

"Capitol Hill Hearing with Defense Department Personnel:
Hearing of the Senate Armed Services Committee"

July 20, 1993

SEN. NUNN: The committee will come to order.

During the 1992 campaign, presidential candidate Bill Clinton said that, if elected, he would take action to change the current policy restricting the service of gay men and lesbians in the armed forces. Early in his administration an amendment was offered to President Clinton's first major legislative initiative, which was the Family and Medical Leave Act, that would have precluded him from making any change in the DOD policy on gays and lesbians in the armed forces. I opposed that amendment because I believe that neither the Executive Branch nor the Congress should have changed the current policy prior to making and undertaking a comprehensive review.

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

In addition, the Senate agreed to an order that effectively precluded consideration of any further amendments on this subject in the Senate until July 15th, and that procedure has been followed.

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

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

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

I would ask our members to the extent possible -- and we certainly have flexibility in this regard but I wanted everyone to know about the second set of hearings tomorrow -- I would ask that everyone to the extent possible focus

today on the broad policy questions and reserve the detailed, interpretive, legal-type questions as much as possible for tomorrow's witnesses.

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

As I indicated from the outset, this committee's focus has been on the implications of any change in the current policy on the effectiveness of the armed forces to carry out their mission to defend our nation. We have heard strong and compelling testimony in this area, as well. Our committee is not going to resolve this issue to the satisfaction of everyone with strongly-held views. We knew that to begin with; we know it now. Some pundits who under recent Republican presidents were strong proponents of congressional prerogatives in the area of national defense now seem to ignore the responsibility of Congress under the Constitution to address this and other issues.

In Article I, Section 8 of the Constitution, our founding fathers clearly set for the responsibility of Congress -- quote from the Constitution of the United States -- "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." End quote. This congressional responsibility under the US Constitution is as clear as any provision in the Constitution of the United States. As I've said, beginning in January and on numerous subsequent occasions, both the Congress and the executive branch have responsibility to resolve this issue in a way that gives clear direction to our military leaders and in a way that can be clearly understood by the men and women who serve our nation in uniform.

Military service is unique. The men and women in the armed forces make extraordinary sacrifices in terms of their personal lives and their privacy. Sometimes they are even called upon to make the ultimate sacrifice. In the military, it's different from civilian society. In the military, the mission is the first priority. The unit is the second priority. The individual is the third priority. This is vastly different from our civilian society, where the rights of the individual properly come first.

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

I hope that we can reach a majority consensus on legislative findings in this committee which will lay the foundation for a Senate floor debate and serve as a guide for the federal courts when these issues are adjudicated, as they will be. After we complete our review of Secretary Aspin's recommendations today and tomorrow, this issue will be discussed in our ongoing mark-up of the National Defense Authorization Bill, which started yesterday and continues today at the

subcommittee level. The committee will complete subcommittee markups today and will shift to full committee mark-up tomorrow and Thursday and Friday as necessary. Because of the timing, this issue we're discussing today will undoubtedly be the last item we consider in the mark-up so that the committee members will have time to absorb the testimony today, to absorb the policy advocated by the Secretary, to take into account the views of the Chiefs, and to also look at the legal implications as revealed by the testimony tomorrow. If we reach a majority consensus in this committee, legislation will be part of the defense bill. If we do not reach that consensus, the defense authorization bill will be subject, of course, to amendment on the floor of the Senate. I hope that we will receive testimony today and tomorrow that will enable us to mark-up legislation that is consistent with the policy announced by the President and by Secretary Aspin.

A leading editorial in a major publication today seemed to be shocked at my suggestion that legislation on this issue should preclude service by persons with a, quote, "propensity to engage in homosexual acts," end quote. I'm accustomed to personal attacks and I've gotten pretty accustomed to that, but I would hope that those attacks would not cloud the issues that are difficult enough to handle under the normal circumstances.

If the editorial writer had bothered to read the administration's July 19th policy statement, he or she would have seen that it contains a prohibition on service by a person who makes a statement that, quote, "demonstrates a propensity or intent to engage in homosexual acts," end quote. So the publication that criticized my suggestion, if they had read they would have found that the prohibition that I suggested is also embodied in the current policy and it is expressly restated in the Clinton administration's announcement of yesterday. This emotional issue is difficult for all of us. I'm sure it's difficult -- been very difficult for the Secretary of Defense and for all the chiefs sitting there today, as well as for the President of the United States and everyone associated with him, as well as for individuals in uniform. I'm hopeful that all of us, including the news media, and particularly including editorial writers, will resist the temptation to transform the debate from "don't ask, don't tell" to "don't read, don't think."

Mr. Secretary and members of the Joint Chiefs, we know this has been a difficult and challenging issue for you.

I know that you have all approached this at all times from the point of view of what is in the best interest of the national defense, and of the men and women in the armed forces of the United States. We are glad you're here today. We hope to conclude this issue and move on to other areas as soon as possible. Before we call on our Secretary for his statement, Senator Thurmond, I'd ask you if there are any remarks you'd like to make.

SEN. THURMOND: Thank you, Mr. Chairman. I join you in welcoming our distinguished witnesses this morning. It is always a pleasure to hear from Secretary Aspin and the Joint Chiefs. Their counsel is important, and I look forward to hearing from them on the President's proposed policy on homosexuals in the military.

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

Mr. Chairman, I believe homosexuality is incompatible with military service. I was glad to see a similar statement in Secretary Aspin's policy memorandum. Secretary Aspin's memorandum goes on to recognize that individuals with a homosexual orientation have served with distinction in the armed services. I agree with Secretary Aspin, but it is important to note that these service men and women serve first as soldiers, sailors, airman and Marines, not as homosexuals. It is essential that the policy be legally defensible. I will be interested in hearing what legal opinions and advice Secretary Aspin and the Joint Chiefs receive on the final version of the policy. I think what the President called "rebuttable presumption" may present a legal problem. At the least, I think this will present a problem for commanders and senior noncommissioned officers as they try to implement the policy. I hope Secretary Aspin can clear this up for us.

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

SEN. NUNN: Thank you, Senator Warner (sic). Mr. Secretary, before we call on you, I think we can probably alleviate some of Admiral Kelso's recent problems. He's been Acting Secretary of the Navy, as well as CNO, which is an unusual arrangement. And we do have a quorum present, and we have received the nomination and had a hearing on the nomination by the President of Mr. John H. Dalton to be Secretary of the Navy. Senator Thurmond and I have reviewed all of those reports, including the FBI report. And I believe the Committee has a quorum present -- Mr. Secretary, you've drawn a quorum. If you'll come up here frequently, we'll get your nominees out very much with dispatch. So unless Admiral Kelso objects, I would ask the Committee to entertain the motion that we approve Mr. John -- (inaudible) -- to be Secretary of the Navy.

SEN. THURMOND: I move that it be approved.

(Short discussion regarding the nomination and the process of approval. Roll is called by the Clerk.)

CLERK: The vote orders the nomination of John H. Dalton to be Secretary of the Navy favorably reported to the Senate.

SEN. NUNN: I'll ask the record be open until late this afternoon for all members to be able to record their vote. Mr. Secretary, the motion carries. And I'll ask Senator Warner, as the former Secretary of the Navy, to report the nomination to the Senate.

SEN. WARNER: I thank the Chair. And Mr. Chairman and members of the Committee, I think this is an outstanding choice by the President of the United States.

And I commend the President and yourself, Mr. Secretary, in selecting such a well qualified and experienced individual.

SEN. NUNN: Motion carries, and the nomination will be reported by Senator Warner.

Secretary Aspin, glad to have you.

SEC. ASPIN: Thank you, Mr. Chairman. If we'd all be willing to wait here for a little while longer, if you wanted to do the Secretary of the Air Force and the Army or -- (laughter)

SEN. NUNN: Mr. Secretary, I hate to tell you, but that problem's over in the White House. It hasn't come up here yet. We haven't received the nominations.

SEC. ASPIN: Mr. Chairman, I want to thank Chairman Nunn and members of the committee for the opportunity to talk about the new policy on homosexuals serving in the military which President Clinton announced yesterday. As the President said yesterday, the new policy is balanced. It represents a real step forward while protecting a strong, ready-to-fight military force. And as he put it, the policy, quote, "provides a sensible balance between the rights of the individual and the needs of our military," end quote.

This issue comes to us not only because President Clinton believes individuals should be able to serve their country regardless of sexual orientation.

Questions about how the issue of orientation should be handled are being raised in the nation generally, and that means they will inevitably be raised in the United States military. Our armed forces are too large and too representative of our nation as a whole to escape these social issues.

When service members returned from the Gulf War, several announced their homosexuality and denounced the military policy. Colleges with ROTC programs have questioned the military's policy. The policy has been challenged in court -- once successfully at the trial court level. The House Armed Services Committee has looked at the issue since the spring of 1992. Senator Metzenbaum of Ohio and Representative Schroeder of Colorado filed amendments to completely abolish the ban on gays in the military during consideration of the '93 defense authorization bill. Neither amendment was formally offered or brought to a vote, but they did service notice that this issue was on the horizon and had to be dealt with.

So what I think is clear, Mr. Chairman, is that, even if George Bush had been reelected last fall, the nation would have had to deal with the policy of homosexuals serving in uniform sometime during this four-year period. We knew this when we set out the two main tasks that we wanted to accomplish in our first six months at the Pentagon. One task is one that we're going to be up here talking to a lot in the next few weeks, which is the bottom-up review that tells us what military forces we need for this new post-Soviet, post-Cold War era. We're very near completion of that review.

The second task we set for ourselves was to deal with the pressing social issues that we face. There are three of these. First is sexual harassment, the Tailhook. The Tailhook convention and other incidents illustrate that the military is far from immune to this problem. Second, society is grappling with the expanding roles of women. In the military, that means the issue of women in combat. And, third and most difficult of them all is the issue of opportunity to serve based on the basis of sexual orientation.

We basically -- in the Pentagon, we basically had two options on all three of these policies -- for dealing with all three of these issues.

We could put off dealing with them, or we could deal with them forthrightly, making constructive changes that preserve our readiness and fit the forces we are building for the new century. We chose the latter course. Over the three-month period in the spring and summer of 1993, we have taken major decisive steps to deal with all three of these issues.

In April we took steps to deal with the sexual harassment and the role of women. On April 23rd we released the Tailhook report and began a process that will make the military a national leader in combatting sexual harassment as actions in early years made the military a national leader in combatting racial discrimination.

On April 28th I opened new positions to women, including service in combat aircraft and on combat Navy vessels. The actions -- this action will enable the military services to tap a pool of talent that had been blocked because these jobs were closed to women.

And finally, on the 19th of July, acting on instructions from the President, I signed a directive making conduct -- not sexual orientation, but conduct -- the focus of Defense Department policy on who can serve in the military.

So the Department didn't ignore these issues. Instead, we tackled them up front. We dealt honestly and constructively with them so that we can get on with the historic challenges of shaping our forces to meet the dangers of the post-Cold War world.

Now, before I describe the new policy on homosexuals serving in the military, let me run through a little bit of the history of how we came to this policy.

It began on January 29th when President Clinton asked me to review the policy on homosexuals serving in the military. The President directed that the Department's policy be, quote, "practical, realistic, and consistent with the high standards of combat effectiveness and unit cohesion our armed forces must maintain," end quote.

We conducted an extensive review. First, we initiated two separate efforts to examine the issue in detail and help us develop the new policy. One, the military working group, consisted of flag officers from each of the services. The other was from the Rand Corporation of Santa Monica, California, which has a long history of working on military personnel issues. Both -- both groups, both working groups provided valuable insights. We also paid careful attention to the hearings held on the issue by the House and Senate Armed Services Committees. We then held a series of regular consultations with the Joint Chiefs and with the acting secretaries of the military departments. We looked at how the military dealt with major social issues, major social changes in the past, and we consulted with the Justice Department on the legal issues.

Throughout this process we were guided by the position stated by the President. He made his key point, and I quote, "People should have the right to serve their country, and if denied the right, it should be on the basis of behavior, not status," end quote. President Clinton also outlined two major criteria for a new policy.

First, the policy must maintain the high morale and cohesiveness of the all-volunteer military. It's important that our men and women in uniform perform well on the job together, get the job done, trust one another's professionalism under pressure, and work as a team. We know from experience that this cohesion is the key to a unit's success in combat.

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

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

As a general rule, the department has long held that homosexuality is incompatible with military service. Nevertheless, the department also recognizes that homosexuals have served with distinction in the Armed Forces of the United States. Therefore, we're going to judge a person's suitability for service on the basis of conduct; that is, not what they are, but what they do. Under the new policy, homosexual conduct will continue to be the grounds for discharge from the military service. On the other hand, sexual orientation is considered a personal and private matter. Under the new policy, sexual orientation alone will not bar a person or individuals from service unless it involves homosexual conduct.

Our new policy includes the following points. First, applicants for military service will not be asked for or required to reveal their sexual orientation. Applicants will be informed of accession and separation policy.

Second, service members will be separated for homosexual conduct.

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

Authority to initiate inquiries and investigations involving homosexual conduct -- conduct shall be limited to the commanders. Commanders will consider in allocating scarce investigative resources that sexual orientation is a personal and private matter. They will investigate allegations of violations of the Uniform Code of Military Justice in an evenhanded manner, without regard to whether the conduct alleged is heterosexual or homosexual, or whether it occurs on base or off base. Commanders remain responsible for ensuring that investigations are conducted properly and that any abuse of authority is addressed.

The constraints of military service require service members to keep certain

aspects of their personal lives private for the benefit of the group. That means no statements by a service member that he or she is homosexual. A statement by a service member that he or she is homosexual or bisexual creates a rebuttable presumption that the service member is engaging in homosexual acts, or has a propensity or intent to do so. What that means is that the service member has the opportunity to present evidence that he or she does not engage in homosexual acts and does not have a propensity or intent to do so. The interim policy and the administrative separation procedures that were established on February 3rd, 1993, will remain in effect until October 1, 1993. The new policy is scheduled to go into effect on that day.

The policy does some important things.

A service member who may be homosexual can serve today without -- can serve under this policy without lying and without fear of witch hunts, but homosexual members will have to play by the rules. The constraints of military service require service members to keep some aspects of their personal lives private for the benefit of the group.

To sum up, I believe to a large extent the President has achieved most of his goal. He has said that service members should be able to serve their country in the United States military regardless of sexual orientation, provided they obey the rules. We have that in this policy. Under the old policy, a homosexual service member had to lie and actively hide his or her orientation. In other words, they had to work hard to keep off the radar screen. Under the new policy, they will have to work to get on to the radar screen. That's progress.

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

SEN. NUNN: Good. General Powell?

GEN. POWELL: Thank you, Mr. Secretary.

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

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

The Joint Chiefs and I have spent an enormous amount of time considering this issue. We had the President's guidance from January, and we owed him and the Secretary of Defense our very, very best advice on this issue. We've challenged our own assumptions, we've challenged the history of this issue, we've argued with each other, we've consulted with our commanders at every level, from lieutenant ensign all the way up to commander-in-chief of the various theaters. We've talked to our enlisted troops. We've talked to the family members who are part of our armed services team. We examined the arguments carefully of those

who are on the other side of the issue from us. The challenge we faced was to try to reconcile or compromise two sets of conflicting views. On the one hand are those who believe that homosexuals should be allowed to openly serve. They note correctly that homosexuals have privately served well in the past and are continuing to serve well today. There are some, however, who advance the view much more aggressively than that and seek acceptance in the military of the entire gay rights agenda to include not only open service within the military but the introduction of all of the associated benefits of partnership and other benefits that accrue to partnerships within the military.

On the other hand are those of us who believe that the presence of open homosexuality would have an unacceptable, detrimental and disruptive impact on the cohesion, morale and esprit of the armed forces. Our concern has not been about homosexuals seducing -- heterosexuals -- homosexuals seducing heterosexuals or heterosexuals attacking homosexuals. The first of these so-called problems is manageable, and the second so-called problem is punishable.

For us the issue is also not what is acceptable in civilian life and it is also not our place as the uniformed leaders of the armed forces to use our official position to make moral or religious judgments on this issue. Our perspective is a unique one, and it's the unique perspective of the military and what is best for military effectiveness.

The military exists to fight the nation's wars, to accomplish our war-fighting mission. Hopefully, we are always strong enough to deter wars but always ready to fight and win them if necessary. And to win wars, we create cohesive teams of warriors who bond so tightly that they are prepared to go into battle and give their lives, if necessary, for the accomplishment of the mission and for the cohesion of the group and for their individual buddies. We cannot allow anything to happen which would disrupt that feeling of cohesion within the force. We are the best force in the world, and to be the best requires subjugating individual rights to the benefit of the group and the benefit of the team.

