no. 3047, S. 3114, Congressional Record, Vol. 138, no. 128, September 18, 1992: S13984-S13987.

134 Congressional Record, September 18, 1992: S13897.

135 H. Res. 271, Rep. Barbara Boxer, November 6, 1991; S. Res. 236, Sen. Brock Adams, November 26, 1991.

136 Cited in MacGregor, Morris, J., Jr., Integration of the Armed Forces 1940-1965, Center of Military History, United States Army, Washington, D.C., 1981: 312.

[Page: S1324]

Mr. McCain. Mr. President, although it appears that the President has already made up his mind on this issue, regardless of what the 6 months of study disclose, I sincerely hope that my fellow colleagues in Congress will come to the debate with an open mind, and a willingness to understand the many difficult and complex issues involved.

Mr. President, I want to just make three points in this debate. Most of the aspects of this argument on both sides has already been fairly well ventilated.

I would like to talk about the process of this debate and what this vote means to the American people. The process under the rules that we go through in this body is a process of collecting information, holding hearings, reporting legislation out of committees with the proper oversight, and finally debating the legislation here on the floor of the U.S. Senate.

However, this vote today will short-circuit that process; in effect, it will determine the verdict before the trial. It forces a major and fundamental decision, concerning one of the most emotional and divisive issues that has come before this body in many, many years, before we have properly understood, examined, and scrutinized this longstanding policy.

Do not believe as you have heard here today that before 1982 there was no policy against homosexuals in the military. That is simply not the case. This longstanding policy will be fundamentally changed by the President of the United States on July 15, without the partnership, the association with, and indeed, the constitutional obligation of, the Senate of the United States.

A vote in favor of the Dole amendment is not for or against homosexuals in the military. A vote for the Dole amendment is indeed an affirmation of the process that we have in an obligation to go through, as elected representatives, to uphold the process as I have described earlier. I was very disappointed by the statement of the Senator from Rhode Island, my friend, who said if the Joint Chiefs of Staff do not agree with lifting the ban on homosexuals in the military then let them leave the military service. That is an incredible, callous, and cavalier attitude toward the brave men and women who volunteered to serve this country and put their lives on the line in defense of peace and freedom.

Let me say, Mr. President, that the Joint Chiefs have an obligation--the Chairman of the Joint Chiefs statutorily has an obligation to provide advice and counsel on military issues to the President of the United States. And I say that when you ignore, in fact, not even take into consideration as was the case in this particular scenario, the advice and counsel of the leaders who place the lives of the young men and women who volunteer to join the military, you are making a deep and serious mistake of which I will not be a part of.

The Joint Chiefs have a unique responsibility that we do not place on anyone else, on any other public, elected, or appointed official, and that is the very lives of the young men and women who volunteer to serve their country. This brings me to my final point.

These brave men and women in the military today are not conscripted. We have done away with the draft in this country. We are dependent upon the willingness and the desire of young men and women to join the military as a way of maintaining in what we are all proud to describe as the finest and highest quality Military Establishment in the world. Before we enact a fundamental change in policies toward personnel--and believe me Mr. President, it is the personnel, especially the young enlisted, that are the backbone

of our great military forces--we had better find out what the effect on the All-Volunteer Force will be. What do the parents of these young men and women think? What do the young men and women who are considering joining the military think? Will they have been more motivated to join the military and serve this country or will they be less so?

I will tell you--that the initial responses that I am getting are that mothers and fathers all over this country are seriously concerned about the effect on the safety and lifestyle of their sons and daughters who serve in the military because of the policy change that the President of the United States has initiated.

Also, the young men and women themselves are concerned. They are concerned about the protection of their privacy and they are concerned about many other serious issues. Issues that are serious to me.

In summary, I ask my fellow colleagues to assess the impact on the All-Volunteer Force and our ability to keep the finest men and women that our military has ever known. That is why I urge my colleagues to maintain the present policy in place until we hold thorough and in-depth hearings, which I know will be conducted in a fair and evenhanded manner by the distinguished chairman of the Armed Services Committee. I most strongly urge a vote in favor of the Dole amendment.

The PRESIDING OFFICER. The Senator's time has been consumed. Who yields time?

Mr. COATS. How much time is left on this side?

The PRESIDING OFFICER. The Senator controls 15 minutes, the Senator from Georgia controls 20 minutes.

Mr. COATS. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. COATS. Mr. President, shortly the U.S. Senate will be faced with two votes. The first vote is a vote that will support the decision by President Clinton to change current military policy and change it now. It will change it in respect to recruitment of homosexuals into the military, a policy that our Joint Chiefs of Staff and virtually the entire military says will fundamentally alter the way the military functions. That first vote will be on the amendment that says we will accept that immediate change but we will study it over the next 6 months.

We can be forgiven for opposing that, when you realize that the President has already said that, regardless of what the study shows, it is not going to change his mind about making the change. I want to quote from his statement. He said:

Well, I haven't given up on my real goals. I think this is a dramatic step forward. I can only tell you that I still think I am right. I feel comfortable about the way we have done this and I am going to maintain the commitment that I have.

Senator Dole has offered an amendment. It will be the second vote. That amendment says that we should hold DOD policy relative to homosexuals in the military as it was before President Clinton ordered the change. Then we should take a 6-month period of time and have a real study and listen to the Joint Chiefs and to sergeants and to privates and to those in the military most affected by any change in this policy. And gather all the evidence that we can and involve Congress, which is constitutionally guaranteed the right to be involved in setting policy, in a final decision as to whether or not such a change is in the benefit of our national security, in the benefit of providing the American people with the most effective military that we can provide them.

This is not an effort to discriminate against any class of citizens. This is an effort to say that the policy that has been upheld by the courts for many, many years and the policy that has been followed by our military for the 200 years of its existence in this country is a wise policy, is a policy that is fashioned on the basis of what is needed to form an effective fighting unit; that morale, good order, discipline, esprit de corps, is an essential element, essentially necessary to provide what is necessary to have an effective military.

Mr. President, I yield myself an additional 2 minutes.

We believe that before any policy change of this magnitude is made, that the Congress ought to study this thoroughly and carefully and wisely and then come to a decision about whether or not a change should be made. Only a vote for the Dole amendment allows this to go forward in the way that we believe is the correct process, in the way we believe will allow our military and those most affected to have input as to whether or not we should go forward with the President's decision.

So Senators have a very clear choice. They could either accept President Clinton's decision to change the policy now and study later or they can vote for the Dole amendment which will say let us keep the policy as it is. It has worked all these years. We are willing to take a look at it and hear the evidence and study it and then make a final decision. That way the American people, the American military, the Congress can have a say and have a role in determining whether or not this is a wise course to take.

I urge my colleagues to follow what I believe is a sensible course of action, and that is let us leave what is in

place and was in place before the President's decision, let us leave that in place, study this, and then make a decision. We are jeopardizing and putting too much at stake by simply going forward with a decision I believe was not well thought out and not designed to provide the American people what they deserve, and that is the most effective military that we can possibly muster.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator reserves the remainder of his time. The Senator from Georgia controls 20 minutes, 35 seconds.

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Mr. NUNN. Mr. President, I yield 10 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia, Senator Byrd, is recognized for 10 minutes.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Georgia.

Mr. President, I shall vote for both tabling motions offered by the two leaders on this matter, as there are elements of both amendments with which I disagree. I ask unanimous consent at this point, to use an old House expression, to revise and extend my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. The amendment by Mr. Mitchell allows for a change in policy on this issue at the same time that it calls for a policy review. I do not think we can have it both ways. The President issued an Executive order on January 29, 1993 which removes from 'future versions of the induction application' the 'question regarding sexual orientation.' This is a major change in policy on this matter. It prejudices the policy review, and anticipates a change in the policy which might not be supported by the findings of the 6-month review which it provides for. Therefore, while I do support a full review of the policy and hearings by the Armed Services Committee, I do not at this time support the change introduced by the President's direction of January 29, and therefore I cannot vote for the Mitchell amendment.

But I want to address my comments at this time to the Dole amendment. Everyone here, every Senator, knows of my great respect for my friend, Bob Dole. I do not believe that he has read his amendment. This is a phenomenal amendment. It is extraordinary, to the point of its being bizarre.

I hold a copy of the Dole amendment and I am just astounded as I read it. I have never seen anything quite like it.

