

SEXUAL ORIENTATION AND U.S. MILITARY PERSONNEL P O L I C Y :

OPTIONS AND ASSESSMENT

National Defense Research Institute (RAND) MR-323-OSD

EXECUTIVE SUMMARY

Overview

On January 29, 1993, President Clinton signed a Memorandum directing the Secretary of Defense to "submit . . . prior to July 15, 1993, a draft of an executive order ending discrimination on the basis of sexual orientation in determining who may serve in the Armed Forces". The Presidential Memorandum also directed that any recommendation by the Secretary should be one that could be "carried out in a manner that is practical and realistic, and consistent with the high standards of combat effectiveness and unit cohesion our Armed Forces must maintain".¹

On April 1, 1993, the Secretary of Defense asked RAND to provide information and analysis that would be useful in helping formulate the required draft Executive Order. This Executive Summary briefly describes the approach and major conclusions of the study. It then summarizes the major findings that support that conclusion.

Approach

An interdisciplinary team of researchers from RAND's National Defense Research Institute considered a wide range of topics potentially relevant to the issue of acknowledged homosexuals serving in the military. Staff members visited several foreign countries and the police and fire departments in six American cities, seeking insights and lessons from analogous experiences of other organizations and institutions. The team considered the historical record, focusing on the integration of blacks and on the development of the current policy that prohibits homosexuals from serving in the military. It reviewed public opinion, including the views of current active-duty military personnel, and the scientific literature on group cohesion, sexuality, and related health issues. It examined a number of legal and enforcement issues, as well as the literature that deals with implementing change in large organizations. The results of the team's research are detailed in the subsequent chapters of this report.

¹ Memorandum for the Secretary of Defense, Ending Discrimination on the Basis of Sexual Orientation in the Armed Forces, January 29, 1993.

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The Policy Option

In light of this research, the team examined a range of potential policy options. Most of the options were judged to be either inconsistent with the President's directive, internally contradictory, or both. Only one policy option was found to be consistent with the findings of this research, with the criteria of the Presidential Memorandum, and to be logically and internally consistent. That policy would consider sexual orientation, by itself, as not germane to determining who would serve in the military. The policy would establish clear standards of conduct for all military personnel, to be equally and strictly enforced, in order to maintain the military discipline necessary for effective operations. The option requires no major changes in other military personnel policies and no change in current law. The "not germane" option could be implemented without any changes in the administrative guidelines for prosecutions under the Uniform Code of Military Justice (UCMJ). However, several considerations lead to the conclusion that the policy would be more legally defensible and less costly and cumbersome to implement if the guidelines were revised to exclude private sexual behavior between consenting adults.

Review of Analogous Institutions and Experiences

To understand the possible effect of changing policy to permit homosexuals to serve and to examine how other institutions have implemented similar changes, members of the research team visited a number of foreign militaries and domestic police and fire departments. None of these organizations is an exact model for the U.S. military personnel policy. Besides these analogous institutions, analogous situations such as the experience of racial integration of the American military were also studied for potentially instructive insights.

The Experience of Foreign Militaries

Researchers visited Canada, France, Germany, Israel, the Netherlands, Norway, and the United Kingdom. With the exception of the United Kingdom, all of these countries permit known homosexuals to serve in some capacity in their Armed Forces. Several broad themes emerged from these visits, with potential implications for the situation facing the United States.

- In countries that allow homosexuals to serve, the number of openly homosexual service members is small and is believed to represent only a minority of homosexuals actually serving.

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- Service members who acknowledged their homosexuality were appropriately circumspect in their behavior while in military situations; they did not call attention to themselves in ways that could make their service less pleasant or impede their careers.
- Few problems caused by the presence of homosexual service members were reported. Problems that did arise were generally resolved satisfactorily on a case-by-case basis. If a problem developed to the point that unit might become dysfunctional, action was taken to remove the individual (homosexual or heterosexual) from the unit.

The Experience of Domestic Fire and Police Departments

Unlike the foreign militaries, domestic police and fire departments function in the American cultural and societal context. Police and fire departments share a number of characteristics with the U.S. military that make them the closest domestic analog. They are hierarchically organized with a well-defined chain of command. Members work together as teams. A substantial proportion of job time is spent training for short, intense periods of hazardous activity. An inherent feature of the job is putting one's life at risk. They are markedly different, however, in that only the military deploys its member on ships, or routinely engages in field exercises of extended length.