Homosexuals over history who have been willing to keep their orientation private have been successful members of those teams. Congress and the courts have consistently upheld the unique circumstances of military service, and I believe the American people understand these unique circumstances and support them as well. Because in the military we discriminate in many ways that would be absolutely unthinkable and unacceptable in civilian life. We have rules and regulations that are unique to our calling and could not pass any constitutional test if they were applied in civilian life. We impose on our troops conditions of service -- conditions of service unlike any other field of endeavor. We tell them who they will work with, where to live, and we tell them who they will be living with.

The American people expect that these rules are reasonable and expect that they are justified, justified because they are necessary in order for the armed forces to be able to perform its military mission. We are expected to be an accurate reflection of the society at large. We have successfully mixed rich

and poor, black and white, urban and rural, but open homosexuality in units is not just the acceptance of benign characteristics such as color or race or background. It involves matters of privacy and human sexuality that, in our judgment, if allowed to exist in the force, would affect the cohesion and well-being of the force. It asks us to deal with fundamental issues that the society at large has not yet been able to deal with.

Military service requires sacrifices in many, many forms. The proposed compromise that we have before the nation, the policy as announced by the President yesterday, permits gay and lesbian Americans to serve if they are willing to keep their orientation a private matter. It's a sacrifice we believe it is necessary for them to make for the overall good of the service and the cohesive teams that they are going to be a part of. We won't ask. We won't witch hunt. We will not seek to learn orientation. This is a significant change on the part of the military. I realize fully that this compromise will not satisfy all parties. But I believe that it is a good compromise, a compromise that will be understood and supported by most Americans. It is also a compromise that will eliminate the tension that exists in the armed forces over this very, very complex and divisive issue. I also know that this is not the end of the matter. The debate will continue. I also don't pretend to know where the nation will be on this issue years in the future. But in my judgment for now and for the set of circumstances we find ourselves in now, I believe that this is the right answer.

The Joint Chiefs of Staff and I have been criticized by some over our handling of this issue. Some say we fought the problem, and there were even suggestions that somehow we were insubordinate. Our responsibility to the President, to the Secretary, to the Congress, to our troops and to the nation is to provide our best, most honest advice when it is asked for, regardless of the popularity of that advice. I'm pleased to say that the commander-in-chief, our President, and our Secretary of Defense asked for our advice. They welcomed that advice. And it was our duty to provide that advice. Not to have done so would have been insubordinate.

I believe Secretary Aspin and the President displayed a great deal of courage in dealing with the issue head-on and forthrightly.

Many have suggested that they could have ignored the views of the military advisers that work for them or the views of most of our troops. They can simply reverse the ban and satisfy the political commitment. Instead, they studied all sides, they recognized their responsibility for the effectiveness of the force, and I know that they both agonized very, very deeply over this issue.

I also believe that they have made a correct choice, a choice which is in the best interest of the armed forces and the best interest of the American people, and I ask for your support of the President's decision.

Thank you.

SEN. NUNN: Thank you, General Powell. Let me start the questioning. General, you've already touched on it, let me just nail it down. I think you've hit pretty good already. But what is the justification in the military service, as opposed to civilian society, for placing the rights of the unit and the mission

before individual rights?

GEN. POWELL: Because --

SEN. NUNN: Why is that done in the military but not in civilian society?

GEN. POWELL: Because we live in a somewhat coercive society within the military. What we ask our people to do is to put their lives on the line, to march up hills in the face of machine guns. A level of cohesion is required that is not required anywhere else in our society. I don't know that I can express it much better than that, Senator. It's also a 24-hour-a-day, 7-day-a-week, 365-day job. You don't go home at 5:00, you may be living in the most incredible conditions all day long, 24 hours a day, with people that are part of your family, your most close relations, frankly. And in that set of circumstances, it is very difficult to introduce this element of gender differentiation, especially along homosexual lines.

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

SEN. NUNN: I would like to hear from each of them on this issue, but let me add one other one to it, and that is the significance of unit cohesion in developing combat capability.

Let me start with General Mundy and the General Sullivan, and we'll work toward the other end of the table. So the two questions, really, are unit cohesion, what does it mean, and the second question is why is the military unique in the sense that individual rights in the military have to be secondary to both the mission and to the unit.

GEN. CARL MUNDY (Marine Corps Commandant): All right, sir. Thank you, Mr. Chairman.

Unit cohesion, I think, to take off of what General Powell has said to you, I would only add to that, is a necessary bonding process whereby the members of a team that must go forth together as he has described have to come together, have to believe in each other, have to believe in the common purpose of the team. We don't send many of our elders in this nation to war, we send young people. We send 18, 19, 20 year olds. The Marine Corps is predominantly a 24 and -- 24-year-old-and-younger organization. They have to be -- they have to have a foundation built on common beliefs, on common trust, and on mutual understanding of what it is their task in life to do.

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

Generally speaking, as this body has heard from far many more voices and far younger voices than those at the table here today, there is not an acceptance of

homosexuality among those who serve in the armed forces.

And to try and inject that, to try and enforce -- or, force it into the ranks simply would create a fracture that would, in my view, be contrary to the cohesiveness that we talked about.

SEN. NUNN: Thank you, General Mundy.

General Sullivan.

GEN. GORDON SULLIVAN (CHIEF OF STAFF, US ARMY): Mr. Chairman, to the first one,

what separates us from -- from civilian society is ultimate sacrifice, the sacrifice of our lives for our country. And we have to sublimate everything that we do to selfless service to our nation: duty, honor, country. And it is, in fact, that mission, the protection of -- of the nation, which must govern everything that we do. And we know from our experience that when we find units where people are coalescing around other objects, that discipline breaks down and, in turn, the cohesiveness and combat effectiveness of the unit breaks down.

Now, to the other -- cohesiveness, cohesion, I reflect upon a -- a letter which was written from one officer to another which I think for me epitomizes what this profession is all about. In that letter, he said, "Throughout the war you are always in mind. I always knew if I were in trouble and you were still alive that you would come to my assistance. Every officer in the United States Army, every soldier in the United States Army, every soldier, non-commissioned officer, and officer, everyone in the United States Army, everyone in the services must know that about me and I about them, that I will give up my life for them, and they in turn will give up their life for me. I have to have trust in them, and them in me."

And I believe that's the question we are talking about today: move out -- move out, take the hill. And they don't ask me. They look in there and they see something. And that's what this is all about.

SEN. NUNN: Thank you, General Sullivan.

Let me -- Admiral Kelso and General McPeak.

ADM. FRANK KELSO (CHIEF, NAVAL OPERATIONS, US NAVY): Well, senator, I think unit cohesion is something that builds with time and as General Sullivan so eloquently stated is based on the trust between the members who have to work together. And in my case, I'm talking about a ship -- maybe small, but maybe large. But whatever happens, you're dependent upon your 'hipmate next to you for your own survival, and how they work as a team, how they work as -- as a unit, maybe how a division within that ship works as a team depends upon the success (sic). We also are a little different in that we are continuously -- are quite often at sea a lot. There's nowhere to go when you're there, so unit cohesion is a constant battle against the sea on a day to day basis. We have the same issues in battle as our other armed services do. But it doesn't take much to cause unit cohesion to be jeopardized. And I believe that homosexual conduct has clearly been seen to do that over the years.

I don't know of any of us that don't believe that. And so I think it's very important that the commander have the capability and the responsibility to deal with this, otherwise his unit won't have the effectiveness or the cohesion that

it requires for a combat situation or to do its job on a day-to-day basis. And I think it clearly is reflected in our experience that cohesion is dependent upon each one's trust of the other, his belief that they will stand up and be counted when that time comes.

SEN. NUNN: General McPeak?

GEN. MERRILL MCPEAK (Air Force Chief of Staff): Mr. Chairman, I think the thrust of your first question was is there a difference between a military and a civilian approach to this issue. I think it's a very good question because much of the public dialogue on this has treated this issue as though it were a jobs issue or a civil rights issue, and that the Air Force is essentially the same as working at General Motors or anywhere else, so why should our policies be different. I think that's a very good question.

The answer, it seems to me, is that we are not General Motors. This is not a 9:00 to 5:00 job, it's a calling. It requires a certain dedication to service that puts it in a different category. One dimension of it that is different is that our lives are in each other's hands in peacetime. It's not just a question of taking the hill under combat conditions. If we send a flight of four aircraft out to go do an operational mission, as we do every day in peacetime, and they get in formation and the flight leader enters clouds and runs into the side of the hill, all four of those aircraft are going to go in in formation.

That flight requires that all four of the men are cohesive, trust each other, understand each other. They're, in fact, a cohesive team. That, it seems to me, is what separates this from a routine job to which you would apply the normal jobs rights issues or civil rights issues.

Now, we talk, then, about the mission as oriented on the team. This is not boxing, this is not tennis. This is much more like football, and the team has certain rights as well as the individual rights that we're ordinarily interested in protecting in a civil environment. The team has a right to be able to depend on each other, in other words, because we don't give those wingmen a vote about entering the clouds; they go where the leader goes. So the wingmen have a certain right to expect their -- you know, they have rights that must be balanced against the normal rights that individuals would possess in a civil rights category.

Now, the second question has to do with unit cohesion and why it is important. To me it's important because it's essentially identical with effectiveness. We want our units to be effective in combat. We often use cohesion as a synonym for effectiveness. When we look at a battlefield situation we say that such and such a unit has lost its cohesion. What we mean is it's lost its effectiveness. It may still all be 100 percent alive but it's out of ammunition or our propaganda has worked, or it is physically separated some way on the battlefield, it's lost its cohesiveness and, therefore, its effectiveness. So we pay a lot of attention to trying to create unit cohesion because it's synonymous with effectiveness for us in combat.

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

SEN. NUNN: Thank you, General McPeak.

Senator Thurmond?

SEN. STROM THURMOND (R-SC): Thank you, Mr. Chairman.

Secretary Aspin, as I said in my opening statement, I am concerned about the concept of rebuttal presumption the President described in his speech yesterday. I think this provision may lead to legal challenges. I am sure it will be problematic for commanders and non-commissioned officers in the field. Please explain rebuttal presumption as you understand it, in simple words, and what guidance will you give commanders and non-commissioned officers to help them implement the policy?

SEC. ASPIN: The rebuttable presumption policy, Senator, is part of the current law now. That is not new in the President's directive. What it says is that if a person says that they are gay, it is a rebuttable presumption that they are conducting homosexual acts. Now, rebuttable presumption is the presumption is that they are engaged in homosexual acts but it is rebuttable by evidence that the member might offer. In other words, the requirement would be for the individual member to present the rebutting argument and the rebutting evidence.

SEN. THURMOND: In other words, it simply means they can answer the charge and be convincing in their answer if they can?

SEC. ASPIN: If they can show that -- yes, indeed. If they can show evidence, convincing evidence that they have not engaged in homosexual acts.

SEN. THURMOND: General Powell --

SEC. ASPIN: It's a tough standard.

SEN. THURMOND: -- is that your --

SEC. ASPIN: Senator, you should understand that it's a tough standard, and I think the evidence is true -- and I'd have to check this record -- that, in fact, it has not been acted on in the past. It's a tough standard to meet.

SEN. THURMOND: General Powell, is that your understanding of --

GEN. POWELL: Yes, sir. Yes, sir.

SEN. NUNN: Senator Thurmond, without taking any of your time, let me just -- this would not count. I just want to make sure I understand that on this question, because it is very important, both of you are saying this is not a change in current policy.

GEN. POWELL: That's correct.

SEN. NUNN: Current policy, if somebody comes in and says, "I'm homosexual," and a commander brings a charge against them, they have a right to come up and say, "Look, I was just kidding" --

GEN. POWELL: Yes.

SEN. NUNN: -- "and that's not correct, and I'm absolutely" -- is the current policy. That's what we're talking about.

GEN. POWELL: That is my understanding, yes, sir.

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

GEN. POWELL: I do, both as a professional matter and as a private matter.

SEN. THURMOND: General Sullivan?

GEN. SULLIVAN: To the policy? Yes, sir, I do.

SEN. THURMOND: Do you agree with the policy as announced?

GEN. SULLIVAN: Yes, I do, and I support it.

SEN. THURMOND: General Mundy?

GEN. MUNDY: I support the policy, Senator.

SEN. THURMOND: General McPeak?

GEN. MCPEAK: Yes, sir, I support it.

SEN. THURMOND: Admiral Kelso?

ADM. KELSO: Yes, sir, I support it.

SEN. THURMOND: Admiral Jeremiah?

ADM. JEREMIAH: Yes, sir.

SEN. THURMOND: General Powell, what is your understanding of the guidance on activities by service members? How many times can one go to a gay bar before the commander has cause to investigate? What about attending a gay religious service in uniform? Is that okay? If a service member advocates a gay lifestyle to others while professing not to be gay, is he or she within his or her rights, or do we need to tighten up the policy in this or other areas?

GEN. POWELL: Obviously, Senator, we cannot write implementing regulations that could cover every possible question that might be raised. The way we're going to handle that is first by giving some examples of the sorts of associational activities, we call them, that would not be prohibited, where a person is exercising their right of assembly or to go to a bar that they prefer to go to as compared to some other bar or some other social activity.

We are putting in the hands of the commander, where I think it belongs, the authority to make a judgment. If, as a result of a pattern of activity, or a number of things that have come to his attention, it is reasonable to consider whether or not that person is exhibiting homosexual conduct, then that would trigger an inquiry on his part. But whether it's one, two, or three times -- we're not going to try to answer that question. We're going to put that judgment in the hands of the commander who is on the scene and is able to assemble a body of real events and real information, as opposed to speculative questions. But obviously, an implementing directive can't be written to accommodate every possibility.

SEN. THURMOND: Admiral Kelso, historically DOD has maintained that homosexual -- homosexuality is incompatible with military service. Secretary Aspin's policy memorandum states that DOD has long held, as a general rule, homosexuality is incompatible with military service. The question is, does the policy and Secretary Aspin's memorandum state this strongly enough, in your opinion? Do you have any recommendation concerning how the policy might be improved?

ADM. KELSO: Well, I believe the policy states clearly that in general, homosexuality is incompatible with military service, and I believe that, and it should be in the policy, and is, sir. And I think that's the way it should be.

SEN. THURMOND: General Mundy, General Schwarzkopf testified to the importance of a clear, well-defined policy, that every soldier, Marine, sailor, and airman can

understand. Do you think this proposal is clear and unambiguous? Is it as workable as the pre-February 1993 policy?

GEN. MUNDY: It is as workable as the pre-February policy. I believe that it can be understood. As has been mentioned, we publish implementing instructions to implement any Department of Defense policy, and we can do that with this policy.

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

GEN. MCPEAK: No, sir. I think the new policy is better than the old approach. A lot of thought went into it in recent days. And I believe that the policy is a substantial improvement in many respects.

SEN. THURMOND: Admiral Jeremiah, a lot has been said in the last six months about the impact of open homosexuals on unit cohesion and readiness. In your opinion, how will this policy affect unit cohesion and combat readiness? Are there any changes to the policy you would recommend?

GEN. JEREMIAH: I would not make any recommendations to the policy. I think that this policy will support unit cohesion and readiness, and that's been our fundamental issue throughout this entire question, that is, the mission readiness of our troops and our organizations and units. I believe this policy will support that.

SEN. THURMOND: General Sullivan, what training do you anticipate being required by the proposed policy? Will there be sensitivity training for all soldiers? Will those in leadership positions be given training on how to implement the policy? Will leaders be trained on how to counsel soldiers on homosexuality and how to deal with those who frequent gay bars, for instance, to remain within the policy? Who will train the trainers? Have you done any preliminary work in this area?

GEN. SULLIVAN: Senator, as you know, we do equal opportunity training now throughout the Army, and I anticipate that this would be a part of that equal opportunity training. Certainly the regulation, when it comes out, will discuss the policy implications of it. But other than that, I don't intend any further separate and distinct instruction on the issue.

SEN. THURMOND: The last question I have at this time is to Secretary Aspin. I'm sure your general counsel reviewed the policy. We heard about consultations with the Department of Justice, including Attorney General Reno. It is essential that any homosexual policy be legally defensible because it will be challenged in the courts. What advice and legal opinions did you receive from the DOD general counsel and the Department of Justice on the policy announced by the President? And will this policy stand a court challenge?