This printed text should be shown to a good grammar teacher. It proposes to trash the Senate rule book and the Constitution of the United States on one piece of paper, and in broken English. It provides that in certain circumstances, on legislation on this matter, the Senate shall be 'deemed' to have passed the House bill in lieu of its own bill and the same shall be transmitted forthwith to the President.

Let us see what the Constitution says. Section 7 article I, paragraph 2.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it--

And so on.

So what we are saying here is, if the House has passed the bill with the number H.R. 100 on it, the Senate has passed a bill with the number S. 150, the Senate shall be deemed to have passed H.R. 100 when, indeed, no such thing really happened. The same bill has to pass both houses--under the presentment clause of the Constitution--before it goes to the President.

We in the Senate sometimes use such language of `deeming' something as having passed. It is messy language. But at least it is done by unanimous consent.

This is not being done by unanimous consent in the Dole amendment. Instead, we are `deeming'--sight unseen--the passage of legislation by a majority vote. And I question, I seriously question the constitutionality of this approach.

Moreover, suppose that after passing the Senate bill, I decide I want to change my vote, I want to vote on that House bill. By the Dole amendment, I would be deprived of the opportunity of even asking for a vote. The Constitution says that any time one-fifth of the Senators present ask for the yeas and nays, a rollcall vote must occur. But this amendment would deprive me and any other Senator of that privilege.

This is a very unusual procedure.

What is `deem' to mean in this context? Are we to cease to be Senators and become deemers? Are deemers dreamers? This is not dreamland. It is a legislative body and I hope it is sober.

We are responsible for the words and clauses and measures that we pass. Each Senator's voting on each item that moves to the President's desk is the ultimate responsibility for which we are elected.

I cannot support an amendment that allows a bill to be deemed passed, rather than actually voted upon and actually passed by a majority.

Also, Mr. President, there is a hole in this thing big enough for the star Betelgeuse to go through, and that star, as Senators know, is so huge that it cannot pass between the Earth and the Sun, the Sun being 93 million miles away.

Well, here is the huge hole in this amendment. `Any proposed change in this policy,' it says, `shall be submitted by the President in the form of a bill and shall be introduced in each House of Congress by the majority leader.' It does not say how much time the majority leader has in which to offer it. He can take a week. He can take 2 weeks. He can take 6 months. It does not say he has to do it immediately. But everything else in the amendment is triggered off the time of his introducing the bill. The 3 days begin to run after he introduces that bill. Nothing will ever happen if the leader does not introduce that bill. What legislative craftsman would write an amendment of this kind?

I do not have enough time, Mr. President, to fully go into this, but let me say one or two other things. There is no provision in here for sending measures to conference. Who is going to make the multiple motion?

I will content myself with one other item. Read this: `Any conference report shall be nondebatable.' Now, why do bills go to conference? They go to conference because there are differences in the bills passed by the two Houses, and the conferences are for the purpose of resolving the differences between the two Houses. So, under the Dole amendment, if there is something in that conference report that I would like to attack, the conference report is not debatable.

Suppose the conferees do not act in good faith, suppose they put something in that conference report that is not relevant, not germane, and conferees have been known to do that. When it comes back to this body, it would be nondebatably. Suppose I raise a point of order. `Mr. President, I make a point of order that this provision is not germane, the conferees put it in.' Suppose the Chair upholds my point of order. Suppose another Senator says, `I appeal the ruling of the Chair.' We have no time to debate the appeal. By a majority vote, the chair would be overruled.

Suppose the House, with its different rules, however, takes that same conference report back and a House Member says, `Here is a provision that is not germane.' Well, they can send it to the Rules Committee. They have a different kind of Rules Committee than in the Senate, which is so ably chaired by the Senator from Kentucky, [Mr. Ford]. They can get a special rule waiving points of order.

So here the House passes a bill that has a nongermane provision in it--line-item veto, enhanced rescission, term limits, not relevant, but the House conferees and the Senate conferees were not loyal to their faith. Senate conferees do not have to pay any attention to instructions of the Senate, but it comes out with any kind--you name it--of nongermane amendment. The House can get a rule waiving all points of order, and it goes sailing through and then comes over here, and we cannot debate it. We cannot even debate it.

Why, Cato the Philosopher conducted a successful filibuster 2,053 years ago when Julius Caesar wanted to be a candidate for the office of consul. The Roman Senate had voted Caesar a triumph. But a general could not enter the city of Rome and go back out and then return to the city to receive his triumph. But in the meantime, the elections for the office of consul were about to be held, and Caesar wanted to be a candidate for consul. Through his friends in the Senate, he hoped that they would be able to get legislation through the Senate that would allow him to run for consul while absent from the city so he could be elected consul and also receive his triumph.

Cato the Younger held the Senate floor and spoke against the proposition until the time ran out and Caesar had to settle for one thing: He had to either give up his triumph or not run for consul. He gave up his triumph. Cato was successful in that ancient filibuster.

The Dole amendment says that the conference report would be nondebatably--even though it may be injurious to my people in West Virginia and the people of Maine, the people of Kentucky. The Senators from those States would not be able to filibuster the conference report. Two of the things that make this institution so unique are: unlimited debate and the ability to amend. The Dole amendment would trash the institution.

Mr. President, I close with those lines by Hughes Mearns.

[Page: S1326]

As I was going up the stair.

I met a man who wasn't there.

He wasn't there again today.

I wish, I wish he'd go away.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I do not want to monopolize the time on this side. Would the Senator from Indiana like to yield at this time and then I will yield to the Senator from Washington some time? How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. Nine minutes and thirty-five seconds for Senator Nunn.

Mr. NUNN. How about the Senator from Indiana?

The PRESIDING OFFICER. Fourteen minutes.

Mr. COATS. I have one more speaker before the Republican leader.

Mr. NUNN. I will yield to the Senator from Washington 3 minutes at this point.

Mr. COATS. That is fine.

Mr. NUNN. I yield to the Senator from Washington 3 minutes.

Mrs. MURRAY. Mr. President, I rise today out of a deep sense of frustration, frustration that the most important piece of legislation, the Family and Medical Leave Act, has been delayed today by politics because so many of us are waiting for its passage. But I am also frustrated by the debate this afternoon because most of this debate has been in the abstract.

I want to share with my colleagues the experience of a real person, Col. Greta Cammermeyer of Washington State whose courage helped define this issue for me. Colonel Cammermeyer was the chief nurse of the Washington National Guard. She was a decorated Vietnam war veteran with the highest professional awards from the Surgeon General and she was on her way to becoming chief nurse of the U.S. National Guard.

During a routine security interview, she was asked a question required by regulation about her sexual orientation. She answered honestly and discharge proceedings began immediately. For Greta Cammermeyer, her distinguished military career of 26 years was summarily ended. For the National Guard and the Nation, the services and combat experience of the most distinguished nurse in the National Guard were lost, lost not because she had done anything wrong, but because she did what we tell our kids to do: Tell the truth no matter the consequences.

Mr. President, I believe it is time to move on.

Mr. President, I believe that President Clinton's decision to seek an end to the policy barring gay men and lesbians from the military is a sound one. It was a commitment made by every Democratic candidate for President last year. It has received the editorial endorsement of major newspapers in my State and throughout our Nation. It is long overdue.

The proposal to implement this decision, offered by Senators Mitchell and Nunn, is a good first step toward this goal. The President is the Commander in Chief. The strength of our democracy lies in civilian authority over the military. He is acting on principle and, after considerable deliberation, on what he believes is best for our Nation. We should respect his decision.

The policy barring gays from the military is based wholly and simply on stereotypes and prejudice. It is bigoted. It wastes some 27 million American taxpayers' dollar every year, and hurts people and destroys careers. It springs from intolerance, myth, and discrimination.

The Republican administrations defended this policy with the same arguments used to deny African-Americans the right to serve their country. I am truly disappointed that Gen. Colin Powell has so vocally opposed his Commander in Chief on this matter. The same arguments were raised against women joining the services. The United States has the most modern military in the world, and an antiquated personnel policy. The President has correctly decided to discard this policy. It is time to do so.

The question is not whether there are or should be gays in the military. There are. One should not have to lie to serve his or her country. The ban encourages harassment of gays, compromises national security, and denies our Nation the service of some of our best soldiers and sailors. Soldiers like Col. Greta Cammermeyer, a Bronze Star Vietnam vet, and sailors like Joe Steffan, top of his class at Annapolis.