Visits to police and fire departments in six cities (Chicago, Houston, Los Angeles, New York, San Diego, and Seattle) resulted in several key findings.

- Even where police and fire departments policies prohibit discrimination based on sexual orientation, only a very small number of homosexuals acknowledge their orientation, particularly where the environment is perceived as hostile to homosexuals.
- Homosexuals who join police and fire departments evidently join for the same reasons that heterosexuals do.
- Acknowledged homosexuals are sensitive to the overall norms and customs of their organizations. They tend not to behave in ways that shock or offend, and they subscribe to the organization's values on working problems out informally and within the ranks.
- Anti-homosexual sentiment does not disappear. However, heterosexuals generally behave toward homosexuals more moderately than would have been predicted based on their stated attitudes toward homosexuals.
- AIDS is a serious concern of heterosexuals and not one that is quickly alleviated by education.

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- Policies of non-discrimination against homosexuals in these departments had no discernable effect on the ability of their departments to recruit or retain personnel.
- Implementation is most successful where the message is unambiguous, consistently delivered, and uniformly enforced. Leadership is critical in this regard.
- Training efforts that provide leaders with the information and skills needed to implement policy were essential. Sensitivity training for rank and file, however, tended to breed additional resentment and to be ineffective. Training that emphasized expected behavior, not attitudes, was judged most effective.

The History of Racial Integration in the United States Military

The historical experience of including blacks in the military can also provide some insights concerning the military's ability, as an institution, to adapt to change. These are the key insights:

- Starting as early as the final years of World War II and especially during the Korean War, integrated Army units were able to function effectively in all sorts of situations, even in the most demanding battlefield situations, and even if the individuals involved has not experienced prior social integration.
- It is possible to change how troops behave toward previously excluded (and despised) minority groups, even if underlying attitudes toward those minority groups change very little.
- Leadership matters for implementation-civilian and military leadership must be prepared to work together over a lengthy period to ensure effective implementation of controversial policies. In some cases, civilian oversight of implementation may be necessary.

Public and Military Opinion

How any option for ending the restriction on homosexual service will fare depends critically on its acceptance by the public and by the people serving in the U.S. military. A review of various surveys indicates that U.S. public opinion is divided over this issue. Until recently, roughly half of the population believed that homosexuals should be allow to serve. However, a recent poll indicates that the percentage who believe they should not be allow to serve *under any conditions* has dropped to 21 percent. It is worth noting this is far below the percentage (61 percent) who were against racial integration of the services at the time of President Truman's order to desegregate the military.

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Military opinion is overwhelmingly against allowing homosexuals to serve. In surveys and RAND-conducted focus groups, a minority of service members expressed indifference to or approval of the policy change, and women were less opposed than men. A few people on the focus groups believed that the military would be able to cope with the change just as it coped with racial integration. However, most service members of all ranks expressed opposition and concerns about the effects it would have on privacy, morale, and unit cohesion and about the probability of anti-homosexual violence and the increase of AIDS in the military.

To the extent that changes in policy resulted in changes in the number of acknowledged homosexuals in the military, the rate of anti-homosexual violence might change, since acknowledged homosexuals are more readily identified targets for such violence. The experience of foreign militaries and police and fire departments suggests that if leaders make it quite clear that violence will not be tolerated and stern action will be taken, violence can be kept to a minimum.

As for concern about AIDS, DoD'S testing program for Human Immunodeficiency Virus (HIV) almost entirely prevents the entry of HIV-infected individuals into the military. Therefore, the only way a change in policy permitting homosexuals to serve could significantly affect HIV infection rates in the military is by increasing the number of service members who are infected while serving. If there were an increase, it would have little effect on military effectiveness. All military personnel whose health is seriously affected by HIV are discharged. Further, all service personnel must be tested before deployment and those who test positive cannot be deployed. Given the accuracy of HIV testing, very few HIV-infected personnel would ever deploy or serve in combat, the military blood supply would remain safe, and there would be virtually no danger from contact with blood on the battle field.