SEC. ASPIN: Mr. Chairman, I -- or Mr. -- Senator, I have a statement here, a memorandum for the President from the Attorney General, which addresses just that issue. What we have -- what it says -- let me just say that the basic statement here in the policy, and we can make it available to members of the committee, hand it out to members -- (aside) -- you have it up there?

(Returning.) Oh, they have it at the desk -- at your desk. It essentially says that the changes that we are making in the policy make it stronger. It is more easily to defend in the courts than the current -- than the previous policy or the current policy for that matter. I think that the -- that what we're saying here is that the report from the Attorney General is that this is a big -- this is an improvement. I'll read the statement.

"The proposed policy that the Secretary of Defense has submitted changes earlier policy in three respects that should improve the ability of the Department of Justice to defend the policy in court." And then it mentions the three. "First, the policy changes the premise on the basis of which questions involving the service of homosexuals in the military are to be resolved. Second, the policy implements the discrimination between status and conduct that you drew in your" -- this is addressed to the President -- "that you" -- meaning the President -- "drew in your January 29th directive. And third, the policy would substantially change pre- January investigative policies. Based upon those, it is the opinion of the Justice Department that this policy improves the ability of the Department of Justice to defend the policy in court."

SEN. THURMOND: And the Department of Defense concurs in that?

SEC. ASPIN: Yes, sir.

SEN. THURMOND: The counsel, I mean, of the Department of Defense?

SEC. ASPIN: Yes.

SEN. THURMOND: Thank you, Mr. Chairman.

SEN. NUNN: Thank you, Senator Thurmond.

Senator Exon?

SEN. J. JAMES EXON (D-NE): Mr. Chairman, thank you very much. Let me start out, Mr. Chairman, by thanking you for your diligence, for your thoughtfulness, for your balanced selection of witnesses that have been before us on this whole very complicated matter.

And to you, Mr. Secretary, and the members of the Joint Chiefs, my hat goes off to you. It's easy for those who do not have to make the decisions or be responsible for the decisions that you've had to make to criticize you. I think and would say that, from what I know of the policy that you've come forth with, it's pretty much -- very much along that lines, Mr. Secretary, of what was suggested to you at a late January or early February meeting in the White House with members of this committee.

And therefore I -- from what I know of the policy now, I think while it's not perfect it's not what I really want. I think it is a significant step in the right direction.

I have some concerns about eliminating the witch hunts that were going on. I think you've basically done that. I am surprised that you have decided that it would be acceptable for members of the armed services to take parts in parades, but I suspect that that came down to a matter of definition and a legal interpretation that we are probably going to have to live with.

So I think you've done an excellent job, and I think basically the policy that you and the President have come forward [with] is a reasonable one that eliminates the witch hunts, the persecution, and the prosecution on flimsy

grounds or just because someone was a homosexual has been corrected, and that was one of the main points that this senator thought should be corrected. We made the necessary changes. Let me ask you a question or two to try and make sure that I understand the situation.

I think you're all familiar with Colonel Kammermeyer, who was discharged from the service because she saw fit to honestly answer the question with regard to an intelligent interview. I take it that notwithstanding what I think was unfair treatment to her, although I would agree that it was fair under the policy that I thought was wrong and is now being changed, I take it that Colonel Kammermeyer or people similarly situated will have no recourse and that her discharge from the service will stand per that decision that was made. Is that correct?

SEC. ASPIN: Let me -- let me refer that question to General Powell, maybe, or Sullivan.

SEN. EXON: General Sullivan?

GEN. SULLIVAN: Senator, I'm -- Kammermeyer versus Cheney is in court, and the court granted the government's request for a stay until 16 August. So that's being litigated in the court in -- in the Western District of Washington, and -- and that's where we are in that case. That's one of three cases that's being litigated now.

SEN. EXON: Supposing that that was --

SEC. ASPIN: Senator, let -- let -- let me -- let me ask the -- answer the question in a general manner. There's about eight, I think, cases that have come up in the period, the Kammermeyer case being one of them. There's about eight cases that have come to light in this interim period since the interim policy was announced. It is our intention -- we have discussed that among the Joint Chiefs, and I think it -- the -- it is the -- the prescription that each of the services will go over each of these cases that apply to their own service and -- and judge them on an individual basis to see what -- in the light of the new policy what might be done with these particular cases. And we'll try and judge them on an individual basis.

SEN. EXON: But let me get, you know, on -- that's kind of evasive, the answer to the question. Supposing they were -- there were not in process a court action. Would Colonel Kammermeyer be not reinstated?

SEC. ASPIN: You have a difficult case here. The -- the -- the situation is that probably under the new policy, Colonel Kammermeyer would not have been -- would -- would not have been --

SEN. EXON: I -- I would hope so.

SEC. ASPIN: Yeah. So that -- but -- but the -- but -- but you're dealing with is a -- is a situation -- what -- what you're dealing with is a situation is now it is known that Colonel Kammermeyer is a homosexual.

So what I'm saying that that's what requires dealing with these things on an individual basis.

SEN. EXON: Well, let me ask this question. With regard to new recruits, how do we explain -- or do we -- to a possible new recruit that that position is that those with homosexual tendencies are not encouraged to join the services because

of the problems that it might cause? How do we formally -- or do we formally relate that to a new recruit that would be coming in under the policy that I assume will become law as outlined by you and the President?

GEN. SULLIVAN: Senator, today when a recruit gets to the -- to his first duty station, he or she is informed of the Department of Defense policies, UCMJ, and there's a whole list of issues that are discussed, not the least of which is drug abuse, alcohol abuse, and so forth, and so on, and this is one of those items. And the soldiers are informed that this is Department of Defense policy, and that will continue.

SEN. EXON: You said get to their first station. That's after they're sworn in?

GEN. SULLIVAN: At the MEPS -- yeah, Military Entrance Processing Station -- they are informed of the policy, then that is further elaborated on when they get to their first duty station.

SEN. EXON: I guess that I -- I hope that we make that clear to people when they are coming in --

GEN. SULLIVAN: Right. We do --

SEN. EXON: -- what the official position is, and I'm not sure that that has been fully explained.

My time is up. I have another question about a guardsman who serves in the Nebraska National Guard that was in a parade here. I would ask questions about him along the line of Colonel Kammermeyer, but I'll wait for the second round.

Thank you very much.

SEN. NUNN: Thank you, Senator Exon. Senator Warner.

SEN. WARNER: Thank you, Mr. Chairman. First, may I be notified when I have but a minute remaining? SEN. NUNN: Yes.

SEN. WARNER: Mr. Chairman, I want to commend you for the manner in which you have handled this difficult issue throughout these many months. I've been privileged to work with you for over two decades, and fairness is your hallmark, and you've always, in my judgment, acted in what is in the best interest of our country and the best interest of the men and women of the armed forces.

SEN. NUNN: Thank you, Senator Warner.

SEN. WARNER: Mr. Chairman, I turn to my first question, and that relates to whether or not this policy leads to condoning an officer or a petty officer or any member of the armed forces from stating less than the truth and the whole truth, Mr. Secretary. And my question -- I picked out the following to frame this question. When I was privileged to serve in the department, I was asked once by the then secretary, Melvin Laird -- or maybe it was Schlesinger -- to study the honor codes of the several academies to determine whether or not they were balanced treated them fairly -- all the academies.

Now the officer corps has to operate by a certain set of standards, and indeed the non-commissioned officers.

And you start with the academies, which have traditionally, throughout their history, set a framework for all officers and noncommissioned officers to operate. The Honor Code says as follows, and this is the midshipmen, "They do not lie, cheat or steal." West Point adds, "A cadet will not lie, cheat or steal, nor tolerate those who do." Ironically, Admiral Kelso, you're the only

member of this distinguished panel that is a graduate of the academy, and my question to you is, will this policy require a revision of the Honor Code?

ADM. KELSO: I don't believe it will, sir. I don't see any reason why it should.

SEN. WARNER: Then, can a cadet or midshipman be asked if they are gay and remain silent?

ADM. KELSO: I don't think the -- I think the policy would say we would not ask whether they were gay or not, and then their subsequent conduct would determine whether they were gay or not.

SEN. WARNER: But a fellow midshipman may ask that --

ADM. KELSO: I think if, as a reason for -- if you had a reason because of some evidence that you could ask, then you have to answer the question honestly.

SEN. WARNER: And they cannot remain silent?

ADM. KELSO: I don't -- no, sir, not if you ask them to answer the question. But you'd have to reason to answer the question that was credible.

SEN. WARNER: Secretary Aspin, two questions. I hope you can keep your answers short. It would seem to me that, whatever policy we have, and I might address the second point, this issue is far more important than just the military.

Because the matter in which the President and the Congress reconcile their differences, probably through law, will have a far-reaching impact all across the United States in terms of what other laws that relate specifically to civilians or nonmilitary should or should not be changed. So we've got to exercise the utmost care as we deal with this tough issue. Secretary Aspin, do we, by virtue of this policy, treat heterosexuals equally with homosexuals, or are heterosexuals or homosexuals set apart as a separate class and treated differently?

SEC. ASPIN: Well, I think what this policy does is it moves towards a policy that treats private conduct privately. I mean, it essentially is a policy that says private conduct is private. In terms of investigations, in terms of interest --

SEN. WARNER: Let's try yes or no. Yes or no, do we create a separate class of persons within the military by virtue of their sexual orientation? Yes or no?

SEC. ASPIN: We move away from that towards a policy which creates a policy that says that privacy is privacy. That's what it does. That's the best answer I can give you, Senator.

SEN. WARNER: So, in your judgment, we're treating heterosexuals co- equal --

SEC. ASPIN: Not entirely. We're moving in that direction, but --

SEN. WARNER: But we haven't gotten there yet.

SEC. ASPIN: No, sir.

SEN. WARNER: Secondly, Secretary Aspin, have you made any assessment as to what impact, if this policy were to be adopted by the Congress, what impact it would have on recruiting?

SEC. ASPIN: I'm not the right person to ask that. I think we ought to ask one of the uniformed people here. Maybe General Powell can answer that question.

GEN. POWELL: I don't know that it would have any effect that I can think of, Senator. I think, throughout the force, to include that part of the force that is at the leading edge in terms of recruiting the recruiters out there, it

removes an item of great controversy and confusion, which has been having some minor effect on our recruiting ability because some youngsters coming in wanted to know the circumstances of service and their parents wanted to know the circumstances of service. This removes that added element of -- that element of confusion.

SEN. WARNER: All right. Let me move to my -- it seems to me that answer says we really don't know. And I think that's probably the best answer you or anyone else can give. We do not know whether or not this policy will foster or denigrate the ability to acquire the quality persons in the future.

My last question is to each of the chiefs, and I'd like to have your personal opinions, which each of you committed at your respective confirmations before this committee to give the committee at any time asked.

Everything we do in the Congress should be done towards improving the readiness of the armed forces of the United States, because bottom line, you're there for one reason and one reason alone, that is to protect the security of our citizens.

Now, my question to you -- and we'll lead off with General Powell -- in your personal opinion, does the armed forces of the United States become more combat ready militarily if this policy is implemented? If your answer is yes, also tell me why this policy will make the force more ready or more efficient in combat.

GEN. POWELL: I think the answer is yes. But the reason for that is that it removes an element of uncertainty, an element of friction, an element of tension that has, frankly, reduced some of the readiness of the force in recent months. So I think the settlement of this issue on a basis that Congress agrees with, the administration agrees with and the uniformed leadership of the armed forces agrees with will enhance our combat readiness by removing this distractor.

SEN. WARNER: General Sullivan?

GEN. SULLIVAN: Senator, I'm supportive of the policy and I believe that getting the policy out there, as we did yesterday, is going to take an element of doubt away. And I concur with the Chairman's comment in that regard. And we can implement the policy and get on with it.

SEN. WARNER: No, that wasn't the question. Does it make it a more ready --

GEN. SULLIVAN: Yes.

SEN. WARNER: It makes it more ready?

General Mundy.

GEN. MUNDY: Senator, I don't think it makes it more ready; I don't think it makes it less ready. I think it makes it more ready than a policy that would admit open homosexuality, which would make it less ready. So the policy of itself is, you know, to maintain readiness, it does not enhance readiness, in my view, but it does not take from it.

SEN. WARNER: Admiral Jeremiah?

ADM. JEREMIAH: Senator, I think it --

SEN. WARNER: The question is, does it make it more ready?

ADM. JEREMIAH: I believe that it does make the force more ready for the reasons that Chairman Powell mentioned. But also, I think that as we looked at the

fundamental policy that we were examining, there were some issues in there that Secretary Aspin suggested were coming under question. And I think that the current policy, in fact, is a cleaner policy and one that is more readily implementable and I, therefore, think that it means that the force will be a readier force.

SEN. WARNER: Admiral Kelso?

ADM. KELSO: I think in the sense that we have a policy that -- and if it's supported by the Congress and the Chiefs and the Defense Department and the White House, that we will become more ready as a result of that. So I think yes because it removes an enormous amount of confusion that is there today. And in that sense, I think we will be more ready.

SEN. WARNER: General McPeak?

GEN. MCPEAK: Sir, I believe the President and Secretary Aspin proposed to discard a policy that did not work and to adopt a better approach that will work. And from my point of view, asking the question was designed to keep homosexuals out of the armed forces and it did not work to do that. Getting rid of that policy makes sense to me. I don't think it will have a great deal of impact on readiness immediately, but it is a better policy and, therefore, over time should work to the benefit of our readiness.

SEN. NUNN: Thank you, Senator Warner. I believe that Senator Bingaman is next.

SEN. BINGAMAN: Thank you, Mr. Chairman. Secretary Aspin, let me ask you a sort of a clarifying question. You've made quite a point of the fact that this new policy tries to look at conduct rather than status. If you had a situation, or have a situation in one of the services where one soldier advises another soldier that the first soldier is homosexual, and then the second soldier relays that conversation, relates that conversation to the commander, what happens to the soldier who has told the second soldier that he is homosexual, in that private conversation?

SEC. ASPIN: Excuse me -- you have a three-step process?

SEN. BINGAMAN: You have one soldier tell another soldier --

SEC. ASPIN: That he is gay?

SEN. BINGAMAN: -- that he is gay.

SEC. ASPIN and SEN. BINGAMAN (simultaneously): Then the second soldier tells the commander --

SEN. BINGAMAN: -- that the first soldier said he was gay.

SEC. ASPIN: Yeah.

SEN. BINGAMAN: The commander then -- what does he do?

SEC. ASPIN: Well, by itself, it is not credible information of homosexuality.

What -- what is ultimately at stake here is the question of what is credible information. And it's up to the commander to look at the totality of evidence, and decide whether in fact there is enough evidence there on which an investigation would be undertaken to determine whether it's true. So the question then is for the commander to decide what is credible evidence. An individual statement, with no other evidence presented, would not be credible information. You may have an enemy, and somebody wants to get somebody in some sense, because of some other purpose. So a single point, if I came to the

commander and said that you told me that you were gay -- if that's the only think going, my expectation would be the commander would not do anything. It has to be part of a pattern, and you'd look -- the commander would look at the totality of evidence, and decide whether there's an investigation.

SEN. NUNN: Mr. Secretary, if I could -- without -- you're not saying that the commander could not use that statement alone to start an investigation, are you?

SEC. ASPIN: If it's -- it's up to the commander to decide when there is credible information.

SEN. NUNN: He would have the discretion to use that statement to start an investigation to determine if there were other evidence -- is that right?

SEC. ASPIN: Probably. But basically, I think it would be the intention of the group not to -- not to do it on the basis of one case. You end up --

SEN. NUNN: That contradicts your guidelines in your statement.

SEC. ASPIN: Well, Senator, the point is that the commander has to decide what's credible information. And the danger of information that's from a single source is that maybe somebody is trying to do damage to that person or that person's career. And I think that the commander has to take that into account; that if it's the only thing he knows is that information.

SEN. NUNN: Mr. Secretary, if I could just interrupt here just a moment, because this is important. This directly contradicts what you said in your opening statement, as I read your opening statement. On page seven you say, quote, "that means no statement by our service member that he or she is homosexual." Then you go on to say, quote, "a statement by a service member that he or she is homosexual or bisexual creates a rebuttable presumption that the service member is engaged in homosexual acts, or has a propensity to do so."