Most of the discussion about gays in the military deals with abstractions. People have expressed fears about disruptions in morale based on all sorts of supposed horrors. I would like to share with my colleagues the experience of a real person, Col. Greta Cammermeyer, of Washington, whose courage has helped define the issue for me.

Colonel Cammermeyer was the chief nurse of the Washington National Guard. A decorated Vietnam war veteran with the highest professional awards from the Surgeon General, she was on her way to becoming chief nurse of the U.S. National Guard. During a routine security interview, she was asked a question required by regulation about her sexual orientation. She answered honestly, and discharge proceedings began immediately.

In one fell swoop, two terrible things happened. For Greta Cammermeyer, her distinguished military career of 26 years was summarily ended. For the National Guard and the Nation, the services and combat experience of the most distinguished nurse in the National Guard were lost. Not because she had done anything wrong. But because she did what we tell our kids to do: tell the truth, no matter the consequences.

Greta Cammermeyer is what I have defined to my kids as a hero. A profile in courage. She told the truth about her sexual orientation, knowing the military's policy would cost her a 26-year career and a promotion to a life-long goal of being the National Guard's highest ranking nurse. It is time to change that policy and lift the ban against gays in the military.

The President is right. The military's standard for service should be conducted. This was unfortunately not the case in the infamous Tailhook incident. That was a double standard, and so is the policy banning gay men and lesbians from the armed services. One should not have to lie to serve his or her country. It is time to move forward and lift the ban.

I ask unanimous consent to print in the Record, several items that I have found persuasive on this question. Editorials from the Seattle Times and Tacoma News Tribune, and an op-ed piece from last Sunday's Washington Post by Lisa Keen in which she succinctly lays out the case to end the ban on gays in the military.

There being no objection, the material was ordered to be printed in the Record, as follows:

[Page: S1327]

Clinton Should Act Now To Change Anti-Gay Rules

President Bill Clinton has the authority to reduce the harassment of gays in the military and pave the way toward full acceptance of homosexuals in the armed services. He should use his authority quickly and decisively.

Clinton is having hard going fulfilling his campaign promise to integrate gays into the services. The military brass is against him and so are some powerful members of Congress. Even his own secretary of defense is urging a six-month cooling off period to work out the details.

That's fine, but not before firm action is taken by the president to stop the military from asking potential recruits their sexual preference and halt the automatic prosecution and discharge of gays and lesbians now in military

Clinton's obligation is not to the Joint Chiefs of Staff or the Congress but to the American electorate. If he delays action or tries to reach compromise, the effect will be harmful to his public standing in the short run and weaken the strength of his presidency on other, tougher decisions in the future.

The foundation of American military hierarchy is civilian control. In large measure, the debate over the acceptance of gays in uniform was concluded in the results of the election, which handed Clinton the authority of commander in chief.

Reducing the ban on gays in the military will not be popular in every corner of the country or the Congress, but Clinton cannot hesitate now if he is going to lead.

He must not let the momentum on this issue slide away to an equivocating Congress or allow military commanders to tarnish his compact with voters.

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From the Morning News Tribune January 27, 1993

[FROM THE MORNING NEWS TRIBUNE JANUARY 27, 1993]

Find Compromise on Military Gays

President Clinton made it clear to his unhappy top military brass Monday he has no intention of backing down from his campaign pledge to end discrimination against gays in the military.

Clinton was right to do so. It is time to end the U.S. military's unjustified practice of discharging gays who have served their country honorably, for no other reason than their sexual preference.

But Clinton must tread carefully. Although it is his prerogative as president and commander-in-chief to order the Joint Chiefs of Staff to fall in line, Clinton should recognize the danger of acting precipitously.

Clinton is now well aware he risks a politically disastrous uprising in Congress--among Republicans and Democrats alike--if he moves too fast. There is no way to completely defuse such a politically volatile issue, but a well-considered strategy of consultation and compromise would improve the new policy's chances of success.

That is precisely what Defense Secretary Les Aspin recommends. Aspin suggests Clinton begin with an administrative directive allowing Aspin to halt action against gays being ousted because they admitted their homosexuality. The military would also stop asking recruits about their sexual orientation. The second step, which carries more symbolic weight, would be a formal executive order by Clinton some months later repealing the ban on homosexuals in the military.

Aspin's proposal is sound. It would give the president time to allay fears in the military and Congress by showing the new policy will be implemented with respect for the military's need for discipline. Rules based strictly on conduct are fair and reasonable. Gay soldiers' clubs, spousal benefits for gays and open displays of sexual preference are not.

The administration and Congress should head for the middle ground between the two extremes on this issue--the gay activists who seek a governmental 'blessing' of homosexuality on one side and outright

homophobes on the other. There's a place in America's armed services--just as there always has been unofficially--for responsible homosexuals who simply want to serve their country and do their jobs.

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From the Washington Post, January 31, 1993

[FROM THE WASHINGTON POST, JANUARY 31, 1993]

The Fears Are Unjustified

(BY LISA KEEN)

Should gay people in the military get better treatment than heterosexuals, worse treatment or the same?

This is really the basic question in the debate about President Clinton's proposal to repeal the Defense Department's regulations barring gays. But media reports on who says what often make it seem much more complicated than that.

It's no surprise: The media are not accustomed to covering gay issues and are unfamiliar with the details. That has given opponents of Clinton's plan an advantage, which they are using--along with some ever-so-effective scare tactics--to stir up hostility to the idea of ending a form of discrimination. In psychobabble, this is known as 'fogging'--keeping people from seeing the key issue by clouding it over with a swirl of smaller and less important matters. Some examples:

(1) With big changes like this, it's better to study the idea first.

The Pentagon has already studied it numerous times and discovered from its own research that gay recruits perform as well or better than their heterosexual counterparts.

(2) If gays are allowed into the military, Congress will have to change military law, which currently prohibits sodomy.

Military law prohibits sodomy with a person of the same sex and opposite sex. Since many studies have shown that more than 90 percent of heterosexual couples engage in oral sex, the military might as well either change the code for everybody or retain it for everybody.

(3) Gays in the military will threaten the privacy of heterosexuals.

The truth is that many service members live off-base in their own apartments, and those who rely on base housing share a dorm-like room and a bathroom that has a door. The only place where service members must rely on group shower facilities is in basic training. If privacy is such a concern, perhaps the military could consider upgrading the facilities at boot camp.

(4) Gays in the military will openly lust after their colleagues.

If gays did this, their actions would constitute sexual harassment, as in the Tailhook scandal. Sexual harassment is already prohibited under military regulations. As long as the military is willing to enforce those regulations, the solution to any such problem with gays is already in place.

Furthermore, there is no evidence that the danger of gays openly expressing lust for their same-sex colleagues would be greater than straights openly expressing lust for their opposite-sex colleagues.

(5) Discrimination based on race is different from discrimination based on sexual orientation--race is an immutable characteristic. Gays can choose to have sex with a person of the opposite sex if they want to. We should not protect people against discrimination based on characteristics that they freely choose and could change.

A person's religion is a matter of choice, too. A person may be born into a Baptist family, but he or she is free to become Catholic and can choose to do so. But that `choice' was considered so precious that the founders of this nation made its protection a part of the constitution's Bill of Rights.

But the implication that sexual orientation is a choice has become a favored argument of the uninformed and the willfully ignorant. Numerous recent studies have all pointed to evidence that sexual orientation is genetic or biological in origin--it is immutable.

(6) Gays in the military will mean more members of the service will have AIDS and spread it to other members.

Again, the DOD already has an HIV antibody testing policy that provides as much insurance as possible that new recruits with HIV infection are barred. The argument that battlefield blood transfusions require this kind of scrutiny are also unfounded, since the military acknowledges that it stores blood transfusions for use in battle. It does not perform person-to-person blood transfusions on the battlefield.

The overall AIDS argument is based on the belief that only gays get AIDS. But more and more, the new infections are occurring among heterosexuals.

(7) U.S. servicemen and women are sometimes deployed in countries where homosexuality is considered an abomination. That could hurt America's image.

Those same countries and many others also consider adultery and sex out of wedlock to be abominations. But male heterosexual U.S. service members, who have gotten thousands of women pregnant overseas, are still allowed to serve in the U.S. military.

(8) President Clinton's proposed executive order would allow gays into the military for the first time, requiring the military to figure out how to accommodate them.