Understanding Unit Cohesion

Concern about the effect that an acknowledged homosexual would have on "combat effectiveness and unit cohesion" has dominated the debate. It also provides the basic rationale for the current policy that "Homosexuality is incompatible with military service." Most military leaders who have spoken publicly on the issue in recent months argue that introduction of a known homosexual into a unit, no matter how discreet his or her behavior might be, would seriously undermine the cohesiveness of that unit. Unfortunately, the subject has not been studied specifically, and no controlled experiments or other research bear directly on this issue.

There is a large body of potentially related empirical research in the fields of industrial organization, social psychology, sports psychology, and group behavior, a significant amount of which was sponsored

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by the military. Other potentially relevant material can be found in the ethnographic and biographical military literature. The principal conclusion from an extensive review of this literature is a common sense observation: It is not necessary to like people in order to work with them, so long as members share a commitment to the group's objectives. The literature also indicates the following:

- If some members of a unit cannot accept the presence of an acknowledged homosexual, the result will probably involve some degree of ostracism of the homosexual, rather than a complete breakdown of the unit. Whether this occurs will depend partly on the conduct, competence, and loyalty of the homosexual individual in question.
- Some heterosexuals might refuse to cooperate with known homosexuals. However, many factors will help to promote cohesion and performance even in the face of hostility toward homosexuals. First, research suggests that leaders play an important role in promoting and maintaining unit cohesion. Second, military roles, regulations, and norms all enhance the likelihood that heterosexuals will work cooperatively with homosexuals. Third, external threats enhance unit cohesion, provided that the group members are mutually threatened and there is the possibility that cooperative group action can eliminate the danger.

Disruptive behavior or behavior that polarizes a unit or renders it dysfunctional, whatever the cause of the behavior, can undermine military effectiveness and should not be tolerated. Although some disruptions might result from have acknowledged homosexuals serving in the military, the literature on cohesion does not provide a basis for predicting the magnitude of the increase. Senior military leaders have stated that, in their professional judgement, the effects would be substantial. The experience of analogous organizations such as foreign militaries and domestic police and fire departments suggests any increase is likely to be quite small. Because the magnitude of the problems cannot be predicted, military leaders must have tools available to help them manage potential disruptions and to implement the policy change successfully.

A Policy Options for Ending Discrimination

Based upon the research summarized above, a number of ways to respond to the President's directive were identified. A policy that focuses on conduct and considers sexual orientation, by itself, as not germane in determining who may serve was judged to meet the President's criteria and to be most consistent with the research findings. Such a policy emphasizes actual conduct, not behavior presumed because of sexual orientation, and holds all service members to the same standard of professional conduct. It requires tolerance and restraint to foster the good of the group, but implies no endorsement of a "homosexual lifestyle".

An illustrative *Standard of Professional Conduct* was designed as part of the research project, with the overarching objective of maintaining the order and discipline essential for an operationally effective

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military organization. Similar standards have been used effectively in other organizations and foreign militaries and are analogous to the "good order and discipline" and "conduct unbecoming" provisions in military law that have been used effectively by the U.S. military for years. For features of this standard are central:

- A requirement that all members of the military services conduct themselves in way that enhance good order and discipline. Such conduct includes showing respect and tolerance for others. While heterosexuals would be asked to tolerate the presence of known homosexuals, all personnel, including acknowledged homosexuals, must understand that the military environment is no place to advertise one's sexual orientation.
- A clear statement that inappropriate personal conduct could destroy order and discipline, and that the individuals are expected to demonstrate the common sense and good judgement not to engage in such conduct.
- A list of categories of inappropriate conduct, including personal harassment (physical or verbal conduct toward others, based on race, gender, sexual orientation, or physical features), abuse of authority, displays of affection, and explicit discussions of sexual practices, experience, or desires.
- Application of these standards by leaders at every level of the chain of command, in a way that ensures that unit performance is maintained.

The conduct-based standard provides military leaders with the necessary frame of reference for judging individual behaviors, just as it provides individuals with clear guidelines. Under this standard, behaviors that commanders judged inimical to effective functioning of the unit (i.e., that undermine task cohesion) would not be tolerated.