SEC. ASPIN: Senator, we're not disagreeing. The point is that people should not talk about this. They should not say that they are gay -- that that is not allowed under this policy. All that I'm saying is that when it comes to investigations by a commander, that the commander must look at the question about whether there is credible information or not, and proceed according to the totality of the evidence.

SEN. NUNN: But your statement on page seven clearly says --

SEC. ASPIN: There --

SEN. NUNN: -- that it's a rebuttable presumption.

SEC. ASPIN: Exactly.

SEN. NUNN: So a commander would then have the authority to move forward with an investigation as I read your statement.

SEC. ASPIN: Exactly. The point of the matter is that an individual should not -- I mean "don't ask, don't tell" means don't tell, that that is the policy -- they should not. There -- we're looking -- we're talking at two different parts of this document, Senator. On the one question, you're asking what is the proper behavior for individuals? The proper behavior for individuals is don't tell. In the other part, we're talking about what is the proper behavior for commanders, and what commanders need to do is to look at the totality of evidence before they decide whether to institute an investigation.

SEN. BINGAMAN: Let me just follow up on that with one other question. In the

memorandum from the Attorney General, the statement is made commanders will initiate investigations only where there's credible evidence of, quote, "homosexual conduct," end quote. Now, under the example I just gave you, where there is perhaps credible evidence of a person's status -- no evidence of conduct, but possibly evidence of a person's status -- then, as I understand what the Attorney General at least says here, is that commanders would not initiate investigations because they would not have evidence of homosexual conduct. They would just have evidence, and maybe not credible or maybe credible, as to status. Is that a correct interpretation?

SEC. ASPIN: You'd have to ask the Attorney General what --

SEN. BINGAMAN: Well, I'm just asking if her interpretation is a correct interpretation of your policy.

SEC. ASPIN: Yes. That's basically -- essentially what we interpret to be the policy.

SEN. BINGAMAN: Okay. Let me just ask one other line of question. As I understand it, the -- until February of this year, the whole policy related to this issue was a matter of DOD or Secretary of Defense directive. It was not statutory. Now, what you issued just in the last few days again is DOD/Secretary of Defense directive. Is that correct?

SEC. ASPIN: Correct.

SEN. BINGAMAN: Now, is it your position that that is how the matter should be handled? Or would you prefer to have us codify this into statute?

SEC. ASPIN: We -- I mean, the statement which we issued yesterday is scheduled to go into effect on October 1st because it would normally take a length of time to get the regulations disseminated and people informed of the policy. And it is our view that that is sufficient. But, of course, the Congress can do what they want. I mean, I do believe that the -- that it's up to -- essentially up to the Congress whether they want to try and codify it and put it into law or not. We believe that the policy directive has worked in the past and the policy directive will work in the future.

SEN. BINGAMAN: That's all I have, Mr. Chairman.

SEN. NUNN: Thank you, Senator Bingaman. Mr. Bingaman, you raised some very good questions, and we really -- I see the general counsel sitting back there. This has to be pinned down. We can't have a commander out there saying, "What I do I do?" and somebody says, "Call the Attorney General."

I mean, I --

SEC. ASPIN: No. It -- it's not going to be "Call the -- "

GEN. POWELL: This is not a new situation, Mr. Chairman and Senator Bingaman. There isn't one of us in uniform sitting at this table now who hasn't had an individual soldier, sailor, airman, and Marine come in at one time or another and we were company commander or battalion commander and say something about someone else, either that they were homosexual or they were doing something else that was brought to the commander's attention. The commander at that point has to examine the source of the information, he has to measure it against any other sources of information he has, and then make an informed judgment as to whether or not this is information that should be acted on. Is it credible information

to be acted on?

The difference with the new policy is that the presumption is that it isn't. The old policy, we'd have been off on what we've been accused of: witch huntings -- witch hunts. Under the new policy, if the commander is told, it really has to be, as the Secretary said, it really has to be dragged up on the radar screen for you to start using scarce investigative sources -- resources or your own time to go after this. So what I would expect to happen out there in each of our orderly rooms and -- and captains' offices aboard ships is that when this kind of information comes along, the commanders will examine it carefully, measure it against all other kinds of information before deciding whether it warrants any kind of investigation or is just to be filed away and see if additional information comes along later that would suggest an investigation is necessary.

This is somewhat different than the way it might have happened two or three or four years ago, so I think it is a significant shift in emphasis on how commanders are supposed to deal with this, but I would --

SEN. NUNN: But if --

GEN. POWELL: -- perhaps one of my colleagues would --

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

GEN. POWELL: A commander answerable to his superior commander could make such a judgment and has -- will be held accountable for the judgment he makes. SEN.

NUNN: Sure, okay.

GEN. SULLIVAN: Senator, may I --

SEN. JOHN MCCAIN (R-AZ): Well, going right along with what our --

SEN. NUNN: Let me -- let me yield to Senator McCain.

SEN. MCCAIN: -- what that discussion was, and I'm pleased to be next, according to the memorandum for the President from the Attorney General, the last chapter states -- clearly to me -- "The policy would substantially change the pre-January investigative policies. Applicants for military service would not be questioned about their sexual orientation or behavior. Investigations would no longer be conducted for the sole purpose of determining an individual's sexual orientations. Commanders will initiate investigations only where there is credible evidence of homosexual conduct."

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

SEC. ASPIN: Senator, in the -- in the policy, conduct is defined as statements. Statement is a conduct in -- in the -- in the policy.

SEN. MCCAIN: So -- so what you're saying is that in -- in -- but yet, being in a homosexual parade, marching in a gay rights rally in civilian clothes is not homosexual conduct.

SEC. ASPIN: Because a person might be a heterosexual who's in favor of gay

rights and attends the gay parade, yes.

SEN. MCCAIN: If that person is dressed in -- in a -- bizarre clothing and under the banner of -- of some organization which advocates --

SEC. ASPIN: No.

SEN. MCCAIN: -- certain things, what does that mean?

SEC. ASPIN: It depends under the circumstances. But the point is that a person should not be automatically barred from -- from attending a gay parade if they are -- if they're doing it in civilian clothes because a person who goes -- attends a gay parade is -- does not prove that they are homosexual just by attending the parade.

SEN. MCCAIN: Mr. Secretary, what you are doing is beginning a long, long lawyers' relief fund. This is going to be a -- a -- a situation where case after case after case is going to be tried in -- in court.

It is nebulous. It creates a rebuttable presumption that the service member -- and I'm reading from your legislative -- the service member is engaging in homosexual acts or has a propensity or intent to do so? What's a propensity or intent to do so? That can only be decided in court. What you are doing here, frankly, is -- as I say, we're going to see case after case after case. Already the homosexual community has announced, it's in all the newspapers, that they will take this all to court and they will get their justice, in their view, in court, and what you have done is duck the issue. And frankly -- well, I have no further questions, Mr. Chairman, except to say that I think that there is very little doubt as to what you have done here has muddied the issue to an incredible degree. Perhaps you have made some advance, in your view, some improvement, in your view, but clearly, this is fodder for legal challenges.

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

SEC. ASPIN: Senator, let me try and respond to that just very briefly, and then maybe let General Powell respond, also. But this is not that unusual in the way a policy comes -- is implemented. What will follow from this is a set of directions and kind of rules of thumb that people will develop in terms of how do you judge these kind of issues, and the issues will be dealt with on the basis of individuals, whether they kind of fall within the kind of boundaries of acceptable behavior or the kind of behavior that will trigger an investigation. And there will develop from this a kind of a set of rules of thumb and guidelines. And I --

SEN. MCCAIN: It will develop. It will develop after several court cases.

SEC. ASPIN: No, no. It is laid out there. They are laid out there in the policy in the backup sheets to the statement. And each of those policies is laid out. And I think it's an eminently workable policy, and I think the people sitting here before you, the Joint Chiefs, will tell you that it's a workable policy.

GEN. POWELL: I don't know how we could say to a heterosexual service member that if they chose to go to a gay rights parade, either to observe it or to make a statement about their view of it, but they, themselves, are heterosexual, that we should tell them they can't do that, or that we should take some action

against them for doing it.

SEN. MCCAIN: Well, how about, General Powell, if they went in transvestite clothing?

GEN. POWELL: I think that would be something that I as a commander would find troubling and I would begin to wonder about that situation, but just the attendance solely at the parade --

SEN. MCCAIN: This policy says marching in a gay rights rally in civilian clothes will not in and of themselves constitute credible evidence that would provide a basis for initiating an investigation.

GEN. POWELL: I would still take a hard look at it to see whether the costuming that was used started to slop over the good browns of ordered discipline.

SEN. MCCAIN: According to this regulation, you can't.

GEN. POWELL: But Senator, this is the problem we've had with the regulations that exist now. We are in court now, and as the Attorney General says -

SEN. MCCAIN: I'm not -- (inaudible word) -- the present regulations; we're examining the proposed regulations.

GEN. POWELL: Yes, but you're comparing them, that we'll need new platoons of lawyers. We've had platoons of lawyers before, and what the new policy, at least from the standpoint of the General Counsel of the Department of Defense and of the Attorney General, is that it would be a more defensible policy than the policy we are moving away from, sir.

SEN. NUNN: Thanks, Senator McCain.

Senator Graham, I believe, is next.

SEN. ROBERT GRAHAM (D-FL): Thank you, Mr. Chairman.

I'd like to go back to the basic policy rationale for why we are doing this in the context of the effect on unit cohesion. It seems to me that there are several levels. The pre-January level might be called the status level; that is, if you were a homosexual, that was considered to be incompatible with military service. We attempted to enforce that, both at the time of entry and through scrutiny throughout a period of service. Is that an accurate description of the --

GEN. POWELL: Yes, sir.

SEN. GRAHAM: A second level might be that -- the difference between open and closed, that homosexuals would be allowed in the military or there would not be a screening at the point of entry and an aggressive pursuit while in as long as they chose to not disclose their status. That would be what I would call level two. Is that -- would that be an accurate statement?

GEN. POWELL: Yes, sir.

GEN. : I'm not sure it is, Senator. Let me jump in here. I -- we have -- what we have talked about in the policy is sexual orientation. We've said everybody has one, some for the same sex, maybe some for the other. We don't know. We don't choose to ask, so we really don't know. And in that case -- so there is not a suggestion in the policy that homosexuals who know they are and who want to declare they are will be acceptable in military service. Orientation --

GEN. : I'm suggesting that we've gone past level two because we accept the fact that a person can make an open statement that they are homosexual and then

rebut the presumption of that statement, which is that they are a practicing homosexual. So theoretically if you -- you can state that you are gay, but if you can meet the presumption that you have not practiced that status, you would be allowed to continue in the military.

GEN. : No.

SEC. ASPIN: Senator, that policy is the current policy. We are not changing the policy in that regard. The rebuttable presumption is part of current policy.

GEN. : The rebuttable presumption, Senator, if I could go back to some of the discussions that we had earlier --

SEN. GRAHAM: But is the rebuttable presumption today that you are homosexual or that you are a non-practicing homosexual?

SEC. ASPIN: The presumption is that, if you say you are gay, that you are engaged in homosexual conduct and that you can present evidence to rebut that under the rebuttable presumption policy. It's a very hard case to make, but it's in the law today. That's not different in the policy.

SEN. GRAHAM: So you're saying that the current policy is that a person can be a self-professed gay as long as they can meet the test of being a non-practicing, self-professed gay?

GEN. : No.

GEN. : No.

SEN. GRAHAM: What do they have to do under the current policy if they --

SEC. ASPIN: They have to present evidence that they are not homosexual -- he's not involved in homosexual conduct.

SEN. GRAHAM: So --

SEC. ASPIN: Of any kind. I mean --

SEN. GRAHAM: I guess that the line I'm trying to draw is -- and maybe there is no differentiation, but I understood the current practice -- the current standard was that, if a person says, "I'm gay, they have the opportunity subsequently to overcome the presumption by stating that was a frivolous remark or --

SEC. ASPIN: Correct.

SEN. GRAHAM: -- or "I was not serious about it."

SEC. ASPIN: Correct.

SEN. GRAHAM: I read this policy to be somewhat different.

SEC. ASPIN: Same policy.

SEN. GRAHAM: This is the same -- so a -- under this policy, a person could not meet the presumption by being able to demonstrate that they do not engage in homosexual acts and do not have a propensity to do so?

SEC. ASPIN: Senator, you ought to ask this of the lawyers tomorrow. All I'm saying is that, whatever this policy is, it has not changed under these guidelines. These -- this is the same policy because the wording is the same as the current policy.

SEN. GRAHAM: So you're saying that in terms of effect on unit cohesion, the change that we're making is that we are not -- that the unit would not know that there had been a pre-screening of homosexuals, that there would not be an active pursuit of homosexuals who might have come into the military, but they would at

least be assured that no one would be a self-professed homosexual and be allowed to continue to serve.

SEC. ASPIN: Correct.

SEN. GRAHAM: And it's the statement that it's a matter of policy, that difference of being in or out in terms of public disclosure is the key factor in terms of impact on unit cohesion effectiveness.

SEC. ASPIN: It is the same as the policy was in the past on that issue.

SEN. GRAHAM: But in the past we'd had a tight screen which was intended to keep people who were homosexuals out of the service in the first instance. We are not going to have that screen now, so --

SEC. ASPIN: It's going to -- but in this regard, as far as this rebuttable presumption policy, there is no difference.

SEN. GRAHAM: Yeah, I --

SEC. ASPIN: Okay.

SEN. GRAHAM: I had misunderstood. I thought there was a difference in the questions of rebuttable presumption, but I'm trying to go back, understanding what the policy is, essentially is the difference between the pre-January policy and this policy, then, the issue of the degree to which the services attempt by pre-screening and relatively aggressive investigation of existing service members to ferret out homosexuals.

SEC. ASPIN: Yes, the policy, Senator, is don't ask/don't tell/don't pursue.

We're saying in this policy, "don't tell." The policy before was "don't tell."

The "don't tell" part is not different. The "don't ask" is different, the "don't pursue" is different. The "don't ask" is a policy which is -- it will not be part of the forms, it will not be part of the inquisition here, and the "don't pursue" is the issue of investigations and witch hunts.

SEN. NUNN: Thank you, Senator Graham. I believe Senator Coats is next. SEN.

COATS: Thank you, Mr. Chairman. Admiral Jeremiah, I trust that your right arm is not in a sling as a result of trying to reach a consensus on this policy.

(Laughter.)

ADM. JEREMIAH: (Land ?) preventive maintenance, sir.

SEN. COATS: We're getting to the crux of the issue here, and that is the legal interpretation of all of this, and I know our hearing tomorrow is designed to address that question specifically. But we're just starting to tap into what I think are some of the inconsistencies and maybe even direct contradictions that exist in the policy as you are presenting. Even the President yesterday interpreted it at his second press conference with the attorney general a provision differently than what he had announced at 2:00 p.m., and it makes me wonder if the Commander-in-Chief doesn't understand it, how can we get the commanders in the field to fully understand this.

But we will explore those legal differences tomorrow, although I would say this is really the crux of the issue.

And I would agree with Senator Nunn that we have a constitutional responsibility to have Congress formulate personnel policies for the military and not have that done by adjudication. My own conclusion is that we're going to have a very substantial amount of adjudication and policy by adjudication if this committee

can't tie down some of these inconsistencies and these legal loopholes. Senator McCain has raised some questions that are literally the tip of the iceberg. We could probably define a thousand scenarios here this morning about what a soldier can or cannot do in uniform, out of uniform, on base, off base, on duty, off duty. Every one of those is going to raise a question mark in the commander's mind as to whether or not he has an obligation to ask further questions, to investigate, to examine, particularly if he concludes that this is undermining unit cohesiveness. We've all indicated that that is the most important criteria.

I don't know how a commander can possibly conclude that one of his soldiers in his unit who just marched in drag in a gay parade and the knowledge of that within the unit -- that that doesn't undermine unit cohesiveness. That's contrary to the testimony of virtually every witness that came before us in six exhaustive hearings. I don't know he can possibly not conclude that that is credible evidence that goes to a declaration of status that undermines unit cohesiveness, but we will, I guess, deal with that tomorrow.

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

SEC. ASPIN: Correct.

SEN. COATS: In two instances in your statement, you indicated on the 19th you signed a directive making conduct -- not orientation, but conduct -- the focus of the policy, and that's restated on page five. "We're going to judge a person's suitability for service on the basis of conduct." But, at the same token, the President's injunctive to the Department of Defense was that the policy be practical, realistic and consistent. Is it realistic to conclude that an individual who is a homosexual will not engage in any expression of his sexuality or her sexuality during their entire time of service? Is that realistic knowing what we know about human beings, human sexuality?