Gays are already in the military, always have been, and both military leaders and Senate opponents of Clinton's plan have already acknowledged that. The executive order would ensure that gays are treated the same as heterosexuals are treated now.

Under current policy, a heterosexual member of the service cannot be discharged from the military simply because of his or her sexual orientation. Under Clinton's executive order, that would apply to service members with a homosexual or bisexual orientation as well.

(9) Clinton's decision to talk with military and congressional leaders about how best to implement the executive order is his way of backing off the executive order idea.

President Harry Truman did the same thing in 1948 when he issued an executive order to end the military's policy of racial segregation. The Truman executive order itself established an advisory panel and ordered that panel to determine how best to implement the executive order and time its implementation without jeopardizing the military's ability to perform its duty.

(10) Gays in the military would hurt morale and jeopardize our military's readiness.

The public counts on the Department of Defense to train its servicemen and women well. It is an unsettling idea that this country's highly trained fighting forces would be so easily demoralized by acknowledging the reality that there are gay troops among them.

The country's military leaders are not elected officials. Bill Clinton is, and during the campaign, he was up front with the American people in saying that he would seek to end discrimination based on orientation in the military. The American public voted him into office, and now he is keeping his word. That's how democratic government works.

The PRESIDING OFFICER. Who yields time?

[Page: S1328]

Mr. NUNN. I yield 3 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I rise in strong support of the amendment offered by the majority leader and the chairman of the Armed Services Committee, and in opposition to the alternative presented by the Senator from Kansas.

The action taken last week by President Clinton was a first essential step toward ending the discrimination against gay men and lesbians in the Nation's Armed Forces. It is now time to move forward and not to turn back.

This action is the latest chapter in the unfinished business of America. This country was founded on the principle of equal justice under law and opportunity for all. If we do not end discrimination wherever it exists in our society--then America is not America. We have been here before, and we will surely be here again.

I agree with President Clinton. America does not have a person to waste. The issue is not whether there are gays in our Armed Forces, there are, and they serve with great distinction. The question is whether we will continue to force them to lie about who they are--in order to serve their country.

The real issue is how we can make progress with this important policy change, in a sound and effective manner, in consultation with all affected parties, and reach the goals of equality and efficiency.

We know that we cannot change hearts and minds overnight. But if we have learned anything from the long and painful experience of our Nation's history, it is that changing the law is an essential step in breaking down barriers and fundamentally changing attitudes. It has been done before. And it must now be done again.

It was once thought that black and white soldiers could not serve together. In fact, in 1948 we heard in this very chamber, and read in the pages of major newspapers across this country that 'One of the surest ways to destroy the efficiency of the Army' was to integrate blacks and whites.

I am sure that my colleagues would be shocked to review the Senate floor debate of a half century ago, and see just how little the arguments for bigotry have changed. We were told in 1948 that integrating black and white members of the Armed Forces would raise insurmountable issues of cleanliness, health, and morale.

Nevertheless, despite strong resistance and threats of mass resignations, we integrated our Armed Forces--and proudly, America moved forward.

As stated by the Federal district court in California in its recent opinion ordering that petty officer Keith Meinhold be reinstated in the Navy:

The Department of Defense's justifications for its policy banning gays and lesbians from military service are based on cultural myths and false stereotypes. These justifications are baseless and very similar to the reasons offered to keep the military racially segregated in the 1940's.

A 1991 report commissioned by DOD and undertaken by the Defense Personnel Security Research and Education Center stated, and I quote:

The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true. It would be wise to consider applying the experience of the past 40 years to the integration of homosexuals.

More recently we were told that if women serve alongside men, the integrity of the military system will be seriously diminished. Once again, adopting a policy of inclusion, we improved our armed services, and our society as a whole.

We must not be deterred now from taking this next important step. It is time to shift the focus from status to conduct. If the Armed Forces have their priorities right, they should deal with the festering epidemic of harassment of women in the military, instead of squandering talent and resources by denying gay and lesbian Americans the opportunity to serve their country.

According to the General Accounting Office, the Federal Government has spent nearly \$500 million over the past 10 years investigating more than 15,000 homosexuals and discharging them. In the same 10-year period, more than 100,000 cases of sexual assaults on women were committed by heterosexual servicemen--100,000 cases.

It is long past time for the Armed Forces to start dealing with people's conduct, and stop discriminating against anyone because of who they are.

Last week's action is a first step. Recruits will no longer be questioned about their sexual orientation, and discharges and court cases will be put on hold pending a comprehensive review of this policy, and further action by the President.

I hope that we can work closely with the administration and our colleagues in Congress to ensure complete implementation of a nondiscrimination policy as rapidly as possible. Whatever name discrimination takes--racism, sexism, homophobia, apartheid, ethnic cleansing--it ought to be exposed and rooted out.

Change is never easy, but it can be done. Canada, one of the few countries in the NATO alliance which had a policy similar to ours, lifted its ban on gays in the military 3 months ago under court order. According to the Canadian Department of National Defense, they have had no resignations, no reports of gay bashing, and no one standing up to declare their sexual orientation. The implementation was without incident. This was the experience of the Australian government that also recently lifted its ban.

President Clinton's decision to delay final action on an Executive order lifting the ban will allow ample time to understand concerns and develop appropriation implementation plans. The Joint Chiefs of Staff, servicemen and women, the gay and lesbian community, and other interested parties will all be heard.

Senator Nunn plans to schedule hearings on this issue in March, and as a member of the Armed Services Committee, I look forward to those hearings. I think that we can all learn something.

I wish we could have moved more swiftly-- and I recognize that some wish we would not move at all. We have all compromised--on both policy and process.

The President has responded wisely and created an opportunity for dialogue and debate. I hope that all Senators will respond positively to this gesture of cooperation and resist any attempt to end-run this constructive compromise, and undermine our Commander in Chief.

Progress has never been easy. But it has always been worth the effort. I look forward to a day when the nation's military, and our society as a whole, will base its judgments on character and conduct, not orientation. It will be a better day for all Americans, and we will have a stronger and fairer country.

In the interim, I urge my colleagues to support the Mitchell-Nunn amendment and oppose the Dole amendment, so that we can dispose of this matter--and return to our efforts to provide family and medical leave for the working men and women of America.

Mr. President, I join others in wanting to move ahead toward the completion of this legislation, which is so important for families all across this country.

But with the issue that is before us, I want to join these expressing support for the Nunn proposal. Change comes slowly in society, and change with regard to racism, ethnicity, religious intolerance, sexism, apartheid, and homophobia has come extremely slow over the history of this country.

This proposal will permit the process to move forward in the manner that has been outlined by those who have spoken already. My own sense is that we ought to move forward, as have other countries. The debate and statements we have heard on the floor have a remarkable resemblance to the kinds of statements that were made some 40 years ago, when this Nation was debating whether those whose skin was a different color could serve this country with distinction and honor.

The words could basically be exchanged.

I welcome the day, Mr. President, when we are going to root out that kind of discrimination in our society and in the Armed Forces.

I think what has been outlined here is an extremely reasonable way to proceed. Many of us wish the steps would be taken more rapidly; others not at all. This is a fair compromise. I hope that it will be supported.

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Mr. COATS. Mr. President, I yield 3 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I rise today in support of the Dole amendment regarding the issue of service of homosexuals in the military.

Many of us in the Senate and those of us sponsoring this amendment feel this matter should be decided by the military experts and leaders--after considerable debate and hearings on the subject--along with a vote by the Congress. I for one, support this course of action. I do not advocate any form of gay bashing, or homophobia. That is not the intent here.

However, there are several tough issues involved here, ranging from health care of service members, to same sex marriages, to benefits for homosexual partners, to the morale, discipline, and welfare of the members of the armed services.

It is an extremely controversial area which must be thoughtfully and carefully considered. That is why we must proceed in an orderly and prudent fashion. It is important that we conduct hearings on this issue and listen so very closely to what the military experts and others, including representatives of the gay community, and the health care community, are saying before making any decisions to change existing policy.

Before rushing to approve policy changes arising out of campaign promises that were made without consultation with the Congress responsible for these issues or our respected military leaders, it is now our responsibility to hear and consider the opinions of our senior military leaders and other experts--and then to vote on this matter.

I have received many calls and letters from people who feel very strongly about this issue.

I understand the depth of feeling on the issue and I am continuing to listen. That is what this amendment advocates. Let us call a time out and listen to the experts. After a thorough policy examination--Congress is entitled to vote on such a major potential change in military policy.