The "not germane"/conduct-based policy does not require extensive revisions to existing military rules and regulations or to personnel policy. If sexual orientation is regarded as not germane in determining who may serve in the military, it is equally not germane to decisions on assignment, pay, military specialty, or benefits. On issue such as recognizing homosexual marriages or conferring benefits on homosexual partners, there is no reason for the Department of Defense to change current policy or to become the "lead" federal agency in these areas.

Concerns about privacy are often cited by those who oppose permitting homosexuals to serve in the military. A survey of military facilities shows that in many newer military facilities there is greater privacy in showers and toilet areas today than was common twenty years ago. However, members of the military often find themselves in situations where very little personal privacy is available, such as aboard ships or on field maneuvers. In situations where privacy is impossible, standard of conduct to foster personal privacy have been developed: Individuals act in ways that do not intrude upon and are not offensive to others. For this reason, a strong emphasis on professional conduct conducive to good order and discipline is the key to dealing with privacy issues as well. Freedom from personal harassment and uniform standards of conduct are the best guarantees of privacy.

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If sexual orientation is regarded as not germane in determining who may serve, enclosure 3H of the DoD regulations concerning administrative separations (DoD Directive 1332.14) should be rescinded. The most problematic regulatory and legal scenario would be to end discrimination without revising portions of the Manual of Courts Martial (MCM) relating to Article 125 (Sodomy) of the Uniform Code of Military Justice (UCMJ).³ They have historically been applied differentially to heterosexuals and homosexuals. Retaining them after rescinding Enclosure 3H would weaken the "orientation-neutral" principle of the "not germane" policy.

A practical approach to dealing with this issue would be to revise the MCM to prosecute only non-consenting sexual behavior or sexual acts with a minor.⁴ No changes would be necessary in the sodomy article of the UCMJ itself, because the code does not specify the sexual acts that are illegal. The definition of the offense is in the MCM, an administrative document.

Implementation Issues

The manner in which the policy change is implemented could have a decisive impact on whether these problems are managed with minimal disruptions or undermine the effort to change. Based on the research conducted in this study, key elements of an implementation strategy can be identified:

- The message of policy change must be clear and must be consistently communicated from the top. Given the fact that senior leaders of the military are on record opposing any change, it will be necessary, if a change in policy is selected, that these and other leaders signal their acceptance of the change and their commitment to its successful implementation. It must be clear to the troops that behavioral dissent from the policy will not be permitted.
- The option selected should be implemented immediately. Any sense of experimentation or uncertainty invites those opposed to change to continue to resist and to seek to "prove" that the change will not work.
- Emphasis should be placed on behavior and conduct, not on teaching tolerance or sensitivity. For those who believe that homosexuality is primarily a moral issue, efforts to teach tolerance

³ From the perspective of a homosexual member of the armed forces, the policy choice would have both positive and negative consequences. A positive outcome would be the ability to serve openly in the military. But a negative consequence could be that if 1332.14 is repealed without changing Article 125, the only way for the military to discharge a homosexual would be through an Article 125 prosecution. Under current policy many homosexuals are given administrative discharges and are not usually prosecuted under Article 125. By not removing or modifying Article 125, homosexuals would be at greater risk of an Article 125 prosecution.

⁴ Appendix C contains an example of such a revision.

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would breed additional resentment. Attitudes may change over time, but behavior must be consistent with the new policy from the first day.

- Leadership must send messages of reassurance to the force. The military is currently undergoing a variety of other stressful experiences, e.g. declining budgets and the drawdown in the force. In such an atmosphere, it is important to signal that the change in policy will not have markedly disruptive effects and that it is not intended as a challenge to traditional military values. This climate of psychological safety is conducive to acceptance of the change.
- Leaders at all levels should be empowered to implement the policy, and some special training or assistance for leaders may be a useful device for ensuring that the change is understood and occurs rapidly.
- A monitoring process should be established to identify any problems early and in the implementation process and address them immediately.

The option assessed here, a conduct-based set of standards applied under the premise that sexual orientation, as such, is "not germane" to military service appears to meet the President's criteria and to be consistent with empirical research and historical experience. By following the implementation strategy, the Department of Defense should be able to increase the probability that a policy that ends discrimination based on sexual orientation can be implemented in a practical and realistic manner and that the order, discipline, and individual necessary to maintain cohesion and performance are more likely to be preserved.