SEC. ASPIN: No. I don't believe it is.

SEN. COATS: Well, why would we then want a policy that essentially says their homosexuality is not a bar to service in the military when we conclude that it's not realistic to think that service in the military will not result in evidence that will lead a commander to conclude that there has to be a discharge? Aren't we just inviting --

SEC. ASPIN: Because --

SEN. COATS: -- more discharges?

SEC. ASPIN: No, because basically, Senator, you can't judge a person by what's in their head. We don't know what's in their head, but we do know what their conduct is or we can know their conduct.

It's just the basis ought to be on the conduct, because frankly, that's what we can see and that's what we can judge.

SEN. COATS: But aren't we just setting ourselves up for a nightmare --

SEC. ASPIN: No.

SEN. COATS: -- of investigations, a nightmare of commanders attempting to -- trying to decide what it is they need to do to protect their unit, to keep their morale in good order and discipline. I mean, if we conclude that it's not

realistic to think that it won't result in the expression of sexual orientation or sexual declaration, why would we want to pretend that on the way in it's not a problem, but as soon as you're in the service, that we know that ultimately this is going to result in some kind of --

SEC. ASPIN: You don't know that, and in any case, the issue that you can judge the policy on is essentially conduct. And that's why the basis is on conduct.

SEN. COATS: Well, I'm just asking whether that's realistic.

SEC. ASPIN: It -- I think it is, and I think not only is it realistic, it's a workable policy, and it is a policy which the Justice Department says they can defend much better than the current policy. It's one of the points that the Justice Department makes in that letter about why the current policy is more clearly defensible in the courts than the -- the proposed policy is more defensible in the courts than the old policy.

SEN. COATS: So we're saying you can be a homosexual, but you can't act like a homosexual.

SEC. ASPIN: What the Justice -- what the policy says is that we judge people on the basis of their conduct. It's the conduct that will come to the attention of people, and it's the conduct on which the commanders will judge.

SEN. COATS: I have one last real quick question, a yes or no answer will be sufficient. I'd just like to ask each -- because Senator Thurmond asked the question just, I believe, of Admiral Kelso, not the rest -- let me just go down the line with General Mundy. The question is do you believe that homosexuality is compatible or incompatible with military service? GEN. MUNDY: Incompatible.

GEN. : Incompatible.

GEN. POWELL: Open homosexuality in a unit setting is incompatible.

GEN. : Open homosexuality would be incompatible.

GEN. : Incompatible.

GEN. : Incompatible.

GEN. : I believe that the question of open versus closeted behavior is at -- the key here. I agree that open homosexuality works against unit cohesion.

SEN. COATS: Believing that, are you satisfied then that the only statement given to us by the secretary and by those of you in the panel -- the only statement relative to that says the Department of Defense has long held that as a general rule -- homosexuality is incompatible with military service. It doesn't say that it is, or that you still believe it, or you still hold that, it just simply says has long held that. I don't know how a court would interpret that any other way than that that is not current policy, otherwise, why not state it directly? I mean, I -- the way I read that is that the Department of Defense has held that as a general rule -- homosexuality is incompatible -- but there is nothing in this policy that states affirmatively that homosexuality is incompatible with military service.

Can all of you accept this as the only declaration of that which to me is the basic premise of the whole policy on which everything else has to follow?

Either it is or it isn't, and everything else in the policy has to follow.

SEC. ASPIN: Senator, may I also call attention to the second part of the paragraph there, which I think all of the members of the joint chiefs would also

ascribe to, which is that as a general rule, homosexuality is incompatible with military service, but it is also true that individual people with a homosexual orientation have served with distinction in the armed forces of the United States. And it is therefore the policy of the United States to judge the conduct. That's a whole series of statements. The first statement is that as a general rule, homosexuality is incompatible. But there are exceptions to the rule. And --

SEN. COATS: But it doesn't say --

SEC. ASPIN: May I finish, sir?

SEC. ASPIN: The second statement is that there are exceptions to the rule and that individual homosexuals have served with distinction in the armed forces of the United States. Therefore, it is the policy of the Department to judge people based upon their conduct, and the policy is to judge people based upon their conduct. That's the policy that evolves from these two statements of policy which goes before.

SEN. NUNN: Senator Coats, I'm sorry, but the time is -- do you want to wrap up with a comment, or --

SEN. COATS: Just a 30-second statement. I won't ask another question.

I don't believe -- I think you slipped the issue very nicely here by saying the Department of Defense has long held that as a general rule. I think we would be much more forthright, candid and honest with the American people if we just concluded one way or another what the current position is on that very critical question, and I don't believe this states that. I think it's very vague as to what the current policy is on that question.

SEN. NUNN: Thank you, Senator Coats.

I'm going to call on Senator Lieberman, but my eye catches Senator Bryan, who is a new member of our committee and not a new member of the Senate, but we welcome you very much to this committee. And I had welcomed Senator Hutchison earlier but not in this audience, so we welcome both of you as new members of the committee. And I say, looking at you at the long end of the table and at the end of the line for questioning, I know it gets frustrating but I must say that some of my most enjoyable years in the Senate was when I was at the very bottom of the line. (Laughter.) So don't get discouraged. It doesn't get more fun as you move up -- (laughter); you just get to ask questions sooner, that's all. Let's see, I believe Senator Lieberman's next.

SEN. JOSEPH I. LIEBERMAN (D-CT): Thank you, Mr. Chairman.

I join in that welcome to Senator Bryan. I told him that not only is he a good friend but his arrival here finally gives me some status on this side of the committee. (Laughter.) I appreciate it a lot.

Secretary Aspin and General Powell, members of the Joint Chiefs, I share some of the frustration about the details of the policy that was announced yesterday and about what someone else here called some of the inconsistencies or apparent inconsistencies in it. And it seems to me that it's important to remember as we look at this policy what the President said yesterday and what I think -- I know, Secretary Aspin, you said today, which is that it's a compromise. In some ways that may be the best way to understand it. It's a compromise between those

who wanted to maintain the total ban on homosexuals in military service and those who wanted to lift the ban totally. In some more personal ways, it's a compromise between -- at some levels between the President and the military. In other ways it's a compromise that recognizes what the President may have wanted initially and what any reasonable estimate would say that the Congress would accept. After all, there's broad -- there's substantial support here in Congress, as I see it, for maintaining the ban as it used to exist. There's, I would guess, majority support for the kind of "don't ask, don't tell" policy that Chairman Nunn has talked about.

So this is a compromise, and I think it helps to understand it that way. And what I'm about to say, I say respectfully. Sometimes when I look at it I remember -- at the policy guidelines, I remember that old line about a camel being a horse designed by a committee; there are a lot of ways in which this doesn't quite flow. And it leads me to ask this general policy question from my own questioning about whether perhaps this policy tries to say too much, tries to do too much, and let me approach it this way.

I think you've all indicated in response, well, Senator Coats' most recent question, that homosexuality itself is not necessarily inconsistent with military service -- we know that homosexuals have served in the military -- but that, to use General Powell's phrase, open homosexuality -- or as others might put it, it depends on how an individual behaves. And that's part of the problem in trying to take this very personalized, not to mention awkward element of human behavior and turn it into guidelines and a directive that go into the detail that this goes into.

And the question about whether -- there are a lot of questions that one could ask. Is there really a difference between sexual -- homosexual orientation and homosexual conduct that matters in most cases -- the kinds of questions that have been raised about certain kinds of behavior that might be private homosexual conduct that are allowed under -- I'm sorry, that are disallowed, that are a cause for separation and yet very public conduct like marching in a gay parade or reading gay magazines, which presumably would be detrimental to unit cohesion, are allowed?

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

So all of this leads me to ask whether it might not have been a better policy, since we all seem to accept the "don't ask" part of this, to have said that it is not inherently inconsistent for homosexuals to serve ably, honorably, bravely in the military service; it's a question of how an individual goes at it. And, therefore, rather than trying to define every different kind of behavior that's

acceptable or unacceptable, since the standard here is unit cohesion as it affects military effectiveness, which is the unique and critical role that we're talking about, why not leave it to the unit commander to make the judgment, rather than trying to spell out every separate case, that this given soldier is acting in a way that affects -- adversely affects unit cohesion and I'm going to take -- I, the unit commander, am going to take disciplinary action against him, whereas other soldiers who might, in fact -- might not only be homosexual and be involved homosexual conduct could act in a certain unit in a way that would not affect the unit cohesion. So I would ask that of you, Secretary Aspin, General Powell and any of the chiefs here to respond.

SEC. ASPIN: Well, let me say, Senator Lieberman, that that's exactly what we're doing here in this policy. We are leaving it to the individual commander, unit commander. And let me say that, as a basic policy, the issue of the compromise -- I mean, I would put it differently.

I mean, I -- I think it's a compromise between two different clashing sets of rights, as General Powell said here, and that's what we're trying to reconcile.

SEN. LIEBERMAN: Right.

SEC. ASPIN: That being the case, there is clearly going to be ambiguity and gray areas that we can't foresee here. We can't foresee all of the particular cases that are likely to arise, nor should we be surprised.

The only unambiguous positions are at the extremes, at the ends. If you adopted a policy that says "No gays, no way, no how," and you said "We're against gays serving in the military and we're going to ask them the questions, and we're going to do the investigations, and we're going to make sure we throw them out," and all that, this is an unambiguous position. The other extreme, where you say "Open to gays, let them come in, anybody can serve, it doesn't matter, we have no restraints on any way that people behave or how they express themselves," total opening, that is an unambiguous position, too. Anything in between, no matter where you draw the line or how you try and work the process, is going to run into these kinds of situations where you have gray areas and hypotheticals and difficult ambiguous cases.

But in the last analysis, this policy leaves it up to the unit commanders. Now, there's going to be from each of these departments and from the Department of Defense generally some kind of guidelines for them, but we are essentially going to leave it up to the unit commanders to institute this policy and to make it work. And their -- their purpose and their goal in life -- and we say it in several places in here -- is the issue of unit cohesion. I mean, their -- their responsibility is to maintain the fighting force.

SEN. LIEBERMAN: So why spell it out in such detail in the guidelines? In other words --

SEC. ASPIN: We -- we do not --

SEN. LIEBERMAN: -- why -- why not -- when -- when something is inherent -- I think your description's right: either extreme, no ambiguity; the rest, ambiguity. Why try to spell it out? Why not leave it to the unit commanders who we give a lot of authority to as it is to make these --

SEC. ASPIN: Well, you've got to give some guidelines because you don't want

treatment of one -- of people in one unit to be vastly different from the treatment in another unit. So we've got to give general guidelines to a policy to make sure that the thing has a general uniformity among services and within services. But beyond that, the last -- the ultimate test of this thing is the unit commander.

SEN. LIEBERMAN: I'd -- I'd ask whether General Powell or any of the chiefs have a response to that in terms of the role that you're obviously very intimately familiar with, which is the role of the unit commander here.

GEN. POWELL: I think we have just drawn the line just about where it ought to be, senator. We -- we've talked about this a great deal between the two extremes that the Secretary pointed out, and we tried to minimize the number of whereases and wherefores and conditions and rules that were put into the policy statement in order to give the commander as much flexibility as possible to deal with this issue in a reasonable, humane way. We had to give them some guidance, and after many hours of discussion the guidance that we have put into this policy is about what we thought we needed to give our commanders without unduly tying their hands or making it that much more difficult a policy to implement. But let me yield to my colleagues.

Carl?

GEN. MUNDY: Well, senator, I think you make a very good point, and that is a lesson that I was taught way back when I was a captain one time and tried to explain why I couldn't do something, and it was explained to me that regulations are a guide for the intelligent and a crutch for others. We have to -- we cannot overly legalize any given policy. We can't write down every given situation that a -- a commander in the field has got to judge. So your point is very well taken in that respect.

The other point that I -- I think merits making here is that commanders are the best we have. Commanders, by and large, are about the best this nation has to be responsible for, ultimately, finally responsible for the sons and daughters that are put into the armed forces. These are good men and women out there who are working their hearts out dealing with people problems every day of the week. And some of these deal here. There are judgmental factors. It does make a difference, the circumstances under which somebody might say "I am gay" or under which somebody might go to a parade.

All of those things are why we pay commanders and select them to do that. So your point's very well made, sir, in that respect.

I would suggest with regard to the policy, really the points that we're getting here, the basic compromises in this policy are in the definition of orientation. Remember that we have never had orientation defined until it came up as a part of this very agonizing 11 months or so that we've all been trying to come to grips and deal with this. That now has been defined as a part of the policy. We defined orientation. But conduct is not and never has been acceptable. You cannot perform in an exemplary fashion if your conduct is such that it is in violation of the Uniform Code of Military Justice. So, if conduct is the defining act, you know, we have a inconsistency there. So conduct has to be the basis for judgment in this policy.

GEN. SULLIVAN (?): Senator, I think that, first of all, all of us at this table here have worked to the Secretary's point long and hard to make this as comprehensive as we can. And the policy does empower our commanders. It puts the power in them to investigate, to consider, and we have stated twice that the commander remains responsible. And we've stated that twice in this policy. Frankly, I think it's a workable policy. I think they will understand that. They may need some more guidance from us, and the Secretary's given us time to do that. And we'll do that. But I think we have empowered them and we have put this action in their hands.

SEN. LIEBERMAN: Thank you.

Mr. Chairman, it's up to you as to whether you want the other chiefs to respond. I'm over my time.

ADMIRAL KELSO: I agree that the -- that the commanders have the responsibility here and the authority to act, to determine whether an investigation is required or not required. This is a change to some extent, but not a complete change to them. They're still -- they're having to make those kind of decisions and have had to make those kind of decisions. There's certainly been a period of time here where the pressure to night investigate has grown over the years, even with the old policy. So it's been -- their view has been adjusted with time as a result of that.

So I think it's still going to be a judgment. And as General Powell said earlier, you know, we have this problem today to decide whether a soldier or sailor does something that they shouldn't do or what they demonstrate on or what they do not demonstrate on and I might say what they come and talk to people about as to judgment as to whether that's out of line or in line. So I don't think this is going to -- it's going to be different. It's going to be a shift, but it's -- I think they'll understand that and will take it and do the job, sir.

GEN. MCPEAK: Sir, I'd like to put this problem in context. It's an important problem, but it needs to be seen in context. Last year, the Air Force discharged 70,000 people. Ten thousand were discharged involuntarily, 115 of them for homosexuality-related reasons. Point two -- you know, two-tenths of 1 percent of our discharges involved homosexuality issues, and of that, two-thirds of it was for conduct, behavior, not simple statements, questions. Ten times that many people were discharged for being overweight. Our commanders will spend, in order of magnitude, more time on the problem of obesity than they will on homosexuality, if that statistic stands up over time.

So this is an important problem, but I wouldn't want to exaggerate the difficulties it gives a commander.

SEN. LIEBERMAN: Well, I appreciate the answer. I think those are very illuminating numbers, important for us and our nation to remember as we go through this process and in a way, just -- I think in part I'm thinking as a lawyer here and maybe reflecting some of what was said on the other side of the table, which is that the more you spell out, the more difficulty you may get yourself into. And in a way, perhaps, I would yearn for a situation where we'd state some general values which seem to be broadly held, and then give the unit

commanders the latitude to enforce those values and develop what you might call a -- is a common law here. Case by case they'll develop in the exercise of their -- and I agree with you. These are the best that we have. And give them the latitude to make those judgments. And I think over time this will work itself out.

SEN. NUNN: Senator Lieberman, we're running over here a little bit. It would be helpful if we could get statistics like General McPeak just gave for the Air Force for each of the services. That's something that we have wanted, particularly how much of the discharge on homosexuality is based on conduct versus simply statements or simply -- of course, conduct includes statements, so if you have a breakdown on that, though, that would be helpful.

GEN. : Let me -- can I jump in, Senator?

SEN. NUNN: Yes.

GEN. : Since February of this year, we have released 46 people. Of that number, 2 for acts --

SEN. NUNN: Forty-six people on homosexual grounds?

GEN. : Right, released. Two were for acts, and 46 were for admissions -- you know, they just admitted they were and they left. All honorable, and so they've gone. So that's in keeping with the normal trend. Last year was 137, and I'm about like General McPeak, I'll give you these numbers -- .16, for instance, of all discharges '83 to '91.

SEN. NUNN: It would be interesting to see on the admissions whether that was because someone asked the question or whether it was a voluntary admission.