The Dole amendment does the following: First, it allows for a thorough review of the issue regarding the service of homosexuals in the military.

Second, the policy that was in effect on January 1, 1993, regarding the service of homosexuals in the military will be reinstated during this review and shall remain in effect until the completion of this review.

Third, any proposed changes to the policy will be presented to both Houses of Congress by the President in the form of a bill which shall be amendable and which shall be voted on by Congress before becoming law.

I believe this is the most thoughtful approach possible and that it ought to be adopted by the Senate.

Finally, I think there has been some unfortunate and erroneous interpretation of my activities in this matter. I have always favored an up-and-down vote on this issue or a motion to table directly on our amendment. I have never waived from that. I want that to be absolutely clear. There has been some remarkable distortion of that.

Remember also that the military is not a social organization; it is a killing machine, and designed to protect our national health and safety. We must keep that distinction in mind as we deal with this issue which is totally different than anything we have dealt with regard to civil rights or other rights in this society.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, given the time limitations we have had, a number of Members have not been able to speak, or have reduced their statements.

I ask unanimous consent that I be allowed to submit a full statement of my remarks on this issue, and that other Members may be allowed to do so also.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I yield 5 minutes to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Mr. President, I thank the Chair.

What is it that makes an excellent soldier? I submit to you that it is five basic virtues: Devotion to duty; loyalty to country, commanders, and comrades; skill in military arts; personal integrity; and courage. If you have these qualities, you can be an excellent soldier, whether your name is Manursky or Jefferson, Goldberg or Nguyen, Warner, Dole, Kerrey, or McCain.

A number of Americans who have these qualities, however, are being excluded from serving their country in the military for reasons beyond fitness or performance.

People have told me for some time that they cannot understand how someone who thinks of himself as a gung-ho marine can march to the music of a drummer that I do not hear.

Mr. President, the drummer I hear plays the Marine Corps Hymn. It still gives me a chill, and I still stand when it is played. I certainly do not want to detract in any way from the military's effectiveness or performance.

Because of that, I cannot stand by and let a policy that I consider less than perfect keep our services from attracting the best and most competent people. The issue should be not what kind of person you are but what kind of soldier, sailor, airman, or marine you are.

As a former marine who considers his 34-plus years in uniform and in the reserve to be the proudest affiliation of my life, I well understand those who argue the importance of maintaining morale and good discipline in the ranks.

But I would suggest to you, Mr. President, morale is in the heart of each service person. The threat to morale comes not from the orientation of a few but from the closed minds of

many. President Truman recognized that when he ordered the services to be integrated by race despite the racial animosity of many then in service.

Do some of today's soldiers fear what they do not understand? Certainly, they do. Obviously. But should America's policy be guided by fear, or should we work to overcome prejudice by showing that merit and behavior, not orientations, are what counts in the military?

I have spent a great deal of time discussing this with a number of friends, including the Chairman of the Joint Chiefs, Gen. Colin Powell. Some think that I am simply on the wrong side of this issue, and I understand this and other objections to the proposal.

General Powell recently drew a difference between discrimination based on sexuality, which he called a behavior, and that based on race, which he called a benign characteristic. But I submit to you that race is obvious, while sexual preference is not. It is an even more benign characteristic; indeed, an invisible one, until and unless it is expressed in conduct. And if that sexuality is expressed, it is no longer benign. Then it will run into the existing regulations of the Uniform Code of Military Justice.

The code offers sufficient protections against much of the conduct that supporters of this amendment fear. And it can certainly be expanded to prevent other breaches of decorum or good order.

The specter of drill sergeants dancing together is unsettling, to say the least, Mr. President. But some of the amendment's supporters fail to note it is just the kind of behavior already prohibited by the Uniform Code, as is almost all of the conduct presented as a concern by those who are in favor of this particular amendment.

The President is the Commander in Chief of the Armed Services, and he sets the goals. Just as many military men were given the goal of ejecting Iraqi forces from Kuwait, and led the plan and implemented that goal, I believe that the military should also be cast with making the President's goal a reality.

As a former military commander, I can tell you that if the goal of truly equal access to military service is to be reached, I believe that the military itself will have to come to terms with it.

That will best be done if given the proper role of implementing the President's directive. The hearings announced actually last year by the distinguished chairman of the Armed Services Committee will add information and understanding to that process and will let us fulfill the Congress' proper role of ensuring that readiness is maintained while achieving the President's goal. But I ask we not let fear govern our actions. While we may not perfectly understand what motivates individual sexuality, we cannot allow that lack of understanding to block deserving patriotic Americans from service.

Mr. President, I hope that my colleagues will oppose the amendment offered by my distinguished and very respected colleague, the Republican leader, in this particular instance.

I yield the floor.

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Mr. DOLE. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. Ten minutes, eighteen seconds.

Mr. DOLE. Mr. President, I make one suggestion to the majority leader either before or after we close debate, if we could have the second vote maybe limited to 10 minutes.

Mr. MITCHELL. That certainly is agreeable with us.

Mr. DOLE. That would be back-to-back votes. I understand there still may be another amendment offered. There is an effort being made to work that out. I hope that can be done. There is no limited debate on that particular amendment.

Mr. JEFFORDS. Mr. President, few issues have generated as much debate and emotion over the last few months as the question of whether to lift the ban on service by homosexuals in the U.S. military. My office has received many, many calls over the past weeks from people on both sides of this issue. While we have a reasonable compromise before us today, it will be quite some time before this issue is finally resolved.

As my colleagues know, there have always been gays in the military and there are many homosexuals proudly serving their country today. In spite of the current ban that prohibits their serving, these men and women have chosen to do so and many will stay, no matter what legislation we might enact today. As our society's concept of individual rights has evolved, I do not believe we can demand that all homosexuals be forced out of the military. And it would not benefit our national security to do so. Rather, our task is to determine how we can best confront the reality of military service by homosexuals and manage the transition to a more stable and just policy.

Having served over 3 years on active duty in the U.S. Navy on board ship and over 25 years in the U.S. Naval Reserves, I am well aware of the concerns that many people have raised about the conduct of military personnel. And I share some of those concerns. No serviceman or servicewoman should have to worry about his or her privacy or safety. But this is primarily a question of conduct, Mr. President. Sexual harassment, no matter what the orientation or motivation of the individual, must not be allowed.

Similar concerns were raised when the decision was made to desegregate the military and to integrate women into the Armed Forces. These concerns had to be dealt with and behavioral regulations clearly articulated to prevent such fears from being realized. The same will have to happen now to ease this transition to a new policy. This type of change cannot happen overnight. Hearings must be held, rules of conduct re-evaluated and military procedures reviewed. The concerns of military personnel at all levels must be listened to and taken into account. It is critical that this change, as with any substantive change in the Armed Forces, not result in any drop in the morale or effectiveness of our military.

Mr. LEVIN. Mr. President, I rise in opposition to the Dole amendment. The country needs to consider this issue in a dispassionate manner--not with emotional, extreme, and uncompromising rhetoric. Changing a part of the institutional culture of the armed services is serious business which requires sober, rational, and reasonable consideration. Our Nation's safety, as well as the well-being of our men and women in uniform, depend upon our efforts to forge intelligent answers to the questions which are raised by the President's plan.

While I believe that the ban against gays and lesbians should be lifted, there are complex issues with regards to such a policy change which must be carefully looked at. The President's plan of allowing for 6 months for the Joint Chiefs of Staff to put together recommendations on how to implement these changes is a wise one--one that will ensure that all pertinent aspects of this issue are considered. Congressional hearings should also provide an opportunity for lawmakers and the public to study the issue in greater depth from a balanced set of witnesses. The hearings should carefully examine how most of our allies in NATO, who have already lifted the ban, have addressed this issue in their own armed services.

The Dole amendment takes a step backward. I urge my colleagues to reject it.

Mr. CAMPBELL. Mr. President, I rise today to address the compromise agreed to by the leadership and President Clinton as we address the current ban on gay and lesbian Americans serving in the United States military.

As a person who knows the sting of discrimination, I do not support this ban. I believe discrimination based exclusively on sexual orientation has no place in our military any more than ethnic discrimination has a place in our military. I support elimination of this ban combined with strict sexual conduct codes for all soldiers, sailors, airmen and marines--gay or straight, as defined in the Uniform Code of Military Justice.

I believe pragmatism, fairness, and common sense--not unfounded fears or old wives' tales of gay behavior should drive this debate.

As all military commanders freely acknowledge, there are about 180,000 homosexuals who currently serve in the Armed Forces ably and honorably. These individuals have displayed the same acts of heroism, courage, determination, and sacrifice for their fellow soldiers and country as heterosexual soldiers. Many of these individuals have distinguished records and careers that would be the envy of any soldier.

Our Armed Forces wasted over \$27 million last year hunting and discharging gay and lesbian soldiers.

So the real question is not, should lesbian and gay Americans be allowed to serve in the Armed Forces?--they already are serving. The question is, how will we treat them? I believe that we should treat these

soldiers as we treat all others. Let's make a distinction between their sexual orientation and their personal conduct.

This change may seem difficult right now. There are many emotional arguments against equality, but they are unwarranted. We cannot live by unjustified fears of change. We must have the courage to eliminate this ban because it is the right thing to do.

In 1862, Abraham Lincoln was vilified for allowing black soldiers to fight for the Union, but he took the heat and he did the right thing.

In 1951, Harry Truman was vilified for integrating our military. This was 3 years before Thurgood Marshall argued *Brown versus the Board of Education* to integrate the public schools, but Truman took the heat and he did the right thing.

By trying to address this inequity in the military, President Clinton is doing the right thing.

This discussion is not about lifestyles or choices, it is about discrimination, and in my opinion should be separate issue and not attached to the Family Medical Leave Act. I applaud Senator Mitchell and Senator Nunn for their efforts to find an equitable solution to this debate and look forward both as a Member of this body, and a veteran of the Korean conflict to helping resolve this issue.

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Mr. DODD. Mr. President, this amendment embodies everything that the American public dislikes about the way our Government is run. As far as they are concerned, the gridlock in Washington has picked up right where it left off.

And the public has every right to feel that way, Mr. President. This issue has absolutely nothing to do with the Family and Medical Leave Act. Nothing. Yet some Members on the other side of the aisle have seen fit to bring this issue before this Chamber.

While we stand here and argue the germaneness of the underlying amendment, American families continue to suffer. Thousands of unemployed aerospace workers are lining up for unemployment applications. Just last week in my home State of Connecticut, Pratt & Whitney workers were notified that another 6,700 layoffs were coming. Three months ago, it was 1,400 Textron workers. And 10 months ago, it was 700 welders and pipefitters at the Electric Boat Shipyard. The people of this country are hurting Mr. President--and they are looking to us for relief.

They are looking to us to provide them with some sense of security in their jobs, in their homes, and in their families. This bill is the first step in addressing the real needs of American families.

Yet, if it were not for these delaying tactics--we could today pass this legislation assuring working Americans that they can be there when their families need them.

Mr. President, I believe that men and women should be permitted to serve their country based upon their qualifications, not their orientation. Conduct, and personal integrity, should be our benchmarks for determining who should continue to serve.

In a Nation that prides its very existence on the promise of equal opportunity for all, I find the current prohibition policy to be baseless. And just as our country dealt with the difficult issue of integration in the military during World War II, the time has come to remove this final, pointless barrier from our military personnel regulations.

I am not suggesting that this will be a simple change, or one that could be accomplished overnight. President Clinton has worked hard to address the concerns of many, both inside and outside of the services, regarding this difficult transition. He has proposed 6 months of study on how best to implement this measure.

I believe that is a fair and equitable approach to the matter.

Mr. President, many of us have no doubt visited Arlington National Cemetery at one time or another. Each time I visit that quiet resting place for our Nation's veterans, I can not help but be moved by the clear evidence of so many who have laid down their lives for this country. Yet, as I gaze down row after row of fallen service members--I see no distinction. I see no separation. I see no isolation. Each and every tombstone from the modern era is equal. No mention of race, no mention of religious affiliation, no mention of sex, no mention of sexual preference, just a name and a date. Equals in the sight of their peers.

Mr. President, our Nation is waiting. We have so much to do and for the first time in 12 years we possess the mechanism to implement meaningful and lasting change.

Our Nation is waiting for Washington to cast aside the shackles of gridlock and to begin working in earnest on the problems facing our country. Health care, job creation, and a solid family leave policy are the issues the American people have told us they care most about.

We simply can not afford to continue this foolish game. Our future and the future of our children is literally in the balance. We must begin to move this country forward if we are to have any hope for renewal. This underlying amendment has no place on this bill and it has no place in our society. I urge my colleagues to reject the underlying amendment and adopt the more moderate proposal as offered by Senators Mitchell and Nunn.

Mr. GLENN. Mr. President, as a cosponsor, I rise in support of S. 5, the Family and Medical Leave Act of 1993 and urge my colleagues to pass this legislation.

Twice before, the Family and Medical Leave Act was passed by the Senate and then vetoed by President Bush. We now have the opportunity to get this legislation signed into law.

We stand at an economical crossroads in America. Our families are being torn apart by the rising cost of health care, layoffs, and unemployment. Our economic competitors in Europe and in Asia have family and medical leave programs. They have struck a balance between the needs of one's family and the needs of the work place. The Family and Medical Leave Act of 1993 will do just that for working people across America.

This legislation will provide up to 12 weeks of unpaid, job-protected leave per year for the birth of a child or the serious illness of the employee or an immediate family member. However, S. 5 will exempt businesses with 50 or fewer employees, protecting small businesses from extraordinary costs. Thus, claims that this legislation will hurt American competitiveness are not well founded. In fact, S. 5 will help companies retain some of their best employees, and foster a sense of family among employers and their workers. Testimony from CEO's of companies that already have some type of family and medical leave policy has illustrated this point. And this sense of loyalty and family will lead to increased productivity, and therefore, increased American competitiveness in the global economy.

Additional safeguards for businesses are included in the Family and Medical Leave Act. Employees will be required to provide adequate medical certification to the employer justifying the leave. Employers may get a second opinion. Also, employees must provide 30 days notice for birth of a child, or imminent medical treatments. Furthermore, employers will be permitted to exempt key employees from coverage--the highest paid 10 percent of their work force.

This bill is about family values--about letting families help each other in a time of need. People should not have to decide between caring for one's children or family members and keeping their job.

I urge my colleagues to pass S. 5, the Family and Medical Leave Act of 1993.

AMENDMENT NO. 17

Mr. DURENBERGER. Mr. President, I rise reluctantly to oppose the measure offered by the distinguished minority leader. Although it is a sound response to the Clinton administration's policy adjustments regarding gays in the military, I believe the compromise arranged between Senator Nunn and President Clinton is a responsible, reasonable approach to take for the next 6 months, particularly when one considers that the compromise, in reality, does not change the current policy in any major way.

I believe we must use this coming period to develop a greater understanding and appreciation for the many issues involved in this matter. It is not a single question of just lifting the ban or maintaining it. There is more to it than that, and this Senator wants to learn a great deal more before making a final decision.

President Clinton has already predetermined the outcome of this 6 month deliberations process. He has stated that he will lift the ban in July, irrespective of what the Senate and the public learn between now and then.

I want to emphasize for my colleagues and constituents, however, that this Senator has not predetermined the outcome. I have come to no decision at this point about what policy is best for America's armed services. I enter this debate with an open mind, anxious to learn from both the opponents and proponents of lifting the ban.

It is incumbent upon each side to make the strongest case for their respective positions. The burden of proof, so to speak, falls equally to the opponents and proponents.

Mr. President, I also wish to emphasize my view that in accepting the Nunn-Clinton compromise, the Congress does not forfeit its constitutional role in making policy in this matter. In 6 months time, we will return to this debate--better informed and better prepared--to make principled, thoughtful decisions. The Senate is not now predetermining the outcome of our own deliberations. That opportunity to decide will come in due time.

Mr. President, I ask unanimous consent that an updated version of a statement I offered yesterday on this subject be included in the Record at this point.

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GAYS IN THE MILITARY

Mr. DURENBERGER. Mr. President, I rise today to address the question of homosexuals in the military. The specific question before us is: Will we approve the Clinton-Nunn proposal and allow a 6-month period of study on the complex moral, legal, and administrative issues involved? I support the option that will do us the most credit as a deliberative body.

What we are addressing today is not the simple question of whether we approve or disapprove of the sexual orientation of certain individuals. We are discussing whether we have the right to deny some of these individuals the right to serve in the U.S. Armed Forces because of that private matter.