GEN. : No, no, we couldn't ask because that was after the policy changed. They just --

SEN. NUNN: So that was all since the interim policy.

GEN. : They just -- that's since the interim policy, which in itself is very interesting. All of these people, by the way -- that's 46 -- they all just left. They're not in the IR to the best of my knowledge. They're not in the IR.

GEN. : It runs about the same, Senator. Three-tenths of one percent for us, 80 percent of which are conduct related not questioning or not admissions.

ADM. KELSO: For the Navy, it's -- in the last four years, it's a half a percent of all discharged were for homosexuality, and those for homosexuality -- and those people discharged for punitive reasons, 2-1/2 percent were for homosexuality and 80 percent were for conduct.

SEN. NUNN: So the overwhelming majority is the conduct?

GEN. : Yes, sir.

SEN. NUNN: All right. Senator Smith?

SEN. SMITH: Thank you, Mr. Chairman. Mr. Chairman, I yield one minute to Senator Warner of my time.

SEN. WARNER: Let me make just a short observation, Mr. Secretary, which you can address as you go along. As I listen carefully, you're asking homosexuals to take an oath of celibacy -- mental and physical -- for the balance of their terms of active duty.

I think that's unrealistic, unfair, discriminatory, it's not a step forward, it's a step back, and we're going to be back in this hearing room after the

federal courts knock it down in less than a year.

SEC. ASPIN: Senator, the only thing I can tell you is that the -- the -- well, the -- every -- everybody's a lawyer here in this -- in this business, but we have gone over this policy, and you've got the statement there from the --

SEN. WARNER: Sure.

SEC. ASPIN: -- Justice Department that they believe that the policy is, as with the three changes that they cite, is more defensible right now than the old policy was before the changes were made.

SEN. WARNER: Thank you.

Senator Smith.

SEN. ROBERT C. SMITH (R-NH): So a lawyer, then, Mr. Secretary, for, say, a homosexual soldier could say you're discriminating against him by asking him to be celibate, bring a lawsuit against the armed forces saying that heterosexuals also ought to be celibate. You're not applying the same standards to them.

SEC. ASPIN: Senator, you know that the -- that the courts have all -- have -- have long held, and I -- again, I think these are questions you ought to ask the panel tomorrow, but the court --

SEN. SMITH: I will.

SEC. ASPIN: -- has long held a difference that they -- that -- that they treat the military different from the rest of society. Clearly, in the case of the rest of society, any kind of distinction like that would not be tolerated. In the case of the military, because of the unique nature of military service and the unique requirements of unit cohesion and the unique nature of the military, which is, after all, to win wars, that the courts have given a certain amount of latitude to the military in order to manage their personal affairs. And distinctions like that are in the current law, and they're going to be in the proposed changes in the law.

SEN. SMITH: Well, as a member of the committee, and -- and, frankly, as a member of the American -- American people, I think we -- I like them have strong feelings about the issue. Most of them have been expressed. But at the same time, in fairness I've tried to listen to all sides and tried to make a judgment on the administration policy. And as all of the gentlemen at the table know, I have the greatest respect for each and every one of them, including the Secretary. But as I watched you as this discussion took place, I -- it -- it sort of reminded me of the individual who had been condemned to death but got the opportunity to select his punishment in terms of how the death penalty would be implemented.

I -- I just -- I'm extremely disappointed with the product that is before us. I think -- simply put, I think it's a charade. I think it's ludicrous. The policy is intellectually dishonest, and it's -- it's unworkable. It's simply unworkable. If the President of the United States had sent you here and said, "Look, I made a promise in the campaign to lift the ban, I'm going to stick with it and we'll let the Congress and the American people make the determination one way or the other," there are certain things that ought not to be compromised. I don't see how you can compromise this. It just doesn't work. To say that a homosexual can serve in the military as long as he doesn't -- he or she doesn't

manifest their orientation is pathetic. No -- human nature just, as Senator Coats said, will -- you can't subject human nature to a policy which mandates celibacy. And the policy says that homosexuals can serve and act out their homosexual desires as long as they don't get caught. But that's a violation of the Uniform Code of Military Justice. And I don't want to get into the legal part, but just briefly to say Article 125. Any person subject to this chapter -- this is sodomy -- who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. That's what the UCMJ says. And then you say "Well, it's conduct, not status," but you also said that you're going to treat private conduct privately. Well, if you're going to treat private conduct privately, Mr. Secretary, then you're condoning it, and you're violating the UCMJ because the UCMJ does not distinguish that.

Do you disagree?

SEC. ASPIN: We're making the distinction, Senator, between -- we're making the distinction between what is permitted and the investigative policy. Homosexual acts, homosexual statements are not permitted. People are not allowed under this law, under this regulation to conduct homosexual acts or to say statements that "I am gay." But the question in another part of the regulation is how will the military deploy their investigative resources. And they will not deploy their investigative resources with these issues as a high priority. They will deploy their resources in a way that can be determined -- in which these kind of things are a lower priority. That's the difference in the policy.

And if I could say, Senator, I think the question about whether this is a workable policy or not needs to be addressed to the gentlemen here. The gentlemen here believe that this is a workable policy. It is working with them that we came up with this policy. Now, they are the people who have the experience in the military. They are the people that have the experience with working personnel policies across the whole range of issues. I mean, there's a whole range of issues that people who work personnel policies have to deal with, and these are the people that have to work the policies, and these are the people who tell you that they believe this policy is a workable policy.

SEN. SMITH: Well, it's pretty clear what the directive and the wish of the President is, and they're good soldiers and they're going to try to carry out that policy, and I respect that. But still, you --

SEC. ASPIN: That was not what they said, Senator. What they said was they agreed with the policy, not that they would try to carry it out. They agreed that this is a --

SEN. SMITH: But --

SEC. ASPIN: -- let me finish, if I could -- that this is a serious and difficult, difficult issue. That basically, all of the gentlemen here at this table believe, first of all, that as a general rule, homosexuality is incompatible with military service, but they all know that there are cases where individuals who are of a homosexual orientation have served with distinction in the armed forces of the United States. Now, we're trying to put together a policy which is consistent with both of those beliefs, and what we

have here is a policy that I think -- one that's based upon conduct -- is a policy that will work, and these gentlemen sitting up here believe it will work.

SEN. SMITH: I'd just like to conclude -- let me just say here's why it won't work, Mr. Secretary, because you're exacerbating the problem. Right now you're asking people -- you're saying to people, if you're homosexual, don't come in. Now you're saying, if you're homosexual, come on it but be a celibate, and that

--

SEC. ASPIN: No, absolutely not.

SEN. SMITH: -- will exacerbate the problem. Well, of course you are.

SEC. ASPIN: No, I'm not.

SEN. SMITH: Well, then you're not -- then you're violating the UCMJ because you're not saying it's conduct, not status. What you're saying is it's conduct but we're going to look the other way.

SEC. ASPIN: No, let me tell you what the policy is. The policy is basically, I believe -- and I'm speaking now for myself as much as anything else. I believe that basically if a person is homosexual, they would be much more comfortable pursuing a different profession than the military profession, and if anybody, 18, 19-year old, whether they're male or female, were gay, they came to me and asked for my advice, I would say -- and they said they are gay, I would say you'll be much more comfortable in another career. That basically, the military is a career which requires a lot of self-sacrifice. You give up a lot of freedoms that you have in civilian life when you join the military. One example is that you have to stay within a certain weight.

Another is that you have to cut your hair a certain length. You have to wear a uniform during certain parts of the day. You have to -- you give up certain individual rights of free speech, First Amendment rights. You give up a whole series of rights.

If you're gay, that burden of giving up those rights is likely to be more onerous than if you're a heterosexual. So I would advocate -- if anybody came and talked to me about it, I would say, "if you're of homosexual orientation, I would advise don't join the military."

SEN. SMITH: But many will.

SEC. ASPIN: Let me finish.

SEN. SMITH: But many will, Mr. --

SEC. ASPIN: But let me finish. The point about this is, if somebody wants to be a soldier first and a gay person second and they really want to join the military and they can -- they pledge to abide by the rules, under this proposal they will be able to do so. And the point is that what we're saying is that you have to be a soldier first, a soldier first, and that is not unlike anything else. When you're a soldier, you're a soldier first and a black militant second or a soldier first and a feminist second. You're a soldier first. The main thing is to be a soldier and to enforce it. The point about this is that, if the person fits into that category, and there are clearly people who have fit into that category, they ought to be allowed to serve. And that's what this policy allows.

GEN. POWELL: May I add a word, Senator? Just --

SEN. SMITH: Yes.

SEN. NUNN: Senator Smith's time has expired, but go ahead.

GEN. POWELL: Senator, I think I have to say that the chiefs do not believe that they have been shot-gunned into the policy just because we are good soldiers. We are good soldiers, and we will faithfully execute any instruction we are given. This particular instruction, we were given the opportunity to participate in its development, and we fully support it. And I think we've already testified both as a personal matter as well as a professional matter.

SEN. SMITH: Well, Mr. Chairman, my time is expired, but I just want to say this, that you also --- gentlemen, also said that it will enhance readiness with the possible exception of Mr. Mundy -- General Mundy, who indicated he didn't accept that premise. But I don't think it will enhance readiness. I think it will undermine it. It's not going to give soldiers and commanders peace of mind at all. It's going to create chaos, and it's going to hurt unit cohesion and the mission. And that's been stated by rank-and-file people from privates to generals in testimony before this committee and in all of the field hearings that we've had. So, you know, I'm just surprised at the conclusion. But my point is --

GEN. POWELL: (Inaudible) -- sir, for the most part, the policy has been working for the last six months. And I think what we do now is improve upon that policy, and it I believe it is workable, as do my colleagues.

SEN. NUNN: Thank you, Senator Smith.

Senator Levin?

SEN. CARL LEVIN (D-MI): Thank you, Mr. Chairman.

I'd like to hear precisely on that issue from each of the chiefs. We've heard now from you, General Powell, that in your personal and professional opinion this policy announced yesterday is workable and you support it.

GEN. POWELL: Yes.

SEN. LEVIN: I'd like to go down the line. General McPeak, is it your professional and personal opinion that the policy is workable, and do you support it?

GEN. MCPEAK: Yes.

ADM. KELSO (?): Yes, sir. And I think it's been about this way for the last six months.

SEN. LEVIN: Okay. Let me jump over.

GEN. SULLIVAN (?): Yes.

SEN. LEVIN: General Sullivan?

GEN. MUNDY (?): I do, Senator.

SEN. LEVIN: General Mundy, okay.

One of the questions that was asked had to do with whether or not homosexuality is compatible or incompatible with military service. And after the two at this end of the table answered, the word "open homosexuality" was added as a qualifier. And then General Powell said that open homosexuality, in his opinion, is incompatible with military service. And I think Admiral Jeremiah did, too, and Admiral Kelso said open homosexuality is incompatible with military service, I believe. Is that correct?

ADM. KELSO: I think I said homosexuality, sir.

SEN. LEVIN: Okay. And General McPeak?

SEN. MCPEAK: Yes. I said that the question of openness is critical here, and I believe that declared homosexuality is incompatible with military service.

SEN. LEVIN: All right. Do you accept that statement that it is open homosexuality which is incompatible with military service, General Sullivan?

GEN. SULLIVAN: I support the policy as it's written, which says homosexuality is incompatible with military service because it interferes with the factors critical to combat effectiveness, including unit morale and so forth and so on.

SEN. LEVIN: Now, tell us what you're reading -- what you're reading it from.

GEN. SULLIVAN: Page one of the policy as it was published yesterday.

SEN. LEVIN: All right. Now, that's the statement that it has been the -- that has long held that. This is the statement, to give you the full sentence, that the Department of Defense has long held that as a general rule homosexuality is incompatible.

GEN. SULLIVAN: That's correct.

SEN. LEVIN: All right.

GEN. SULLIVAN: And then it says --

SEN. LEVIN: Now, then --

GEN. SULLIVAN: It goes on in the next paragraph to say that we'll judge the suitability of persons to serve on the basis of their conduct.

SEN. LEVIN: All right. Now let me read two paragraphs down and ask you all whether you agree with this statement. This is the policy enunciated yesterday -- not what has long been the policy, but what is the policy as of now. It's near the bottom of page one.

"Homosexual conduct will be grounds for separation from the military services."

I'm sorry. Let me start again. "Sexual conduct will be grounds for separation from the military services. Sexual orientation is considered a personal and private matter, and homosexual orientation is not a bar to service entry or continued service unless manifested by homosexual conduct."

General McPeak, do you agree with that, what I just read?

GEN. MCPEAK: Yes, sir. I do.

SEN. LEVIN: All right. Admiral? You do?

JOINT CHIEFS: (Answer in affirmative.)

SEN. LEVIN: You all agree with what I just read?

GEN. : Yes, sir.

SEN. LEVIN: I want to ask you about some principles of military personnel policies and military activity. Is it an important principle of military life, military activity and military personnel policies that orders of commanders be obeyed? General?

GEN. POWELL: Of course.

SEN. LEVIN: Everybody agreement with that?

JOINT CHIEFS: (Answer in affirmative.)

SEN. LEVIN: I just want to establish some important principles of military activity here. You all agree with that.

Next, would you say -- and here I'm quoting, to be fair for everybody, from

Directive 1350.2. Would you agree that it is an important -- I knew you were -- you're going to check up on me, General.

GEN. POWELL: We have the memorized right here.

SEN. LEVIN: Right. (Laughter.) I want to give you the source of my quote. Would you agree that the "programs and activities in the military shall be free from social, personal, or institutional barriers that prevent people from rising to as high a level of responsibility as possible"? General, I quoted from a directive. Do you agree with that statement?

GEN. POWELL: As a general proposition. I don't see it in context, and I'm not familiar with the title of the regulation.

SEN. LEVIN: As a general proposition? Well, let me give you the whole --

GEN. POWELL: I really would like to see the whole thing in context, because --

SEN. LEVIN: Well, if DOD -- GEN. POWELL: -- you have an advantage on me, Senator.

SEN. LEVIN: Well, that's why I gave you the source. DOD --

GEN. POWELL: The number doesn't help me, sir.

SEN. LEVIN: I'll give you more context. DOD's Equal Opportunity Manual defines equal opportunity as, quote, "the right of all persons to participate in and benefit from programs and activities for which they are qualified. These programs and activities shall be free from social, personal or institutional barriers that prevent people from rising to as high a level of responsibility as possible." Do you agree with that as a principle?

GEN. POWELL: As a general principle.

SEN. LEVIN: You do? Everybody else agree? You're all nodding yes.

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

GEN. POWELL: No soldier, sailor, airman or marine should be subjected to harassment or violence, and there's nothing in what you said to suggest that you've identified somebody who would be subject to harassment or violence.

SEN. LEVIN: Right. But would you agree that that general policy, that persons should not be subject -- in the military should not be subject to harassment includes homosexual persons who comply with the policy enunciated yesterday?

GEN. POWELL: Yes.

SEN. LEVIN: General?

GEN. : Yes, sir.

SEN. LEVIN: General?

GEN. : Yes.

SEN. LEVIN: General? Admiral? General?

All right. The rebuttable presumption issue -- it is a rebuttable presumption, we've talked about here that, if one announces that he or she is a homosexual, that he or she is engaged in illegal activities that are homosexual, but it is rebuttable. And we -- and you define in your policy homosexual activities as bodily -- sexual bodily contact with another person. Is that correct? Is that all your understanding? That in terms of --

GEN. POWELL: It's an act.

SEN. LEVIN: -- homosexual activity in the policy --

GEN. POWELL: An act. Homosexual act.

SEN. LEVIN: Yeah, right. That involves bodily contact with another person. Is that correct, General?

GEN. POWELL: That's what the policy says.

SEN. LEVIN: Okay. And finally would you not agree that we have some practical problems? We talked about practicality, and by the way, I must tell you that I do believe that, in focusing on conduct instead of on status, that the President -- more important, that you, Mr. Secretary, in the first instance -- not more important, but in the first instance, you and the Chairman and the other chiefs did all you could under difficult circumstances to resolve this issue. And I respect what you've done, and I think you've done the best you could. I think, if it's workable, and that's the key to me, and you've told me it is workable, that then it becomes a reasonable solution to a difficult policy. But I lost the strain of my question, which is probably just as well because I'm over time anyway. (Laughter.)

GEN. POWELL: We are greatly relieved. (Laughter.)

GEN. : It was a great warmup.

SEC. ASPIN: Saved by the bell.

GEN. : A great lead.

SEC. ASPIN: Saved by age.

SEN. NUNN: Senator Levin, I thought it was one of the best questions you ever posed. (Laughter.) And I was looking forward to the answer -- (Cross talk, laughter.)

SEN. LEVIN: In that case, I just found it, Mr. Chairman. (Laughter.)

SEN. NUNN: Senator Faircloth?

SEN. LAUCH FAIRCLOTH (R-NC): Thank you, Mr. Chairman. I think we have about ground the status, orientation, conduct and the Code of Military Justice to a pulp and liquefied it. I would like to ask some questions and maybe bring the problem to where it is. All of you, generals and admirals, have testified this is a pretty good idea and you all like it and you think it's going to work and help the Army. Which ones of you had planned to suggest it to the Armed Services Committee if the President hadn't brought it up? I mean, it's a good idea now. Were you all going to bring it up if he hadn't?

SEC. ASPIN: I think, Senator, that eventually -- and as I said in my opening statement, I think that, even had George Bush been reelected, we would be dealing with this issue in some form here over the next four years. Because there's just too many cases in the courts, too many amendments floating around, too many issues out there with the ROTC program, et cetera.

SEN. FAIRCLOTH: Let me ask another question then. I'll ask this, and I'll start with General Mundy on this one. If President Clinton had gone through basic training at Paris Island or any of the other four military basic training group headquarters, do you think we'd be here today discussing this question?

GEN. MUNDY: Well, that's subjective, Senator, and I don't know that I can get inside the President's thought process, and I'd rather not.

SEN. FAIRCLOTH: General, when I was at Fort Bragg -- Fort Jackson washing cooking pots and a Pfc came back and told me to wash them over, I was reminded of a little litany and rhyme that I had to learn in fifth- grade Latin. And it's still very much applicable here today. "Big fleas have little fleas upon their backs to bite; little fleas have lesser fleas ad infinitum." Now, washing that pan, I was at the end of infinitum. But the President is at the top. He has set this order, and here we go with it. What -- may I ask you another question?

GEN. POWELL: But, Senator, can I take it?

SEN. FAIRCLOTH: Excuse me?

GEN. POWELL: There are many senior people in this body who have been through boot camp, who have been in training facilities and have come to a different conclusion on this issue. So I think it is unfair to single out the President in this regard. The President came into office with not only a political commitment, but he also had a conviction. However he arrived at that conviction -- SEN. FAIRCLOTH: Excuse me. He had a what? A commission?

GEN. POWELL: A conviction.

SEN. FAIRCLOTH: Conviction.

GEN. POWELL: A conviction as well as a political commitment. However he arrived at that commitment and conviction, he had it when he became the commander-in-chief of the armed forces of the United States. And he discussed this matter with us early on. And as early as four days after the inauguration, we as a body told him that there were changes we could make to the policy that we would find acceptable. And that change principally was to stop asking. We have not been asking for six months, and we have shown that that can be a workable policy. We have had some difficulties, but they are minor. I think the policy that the President announced yesterday takes us a little further and takes us further in a way that we will be able to implement this new policy.

SEN. FAIRCLOTH: General, if you wanted to inflict moral problems, confusion, legal entanglements, lawsuits upon the military, can you think of a better subject to have brought it up than this one? Quicker -- and you would have gotten to it quicker? What would it have been? Can you think of anything that would have done it quicker?

GEN. POWELL: Oh, I could think of a few environmental issues and a lot of other issues, but that's --

SEN. FAIRCLOTH: Environmental?

GEN. POWELL: But, Senator, we are where we are. The issue is before the administration and the military leadership and before the Congress. And as Secretary Aspin pointed out, we were going to be facing this no matter who was elected. Frankly, we were -- I was facing it last year. All of the chiefs were facing it last year and the year before when Mr. Aspin was chairman of the House Armed Services Committee and members of the House Armed Services Committee wanted to raise the issue and introduce legislation for that purpose. So the issue has been with us, frankly, for the entire period of time I've been chairman.

SEN. FAIRCLOTH: All right. How long has this current, or the one that was in

place prior to January the 21st or whatever -- how long has that policy been in effect?

GEN. POWELL: A little over 10 years, sir.

SEN. FAIRCLOTH: A little over 10 years?

GEN. POWELL: Yes, sir.

SEN. FAIRCLOTH: Why was it put in effect?

GEN. POWELL: It was put in place in 1981, I guess it was, or '82.

SEN. FAIRCLOTH: Why?

GEN. POWELL: Because it was felt that there was a need for clarification of the policy, there was a need to give guidance to the services and to the commanders in the field as to what acceptable practices were and what policy everybody should be following. There was confusion prior to that time as to what actually we should be doing.

SEN. FAIRCLOTH: All right. The policy was put in effect to keep homosexuals out of the military, is that -- that was its basic purpose.

GEN. POWELL: The policy was for the purpose of implementing the principle that homosexuality was incompatible with military service.

SEN. FAIRCLOTH: But that -- in simple language, it was to keep --

GEN. POWELL: Simple language: To keep homosexuals out of the service.

SEN. FAIRCLOTH: Out of the military? GEN. POWELL: Yes, sir.

SEN. FAIRCLOTH: Now, what has changed in the last 10 years to make us want to change the policy?

GEN. POWELL: Ten years of experience --

SEN. FAIRCLOTH: Do you think we need them in the military now?

GEN. POWELL: Ten years of change in our society, a new President who has a conviction to move in that direction. He is our commander-in-chief.

Congressional challenges, legal challenges, and, frankly, serious soul-searching on the part of the chiefs to see if we could not, in some way, try to accommodate these changing social forces and do it in a way that was not detrimental to good order and discipline and did not adversely impact the effectiveness of the service. And I think we have been able to do that with this policy.

SEN. FAIRCLOTH: Well, we just go through, General, having Secretary Aspin saying the military is different. It has special needs, special requirements. It inflicts special requirements upon those people who participate in the military.

We have heard repeatedly that homosexuality is not compatible with military service. Now, we've clearly established the military is different from social -- it's not a social issue, so why are we trying to bring upon the military, which has these special needs, a social activity -- (inaudible) -- bringing the -- a social problem and inflicting it upon the special needs of a military?

I'll say to Admiral Kelso, if he can enforce and understand and handle all of the discussion that we've had here today in the grinding of the minutia, he can sell his launch and walk out to the ship.

GEN. POWELL: Senator, the military does have special needs, and I'm pleased that the President of the United States, the commander-in-chief, recognized that we have special needs and took the time to listen to those special needs as we

developed this policy over the last six months. Where are we now is that we are no longer asking the question. It is not a matter of asking a young recruit to take an oath of anything, or celibacy or anything else.

What we are saying [is] "These are the unique features of military service. We will not ask the question with respect to your sexual orientation, and if you can enter the military service, whatever your sexual orientation, but not show homosexual conduct, then that's a matter between you and your conscience and your God as to whether or not you can handle that. But if you can't and you must manifest this behavior in some way or after entry in the service you subsequently discover that you have a different orientation than you thought you did, then at that point it is best that you separate yourself from the service, and we will do it under honorable circumstances, in a way that is a genuine parting of the ways."

I think it's a policy that works. It's worked pretty well for the last six months as a couple of the chiefs have indicated, and I think we can make it work in the future.

GEN. SULLIVAN: I think it's worthy of note, by the way, by the committee, and I'll give you these figures, Mr. Chairman, 46 people -- of that, 44 really -- left. They said, "I am and I'm gone." And they just left. They are not in the Individual Ready Reserve. They're out as civilians. They didn't -- this is in this six-month period. They haven't litigated. They could have. And that is, I think, worthy of note.

SEN. FAIRCLOTH: My time's up. One quick question. Anybody decided that they were going to bring this up to the Armed Services Committee if the President hadn't?

SEC. ASPIN: I think eventually we would have been --

SEN. FAIRCLOTH: I'm talking to the generals and to the admirals.

SEC. ASPIN: Oh, sorry. I can't bring it up.

ADM. JEREMIAH: Senator, I think the President exercised leadership on this, and that doesn't make me uncomfortable. He's commander-in-chief. He leads on lots of issues.

SEN. NUNN: Thank you, Senator Faircloth.
Senator Bryan?

SEN. RICHARD BRYAN (D-NV): Thank you very much, Mr. Chairman. You noted in your introductory comments that I would be at the end of the line. I'm reminded that 35 years ago this very month I was -- to use the language of our colleague Senator Faircloth, I was one of those lesser fleas at Ft. Lewis, Washington, doing my appointed rounds as well.

I understand and I have considerable sympathy with the concerns that have been articulated by the Chairman and each of the service chiefs in terms of the unique features of military life and the concern that we do nothing to undermine the readiness, that we do nothing to undermine the effectiveness, and that we need to recognize that there are some circumstances. I accept that premise. Let me ask a series of questions, however, to try to point out an area that maybe you can enlighten me on further.

Prior to January of this year, if an individual identified himself or herself as

being homosexual, that it was not just a statement that was made in jest or to provoke a controversy per se, but in his or her own thought process orientation was, in fact, revealing candidly his or her sexual orientation, that would have been grounds for separation, would it not? GEN. : Yes, sir.

SEN. BRYAN: I take it that the answer is yes. And the concern that you've all expressed is about the cohesiveness and what that would do to the individuals that associate in a unit that is charged with responsibility that ultimately may call upon the service member to sacrifice his or her life for another member of the unit, but ultimately to satisfy the assignment or the task that's given to the unit in our national policy. What is a little less clear to me is that today, as I understand the policy, if an individual identifies himself or herself as being homosexual but does not perform any act of homosexuality -- we're saying "don't ask, don't tell, don't pursue" -- that individual could complete a career in the military service. Am I correct on that assumption?

GEN. POWELL (?): No.

GEN. MUNDY: No, sir.

SEN. BRYAN: Could not?

GEN. MUNDY: Could not.

SEN. BRYAN: If he identified himself or herself as a homosexual but did not commit any act of homosexuality, could that individual not complete --

GEN. MUNDY: Homosexual conduct is defined as a statement.

SEN. BRYAN: But is --

GEN. MUNDY: Conduct -- act is defined as the behavior, Senator.

SEN. BRYAN: As the behavior. But I mean, is he or she not entitled to a rebuttable presumption?

GEN. : Yeah.

SEN. BRYAN: And is the rebuttable presumption that he or she is not homosexual or a rebuttable presumption --

SEC. ASPIN: There is a rebuttable presumption, Senator. There was a rebuttable presumption in the law before. This is not different.

SEN. BRYAN: No, I --

SEC. ASPIN: The "don't tell" part is not different from before. The previous policy was "ask, don't tell, investigate." The current policy is "don't ask, don't tell, don't investigate" -- the proposed policy.

SEN. BRYAN: So the rebuttable presumption is a rebuttable presumption that the individual then, in effect, would carry the burden of establishing that he or she was not homosexual?

SEC. ASPIN: Correct.

SEN. BRYAN: So anyone who is identified as such, comes forward and acknowledges his or her --

SEC. ASPIN: I mean, what -- yes. I mean -- and this is the distinction between going into a gay -- marching in a gay parade or even going into a gay bar. I mean, a person may go into a gay bar and be heterosexual. They may march in a --

SEN. BRYAN: I understand.

SEC. ASPIN: And if -- but if a person says they're gay, that probably means

they're gay.

SEN. BRYAN: And so, in that respect, the policy does not fundamentally change then? Once an individual identifies himself or herself as being gay and says, "Look, that's my sexual orientation, notwithstanding the fact that I do not intend to carry out this orientation by any type of affirmative conduct, that per se merits a separation?"

SEC. ASPIN: They would have the opportunity to prove that, which is a very difficult thing to prove -- the rebuttable presumption -- and that's no different. They had that before, the opportunity --

SEN. BRYAN: But let me be clear on that. You keep saying there's a rebuttable presumption, Mr. Secretary. Is the rebuttable presumption that they are not gay or the rebuttable presumption that they will not carry out any type of affirmative --

SEC. ASPIN: Either way. I mean, the point is conduct in either way, but the point is it's a very difficult thing to prove.

SEN. BRYAN: No, I understand. SEN. NUNN: But I think you're talking past -- if I may interject, I think the Senator's asking whether the rebuttable presumption is that they are gay once they've said they're gay and then they have the right to rebut that with their own proof or whether it's the contrary.

SEN. BRYAN: That's correct.

SEC. ASPIN: Whether it's what?

SEN. NUNN: Or whether the presumption is they're not gay.

SEC. ASPIN: No. The presumption is, if they say it, they're gay.

GEN. POWELL (?): Right.

SEN. BRYAN: And they would then have the burden to disprove that in effect?

SEC. ASPIN: Yes, sir.

SEN. BRYAN: I guess the last question that I would have, and I recognize that this is a very difficult issue that's engaged a good bit of debate not only in this committee but across the nation over the period of the last few months, is, in terms of the policy that you have advanced -- I'd like to ask each of the service chiefs to respond -- in your view, if the policy as enunciated by the Secretary's directive were fully implemented as is, would that policy in any way compromise the military effectiveness of any of the armed forces of the United States of America?

GEN. MUNDY: Start here. No, sir. I believe it would be consistent with the military effectiveness.

GEN. SULLIVAN: Senator, I've said this before, and I'll say it again. This -- I can support this policy. We can carry it out. We must get on with our lives. I think the policy as it was stated on the 19th of July, 1993, is one that we can get on with and --

SEN. BRYAN: I understand that, but I don't think that's a response to my question. I understand --

GEN. SULLIVAN: Okay. Well, the response to your question is I do not think it's going to hurt readiness.

SEN. BRYAN: Okay.

GEN. POWELL: I agree.

ADM. KELSO: I agree, sir. I don't think it will.

ADM. JEREMIAH: I agree.

SEN. BRYAN: And I note that the Chairman has reminded me that my time is expired, and I thank him and my colleagues.

SEN. NUNN: Thank you, Senator Bryan. Senator Hutchison.

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

SEN. NUNN: We will record you as voting for him. The record is open until late this afternoon, so we will record you voting affirmative.

SEN. HUTCHISON: Thank you very much. One vantage point that a person who is at the end of the totem pole has, Mr. Chairman, is that by the time you get to the end, you have pretty much had every question asked, and heard the answers. So I won't belabor it for too long a period, except to say that I heard General Sullivan's eloquent discussion of what was cohesiveness, and that you need to instill in your troops the feeling and the commitment that I will die for you, and you must be willing to die to protect me -- and that keeps you going. I am concerned when you inject an issue upon which debate is fierce, both within and without the military, that it is going to damage the ability to instill in your troops that kind of spirit and morale. I will look at this as we go into the discussion tomorrow, because I think one of the problems is the vagueness. One of the problems is, we don't know where we are. If you are overweight, according to the code, you're out. If your eyesight doesn't meet the code, you're out. But to say that open homosexuality is a disqualification, but here are the ways that we can determine if you're out or not, I think does raise questions that make it not as easily determined that you're out. So, I'm concerned about it, but I've heard your statements, I respect you very much. I certainly want to do what will be the goal for all of us, which is to make sure that the morale is what it needs to be, so that I will be willing to die for you, and you would be willing to die for me on the field. And I am not convinced that we're there, but I certainly want to give every benefit of listening to the people that are the experts. And so that's what I'm trying to do. Thank you, Mr. Chairman.

Being at the end also means that you don't take all of your time.

SEN. NUNN: Thank you very much. You and Senator Bryan have set a rare and unusual precedent here, both of you yielding back time -- that's right. I believe Senator Robb is next.

SEN. ROBB: Thank you, Mr. Chairman. Let me say at the outset, I would respectfully disagree with your suggestion earlier on that there is great joy being the last to pose questions. I hope a little later on informally you can tell me some of the joys that you experienced -- (laughter) -- of being the last questioner. But in the almost five years that I've been here, I've found very little joy being the last questioner, whatever the circumstances.

Let me just say -- and I'll be very brief myself -- I certainly envy those who see this question exclusively in absolute terms and without any sense of ambiguity, and anyone who has listened to the secretary of defense, the chairman

of the joint chiefs and all of the joint chiefs here this morning and certainly been through any part of the hearings that we have held on this issue understands that it is a very difficult one.

When I was asked yesterday right after the president and the SECRETARY made their statements what my reaction was, I made a very short statement. I just thought I'd read it in conclusion here. I said that progress in civil rights is seldom rapid or painless, yet the compromise does shift the focus from who an individual is to what the individual does and allows qualified individuals who are willing to fight and die for their country to serve without prejudice if they adhere to a strict code of conduct.