It is a fundamental principle of American Government that we must not discriminate against an individual for having a certain status--a certain gender, religion, sex, race, disability or age. In civilian life, the

Government can only legitimately prevent or punish conduct--behavior that society views, rightly or wrongly, as harmful to its own interests.

The military is recognized, appropriately in my view, as a special case. Military service does in fact require certain forms of discrimination--like restrictions on the role of women in combat, and the exclusion of some disabled persons.

In the present case, homosexuals have been expelled from the military absent any demonstration that they have actually engaged in homosexual conduct. What we have to determine is whether the status of being a homosexual--in and of itself--is sufficiently harmful in a potential serviceman to warrant an exception to the rule that in civilian life we do not discriminate on the basis of status.

Is this a decision we have to make now? Yes and no. For each gay person facing disciplinary proceedings in the military, the answer is yes. For those who are investigating the tragic death of Seaman Allen Schindler in Japan, again, the answer is yes. But for the Americans who are desperately concerned about the economy, the budget deficit, and fixing health care and education, the answer is no.

But the issue will not go away. The President has put us on the track toward a date certain for the resolution of this problem. We can not duck it--so let us get to work on making the best decision we can.

It is in the interest of the armed forces of this country that we make a decision, but not an unconsidered decision. This issue affects the lives of millions of men and women currently in uniform, and also those we will need to attract to service in the future. We need to examine the potential consequences in detail--and come to a principled decision.

This Senator is not prepared to decide today. We are nowhere near that stage yet. When any major change is contemplated in a huge organization of people, there needs to be an intelligent analysis of the real disruptions that are going to result--and whether they are so great that to risk them would be unwise.

This sort of analysis is precisely what we have lacked so far in the national discussion on gays in the military.

We also need to understand that in recent years, we have repudiated laws that discriminate against individuals in employment or public accommodation on the basis of their status--on the basis of stereotypes that relegate every individual to a pigeonhole. We have repudiated the spurious logic that goes, 'All Polish people are stupid, I am Polish. Therefore I am stupid. Therefore, do not hire me.'

The days of Jim Crow--the days when it was acceptable to put up signs reading 'No Irish Need Apply'--are over. Employment law now protects individuals from this kind of pigeonholing by status.

Again, we recognize that the military has the right to discriminate in certain cases. In some areas of discrimination, the military has reversed its opinion--in other areas, it has not. And for the next 6 months we will be examining whether the policy on homosexuals ought to be reversed.

What we need to determine is whether the status of homosexuality standing alone bestows on everyone in that category a set of behavior patterns that cannot be modified by conduct regulation. Then--and only then--should status classification lead to blanket exclusion.

It is objected that having gays in the military would pose a serious threat to morale--that it would reduce the camaraderie, the bonding, and the trust that are necessary if soldiers are going to be an effective fighting team in combat. But it is acknowledged even by those who advance this line of argument that there are gays currently serving in the military, and I have yet to see any evidence suggesting that these gays have in any way impaired the morale or fighting effectiveness of our armed forces.

I am not saying that there is no evidence proving this. I am merely saying that I have not seen it--yet. That is another reason why I think this 6-month delay will be extremely valuable--we need to find out if their acknowledged presence will reduce our military effectiveness.

It has also been objected that gays in the military might abuse positions of authority to engage in sexual harassment. Again, no evidence has been presented to demonstrate that these cases would be any more disruptive than the cases of heterosexual harassment that we already have to confront. It would be truly perverse to draw the conclusion from the `Tailhook' scandal that heterosexual men or women ought to be excluded from the military. It would seem to me that if this were the sole objection, the appropriate solution is not to exclude people from the armed services, but to have a code of conduct and enforce it.

I recognize that there is undoubtedly more to this argument than I currently know. And I want to learn about it over the next 6 months.

I join my distinguished colleague, the senior Senator from Georgia, as well as the no less distinguished Chairman of the Joint Chiefs of Staff, General Powell, in hoping that the proposed 6 months of investigation will give us a better understanding of the serious objections that no doubt exist to the lifting of the ban.

Like Senator Nunn, I am making no commitment to support the full lifting of the ban when the 6-month investigation is over. In 6 months, I expect that we will have a better understanding of the real facts and issues involved--and thus be able to make that decision intelligently. In the meantime, I would modestly suggest that it would be appropriate for us to address other issues of national importance--such as economic growth and job creation, the Federal budget deficit, and the fundamental reform of U.S. health care.

Thank you, Mr. President, I yield the floor.

Mr. DORGAN. Mr. President, today, I will cast my vote in opposition to an amendment to the Family and Medical Leave Act that would prohibit lifting the current ban on homosexuals in the military. But I cannot do so without expressing my great frustration at the amount of time spent on this issue.

The American people have told us in no uncertain terms that they are interested in finding solutions to the economic problems of this country, reforming our inadequate health care system, and addressing important issues like the education of our children and the future of the Social Security trust fund. These are their priorities, and they expect us--their elected representatives--to get to work on them.

And yet we and the media have spent several days discussing the issue of gays in the military. By focusing on these controversial issues, we are ignoring the central challenges that face our nation.

That being said, I want to be clear that I agree that we should lift the ban on gays in the military carefully over time, and in close consultation with U.S. military leaders. The President has reached an agreement with the Joint Chiefs of Staff about the most appropriate way to do this, and I think we should support these leaders in their efforts to work together to address this problem.

And in the meantime, I think Congress should get down to the business of solving the pressing economic problems facing our Nation as a whole.

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Mr. MACK. Mr. President, I agreed with President Clinton last week when he acknowledged that, fundamentally, military society is different from civilian society. Ideally, a military force will never be used, but in a time of crisis there is often nowhere else to turn. A society looks to its military for insurance against catastrophe. No excuses can be tolerated when lives are in jeopardy.

The Armed Forces are like no other organization in the Government, in society for that matter. Discrimination is an everyday affair in the military: height, weight, hair length, visual acuity, dexterity, physical disability, disease, alcoholism, casual drug use, even attitude have legitimate standards to which servicemembers are held, and which would be considered well out of bounds in the civilian sector. Such discrimination is only tolerable because it advances the necessary readiness and warfighting capability of that military.

America's armed services have the responsibility to select from the available talent pool only those who will help strengthen the team. The good of the whole is more important than the demands of the individual. Just ask the next servicemember you see whether it is a right or a privilege to wear the uniform of the United States of America.

I am gravely concerned by the apparent disregard for the readiness of our armed services. The informed counsel of General Powell and the Joint Chiefs of Staff, of every major veterans' organization, of the Republican leadership, and even the groundswell which has swept America in opposition to lifting the ban have been ignored. I fear that we face a proposal to change a successful and longstanding personnel policy simply in order to meet a given social agenda.

Still, it is not too late. I urge my colleagues to support the Dole amendment which makes meaningful the hearings and studies proposed for the next 6 months, and does not presuppose the end result of those investigations, by codifying the present policy in law until Congress has the information to make an informed decision in July.

Mr. PELL. Mr. President, I rise today to express my full support for the amendment offered by the majority leader which would let stand the compromise agreement announced by President Clinton on January 29, 1993, regarding the ban on homosexuals from serving in the military.

The agreement provides a 6-month period to carefully and thoroughly review the current Department of Defense policy excluding homosexuals from serving in the Armed Forces. My own view, Mr. President, is that men and women should not be prohibited from serving in the Armed Forces solely because of their sexual orientation. Like the President, I believe such a prohibition is discriminatory and is just as inappropriate as discrimination based on race, gender, or religion.

I believe all our service personnel should be judged on performance and behavior and held accountable to the strict code of conduct which is necessary for the effective operation of military units.

The implementation of policies based on these views will require time and sensitivity, and I applaud the President's determination to seek a broad range of advice on this vexing issue.

Mr. President, I am confident that, in the end, the President, after full consultation with congressional and military leaders, will reach a resolution that is positive, fair, and equitable.

Mr. COATS. Mr. President, I want to be clear what this amendment is about. It is a freeze in current policy on homosexuals in the military--for a limited period of time--for a specific purpose. That purpose is to carefully study the issues involved before we begin a change.

The military argues that our military effectiveness is at stake. If their case is even remotely plausible, we have a duty to consider it fully and fairly before we act.

So, though there are countless questions about procedure and politics--I want to focus on the substance of this debate.

Many of us had a part in an extraordinary effort to raise our military from the low point of the 1970's. If you ask military leaders, they will tell you what has made the difference: It is our people. In spite of all the new weapons and new training, our strength is in our soldiers. The services now attract some of the very best men and women in our Nation.

These same commanders will also tell you that many of these soldiers hold strong religious beliefs and moral convictions. Many come from families with strong moral traditions. R.D. Adair and Joseph Myers, two military experts, have written:

Military courses in ethics and professionalism teach a lengthy process of reasoning one's way through moral dilemmas. But the decisions of junior commanders reflect less of what they have been taught as soldiers and more of the moral characteristics they brought with them into the Army from their teachers, parents, and childhood environment. Our leadership must understand that simply declaring a new morality by executive or legislative fiat does not automatically imbue soldiers and officers with a new professional ethic concerning issues of right and wrong, Particularly if it is seen as an overtly political act.

This kind of moral principle is valued in military life. Adm. James Stockdale, while president of the Naval War College, wrote:

If anything has power to sustain an individual in peace or war, it is one's conviction and commitment to defined standards of right and wrong.

Many of the people who train these young men and women have real fears that lifting military policy on homosexuality will cause good soldiers to leave, or not renew. They are worried about retention. They are worried about recruitment. They are worried about how the Armed Forces will look in 5 or 10 years. Gen. Colin Powell told midshipmen at the Naval Academy: 'If it strikes at the heart of your moral beliefs, then you have to resign.'

Recently, a high ranking naval official visited a ship to talk, in assembly, with the entire crew. One sailor rose to say that he had 2 years left on his contract, but if the President acted to lift the ban he wanted to know how he could leave. That

sailor got a standing ovation from every crewmember.

I've had a number of letters. One from Anderson went:

My husband comes from a family of six siblings; of that six, five were marines. Four of the five married marines * * * we would say that if this ban were to be lifted, we would advise our son, son-in-law, and many young people not to join the military.

Another letter read:

We have a son serving in the Army in Wurzburg, Germany, and he has shared his concerns over this matter. He said the entire base was upset and knows this reckless action would jeopardize military effectiveness, as you have stated. He will look to get out as soon as he can as I'm sure many others will do.

Some homosexual activists are arguing they have the right to serve. But military service has never been a right. There have always been restrictions--limits on who could be recruited. There is only one goal: To get the type of soldier that will form one part of an effective fighting unit.

For instance, a disabled person might want to serve in the military--or someone too old or too weak. They would be denied, not out of discrimination, but to do something specific and limited--to fit a mission.

An editorial in the Washington Times made this case:

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Many groups are excluded based not on bigotry but on characteristics found incompatible with military service. Examples include young people, old people, short people, single parents, undocumented aliens, and many others. Indeed, all of these people enjoy civil rights because a strong military protects the freedoms of all Americans.

Maj. Melissa Well-Petri, in a new book titled 'The Power To Raise and Support Armies,' writes:

Military personnel policies are designed to effect decisions on how best to compose America's fighting force. They are designed to discriminate between those in the judgment of the Army's senior military and civilian leadership, is strong and those whose potential is weak. Military personnel policies are not anti-individual. They are simply pro-Army.

Should homosexuals fit in the category of the excluded? The military has argued for decades that they should. To understand why, we need to open our minds and listen to what makes a fighting unit effective. It is unlike anything we encounter in civilian life.

An effective fighting unit depends on something intangible--something you cannot quantify. It is described as morale, Esprit de Corps, good order. Throughout history, commanders have argued it is the essence of military success--from the platoon to the battalion. David Hackworth, America's most decorated veteran, writes:

On the Battlefield, what allows men to survive is combat units made up of disciplined team players * * * when these factors are in synch, a unit has the right stuff. It becomes tight, a family, and clicks like a professional football team. Spirited men who place their lives in their buddies' hands are the most essential element in warfare. The members of such combat teams trust one another totally.

Those who have been in the military know what this is. Those who have not need to try to understand--before they make a decision. This is why we need to wait--to listen to the people who will live with that decision.

What is it about the presence of open homosexuals in the military that would cause General Schwarzkopf to say it would 'destroy the military'? Or General Powell to comment it is 'inconsistent with maintaining good order and discipline'?

The problem is a simple three letter word: Sex. Why should we be afraid to address it? Common sense and thousands of years of human experience teach that sexuality is powerful, especially among the young. In the case of Baker versus Wade, the judge found that 'sex next to hunger and thirst, is the most powerful drive that human beings experience, and it is unrealistic to think that laws will force total abstinence.' I don't think that we needed a judge to tell us that.

Managing sexual tension among young people is hard, in the best circumstances. In military life it is even more difficult. The challenges are unique--enforced, close living where people often share intimate situations. Not just for 8 hours day, but for 24 hours a day. The military mission dictates intimacy, from close bunks to communal showers. On submarines, that closeness can be measured in inches.

Many recruits are just 18 years old--the age of high school seniors. This, to say the least, is a tender age sexually. We are not always talking about mature professionals.

I had one letter from Lebanon, IN, that reads:

The first thing you notice in the military is the loss of privacy. It starts in boot camp with an 88 man barracks. You eat, sleep, shower, shave, march, go to classes, learn how to care for a weapon as a group. No one has any secrets. You just aren't physically able to get away from the others.

The unity that causes soldiers to sacrifice for each other is eroded when there are sexual undercurrent in the barracks. Again, listen to David Hackworth:

One doesn't need to be a field marshal to understand that sex between service members undermines those critical factors that produce discipline, military order, spirit and combat effectiveness. Mix boys and girls, gays and straights in close quarters such as the barracks or the battlefield, and both sexual contact and the consequent breakdown of morale are inevitable.

Sometimes the ban on homosexuals in the military is compared to its dead, discredited color bar. But practical concerns about controlling sexual tension are not the same as racism. We are talking about sexual tension, conflict, and consequences in close quarters. Colin Powell addressed this issue as follows:

Skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.

The proper analogy here is to the tension between the sexes. No one would put young men and women together in the same barracks and then try to regulate behavior. So they are separated. Charles Krauthammer argues:

Consider the behavioral implications of gender differences: Men and women are sexually attracted to each other, and sexual attraction engenders feelings not just of desire but shame and a wish for privacy. That is why segregating bathroom facilities by sex makes sense, whereas segregating them by race is pure prejudice.

Homosexuals cannot be treated the same way. An all-gay barracks would concentrate sexual conflict. Yet putting open homosexuals with heterosexuals would spread sexual tension throughout the force and undermine morale.

This is not, like I've sometimes heard, like a health club. In many cases, it is 24-hour, forced intimacy. You can't just politely ignore matters of sex. Sean O'Keefe, former Secretary of the Navy, has written:

This is not a case of trying to be belligerently discriminatory. It's a circumstance where we're trying to apply a 9 to 5 social tolerance to an environment in which we're asking people to operate that bears no resemblance to a 9 to 5 environment at all.

Heterosexuals have a right to privacy, just as women do with men. Wouldn't a woman, placed in this situation with men, feel shamed and harassed? Sociologist Charles Moskos at Northwestern University says:

Sex between service members does undermine order, discipline and morale. So does invasion of sexual privacy. This is why the military separates the living quarters of men and women. Even in field conditions, the privacy of men and women is maintained to the maximum degree possible. If feelings of privacy for women are respected regarding privacy for men, then we must respect those of straights with regard to gays.

Commanders need to be realists about human nature. They try to manage the sexual energy of young people in an intimate living place, while building morale and unit cohesion. Open homosexuality in the barracks, on their testimony, would make that job impossible.

If you say the real issue is not status but behavior, then you have taken away the rational justification for separating men and women. They are prevented from living together because sexual status is directly related to behavior.

The issue here is not if a homosexual can be a good soldier--many have been. The issue is this: Will units fight and die together if they are divided by sexual conflict and tension? Will unit effectiveness be dangerously compromised?

That is a serious enough prospect to justify a call for patience and study. With so much at stake, I believe we have no other choice. That is what this amendment is about--a temporary freeze in current policy for a limited purpose: To give a change in policy the scrutiny it demands.

In 6 months, we will be involved in a final choice on this question--after hearings and a renewed national debate. This is just the first shot in a siege.

I hope we win today, but we will gather strength as time passes, as our case is made, and as the political fog begins to lift. We are committed to this fight, and we will see it to its end.

END