And I went on to say with strong leadership and greater understanding, more changes will come in time; but for now the active support of General Powell and each of the individual service chiefs, as far as I am concerned, is critical, and I recognize that it is a compromise for the joint chiefs as well, and I added one caveat: I hope that Congress will resist any attempt to intervene legislatively. I say that now only and as the concluding questioner on this panel to suggest to you that although almost everyone disagrees with some part of the policy, I don't think either the president or any of you individually would necessarily draw the line in precisely the same spot that you have drawn the line, and some of us had hoped for a line in a different spot.

The fact that the service chiefs and the chairman of the joint chiefs are actively on board in supporting this policy, I think, is probably at this particular stage, the most important single element, and I told many with whom I shared my views, including several of those who are seated at the table this morning and others, that I thought it was important that we find something that the chairman and the joint chiefs and the individual services could agree with, and I certainly agree with the suggestion made several times that the unit commanders are the ones who are given a fairly broad leeway or discretion in carrying out this particular policy. It's going to be difficult; we're going to have additional challenges to it. I think that any existing policy is challenged at court, and I think that it would be unrealistic to assume that any new policy wouldn't also be challenged in court, but that can't keep you or anyone else from continuing to examine policy changes and make changes where appropriate.

I have a single question for the secretary of defense, if I could.

Secretary Aspin, you made reference in your opening statement to the fact that you worked very closely with the military working group, consisting of flag and general officers and with the Rand Corporation, and profited from the input that they received. Could you make available to this committee any of the written deliberations or conclusions or the study that was the result of that particular -- or those two particular consultative processes in which you engaged?

SEC. ASPIN: Let me, Senator, look at the issue and see whether we can't make some of that available. As a general proposition, the answer is yes. We may have some issues of confidentiality in terms of advice, but we will try and make available the information that you seek.

SEN. ROBB: Thank you Mr. secretary. It seems to me, given the amount of time

and thought that have gone into this, that having the benefit of those additional professionally developed responses to the challenge would be very useful to the committee. With that, I thank the chairman, the joint chiefs and the secretary for coming before us this morning, and, Mr. Chairman, I thank you for this opportunity.

SEN. NUNN: Thank you, Senator Robb. Let me ask my final question here to each of the chiefs.

General McPeak?

GEN. MCPEAK: Yes, sir. We will go to work immediately on implementing regulations and procedures, and I don't think there will be any problem whatsoever in carrying this policy out in precisely the way you specified.

SEN. NUNN: Admiral Kelso?

ADM. KELSO: Yes, sir, Senator, I think we can work to get this policy in place, and it will work, sir.

SEN. NUNN: Admiral Jeremiah?

ADM. JEREMIAH: Yes, sir. Yes, sir.

SEN. NUNN: General Powell.

GEN. POWELL: Yes, sir, we can implement this policy.

GEN : Without any qualification.

GEN. MUNDY (?): Yes, sir.

SEN. NUNN: General Mundy, thank you.

Let me suggest one thing for the general counsel tomorrow. I think where we've had some confusion today, and I'm afraid it's going to get bigger rather than smaller, and I think most of the questions have been answered.

But the area is to distinguish between what is new in this policy and what was existing policy. Some of the big debate today has been on due process-type questions that are existing policy.

GEN. : Exactly, sir

SEN. NUNN: But the way they have been presented in the last 24 hours has given the impression or the perception, both in the media and in the committee, and perhaps the public at large, that this is something new, like the rebuttable presumption. That is an area that has been difficult today. And if the general counsel tomorrow could start off with her testimony by saying here in the new policy is what is really new, and here in the new policy is what was already in existence, I think that would be a big help in clarifying the Record. I'll give you two or three examples. The gay bars -- it's been my impression that all along there's been no bar -- or no automatic expulsion for anyone that was seen in a gay bar. In fact, many bars are not known by many people who walk in them as gay bars, and some of them are. Now that would be the exception, and my impression is if a bar was placed off limits, which a commander has the right to do. Whether it's a gay bar or another bar, they have the right to place it off limits.

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

GEN. : Yes, sir.

SEN. NUNN: So there is no change in either of those policies, there is no change in any -- that's what we really need to pin down here because I think there is some confusion.

SEC. ASPIN: Senator, let me just say that as a general proposition, the policy being don't ask/don't tell/don't pursue -- the new part is in the don't ask and don't pursue, not in the don't tell.

SEN. NUNN: Well, even on the don't ask, you get into the presumption -- the example about one person saying to another, and that person reporting to the commander, and what the commander can do, and what the commander can't do at that stage. That --

SEC. ASPIN: That's don't pursue.

SEN. NUNN: Well, we have a problem with that one because the way I read all of your statements is that -- Mr. Secretary, is that on that one that that commander does have discretion --

SEC. ASPIN: Yes.

SEN. NUNN: -- based on one soldier's comment to another, and that soldier reporting it to the commander. That soldier -- as I read all of your statements -- written statements, that soldier -- that commander would have the discretion -- not the absolute obligation -- that he could consider other matters, but would have the discretion to at the stage start an investigation.

SEC. ASPIN: It is up to the individual commander to determine when he has credible information.

SEN. NUNN: Right. I think General Powell --

GEN. POWELL: Yeah, he may or may not proceed, depending --

SEN. NUNN: May or may not. Doesn't have to, but may. All right. I think we'll -- we'll set the stage for the -- for the attorneys tomorrow.

I want to yield to Senator Thurmond, and we'll start back for those who want to ask further questions here. I know you all are ready to depart in a minute, but I don't -- I don't want to deprive my colleagues --

SEN. WARNER: Let's limit questions to, say, two minutes or something like that --

SEN. NUNN: I -- there's a --

SEN. WARNER: -- because these gentlemen have been here a long time.

SEN. NUNN: Does anybody having a real need for a break? We won't be here another five, ten minutes, I don't believe.

SEC. ASPIN: Go ahead.

SEN. NUNN: Okay.

Senator Thurmond.

SEN. THURMOND: Mr. Chairman.

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

SEC. ASPIN: No, I think it's -- it's -- it all takes place as of October 1st.

SEN. THURMOND: Do those who have been separated have reason to believe they may re-enter the military?

SEC. ASPIN: Well, I think we can't answer that question at this point totally, senator. We -- the -- discussing it among the Joint Chiefs, and I can let them each speak for their individual service, but we have about eight cases which are scattered throughout the services, and we are examining those on an individual and a case by case basis.

SEN. THURMOND: General Powell, what impact in your opinion will this policy have on our allies and coalition partners' willingness to permit US forces to train and to be stationed in -- in their countries?

GEN. POWELL: I don't think it will have any impact. I don't think it'll change the current status. SEN. THURMOND: General Mundy, I am sure you have not -- I -- I am sure you have met with many family members over the past six months.

How do you think this policy will be accepted by Marine Corps family members?

GEN. MUNDY: It will be accepted very well, I think, senator. It will assure their concerns about open homosexuality, which has been the focus.

SEN. THURMOND: That's the only question I have. I want to thank all you members for being here today and answering the question very frankly.

Thank you.

SEN. NUNN: Thank you, Senator Thurmond.

Senator Warner.

SEN. WARNER: Thank you. I'll be very quick -- two questions to the Secretary.

First, in reading through all the material that descended on us for an hour or so to review it, it's the acts throughout. You talk about acts of homosexuality, conduct of homosexuality, yet -- and this is the only thing we have, is this thing from the Attorney General, and the quote is "Homosexuality is incompatible with military service." Why don't you say "An act of homosexuality is incompatible" rather than just the broad term "homosexuality"?

SEC. ASPIN: Well, we -- we -- we decided that the first part of the thing is essentially a philosophical statement which was not an operative paragraph. The operative paragraph is the next paragraph --

SEN. WARNER: Well, we don't have it. We don't have the official text, at least --

--

SEC. ASPIN: Oh. Well, the operative paragraph is that the -- that the -- that -- that the basis for judgment is conduct. I mean, whether it's -- whether you believe that homosexuality is incompatible with military service -- I mean, most of the members, as you heard here, believe that that is the case. They also believe that there are individual members who -- who are -- that do have a homosexual orientation who have served with distinction in the armed forces.

Therefore it is the policy to judge people on the basis of conduct.

That's the operating paragraph, Senator, is the --

SEN. WARNER: Well, we -- this doesn't have it in it. This is just --

SEC. ASPIN: I'm sorry.

SEN. WARNER: Mr. Secretary, we'll get it eventually, and we'll have a chance to look at it with the lawyers tomorrow.

SEC. ASPIN: Okay.

SEN. WARNER: But, to me, that helps, because I continue to come back to this thing as it's now written is simply requiring of the homosexuality to take an

oath of mental and physical celibacy or abstinence, and I find that so unrealistic. Mr. Secretary, what is the burden of proof that's going to be required by these individuals?

SEC. ASPIN: You're talking about the individual commanders that are --

SEN. WARNER: No, no -- well, both. Either the homosexual who has to get up and say, "I am, but" -- what's the burden of proof cast on him or her?

SEC. ASPIN: Under the rebuttable presumption?

SEN. WARNER: Yeah.

SEC. ASPIN: I mean, they have to prove, at least to the investigators, that they are not or have not engaged in homosexual conduct.

SEN. WARNER: And that's during hours of professional work or after hours or any time?

SEC. ASPIN: Period.

SEN. WARNER: Celibacy? That's about it, right?

SEC. ASPIN: It's never been done, Senator. Nobody's ever tried this defense. It's a very tough standard to meet.

SEN. WARNER: Yet you said at least once, I think twice, you recognized that in the history of the military homosexuals have served --

SEC. ASPIN: Correct.

SEN. WARNER: -- and have served with distinction.

SEC. ASPIN: Correct. Because they --

SEN. WARNER: It seems to me that this is a change that you're making.

SEC. ASPIN: No, no. The issue has never come to the point. The point of rebuttable presumption is that, if the issue comes to the attention of the authorities and the authorities say, "We -- you have just said that you are gay and you have the opportunity to present some evidence to the contrary." But if it never -- the people who have served have served because it has never come to the attention of anybody in authority. It's never come to the commander's attention.

SEN. WARNER: Well, my earlier question tried to strike a note that there should be some equality between all sexual orientations. If this policy is to withstand the scrutiny of the federal courts, then I just --

SEC. ASPIN: I think there is something about that. We'll show you, Senator --

SEN. WARNER: All right. I don't want to take up the time. My time has expired, so I will not be able to pursue these --

SEC. ASPIN: Part of the policy here is to try and get that kind of equality that you're talking about.

SEN. WARNER: I'm not sure you achieved it. You see, I asked what I felt was -- what concerns me, readiness. And each one of the witnesses answered it obliquely in my judgment, "Yes, we're going to have a more ready force because the policy's clear." I can't find that clarity, and therefore, it undermines, in my judgment, the responses of each, that because of the clarity of policy we're going to be a more ready -- more combat-ready force to defend our country. I can't find that clarity.

SEN. NUNN: Senator Coats.

SEN. DAN COATS (R-IN): Mr. Chairman, I know the time is short. I'll just ask

three hopefully brief questions, and hopefully they'll lend themselves to brief answers.

I just want to follow up on that point. I -- because I don't quite understand this. The Attorney General's memo states the policy -- the new policy "reiterates the prior Defense Department view that homosexuality is incompatible with military service because it interferes with factors critical to combat effectiveness." But the policy memorandum doesn't say that. It says, "The Department of Defense has long held that, as a general rule." "Has long held that" is not the same as reiterating the policy, and I'm just wondering why the inconsistency there, or is there? And I'm missing --

SEC. ASPIN: I don't know that there is an inconsistency. You ought to check with the Attorney General or the people from -- who represent the Attorney General when they come in tomorrow. But I mean, our policy is stated there. I think that, to the extent that we understand these things, we have -- the Department has long held --

SEN. COATS: It's your intent, though -- it's your intent that the present policy state the long-held policy?

SEC. ASPIN: I believe that that's true, that, yes, that it does state the long-held policy. You just heard the chiefs all talk about it.

I don't think they have changed their point of view. The point that we're making, though, is that the policy -- that the conduct becomes the judgment.

SEN. COATS: I understand that.

SEC. ASPIN: Right.

SEN. COATS: We'll ask the attorneys tomorrow. Then we'll all be confused.

SEN. NUNN: Senator Coats, would it help if we asked the Secretary about the words, "the Department of Defense has long held that." It would seem to me, by using the word "has" instead of "had," that that continues to be the view of the Department of Defense.

SEN. COATS: "Has long held"?

SEN. NUNN: If this was past tense, you would've used the word "had."

SEN. COATS: Yes.

SEN. NUNN: Does the word "has" mean that that is still the view of the Department of Defense?

SEC. ASPIN: That was my intention, yes sir.

SEN. COATS: I want to hear the attorneys say that tomorrow. But we'll all be confused, I'm sure, when they do give us their analysis.

Question number two. In your statement today, Mr. Secretary, you said the constraints of military service require service members to keep certain aspects of their personal lives private for the benefit of the group. That means, no statement by a service member that he or she is a homosexual -- and we've talked about that. But yesterday the President said, quote, "Under this policy, a person can say, 'I am a homosexual.'" Now, did the President misinterpret what the policy was?

SEC. ASPIN: I'm unfamiliar with the -- that was in his speech, at the National Defense --

SEN. COATS: No, that was during his press conference with the Attorney General,

in response to a question. So there's an inconsistency here. And it may be that the President, in response to the question, simply misunderstood what the policy is. My point is, if the President doesn't understand the policy as Commander in Chief, how are we going to get a commander to understand the policy? Because you can say: Well now, who am I supposed to follow? The President's quote is, a person can say, "I am a homosexual," and that's not bar to service. And yet you said, no statement by a service member that he or she is a homosexual is acceptable under the new policy. That's totally contradictory to me.

SEC. ASPIN: Senator, I wasn't at the press conference that you're referring to. What I know was that the President was at the National Defense University, and laid out in his speech what his views were. And I heard the speech and read the speech beforehand. I think what he said in the speech is absolutely correct. It's consistent with what we've been saying here today. I honestly don't know what happened after, in the press conference --

SEN. COATS: Well, I would suggest that's something we need to clarify.

SEN. NUNN: What did he say after he said that? Did he go ahead and say what would happen? Or did --

SEN. COATS: He said -- but I am going to strictly adhere -- he said: under this policy, a person can say, "I am a homosexual, but I am going to strictly adhere to the code of conduct." But we had -- but that directly contradicts the policy as enumerated by the Secretary, indicating no statement by a service member that he or she is homosexual is allowed.

GEN. : Well, it wasn't a complete answer. I don't know --

SEN. COATS: Okay. Well, we'll let the attorneys wrestle with that one, too.

One last question. When I asked the question individually, do you feel that homosexuality is compatible or incompatible, we got into -- is it open or private? And if it's open, I think there's agreement that it's incompatible with military service, undermines unit cohesiveness. If it's private, there may or may not be a division as to whether or not it's compatible, and whether it undermines.

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

GEN. MUNDY: Yes, Senator, you do. Back in the early '80s, I believe, there was a great deal of aggressiveness towards recruits, and that was, I think, isolated to the woman Marine recruit training battalion, and it was a major problem for us with a number of people involved.

SEN. COATS: But would that be clarified as open? No one was openly declaring homosexuality.

GEN. MUNDY: That was not a declaration. It was the conduct that was taking place by homosexuals.

SEN. COATS: So would you describe that as private -- well, you would say that the conduct, then, would fall within this policy. How do you square that with open -- incompatibility whether it's open or closed?

GEN. MUNDY: Well, I believe what the policy says, Senator, is that homosexual

orientation is not a bar to enlistment, not a bar to accession into the armed forces. That's orientation. That is distinct and separate from behavior or from conduct. Conduct includes all of those things, of stating "I am" or of behaving as such or the other -- marriage, those sorts of things that have been defined in the policy statement.

SEN. COATS: So, what took place there at Paris Island that definitely undermined

--

GEN. MUNDY: Was conduct.

SEN. COATS: And, therefore, would be incompatible.

GEN. MUNDY: Yes, sir.

SEN. COATS: Thank you.

Thank you, Mr. Chairman.

SEN. NUNN: Thank you, Senator Coats.

Thank you, Mr. Secretary and all the Chiefs. General Powell, all of you, thank you very much for being here and for all of your hard work on this issue. We'll hear from general counsel tomorrow and move from there.